

ORDINANCE No. 122211

COUNCIL BILL No. 115661

AN ORDINANCE relating to the Seattle Aquarium; authorizing the loan of funds from the City's Consolidated (Residual) Cash Pool, or its participating funds, to the 2007 Multipurpose LTGO Bond Fund; increasing an appropriation in the 2006 Adopted Budget; amending the Adopted 2006-2011 Capital Improvement Program; and authorizing an agreement with the Seattle Aquarium Society for use and further development of portions of the Aquarium; all by a three-fourths vote of the City Council.

COMPTROLLER FILE No. _____

Introduced: <u>JUL 24 2006</u>	By: <u>McIVER</u>
Referred: <u>JUL 24 2006</u>	To: <u>Finance & Budget</u>
Referred:	To:
Referred:	To:
Reported: <u>9-5-06</u>	Second Reading:
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Returned to City Clerk: <u>9/11/06</u>	Published: <u>title 4 pages</u>
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Passed over Veto:	Veto Sustained:

US5047

The City of Seattle--Legislative Department

REPORT OF COMMITTEE

Richard J. McIver
Date Reported
and Adopted

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:

Passed 3/0 August 16th 2006, RM, DD, JB

9-5-06 Passed 9-0

Law Department

Committee Chair

ORDINANCE 122211

AN ORDINANCE relating to the Seattle Aquarium; authorizing the loan of funds from the City's Consolidated (Residual) Cash Pool, or its participating funds, to the 2007 Multipurpose LTGO Bond Fund; increasing an appropriation in the 2006 Adopted Budget; amending the Adopted 2006-2011 Capital Improvement Program; and authorizing an agreement with the Seattle Aquarium Society for use and further development of portions of the Aquarium; all by a three-fourths vote of the City Council.

WHEREAS, the City of Seattle (City) owns and operates the Seattle Aquarium (Aquarium), located on Piers 59 and 60 in Seattle, Washington, and for many years the Seattle Aquarium Society (the Society) has supported the City in this endeavor, including managing the Aquarium merchandise concession under an agreement with the City that extends through December 31, 2006; and

WHEREAS, in 2005, pursuant to City Council Resolution 30737, the City and the Society executed a Memorandum of Agreement in which, among other things, the Society committed to undertake a capital fundraising campaign and to provide the City with certain capital improvements to the Aquarium concession areas and new exhibits (the "Aquarium Project"); and

WHEREAS, Resolution 30737 also contemplates that upon successful completion of the fundraising campaign and capital improvements and the satisfaction of other conditions, the Society may assume additional responsibilities with respect to the management of the Aquarium, including management of the Aquarium food services operations; and

WHEREAS, the Mayor has proposed, and the City Council has approved, a 2006 Budget and 2006-2011 Capital Improvement Program ("CIP") that includes certain structural renovations to Pier 59 and the Aquarium; and

WHEREAS, in 2005, Seattle undertook CIP Project K732202, "Aquarium Pier 59 Piling Replacement Project," to replace the pilings under Pier 59 as part of a plan to repair and redevelop the Aquarium and the Central Waterfront area and to construct a new Aquarium entrance, exhibits, and visitor services on a portion of the pier; and

WHEREAS, in order to allow for the orderly progression of the Aquarium Project in conjunction with the repairs to Pier 59 and so that the new concession facilities may open in 2007, the City wishes to amend its general contract for the Pier 59 Piling Replacement and to proceed with certain work involved in the Aquarium Project; and

1 WHEREAS, the City and the Society have negotiated a Master Concession Agreement pursuant
2 to which the Society will manage merchandise and food and beverage concessions at the
3 Aquarium and will compensate the City for such right in a manner that will offset the
4 City's costs of the City's expanded CIP project authorized herein; and

5 WHEREAS, there is sufficient cash in the City's Consolidated (Residual) Cash Pool or its
6 participating funds to support a loan of up to Six Million Three Hundred Thousand
7 Dollars (\$6,300,000), plus accrued interest to the 2007 Multipurpose LTGO Bond Fund
8 (the "Bond Fund") for the Aquarium Project terminating no later than June 30, 2008; and

9 WHEREAS, it is anticipated that this loan will be refinanced in or before 2008 with general
10 obligation bonds when the City has sufficient financing needs to warrant a bond issue;
11 NOW, THEREFORE,

12 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

13 Section 1. A loan of up to Six Million Three Hundred Thousand Dollars (\$6,300,000)
14 principal amount outstanding at any one time, plus accrued interest, is hereby authorized to be
15 made from the City's Consolidated (Residual) Cash Pool, or its participating funds, to the Bond
16 Fund for the costs of constructing certain improvements to the concession and exhibit areas of
17 the Seattle Aquarium. Said loan is to be repaid no later than June 30, 2008.

18 Section 2. Interest owed by the Bond Fund to the City's Consolidated (Residual) Cash
19 Pool that is allocable to the Aquarium project will accrue to the Project Fund and be repaid with
20 the proceeds of limited tax general obligation bonds issued by the City. Interest on the loan will
21 be calculated at the rate of return of the City's Consolidated (Residual) Cash Pool.

22 Section 3. The entire principal amount of the loan authorized by Section 1 above shall be
23 repaid.

24 Section 4. The Director of Finance may effectuate the loan authorized in Section 1 of
25 this ordinance by transferring cash from one or more of the funds participating in the City's
26 Consolidated (Residual) Cash Pool to the Project Fund, or by carrying the Project Fund in a
27
28



negative cash position in an amount not to exceed Six Million Three Hundred Thousand Dollars (\$6,300,000) plus accrued interest at any one time, until no later than June 30, 2008.

Section 5. In order to pay for necessary capital costs and expenses for which insufficient appropriations were made, the appropriation for the following in the 2006 Budget is increased from the fund shown, as follows:

Item	Fund	Department	Budget Control Level	Amount
1.1	2007 LTGO Multipurpose Bond Fund (#35100)	Parks & Recreation	Seattle Aquarium Projects (K72448)	\$6,384,000

Section 6. The name and description of the "Aquarium Pier 59 Piling Replacement" project # K732202 in the 2006-2011 Adopted Capital Improvement Program for the Parks and Recreation Department are amended as shown on Attachment 1 to this Ordinance.

Section 7. The Superintendent of Parks and Recreation, or his designee, is hereby authorized on behalf of the City to execute a Master Concession Agreement with the Society substantially in the form of Attachment 2 to this Ordinance, or with such additions, deletions and modifications as the Superintendent determines are in the City's best interests.

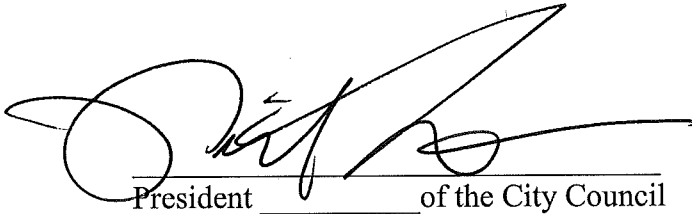
Section 8. In accordance with RCW 35.32A.060, some of the foregoing appropriations are made to meet actual necessary expenditures of the City for which insufficient appropriations have been made due to causes which could not reasonably have been foreseen at the time of the making of the 2006 Budget.

Section 9. All acts taken prior to the effective date and consistent with the authority of this ordinance are hereby ratified and confirmed.



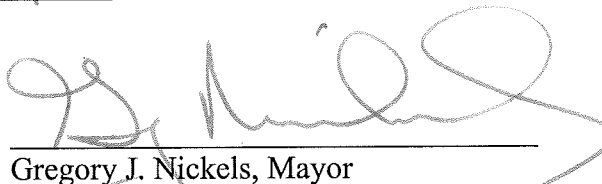
Section 10. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by a three-fourths (3/4) vote of all the members of the City Council the 5th day of September, 2006, and signed by me in open session in authentication of its passage this 5th day of September, 2006.



President _____ of the City Council

Approved by me this 8th day of September, 2006.



Gregory J. Nickels, Mayor

Filed by me this 11th day of September, 2006.



City Clerk

(Seal)

Attachment 1: Aquarium - Pier 59 Piling Replacement and Aquarium Redevelopment
Attachment 2: Pier 59 Master Concession Agreement between the City of Seattle, as City, and the Seattle Aquarium Society as SEAS

Exhibits to Attachment 2:

Exhibit 1.1: Legal Description

Exhibit 1.2: Tenant Improvements

Exhibit 1.2 (A): Documents for City Work

Exhibit 1.2 (B): Document for SEAS Work

Exhibit 1.2.1: First Floor Lease Plan

Exhibit 1.2.2: Second Floor Lease Plan

Exhibit 1.5: Base Rent Schedule - Initial Term & Base Rent Schedule - Extended Term(s)

Exhibit 15.1: City's Builders Risk Insurance

Exhibit 15.7: SEAS' Contractor's Insurance

Aquarium - Pier 59 Piling Replacement and Aquarium Redevelopment

Project ID	K732202	New Project?	Project Start	Q3/2003
Type	Rehabilitation or Restoration		Project End	Q43/20076
Contact Name:	Browne		Contact	684-4155
BCL Name:	Seattle Aquarium Projects		BCL Code:	K72448
Capacity:				

Project Location(s)**Location:** 1483 Alaskan Wy.**Neighborhood Plan:** Not in a Neighborhood Plan**Neighborhood Plan** N/A**Neighborhood District:** Downtown**Urban** Commercial Core**Checked box indicates this project is:****Art Eligible****Design Eligible****Cost Estimate:** \$26,145,000 32,721,000**In a Neighborhood Plan****Information Only****Description**

This project originally included removal and replacement of deteriorated pilings, pile caps, sub-caps, and stringers supporting the decking on Pier 59. In 2003, an extensive evaluation of the pier was completed by Seattle Structural, a private consulting firm. The evaluation indicated the pier's entire piling system should be replaced. This CIP project fully funds this comprehensive repair including demolition and reconstruction of the deteriorated pier as well as reconstruction of the east end (facing Alaskan Way) of the pier shed. Existing wood pilings are replaced with long-lasting and corrosion-resistant stainless steel pilings and trusses. The project includes \$2.4 million for reconstruction of the pier shed, including a second floor balcony, stairs, and interior walls (ready for final finishes), installation of an elevator, and public restrooms. ~~In 2006, an additional \$1.8 million was added to the project (financed with Limited Tax General Obligation bonds, and shown in the table below). The additional debt is reflected by an associated increase in REET funding for the Aquarium Pier 59 Piling Replacement Debt Service project (K732283).~~

This project anticipates ~~\$13.7~~ \$17.1 million in private or other public funding to be raised by the Seattle Aquarium Society (SEAS), ~~to fund development of the Aquarium facility, of which \$6.3 million will offset certain costs of redevelopment of the Aquarium Facility, including a new visitor entrance, an entry exhibit hall, one other unspecified major exhibit, and relocation of concession facilities and other visitor amenities, as further described below.~~

On November 4, 2004, the City Council budget committee held a special public hearing on this project. Special public hearings, also known as "CLEAN!" hearings, are held for certain major capital projects on which the City spends or is authorized to spend \$5 million or more in City money.

In early 2005, the City Council passed Resolution 30737 authorizing the Department to enter into a Memorandum of Agreement (MOA) between the City and SEAS and rescinding a previous MOA regarding the City's partnership with SEAS. The new MOA reflects a change in the City's financial commitment to the development of the new Aquarium. In lieu of a cash contribution to the Aquarium redevelopment, the City is funding this infrastructure replacement project, including the improvements described above.

In addition, the 2005 fourth quarter supplemental budget legislation, Ordinance 121993, added \$250,000 in grant funds from the Seattle Aquarium Society to help pay for the renovation of the Aquarium's gift shop. In 2006, the City Council passed an Ordinance authorizing a loan of \$6.3 million plus accrued interest from the City's Consolidated (Residual) Cash Pool, or its participating funds, to the 2007 Multipurpose LTGO Bond Fund; increasing the appropriation in the 2006 Adopted Budget by this amount; and authorizing the Department to enter into an agreement with SEAS for use and further development of portions of the Aquarium. The \$6.3 million will complete the structural and tenant improvements to the Aquarium. Bond financing costs of \$192,000 are shown below in 2007. SEAS will repay the \$6.3 million plus interest and financing costs from revenues generated from merchandise and food and beverage concessions at the Aquarium or from donations to its capital campaign. Repayment of the debt (financed with Limited Tax General Obligation bonds, and shown in the table below), is reflected in the Aquarium Pier 59 Piling Replacement Debt Service project (K732283).

Attachment 1

	LTD	2005	2006	2007	2008	2009	2010	2011	Total
Revenue Sources									
General Obligation Bonds	0	22,400		0	0	0	0	0	22,400
General Obligation Bonds			1,854	0	0	0	0	0	1,854
General Obligation Bonds			0	0	0	0	0	0	0
			<u>6,384</u>	<u>192</u>					<u>6,576</u>
Real Estate Excise Tax II	1,129	289	0	0	0	0	0	0	1,418
Miscellaneous Grants or Donations	175	48	0	0	0	0	0	0	223
Private Funding/Donations	0	250	0	0	0	0	0	0	250
Project Total:	1,304	22,987	<u>1,854</u> <u>8,238</u>	<u>0</u> <u>192</u>	0	0	0	0	<u>26,145</u> <u>32,721</u>
Fund Appropriations/Allocations									
2005 LTGO Capital Project Fund	0	22,400	0	0	0	0	0	0	22,400
2006 LTGO Capital Project Fund			1,854	0	0	0	0	0	1,854
2007 LTGO Capital Project Fund			0	0	0	0	0	0	0
			<u>6,384</u>	<u>192</u>					<u>6,576</u>
Cumulative Reserve Subfund – REET II Subaccount	1,129	289	0	0	0	0	0	0	1,418
Cumulative Reserve Subfund – Unrestricted Subaccount	175	298	0	0	0	0	0	0	473
Appropriations Total*	1,304	22,987	<u>1,854</u> <u>8,238</u>	<u>0</u> <u>192</u>	0	0	0	0	<u>26,145</u> <u>32,721</u>
O & M Costs (Savings)	0	0	0	0	0	0	0	0	0
Spending Plan	0	<u>15,100</u> <u>13,954</u>	<u>9,741</u> <u>12,471</u>	<u>0</u> <u>4,992</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>24,841</u> <u>31,417</u>

Attachment 2

**PIER 59 MASTER CONCESSION AGREEMENT
BETWEEN
THE CITY OF SEATTLE,
AS CITY,
AND
THE SEATTLE AQUARIUM SOCIETY
AS SEAS**

June___, 2006

June 20, 2006

Attachment 2 to DPR Aquarium Society ORD



Attachment 2

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PIER 59 MASTER CONCESSION AGREEMENT

THIS PIER 59 MASTER CONCESSION AGREEMENT (this "Agreement") is entered into by and between **THE CITY OF SEATTLE** ("City"), a city of the first class of the State of Washington, acting by and through its Department of Parks and Recreation and the Superintendent thereof, and **THE SEATTLE AQUARIUM SOCIETY** ("SEAS"), a not-for-profit corporation organized under the laws of the State of Washington.

RECITALS

City and SEAS are parties to that certain Pier 59 Concession Agreement, dated December 31, 2003 (as amended to date, the "2003 Agreement"), as amended by that certain First Amendment to Pier 59 Concession Agreement, dated effective as of January 1, 2006. This Agreement shall be concurrent with the 2003 Agreement until the Rent Commencement date under this Agreement occurs at which time the 2003 Agreement shall terminate without prejudice to any liability accrued prior to termination.

The Memorandum of Agreement dated March 16, 2005 (the "MOA"), between the City and SEAS (authorized by Resolution 30737) envisioned transfer of operation of the Aquarium to SEAS after completion of Phase One improvements outlined in the MOA. The MOA recognized that the transition could occur in phases, with food service and gift shop cited as specific examples of early phase transitional operations. The MOA also authorized SEAS, as part of its annual agreement with the Department of Parks and Recreation, to proceed with selection of food service and gift shop operators for the renovated space. This Agreement will permit SEAS to extend to the new concessionaires commercially reasonable terms and conditions that are commensurate with the level of investment those concessionaires intend to make in the concession premises.

AGREEMENT

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

1. Agreement Data; Exhibits.

The following terms shall have the following meanings, except as otherwise specifically modified in this Agreement:

1.1 **Building.** Seattle Aquarium, Pier 59 Pier Shed, 1483 Alaskan Way, Seattle, King County, Washington 98101, situated on real property described on Exhibit 1.1.

1.2 **Premises.** The Premises shall consist of the areas described below, including SEAS improvements (City Work and SEAS Work) described in Exhibit 1.2 attached hereto and made a part hereof:



Attachment 2

1.2.1 an area consisting of approximately 2,960 rentable square feet, outlined on the Floor Plan of the Building (the "Floor Plan") attached hereto as Exhibit 1.2.1 and designated thereon as "Gift Shop" (the "Gift Shop Premises"); and

1.2.2 an area consisting of approximately 4,535 rentable square feet, outlined on the Floor Plan of the Building (the "Floor Plan") attached hereto as Exhibit 1.2.2 and designated thereon as "Restaurant" (the "Restaurant Premises").

1.3 Commencement Date. June 1, 2006.

1.4 Expiration Date. Ten years after the Rent Commencement Date, unless the Term of this Agreement is extended pursuant to Subsection 3.

1.5 Base Rent. The Base Rent is that amount shown in Column D of Exhibit 1.5 the Base Rent Schedule. The Base Rent has three components. Component A is City's cost of financing \$ 2,400,000 of City improvements to the Aquarium entry and is shown in Column A of Exhibit 1.5. Component B is the principal amount of the City Work and is shown in Column B of Exhibit 1.5. Component C is an amount equal to City's cost of financing the City Work, and is estimated in Column C of Exhibit 1.5. The City Finance Director will provide SEAS from time to time with the actual costs of financing the City Work and that amount shall be Component C of the Base Rent, all of which SEAS shall pay City during the Term, as and when specified in Section 4.

1.6 Security Deposit. None required.

1.7 Parking. None provided.

1.8 Notice Addresses.

To City: The Seattle Aquarium
The City of Seattle
Department of Parks and Recreation
Attention Aquarium Director
1483 Alaskan Way Pier 59
Seattle, Washington, 98101- 2015

To SEAS: The Seattle Aquarium Society
Attention Chief Executive Officer
1415 Western, Suite 505
Seattle Washington, 98101-2051

With a copy to: Riddell Williams P.S.
Attention: Paul Kundtz
1001 Fourth Avenue Plaza, Suite 4500
Seattle, Washington 98154-1192



Attachment 2

1.9 Exhibits. The following exhibits are made a part of this Agreement:

- Exhibit 1.1 - Legal Description
- Exhibit 1.2 - Tenant Improvements
- Exhibit 1.2 (A) - Documents for City Work
- Exhibit 1.2 (B) - Document for SEAS Work
- Exhibit 1.2.1 - First Floor Lease Plan
- Exhibit 1.2.2 - Second Floor Lease Plan
- Exhibit 1.5. - Base Rent Schedule
- Exhibit 15.1 - City's Builders Risk Insurance
- Exhibit 15.7 - SEAS' Contractor Insurance

2. Premises.

2.1 Grant. City hereby leases to SEAS and SEAS hereby leases from City those certain premises (the "Premises") referenced in Section 1 located in the Building which is located on the real property described on Exhibit 1.1.

2.2 Condition. The Premises are leased by City and accepted by SEAS subject to City's obligation to perform City Work pursuant to Exhibit 1.2. SEAS shall perform SEAS Work pursuant to Exhibit 1.2.

2.3 Permitted Use. SEAS shall use the Premises in a manner which, in the reasonable opinion of the Superintendent of the Department of Parks and Recreation of The City of Seattle, is compatible with the use of Pier 59 for parks and recreation purposes as more particularly described below. SEAS shall not sell, nor allow others to sell, or promote the sale or use of, tobacco, weapons, and alcoholic beverages at any part of the Premises (provided that alcoholic beverages may be served at catered events and in the Restaurant Area). SEAS shall not use the Premises for any purpose whatsoever other than the uses specifically permitted herein (collectively, the "Permitted Use").

2.3.1 The Gift Shop Premises shall be used by SEAS as a gift shop, to be named "The Seattle Aquarium Store", for the retail sale of Aquarium-related gifts, educational merchandise and other aquatic-related items including, but not limited to, books, prints, statuary, jewelry, toys and games, stuffed animals, posters, paintings, paper products, children's gifts, design objects, artwork, decorative accessories, design furniture, clothing, accessories, novelty candy, and collectibles in connection with Aquarium promotions and exhibits, and other similar type merchandise, and other uses incidental thereto. There shall be no other gift shop in the Building where the foregoing items are sold, and SEAS shall have the exclusive right to maintain a gift shop in the Building. City retains a continuing right of review and approval of all items sold from the Gift Shop Premises, and City shall have the right to require SEAS to remove from the Gift Shop Premises or prohibit SEAS from selling or promoting in the Gift Shop Premises any item that City, in its reasonable discretion, determines is inappropriate for display and sale in the Gift Shop Premises. The name of the gift shop shall be displayed at the retail store on a sign pursuant to Section 47 below. Notwithstanding the foregoing to the contrary, the portion of the Gift Shop Premises that is



Attachment 2

outlined on the Floor Plan as "Gift Shop (office/storage)" shall only be used by SEAS as storage and office space in support of the retail sale of the Aquarium-related gifts, educational merchandise and other aquatic-related items as further described above.

2.3.2 The Restaurant Premises shall be used by a SEAS subtenant as a restaurant and for other uses incidental thereto.

2.3.3 If SEAS or any Subtenant conducts any business related to the Permitted Use from a website dedicated or related to The Seattle Aquarium, such website's contents shall be subject to the prior approval of City and SEAS, whose approval shall be given or withheld in their respective sole discretion. City and SEAS retain a continued right of review and approval of the website. In the event of any disagreement between City and SEAS, City's decision shall control.

2.4 Common Areas. During the Term, SEAS and its subtenants (including without limitation the Subtenants), licensees, invitees, customers, employees and other occupants of the Premises, shall have the non-exclusive right to use the pier, lobbies, stairs, corridors, restrooms and other Building public areas (the "Common Areas") in common with City, other Building occupants and their respective licensees, invitees, customers and employees. City shall at all times have exclusive control and management of the Common Areas and no diminution thereof shall be deemed a constructive or actual eviction or entitle SEAS to compensation or a reduction or abatement of rent. City shall design and provide directional signage to the Gift Shop Premises and the Restaurant Premises in the Common Areas and in the Aquarium as deemed appropriate by City.

2.5 License. SEAS is granted an exclusive license (the "License") to: 1) hold catered events on the pier where the Building is located and in the Building; and 2) set up mobile cart(s) on the pier where the Building is located and inside the Building for the retail sale of Seattle Aquarium ("Aquarium")-related gifts, educational merchandise, other aquatic-related items and coffee and foodstuffs. The Director of the Aquarium (the "Director") shall retain the right to determine, in his or her sole discretion, the exact location of the cart(s) and the number of cart(s). The Director retains a continuing right of review and approval of all items sold from the mobile cart(s) and shall have the right to require Licensee to remove from the mobile cart(s) or prohibit Licensee from selling or promoting from the mobile cart(s) any item that the Director, in his or her sole discretion, determines is inappropriate for display and sale from the mobile carts.

2.6 Alterations. City, in its discretion, may increase, decrease or change the number, locations and dimensions of any hallways, lobby areas, Common Areas and other improvements shown on Exhibit 1.2.1 that are not within the Premises. Such increase, decrease, or change shall not materially interfere with SEAS' business as permitted in Section 1.9. Permitted Use, or change the exit mechanism of the Building as shown on Exhibit 1.2.1. City reserves the right from time to time (i) to install, use, maintain, repair, relocate and replace pipes, ducts, conduits, wires and appurtenant meters and equipment for service to the Premises or to other parts of the Building in areas above the suspended ceiling surfaces, below the floor surfaces, within the walls and in the central core areas of the Building within the



Attachment 2

Premises and elsewhere in the Building; (ii) to construct the Gift Shop Premises and the Restaurant Premises; (iii) to alter or expand the Building; and (iv) to alter, relocate or substitute any of the Common Areas.

3. **Agreement Term.**

3.1 **Initial Term.** This Agreement shall be for a term ("Agreement Term" or "Term") beginning on the Commencement Date specified in Subsection 1.4 and ending on the Expiration Date specified in Subsection 1.5, unless the Agreement Term is terminated earlier in accordance with the provisions of this Agreement or extended as provided in Section 3.2 below. Notwithstanding the foregoing, SEAS and its officers, employees, agents, contractors, and subtenants shall have the right, at any time and from time to time after the Effective Date, in SEAS' sole discretion, to enter the Premises before the Commencement Date for the purpose of construction, installation or any other related purpose, and, if any of them does so, all provisions of this Agreement other than those relating to payment of Minimum Rent, Concession Fee and Additional Charges shall become effective upon the date that SEAS or any of its officers, employees, agents, contractors, or subtenants, is first present on the Premises for such purpose after the Effective Date.

3.2 **Extended Terms.** At the expiration of the original Agreement Term, SEAS shall have the option to extend this Agreement for up to two (2) successive individual extended terms of five (5) years each ("Extended Terms") on the same terms and conditions set forth herein. SEAS may extend the Agreement Term to include any Extended Term by giving City written notice of its intention to do so at least ninety (90) days prior to the beginning of the Extended Term. As used in this Agreement, the "Agreement Term" means the original term commencing on the Commencement Date and ending on the Expiration Date specified in Section 1.4, and any and all Extended Term(s) established by SEAS hereunder.

4. **Base Rent, Concession Fee, Percentage Rent and Additional Charges.**

4.1 **Base Rent.** SEAS shall pay to City at the address and to the account specified by City, without notice or demand or any setoff or deduction whatsoever, in lawful money of the United States (a) \$ 56,000 on or before February 1, 2007 ("Rent Commencement Date"); (b) thirty (30) days after final completion of City Work and SEAS Work or August 1, 2007, whichever is earlier, the balance of the annual amount of Base Rent for 2007; (c) the annual Base Rent shown in Column D of Exhibit 1.5, paid in advance in equal quarterly installments, with the first installment due October 1, 2007, for calendar year 2008; (d) Concession Fees as and when specified in Subsection 4.3; and (e) Additional Charges as and when specified elsewhere in this Agreement, but if not specified, then within ten (10) days after written demand. Rent and, if appropriate, as reasonably determined by City, Additional Charges shall be prorated on a daily basis for any partial month within the Agreement Term.

4.2 **Prepayment of Base Rent.** SEAS may prepay all or any part of Component B of the Base Rent at any time and if it does so, Component C will be increased or reduced depending on City's actual costs incurred or saved as a result of the prepayment, including but not limited to all City costs of defeasing bonds issued to finance the construction of the City



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Work. In the event of any prepayment of Base Rent, the City shall prepare an updated Exhibit 1.5. to reflect the revised Base Rent and SEAS shall thereafter pay such revised Base Rent to City. City's Finance Director shall determine the amount, timing and method of adjusting for any savings or costs resulting from a prepayment.

4.3 Concession Fee. In addition to Base Rent, SEAS shall pay to City as a Concession Fee during the Term Fifty percent (50%) of the Surplus defined in Section 4.3.1.1.

4.3.1.1 Surplus. SEAS shall retain all rents ("Retained Sublease Rent") received by SEAS from the subtenants of the Gift Shop Premises and the Restaurant Premises (collectively the "Subtenants") under any and all subleases (the "Subleases") for the Gift Shop Premises and the Restaurant Premises. The difference between (i) the total annual amount of annual Retained Sublease Rent and (ii) \$180,000 is hereinafter referred to as the "Surplus". On or before February 1 each calendar year during which any Sublease is in effect, Fifty percent (50%) of the Surplus for the preceding calendar year shall be paid by SEAS to City as a Concession Fee. The Concession Fee shall be used by City for the maintenance and operation of the Aquarium. If any Subtenant fails to pay amounts owed to SEAS under a Sublease, (i) SEAS shall use commercially reasonable efforts to pursue appropriate remedies under the Sublease to attempt to cause Subtenant to pay the amounts owed; and (ii) if City is dissatisfied with SEAS' efforts made pursuant to (i) above, upon City's written request therefor, SEAS shall assign to City its claims against Subtenant to the extent necessary to enable City to collect directly from Subtenant City's share of the Surplus which would have been payable if Subtenant had duly performed its obligations under the Sublease. The calculation of the Surplus may be equitably adjusted if SEAS incurs taxes on its Retained Sublease Rent. In the event that public attendance at the Aquarium is less than 500,000 during any calendar year during the Term, City and SEAS agree to review the Base Rent and Concession Fee requirements of this Agreement and to consider the appropriateness of an equitable adjustment or restructuring of SEAS payment obligations.

4.3.1.2 Reports to City from SEAS and Subtenant. On or before the tenth (10th) day of each calendar month during the Term, SEAS shall submit to City a written report, in a form reasonably prescribed by City, wherein SEAS shall set forth in reasonable detail the amount of all rent received by SEAS from Subtenants ("SEAS' Receipts") during the proceeding month. SEAS shall also furnish to City with each monthly report a certified copy of each retail sales tax report which the State of Washington requires of Subtenants. Within thirty (30) days after the close of each calendar year, SEAS shall submit to City a written statement, certified by SEAS, setting forth in reasonable detail: (i) the amount of SEAS' Receipts; and (ii) a computation of the Concession Fees due the City, for such calendar year. All certificates required above shall be by an authorized officer of SEAS. In addition, upon ten (10) calendar days' prior written notice, City shall have access at the Premises to any reports required by SEAS to be provided by Subtenants under the Subleases.

4.3.1.3 Subtenant's Records. SEAS shall require all Subtenants to keep true, full, and accurate books of account setting forth gross receipts, together with any other information which will affect the determination of the Concession Fee (if any). SEAS shall require in all Subleases that all Subtenants permit City, after five (5) days' prior written notice



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to SEAS and any Subtenant, to inspect any Subtenant's books of account and to procure audits thereof by an auditor at City's sole cost and expense (except as provided below). SEAS shall require in all Subleases that all Subtenants permit City to inspect said books of account at the Premises and shall require that, if in the reasonable judgment of such auditor any Subtenant's books of account are incomplete or improperly reflect the information necessary for an accurate determination of the rents payable under its Sublease, or if the audit shall show that the reports submitted by any Subtenant under its Sublease understated Subtenant's gross receipts by more than three percent (3%) thereof for any year covered by the audit, the Subtenant shall pay the costs and fees for such audit to City. SEAS shall require in all Subleases that all Subtenants shall retain all books of accounting and any other information which will in any way affect the determination of Percentage Rent payable under the Sublease (if any) for a period of two (2) years after the expiration or termination of the Subtenant's Sublease; and each Subtenant shall be required to make them available for inspection at the Premises within ten (10) days of City's or SEAS' prior written demand therefor. The Subleases shall require that Subtenants' obligations under this paragraph shall survive expiration or termination of the Subleases. The Subleases shall require that upon five (5) calendar days' prior written notice to SEAS and any Subtenant, City shall have access to any documents required by SEAS to be available from Subtenant under the Sublease.

4.3.1.4 SEAS' Records. SEAS shall keep true, full, and accurate books of account setting forth SEAS' Receipts, together with any other information which will affect the determination of Surplus and the Concession Fee. City shall be allowed after five (5) days' prior written notice to SEAS, to inspect SEAS' books of account at SEAS' office and to procure audits thereof by an auditor at City's sole cost and expense (except as provided below). If in the reasonable judgment of such auditor SEAS' books of account are incomplete or improperly reflect the information necessary for an accurate determination of the Surplus, or if the audit shall show that the reports submitted by SEAS understated SEAS' Receipts by more than three percent (3%) thereof for any year covered by the audit, the costs and fees for such audit shall be paid by SEAS to City; provided, however, if the incompleteness, inaccuracy or understatement results from any Subtenant's understatement to SEAS of the gross receipts or Percentage Rent (if any) or from other actions or omissions of any Subtenant, then the costs and fees for such audit shall be paid by Subtenant to City. If an audit discloses any willful or intentional effort to understate SEAS' Receipts, then, at City's option, SEAS and Subtenants may be required to surrender possession of the Premises under the provisions of Section 20 of this Agreement. SEAS shall retain all books of accounting and any other information which will affect the determination of Surplus and the Concession Fee for a period of six (6) years after the expiration or termination of this Agreement, and SEAS shall make them available for inspection at SEAS' office within ten (10) days of City's prior written demand therefor. SEAS' obligations under this paragraph shall survive expiration or termination of this Agreement.

4.3.2 Additional Charges. Whether or not so designated, all other sums due from SEAS under this Agreement shall constitute Additional Charges, payable when specified in this Agreement.

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5. **Late Charge; Interest.**

If SEAS fails to pay the City any sum when due, such amount shall bear interest at the rate of 8% per annum from the date due until the date paid.

6. **Security Deposit.**

Not applicable.

7. **SEAS' Operations.**

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

7.2 **Compliance with Laws.**

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

7.2.2 **Nondiscrimination.** Without limiting the generality of the foregoing, SEAS agrees to and shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington and The City of Seattle, including but not limited to Chapters 14.04, 14.10, and 20.42 of the Seattle Municipal Code

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("SMC") as they may be amended from time to time, and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

7.3 Liens and Encumbrances. SEAS shall keep the Premises and Building free and clear of, and shall indemnify, defend and hold City harmless from, any and all, liens and encumbrances arising or growing out of any act or omission, or breach of this Agreement or its use, improvement or occupancy of the Premises by SEAS or any of its principals, officers, employees or agents or subtenants. If any lien is so filed against the Premises or Building, SEAS shall either cause the same to be fully discharged and released of record within ten (10) days after City's written demand therefor or, within such period, provide City with cash or other security acceptable to City in an amount equal to one and one-half (1½) times the amount of the claimed lien as security for its prompt removal. City shall have the right to disburse such security to cause the removal of the lien if a judgment is entered against SEAS in the lien proceeding, if such lien causes difficulties for City in connection with its financing of the Building, if SEAS is otherwise in default under this Agreement or if City otherwise deems such necessary, in City's sole discretion.

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



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8. **Utilities.**

8.1 **General.** City shall provide heating and ventilation ("HV"), water and sewer, and electricity to the Premises to the extent reasonably necessary for the operation of the Premises for the Permitted Use. SEAS shall pay when due, directly to the appropriate company or to the City based on metered readings and prevailing rates, all bills for water, sewer, electricity, data and tele-communications services for the Premises.

8.2 **Refuse Collection.** SEAS shall pay City as an Additional Charge on or before the tenth (10th) day of each calendar month the reasonable cost of providing refuse collection to the Premises. SEAS and its sub-concessionaires shall comply with commercially reasonable sorting and recycling standards adopted by the City ("Refuse Standards").

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

9. **Licenses and Taxes.**

9.1 Without any deduction or offset whatsoever, SEAS shall be liable for, and shall pay prior to delinquency, all taxes, license and excise fees and occupation taxes covering the business conducted on the Premises and all personal property taxes and other impositions levied with respect to all personal property located at the Premises; SEAS shall be responsible for, and shall pay prior to delinquency, all fees, charges, or costs, for any governmental inspections or examinations relating to SEAS' use and occupancy of the Premises, and pay all taxes on the leasehold interest created by this Agreement (e.g., leasehold excise taxes). The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Agreement.

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

10. **Delivery of Premises.**

City shall use its best efforts to perform and complete City Work at City's sole cost and expense prior to the Commencement Date and to deliver the Premises to SEAS on or about _____, 200__.

11. **Alterations by SEAS.**

SEAS may, at any time after the Effective Date, commence construction of any pre-approved SEAS Work to be performed by SEAS under terms of Exhibit 1.2 and shall diligently prosecute such work to its completion. City shall not unreasonably withhold, delay, or condition its consent to additional alterations and improvements to the Premises proposed by SEAS. SEAS shall not make any alterations, additions or improvements in or to the Premises (other than the pre-approved SEAS Work described in Exhibit 1.2 or City Work performed by SEAS with City's consent) without first submitting to City professionally-prepared plans and specifications for such work and obtaining City's prior written approval thereof as provided in Exhibit 1.2. SEAS covenants that it will cause all alterations, additions and improvements to the Premises (other than City Work to be performed by City pursuant to the provisions of Exhibit 1.2) to be completed at SEAS' sole cost and expense by a contractor approved by City and in a manner that (a) is consistent with the City-approved plans and specifications and any conditions imposed by City in connection therewith; (b) is in conformity with first-class, commercial standards; (c) includes acceptable insurance coverage for City's benefit; (d) does not affect the structural integrity of the Building or any of the Building's systems; (e) does not disrupt the business or operations of any other occupant of the Building or of the Aquarium; and (f) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Building. SEAS shall secure all governmental permits and approvals required for SEAS Work and comply with all other applicable governmental requirements and restrictions applicable to SEAS Work; and reimburse City for any and all expenses incurred in connection therewith. Except as provided in Section 14 with regard to concurrent negligence, SEAS shall indemnify, defend and hold City harmless from and against all losses, liabilities, damages, liens, costs, penalties and expenses (including attorneys' fees, but without waiver of the duty to hold harmless) arising from or out of SEAS' performance of such alterations, additions and improvements, including, but not limited to, all which arise from or out of SEAS' breach of its obligations under terms of this Section 11. All alterations, additions and improvements (expressly including all light fixtures; heating and ventilation units; floor, window and wall coverings; and electrical wiring), except SEAS' or Subtenants' moveable trade fixtures and appliances and equipment not affixed to the Premises (including without limitation furniture, computers, point of sale systems and registers) and cabling and wiring for computers, telephones and other electronic equipment, shall immediately become the property



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of City without any obligation on its part to pay for any of the same. These improvements remain City's and SEAS shall not remove all or any portion thereof on the termination of this Agreement except as specifically directed by City in writing at the time of City's issuance of its approval thereof. Within ninety (90) days after the completion of any alteration, addition or improvement to the Premises, SEAS shall deliver to City a full set of "as-built" plans of the Premises showing the details of all alterations, additions and improvements made to the Premises by SEAS.

12. Care of Premises.

12.1 General Obligation. Except for those portions of the Premises and Building that are the responsibility of City under this Agreement, SEAS shall take good care of the Premises and shall reimburse City for all damage done to the Premises that results from any act or omission of SEAS or any of SEAS' officers, contractors, agents, invitees, licensees or employees, including, but not limited to, cracking or breaking of glass.

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

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

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

12.3 Prohibition Against Installation or Integration of Any Work of Visual Art on Premises Without City's Consent. City reserves to and for itself the right to approve or disapprove of the installation or integration on or in the Premises of any "work of visual art," as that term is defined in the Visual Artists Rights Act of 1990, as now existing or as later



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amended, and to approve or disapprove of each and every agreement regarding any such installation or integration. SEAS 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 City. City's consent to the installation of any such art work may be granted, granted upon one or more conditions, or withheld in City's discretion; provided, however, that City's consent to the installation by or for SEAS of any such art work shall not be required under the following three (3) circumstances:

12.3.1 If such art work (a) weighs less than fifty (50) pounds; and (b) is of a size and has such dimensions and material composition that makes its passage through an open 32" x 78" or larger doorway a simple and easy maneuver; 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 (2) simple picture hooks and wire; all so that the easy removability from the Premises of such art work without its destruction, distortion, mutilation or other modification by reason of such removal is undeniable; or

12.3.2 If SEAS delivers to City a waiver appropriately executed by the art work creator, for the benefit of City and its successors and assigns as the owner of the Premises, of the creator's right of integrity regarding such art work, in a form of waiver that satisfies both City and the requirements of 17 U.S.C. §106A(e), as the same now exists or is hereafter modified; or

12.3.3 If City executes with the creator of a work of visual art to be installed in the Premises a consent agreement of the type contemplated by 17 U.S.C. §113(d)(1), as the same now exists or is hereafter amended, and in the form and manner specified by City.

In the event the creator of any work of visual art installed in the Premises by or for SEAS has not executed a waiver, or such creator and City have not executed a consent agreement, each as described herein, SEAS shall ensure that, prior to removing or allowing the removal from the Premises of any such art work, such creator is given both notice, as contemplated in 17 U.S.C. §113(d)(2), of the intended removal of such art work, and the time required by that statutory provision to respond to such notice, and that SEAS takes whatever other action(s) may be required by such legislation to ensure that no claim, action or suit alleging a violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended, and arising out of any act or omission of or for SEAS or any of its officers, employees, or agents, is filed or lodged against City in its capacity as the Premises owner.

12.4 SEAS' Indemnification of City Against Liability under Visual Artists Rights Act of 1990. SEAS shall protect, defend, and hold City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of (a) the installation or integration of any work of visual art on or into the Premises; or (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any breach of this Subsection 12.4 of this Agreement; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by SEAS or any of its officers, employees or agents. This indemnification obligation shall exist regardless of whether City or any other person employed by City has

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knowledge of such installation, integration, or removal or has consented to any such action or is not required to give prior consent to any such action. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Agreement.

13. **Surrender of Premises.**

13.1 **General Matters.** At the expiration or sooner termination of the Agreement Term, SEAS shall return the Premises to City in the same condition in which received on the Commencement Date (or, if altered, then the Premises shall be returned in such altered condition unless otherwise directed by City pursuant to Section 11), reasonable wear and tear, casualty and condemnation damages not resulting from or contributed to by negligence of SEAS, excepted. Prior to such return, SEAS shall remove its moveable trade fixtures and appliances and equipment that have not been attached to the Premises, and shall repair any damage resulting from their removal. In no event shall SEAS remove floor coverings; heating or ventilating equipment; lighting equipment or fixtures; or floor, window or wall coverings unless otherwise specifically directed by City in writing at the time when City's approval of their installation is issued. SEAS' obligations under this Section 13 shall survive the expiration or termination of this Agreement. SEAS shall indemnify City for all damages and losses suffered as a result of SEAS' failure to remove voice and data cables, wiring and communication lines and moveable trade fixtures and appliances and to redeliver the Premises on a timely basis.

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

14. **Waiver; Indemnification.**

14.1 **SEAS' Indemnification.** Except as otherwise provided in this section, SEAS shall indemnify, defend (using legal counsel reasonably acceptable to City) and save City, City's officers, agents, employees and contractors, and other occupants of the Building harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable personnel and overhead costs and attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to, any property arising out of or in connection with (i) SEAS' occupation, use or improvement of the Premises, or that of any of its employees,



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agents or contractors, (ii) SEAS' breach of its obligations hereunder, or (iii) any act or omission of SEAS or any Subtenant, licensee, assignee or concessionaire of SEAS, or of any officer, agent, employee, guest or invitee of any of the same in or about the Building. SEAS agrees that the foregoing indemnity specifically covers actions brought by its own employees. This indemnity with respect to acts or omissions during the Agreement Term shall survive termination or expiration of this Agreement. The foregoing indemnity is specifically and expressly intended to, constitute a waiver of SEAS' immunity under Washington's Industrial Insurance Act, RCW Title 51, to the extent necessary to provide City with a full and complete indemnity from claims made by SEAS and its employees, to the extent of their negligence. SEAS shall promptly notify City of casualties or accidents occurring in or about the Premises. **CITY AND SEAS ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF SECTION 11 AND THIS SECTION 14 WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.**

14.2 SEAS' Release of Claims. Except in the event of City's negligence or intentional misconduct, SEAS hereby fully and completely waives and releases all claims against City to the extent a loss or damage is covered by insurance for any losses or other damages sustained by SEAS or any person claiming through SEAS resulting from any accident or occurrence in or upon the Premises, including but not limited to any defect in or failure of Building equipment; any failure to make repairs; any defect, failure, surge in, or interruption of Building facilities or services; any defect in or failure of Common Areas; broken glass; water leakage; the collapse of any Building component; or any act, omission or negligence of co-tenants, licensees or any other persons or occupants of the Building.

14.3 Limitation of SEAS' Indemnification. In compliance with RCW 4.24.115 as in effect on the date of this Agreement, all provisions of this Agreement pursuant to which City or SEAS (the "Indemnitor") agrees to indemnify the other (the "Indemnatee") against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Building, (i) shall not apply to damages caused by or resulting from the sole negligence of the Indemnatee, its agents or employees, and (ii) to the extent caused by or resulting from the concurrent negligence of (a) the Indemnatee or the Indemnatee's agents or employees, and (b) the Indemnitor or the Indemnitor's agents or employees, shall apply only to the extent of the Indemnitor's negligence; PROVIDED, HOWEVER, the limitations on indemnity set forth in this section shall automatically and without further act by either City or SEAS be deemed amended so as to remove any of the restrictions contained in this section no longer required by then applicable law.

14.4 City's Release of Claims. City hereby fully and completely waives and releases all claims against SEAS to the extent a loss or damage is caused by City's negligence, willful misconduct or breach of this Agreement.



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15. **Insurance.**

15.1 **Minimum Insurance Requirements.** SEAS shall maintain (and, if applicable, cause its Subtenant(s) to maintain) in full force and effect, at no expense to City, and throughout the entire Agreement Term, insurance as specified in the following:

15.1.1 Commercial General Liability (CGL) insurance including:

Premises/Operations Liability
Products/Completed Operations Liability
Personal/Advertising Liability
Contractual Liability
Stop Gap/Employers Contingent Liability
Independent Contractors Liability
Host Liquor Liability
Fire/Tenant Legal Liability

Such insurance shall provide the following minimum limits of liability:

\$2,000,000 each Occurrence Combined Single Limit Bodily Injury and Property Damage

\$1,000,000 each Offense Personal and Advertising Injury

\$500,000 each Occurrence Fire/Tenant Legal Liability

\$1,000,000 each Accident/ Disease/Employee Stop Gap

The above limits may be evidenced with primary liability insurance or a combination of primary and excess or umbrella liability insurance, as required.

15.1.2 Business Automobile Liability including coverage for owned, non-owned, leased or hired vehicles as appropriate with a minimum limit of liability of \$1,000,000 each Occurrence Combined Single Limit Bodily Injury and Property Damage

15.1.3 Workers Compensation securing SEAS' liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington; provided, that if SEAS is qualified as a self-insurer in accordance with Chapter 51.14 of the Revised Code of Washington, SEAS shall certify that qualification by a letter that is signed by a corporate officer of SEAS and delivered to City that sets forth the limits of any policy of excess insurance covering its employees; and

15.1.4 SEAS Property Insurance under which SEAS' furniture, trade and other fixtures, equipment and inventory (Business Contents) excluding, however, any portion of the Premises, are insured throughout the Agreement Term in an amount equal to the replacement cost thereof, against the following hazards: (i) 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 (ISO form CP 1030 or equivalent); (ii) loss or



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damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises; (iv) loss from business interruption or extra expense, with sufficient limits of liability to provide for the payment of rent and other fixed costs during any interruption of SEAS' business for at least twelve (12) months.

15.1.5 City of Seattle Property Insurance. The City shall insure and/or self-insure the Building and the Premises (including the City Work and the SEAS' Work but excluding SEAS' Business Contents) in an amount equal to the replacement cost thereof, against the following hazards: (i) 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 (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; and (iii) loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises. The City's property insurance described herein shall not, however, be in force when the City's Builder's Risk Property Insurance described in Exhibit 15.1 is in effect. The City shall maintain Builder's Risk Property Insurance as described in Exhibit 15.1 (insuring the City Work and the SEAS' Work but excluding SEAS' Business Contents) until such time as both City Work and SEAS Work are substantially completed.

15.2 General Requirements Regarding SEAS' Insurance (Does Not Apply to Workers Compensation Subsection 15.1.3.)

15.2.1 The CGL and Business Automobile Liability insurance required by Subsections 15.1.1 and 15.1.2 shall be endorsed to include the City of Seattle as an additional insured and shall be primary as respects the City, providing that any other insurance and/or self-insurance maintained by City shall be excess and not contributing insurance with SEAS' insurance.

15.2.2 No insurance shall be canceled without written notice to the City being actually delivered or mailed not less than thirty (30) days prior to the effective date of cancellation, except ten (10) days prior with respect to non-payment of premium, at its address as specified in or pursuant to Subsection 1.8 hereof.

15.2.3 All insurance policies required hereunder shall be subject to reasonable approval by City's Risk Manager as to insurer, form and coverage and shall be issued by an insurer rated A-:VII or higher in the then-current A. M. Best's Key Rating Guide and licensed to do business in the State of Washington or procured under the provisions of chapter 48.15 RCW (Surplus lines).

15.2.4 Any deductible or self-insured retention in excess of \$10,000 must be disclosed to, and shall be subject to reasonable approval by, the City. The cost of any claim payments falling within the deductible or self-insured retention shall be the responsibility of SEAS.



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15.2.5 Coverage and/or limits may be reasonably altered or increased as necessary to reflect type of or exposure to risk. City shall have the right to periodically review the appropriateness of such coverage and limits in view of inflation and/or changing industry conditions and to require an increase in such coverage or limits upon ninety (90) days' prior written notice; provided, City shall not require an increase in such coverage or limits prior to December 31, 2007.

15.3 Evidence of Insurance (Does Not Apply to Workers Compensation Subsection 15.1.3.)

15.3.1 The following documents must be delivered to City at its address as specified in or pursuant to Subsection 1.8 hereof, as evidence of the insurance coverage secured and maintained by SEAS:

15.3.1.1 On or before the Commencement Date, and thereafter, not later than five (5) days prior to the expiration or renewal date of each such policy, SEAS shall, subject to Subsection 15.3.2, provide or cause to be provided:

15.3.1.2 A copy of each policy's declarations pages, showing the insurer, policy period, coverages and limits of liability;

15.3.1.3 A copy of each policy's Schedule of Forms and Endorsements;

15.3.1.4 A copy of the CGL insurance endorsement naming the City of Seattle as an additional insured on ISO Form CG 20 26 or an equivalent additional insured or blanket additional insured policy wording;

15.3.1.5 A copy of each SEAS property and liability insurance policy provision that documents that coverage shall not be reduced or canceled without written notice to the City being actually delivered or mailed not less than thirty (30) days prior to the effective date of cancellation, except ten (10) days prior with respect to non-payment of premium, at its address as specified in or pursuant to Subsection 1.8 hereof; and,

15.3.1.6 For the CGL and Business Automobile insurance maintained pursuant to Subsection 15.1.1 and 15.1.2 hereof, a copy of the "Separation of Insureds" or "Severability of Interests" clause in such policy.

15.3.2 Pending issuance and receipt of the insurance policies and endorsements specified in Subsection 15.3.1 hereof, a copy of a current complete binder of property and liability insurance. An ACORD certificate of insurance will not be accepted in lieu thereof.

15.4 Reconstruction Following Loss. In the event of a loss due to casualty then, provided this Agreement has not been terminated pursuant to Section 18, SEAS shall proceed with reasonable diligence as soon as sufficient funds are available therefor, to repair and restore its Business Contents with property that is at least equivalent to, or more suitable than, the Business Contents that were damaged or destroyed.



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15.5 Waiver of Subrogation and Rights of Recovery. The City and the City's property insurer(s) shall waive subrogation and rights of recovery for damage to or destruction of the Building, Premises, City Work, SEAS Work and City's furniture, fixtures, equipment and inventory in favor of SEAS except with respect to loss of City's aforesaid property of up to the City's deductible or \$500,000, whichever is the lesser, but only to the extent to which such loss is due to the negligence or willful misconduct of SEAS and only to the extent to which SEAS' Fire/Tenant Legal Liability insurance responds. SEAS and SEAS' insurer(s) shall waive subrogation and rights of recovery for damage to or destruction of SEAS' Business Contents in favor of the City except with respect to loss of SEAS' aforesaid property of up to the amount of SEAS' deductible, but only to the extent to which such loss is due to the negligence or willful misconduct of the City.

15.6 Assumption of Risk. The placement and storage of its personal property in the Premises shall be the responsibility, and at the sole risk, of SEAS.

15.7 Insurance during Course of Construction. In addition to the insurance requirements specified above, the following provisions apply during the course of any construction authorized under this Agreement:

15.7.1 As respects SEAS Work, until said work is complete, SEAS shall require its contractor to maintain liability insurance coverages, limits of liability and with terms and conditions as described in Exhibit 15.7 (SEAS' Contractor's Insurance).

16. SEAS' Assignment or Sublease.

SEAS shall not sublet or encumber the whole or any part of the Premises, nor shall this Agreement or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court or otherwise without the prior written consent of City, whose consent shall be given or withheld in its sole discretion. City hereby acknowledges and agrees that SEAS is hereby authorized and permitted to enter into: (i) a Sublease Agreement for the Gift Shop Premises by and between SEAS and Event Network, Inc. (the "EN Concession Agreement"), in a form approved by City; and (ii) a Sublease Agreement for the Restaurant Premises by and between SEAS and Sodexo America, LLC (the "Sodexo Concession Agreement"), in a form approved by City. The granting of consent to a given transfer shall not constitute a waiver of the consent requirement as to future transfers. Any assignment or sublease, without City's prior written consent, at City's option, shall be void. No assignment or sublease shall release SEAS from primary liability hereunder. Each assignment and sublease shall be by an instrument in writing in form satisfactory to City. If SEAS is a corporation, then any transfer of this Agreement by merger, consolidation or liquidation, or any direct or indirect change, in the ownership of, or power to vote the majority of, SEAS' outstanding voting stock, shall constitute an assignment for the purposes of this Agreement. If SEAS is a partnership, then a change in general partners in or voting or decision-making control of the partnership shall also constitute an assignment.



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17. **Assignment by City.**

If City sells or otherwise transfers the Building, or if City assigns its interest in this Agreement, other than an assignment solely for security purposes or a transfer in foreclosure or a deed in lieu of foreclosure, such purchaser, transferee, or assignee thereof shall be deemed to have assumed City's obligations under this Agreement arising after the date of such transfer, and City shall thereupon be relieved of all liabilities under this Agreement arising thereafter, but this Agreement shall otherwise remain in full force and effect. SEAS shall attorn to City's successor, which assumes and agrees to perform all of City's obligations under this Agreement.

18. **Destruction.**

If the Premises are rendered partially or totally untenable by fire or other casualty, and if the damage is repairable within twenty-four (24) months from the date of the occurrence and if insurance proceeds or self-insurance coverages are available to pay the full cost of the repairs (except for the deductible amounts), City shall repair the Premises with due diligence; otherwise City may elect to terminate this Agreement. Base Rent and Concession Fees shall be abated in the proportion that the untenable portion of the Premises bears to the whole thereof, as determined by City, for the period from the date of the casualty to the completion of the repairs. If the damage to the Premises is uninsured or cannot be repaired within twenty-four (24) months from the date of the occurrence, City or SEAS may terminate this Agreement upon sixty (60) days' written notice to the other. If thirty percent (30%) or more of the Building is destroyed or damaged, then regardless of whether the Premises are damaged or not, SEAS may elect to terminate this Agreement upon written notice to City. City shall advise SEAS of City's election to terminate by giving notice to SEAS thereof within thirty (30) days after the occurrence. In the event of damage by casualty, SEAS shall, at its sole cost and expense, repair all damage to its own personal property. Except in the event of City's negligence, intentional misconduct or breach of this Agreement, City shall not be liable to SEAS for damages, compensation or other sums for inconvenience, loss of business or disruption arising from any repairs to or restoration of any portion of the Building or Premises.

19. **Eminent Domain.**

19.1 **Taking.** If all of the Premises are taken by Eminent Domain, this Agreement shall terminate as of the date SEAS is required to vacate the Premises and all Minimum Rent and Additional Charges shall be paid to that date. The term "Eminent Domain" shall include the taking or damaging of property by, through or under any governmental or statutory authority, and any purchase or acquisition in lieu thereof, whether the damaging or taking is by government or any other person. If a taking of any part of the Premises by Eminent Domain renders the remainder thereof unusable for the business of SEAS, in the reasonable judgment of City, the Agreement may, at the option of either party, be terminated by written notice given to the other party not more than thirty (30) days after City gives SEAS written notice of the taking, and such termination shall be effective as of the date when SEAS is required to vacate the portion of the Premises so taken. If this Agreement is so terminated, all Minimum Rent and Additional Charges shall be paid to the date of termination. Whenever any portion of the



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Premises is taken by Eminent Domain and this Agreement is not terminated, City, at its expense, shall proceed with all reasonable dispatch to restore, to the extent of available proceeds and to the extent it is reasonably prudent to do so, the remainder of the Premises to the condition they were in immediately prior to such taking, and SEAS, at its expense, shall proceed with all reasonable dispatch to restore its personal property and all improvements made by it to the Premises to the same condition they were in immediately prior to such taking, to the extent award is available therefor. The Minimum Rent and Additional Charges payable hereunder shall be reduced from the date SEAS is required to partially vacate the Premises in the same proportion that the Rentable Area taken bears to the total Rentable Area of the Premises prior to taking.

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

20. Default by SEAS.

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

20.2 City Remedies. If SEAS has defaulted and such Default continues or has not been remedied to the reasonable satisfaction of the Superintendent within thirty (30) days after written notice thereof has been provided to SEAS, then City shall have the following nonexclusive rights and remedies at its option: (i) to cure such default on SEAS' behalf and at SEAS' sole expense and to charge SEAS for all actual and reasonable costs and expenses incurred by City in effecting such cure as an Additional Charge; (2) to terminate this Agreement; provided, however, that if the nature of SEAS' obligation (other than monetary obligations and other than vacation or abandonment of the Premises) is such that more than thirty (30) days is required for performance, then SEAS shall not be in default if it commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

20.3 Reentry by City Upon Termination. Upon the termination of this Agreement, City may reenter the Premises, using such means as permitted by law, take possession thereof,



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

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

20.5 City's Non-exclusive Remedies upon Termination due to Default of SEAS. Notwithstanding any reentry by City and anything to the contrary in this Agreement, in the event of the termination of this Agreement due to the Default of SEAS, the liability of SEAS for all sums due under this Agreement provided herein shall not be extinguished for the balance of the Term of this Agreement. SEAS shall also be liable to City for any other amount (excluding consequential or specific damages) necessary to compensate City for all the detriment proximately caused by SEAS' failure to perform its obligations under this Agreement or that in the ordinary course of things would be likely to result therefrom, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any costs incurred in authorizing others the use and occupancy of the Premises and in preparing the Premises for such use and occupancy, and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington. The provisions of this Subsection 20.5 shall survive the expiration or earlier termination of this Agreement.

21. City's Remedies Cumulative; Waiver.

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



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22. **Default by City.**

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

23. **Attorneys' Fees.**

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

24. **Access by City.**

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

25. **Holding Over.**

Unless otherwise agreed in writing by the parties hereto, any holding over by SEAS after the expiration of the Agreement Term, whether or not consented to by City, shall be construed as a tenancy from month-to-month on the terms and conditions set forth herein. Any holdover tenancy may be terminated by either party by written notice delivered to the other party not later than twenty (20) days prior to the end of the final month. If SEAS fails to surrender the Premises upon the expiration or termination of this Agreement without City's written consent, SEAS shall indemnify, defend and hold harmless City from all losses, damages, liabilities and expenses resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant arising out of such failure.

26. **Agreement Subordinate to Mortgages.**

This Agreement shall be automatically subordinate to all of City's mortgages or deeds of trust that heretofore and hereafter affect the Premises or Building; to any sale and leaseback; to any and all advances made or to be made thereunder; to the interest on the obligations secured thereby; and to all renewals, modifications, consolidations, replacements or extensions thereof;



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all provided that for so long as SEAS is not in default hereunder beyond the applicable Section 20 cure period, SEAS shall have continued enjoyment of the Premises and the rights provided under this Agreement, free from any disturbance or interruption by reason of any exercise of remedies by Lender under or in connection with its deed of trust or mortgage. This subordination shall be self-operative, and no further instrument of subordination shall be necessary to effect such subordination. SEAS, nevertheless, shall execute such instrument of subordination as may be required by any Lender if such instrument of subordination carries out the terms of this Section 26 and provides for non-disturbance covenants reasonably acceptable to SEAS. In the event of sale or foreclosure of any such mortgage or deed of trust, or exercise of the power of sale thereunder, or in the event of a transfer in lieu of foreclosure, SEAS shall attorn to the purchaser (or transferee) of the Building at such foreclosure or sale and recognize such purchaser (or transferee) as City under this Agreement if so requested by such purchaser (or transferee), and if such purchaser (or transferee) agrees to assume and perform City's obligations under this Agreement. Such attornment shall be self-operative and no further instrument need be executed to effect such attornment. If any Lender elects to have this Agreement superior to its mortgage or deed of trust and gives notice of its election to SEAS, then this Agreement shall thereupon become superior to the lien of such mortgage or deed of trust, whether this Agreement is dated or recorded before or after the mortgage or deed of trust.

27. **Estoppel and Other Certificates.**

As a material inducement to City to enter into this Agreement, SEAS covenants that it shall, within ten (10) days of SEAS' receipt thereof, acknowledge and deliver to City (a) any subordination or attornment agreement or other instrument that City may require to carry out the provisions of Section 26, in exchange for a non-disturbing agreement reasonably acceptable to SEAS and (b) any estoppel certificate requested by City from time to time in the commercially reasonable standard form of City or any mortgagee or beneficiary of such deed of trust certifying, to the extent such be true that (i) SEAS shall be in occupancy, (ii) this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as modified and stating the modification(s), (iii) Minimum Rent and Additional Charges have been paid only through a certain specified date, (iv) SEAS has no offset, defense or claim against City and (v) such other matters as City may reasonably request. If not cured within twenty (20) days after written demand therefor, then SEAS' failure to deliver an estoppel certificate within the ten (10) day period shall be deemed its confirmation of the accuracy of the information supplied by City to the prospective lender or purchaser. SEAS acknowledges and agrees that City and others will be relying and are entitled to rely on the statements contained in such estoppel certificates.

28. **Quiet Enjoyment.**

If SEAS fully complies with and promptly performs all of the terms, covenants and conditions of this Agreement on its part to be performed, it shall have quiet enjoyment of the Premises throughout the Agreement Term, subject, however, to matters of record on the day hereof.



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29. **Notices.**

Any notice, demand or request required hereunder shall be given in writing to the party's address set forth in Subsection 1.8 hereof by any of the following means: (a) personal service; (b) commercial or legal courier; or (c) registered or certified, first class mail, postage prepaid, return receipt requested. Such addresses may be changed by notice to the other parties given in the same manner as above provided. Notices shall be deemed to have been given upon the earlier of actual receipt, as evidenced by the deliverer's affidavit, the recipient's acknowledgment of receipt, or the courier's receipt, except in the event of attempted delivery during the recipient's normal business hours at the proper address by an agent of a party or by commercial or legal courier or the U.S. Postal Service but refused acceptance, in which case notice shall be deemed to have been given upon the earlier of the day of attempted delivery, as evidenced by the messenger's affidavit of inability to deliver stating the time, date, place and manner in which such delivery was attempted and the manner in which such delivery was refused, or on the day immediately following deposit with such courier or, if sent pursuant to subsection (c), forty-eight (48) hours following deposit in the U.S. mail.

30. **Successors or Assigns.**

All of the terms, conditions, covenants and agreements of this Agreement shall extend to and be binding upon City, SEAS and, subject to the terms of Section 16, their respective heirs, administrators, executors, successors and permitted assigns, and upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

31. **SEAS Authority and Liability.**

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

32. **Brokers' Commission.**

Not applicable.

33. **Partial Invalidity.**

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



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34. **Recording.**

SEAS shall not record this Agreement without the prior written consent of City. However, upon City's request, both parties shall execute a memorandum of this Agreement, in a form customarily used for such purpose of recordation. The memorandum shall describe the parties, the Premises and the Agreement Term and shall incorporate the other terms of this Agreement by reference.

35. **Financial Statements.**

Within ten (10) days after City's request therefor, SEAS shall deliver to City a financial statement for SEAS' prior quarter and fiscal year. SEAS shall certify the accuracy of such statements. City shall preserve their confidentiality except in connection with legal proceedings between the parties or as otherwise directed by court rule or order.

36. **Liability of City.**

SEAS shall look solely to rents, issues and profits from the Building for the satisfaction of any judgment or decree against City, whether for breach of the terms hereof or arising from a right created by statute or under common law. SEAS agrees that no other property or assets of City or any partner in or of City shall be subject to levy, execution or other enforcement procedures for satisfaction of any such judgment or decree.

37. **Force Majeure.**

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

38. **Counterparts.**

This Agreement may be executed by the parties in counterparts, which, taken together, constitute the entire Agreement.

39. **Headings.**

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



40. **Context.**

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

41. **Execution by City and SEAS; Effective Date.**

Neither City nor SEAS shall be deemed to have made an offer to the other party by furnishing the other party with a copy of this Agreement with particulars inserted. No contractual or other rights shall exist or be created between City and SEAS until all parties hereto have executed this Agreement and it is approved by appropriate legislative authority. This Agreement shall become effective on the date (the "Effective Date") on which this Agreement is executed by City and SEAS and approved by the Seattle City Council. On the Effective Date, this Agreement shall supersede and cancel the 2003 Agreement, without prejudice to any liability accrued under the 2003 Agreement prior to cancellation. City shall have no liability to SEAS and shall have the right to terminate this Agreement upon written notice to SEAS if this Agreement is legislatively disapproved.

42. **Time of Essence; Time Calculation Method.**

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

43. **Continuous Operation.**

Except for the period necessary to complete City Work and SEAS Work (during which the Premises may be closed for business for alteration and preparation of the Premises), SEAS shall keep the Gift Shop Premises and the Restaurant Premises open and use them to transact business with the public daily during hours as designated below or as otherwise may be designated by the Director of the Seattle Aquarium ("Director") under the terms of the 2003 Agreement, which agreement shall be deemed to terminate thirty (30) days after final completion of City Work and SEAS Work. Subject to the prior reasonable approval of the Director, SEAS may, upon posting a written notice to the public of not less than one (1) week in duration prior to any approved closure, close the Premises or a portion thereof for a reasonable period for repairs or any approved remodeling, or for taking inventory. SEAS shall close to accommodate reasonable operational requirements of City's business, upon thirty (30) days' prior written notice to SEAS, and SEAS shall immediately close in the case of any emergency as determined by the Director; provided, however, that if SEAS shall close pursuant to this sentence at the direction of City, and if SEAS remains closed at the direction of City for more than three (3) days, then SEAS' Minimum Rent and Additional Charges shall be prorated for the duration of the closure in the proportion that the number of days of the closure bears to the number of days of the month. SEAS shall furnish an approved sign at the



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Premises entrance advising the public of any approved closure, unless closed at the Direction of City.

Minimum hours of operation of the business conducted on the Gift Shop Premises and the Restaurant Premises shall be the same as the hours during which the Aquarium is open to the general public.

44. **Standards.**

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

SEAS shall operate and conduct the facilities on the Premises in a businesslike manner, and will not permit any conduct on the part of SEAS' employees which would be detrimental to City's operation of Pier 59.

SEAS shall require Subtenants to provide sufficient personnel to adequately staff the Gift Shop Premises and the Restaurant Premises at all times. All personnel shall be dressed in neat appearing attire which clearly identifies them as SEAS' or Subtenants' employees.

45. **City's Control of Premises and Vicinity.**

All common and other facilities provided by City in or about the Premises, including any parking areas, boardwalks, and decks are subject to the exclusive control and management by City. Accordingly, City may do, therefore, any and all of the following (among other activities in support of Parks and Recreation Department of other municipal objectives), all without incurring any liability whatsoever to SEAS:

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

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

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

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

46. Data to State and Federal Governments.

Within ten (10) days of City's request therefor, SEAS shall provide, at SEAS' sole cost and expense, necessary data relating to SEAS' use of the Premises or to any aspect(s) of this Agreement, including reports or information of any kind, which is in SEAS' possession or under SEAS' reasonable control, to enable City to fully comply with any and every requirement of the State of Washington and the United States of America.

47. Miscellaneous.

47.1 City agrees:

47.1.1 To cooperate in SEAS' gift shop and restaurant promotional efforts to the extent deemed appropriate by City.

47.1.2 To provide SEAS with admission summary reports identifying the actual number of persons admitted to The Seattle Aquarium at Pier 59 (regardless of whether admitted as part of a group) and not identifying persons admitted to The Seattle Aquarium outside of its normal operating hours and not identifying persons admitted to The Seattle Aquarium at a time the gift shop and/or the restaurant at the Premises are/is closed for business. City shall provide the admission summary reports on a daily, weekly and annual basis. City shall provide daily admission reports within three (3) calendar days of the applicable day, weekly admission reports within seven (7) days of the last day of the applicable week (determined by City), and City shall provide the annual report, covering a calendar year, by January 10th following the applicable year.

47.2 SEAS agrees:

47.2.1 To design and provide signage on the Gift Shop Premises identifying them as a gift shop, and on the Restaurant Premises identifying them as a restaurant. The names of the gift shop and the restaurant, as well as all aspects of the signs themselves, are subject to the Director's prior written approval, whose approval shall be given or withheld in his or her reasonable discretion. The Director approves the name of the gift shop "The Seattle Aquarium Store."

47.2.2 Subject to City's prior written approval, whose approval shall be given or withheld in its reasonable discretion, SEAS may post advertisements in or on the Building.

48. Entire Agreement; Applicable Law.

This Agreement and the Exhibits attached hereto, and by this reference incorporated herein, set forth the entire agreement of City and SEAS concerning the Premises and Building, and there are no other agreements or understanding, oral or written, between City and SEAS



Attachment 2

concerning the Premises and Building. Any subsequent modification or amendment of this Agreement shall be binding upon City and SEAS only if reduced to writing and signed by them. This Agreement shall be governed by, and construed in accordance with the laws of the State of Washington.

49. **Negotiated Agreement.**

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

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

CITY:

SEAS:

THE CITY OF SEATTLE

THE SEATTLE AQUARIUM SOCIETY

By: _____
Kenneth R. Bounds, Superintendent
Department of Parks and Recreation

By: _____
Robert W. Davidson
Chief Executive Officer



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

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

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

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

Exhibit 1.1: Legal Description
Exhibit 1.2: Tenant Improvements
Exhibit 1.2 (A): Documents for City Work
Exhibit 1.2 (B): Document for SEAS Work
Exhibit 1.2.1: First Floor Lease Plan
Exhibit 1.2.2: Second Floor Lease Plan
Exhibit 1.5: Base Rent Schedule - Initial Term & Base Rent Schedule - Extended Term(s)
Exhibit 15.1: City's Builders Risk Insurance
Exhibit 15.7: SEAS' Contractor's Insurance

Attachment 2

EXHIBIT 1.1

Legal Description

That portion of the harbor area in front of Lots 1 and 2, portion of Lot 3, Block 176, and the south 20 feet of vacated Pike Street, Supplemental Maps of Seattle Tide Lands, included in a tract described as follows:

Beginning at point 8', being an angle point in the inner harbor line and running thence S 25° 21' 48" E 128.307 feet, along said inner harbor line, thence west 378.111 feet to the outer harbor line, thence N 48° 49' 51" W 218.603 feet along said outer harbor line, thence E 455.730 feet to the inner harbor line and thence S 48° 49' 51" E 42.48 feet along said inner harbor line to said point of beginning.

All as shown upon the Supplemental Maps of Seattle Tide Lands on file in the office of the Commissioner of Public Lands at Olympia, Washington.



EXHIBIT 1.2

TENANT IMPROVEMENTS

A. CITY WORK. The City shall perform the work substantially described in the following document in accordance with the Schedule attached hereto as Exhibit 1.2(A). City and SEAS may agree that SEAS shall perform certain parts of the City Work. In such event, SEAS may require the City to purchase such work at cost. Payment shall be made on the later of thirty (30) days after the work is completed and invoiced or that date which is ten (10) days after the date on which the City has appropriated funds to pay for the work.

B. SEAS WORK. SEAS shall perform the work substantially described in the following document in accordance with the Schedule attached hereto as Exhibit 1.2(B).

If SEAS elects to upgrade surface finishes from the condition they are in when made available to SEAS, or to make any other departure with respect to any portion of the walls; ceiling; floor; electrical distribution equipment; heating equipment and ducting, including but not limited to standard size variable air volume air terminal units; fire and life safety equipment; telephone service and the basic sprinkler distribution grid; then such upgrade or other departure from the condition of the Premises when made available to SEAS shall be subject to City's and City's Architect's approval and SEAS shall pay the cost thereof pursuant to the terms of this Exhibit. Notwithstanding anything contained herein to the contrary, City shall be solely responsible for the performance of, and the cost and expenses related to, City Work.

Improvements to the Premises made by SEAS are sometimes referred to herein as SEAS Work. SEAS, rather than City, shall be responsible for all SEAS Work, which SEAS may elect to make with approval of City, with respect to the following items:

1. All partitioning (solid, glazed or otherwise).
2. Paint or other wall coverings, all of which shall be subject to City's approval prior to application or installation. Painted walls shall receive at least one prime coat and one finish coat.
3. Doors, door frames, relite frames and door hardware.
4. Ceiling, including suspension system, hangers and finish materials.
5. Cabinetry and millwork.
6. Carpeting, pad or other floor covering.
7. Window coverings for exterior windows as approved by City.



EXHIBIT 1.2

8. Light fixtures, all in accordance with applicable Seattle codes and the Energy Edge Program.

9. Electrical receptacles, wiring and conduit from electrical panels to electrical receptacles and light fixtures, and other electrical items.

10. Mudrings and pullstrings for telephone and computer receptacles. SEAS is responsible for SEAS' telephone and computer equipment, service and cabling. SEAS shall select a telephone system and coordinate its installation with City.

11. Air terminal units including related ducting, round low pressure run out ducting, flexible ducting, diffusers and any other items for heating and air conditioning.

12. Modifications to the sprinkler distribution system and installation of sprinkler heads, emergency speakers, exit signs and fire extinguishers and cabinets within the Premises.

13. All removal of debris for any item of work installed pursuant to Section B of this Exhibit.

14. The fees due for any architectural or interior design services provided with respect to the Premises including but not limited to the furnishings, furniture, art work, fixtures, equipment, and other personal property therein.

15. All Washington State sales tax applicable to SEAS Work made to the Premises.

16. All signage in excess of any provided by City.

C. DESIGN OF IMPROVEMENTS.

1. Plans for SEAS Work and City Work.

a. Responsibility of SEAS' Architects for Final Contract Documents.

Based on information provided by SEAS and approved by City, SEAS' Architects shall prepare the working drawings, specifications and engineering drawings representing the Design Development and Construction Documents for SEAS Work and for all of the City Work (the "Design Documents").

b. Final Design Documents. SEAS shall cause SEAS' Architects to submit two (2) blackline sets of the Design Documents to City. City shall have ten (10) days to review and return one (1) marked up set of the Design Documents to SEAS' Architects. SEAS' Architects shall endeavor to accommodate the City's comments in the proposed Final Design Documents and submit two (2) complete sets of the proposed Final



EXHIBIT 1.2

Design Documents, as modified, to SEAS. SEAS shall have ten (10) days to review and approve the modified Final Design Documents. SEAS shall indicate its approval by signing the cover sheet of the modified Final Design Documents and returning one (1) complete set to City. The Final Design Documents, as modified, shall be prepared in accordance with the standards developed by City including common symbols, legends and abbreviations together with information required to obtain a building permit. The Final Design Documents, as approved and signed by SEAS, shall include:

- (1) Architectural Floor Plan: A plan, fully dimensioned, showing partition layout and type identifying each room with a number and each door with a number and the extent of floor finishes, casework, relites, etc.
- (2) Reflected Ceiling Plan: A plan showing all Building Standard and special ceiling conditions and materials. This plan shall include the location and type of all Building Standard and special light fixtures including switching, together with a legend indicating fixture type, quantity of fixtures, and connected wattage of each fixture as necessary for compliance with The City of Seattle codes.
- (3) Electrical, Telephone and Computer Receptacles Plan: A plan locating all power, telephone and computer requirements dimensioned to give exact location of receptacle, height above concrete slabs and position from a corner. This plan shall identify all dedicated circuits and identify all power receptacles greater than 120 volts. For equipment utilizing receptacles that require dedicated circuits and/or that require greater than 120 volts, SEAS shall specify the type of equipment, the manufacturer's name and model number. The plan must also identify the name of the manufacturer of the phone and computer system to be used and the power requirements, size and location of its primary equipment.
- (4) Furniture Layout: Basic layout showing furniture location.
- (5) Millwork/Casework Details: Complete elevations, sections and construction details of all special millwork including but not limited to cabinets, paneling, trim, bookcases, doors, door frames and relite frames.
- (6) Hardware Specifications and Keying Schedule: Complete specifications for all special hardware. Key ways in special locks must be compatible with building master key system. The keying schedule must indicate which doors are locked and which keys open each lock, together with a symbol indicating which side of the door is to be locked to prohibit entry.
- (7) Room Finish and Color Schedule; Signage: Complete information showing on the drawings the location and specifications for all finishes



EXHIBIT 1.2

including wall, floor covering, wall base, ceiling and special conditions; as well as the size, design, method of installation, and desired location of all signage.

(8) Construction Notes and Specifications: Any special notes required and complete specifications for all special items including but not limited to instructions for bidders, special conditions incorporating the AIA standard form of general conditions and technical specifications for all special Building work.

(9) Structural Drawings: If required, SEAS shall engage the services of a structural engineer, shall obtain appropriate permits for the engineering components of SEAS Work, and the cost of those services shall be included in the cost of SEAS Work. A drawing will be prepared for City's review, indicating the extent of structural modifications proposed for the Premises.

(10) Mechanical Drawings: SEAS shall engage the services of a mechanical engineer to provide HVAC facilities for the Restaurant Concession space and the Gift Store space which are complementary to the HVAC system included as part of the City Work, separate mechanical permits will be obtained, and the cost of those services and permits shall be included in the cost of SEAS Work. Drawings shall be prepared for City's review indicating SEAS HVAC requirements as follows:

(a) HVAC: Clearly indicating the basic system, modifications to the basic system if required, including any special stand-alone system, special ventilation system, and supply air diffusers, return air grilles and space temperature sensors.

(11) Exhibit Drawings: SEAS shall engage (directly or through a design-build contract) the services of an exhibit designer to prepare the Exhibit Design Documents to be included in City Work and additional exhibit design documents to be included in SEAS Work.

2. Delays and Costs. SEAS shall be responsible for delays and additional costs in completion of the SEAS Work and any damages or other costs. If, after the commencement or completion of SEAS Work, SEAS wishes to make improvements to or changes in the Premises beyond those provided for in Section B of this Exhibit, SEAS shall submit to City a written request to make such changes, and the parties shall follow the same procedures and be subject to the same requirements as are specified herein for the initial SEAS Work.

D. CONSTRUCTION OF SEAS IMPROVEMENTS.

1. SEAS' Entry into Premises. SEAS' entry to the Premises for any purpose, including without limitation, the performance of SEAS' construction prior to Commencement Date of this Agreement, shall be scheduled in advance with City and



EXHIBIT 1.2

shall be subject to all the terms and conditions of the Agreement, except the payment of Minimum Rent, Concession Fees, and Additional Charges. SEAS' entry shall mean entry by SEAS, or any of its officers, contractors, office planner, licensees, agents, servants, employees, guests, invitees or visitors.

2. SEAS' Telephone. SEAS shall be solely responsible for its telephone system, including selection, installation and cost and for SEAS' telephone service. Information concerning telephone equipment size and any special requirements must be given to City's Architect during the planning phase.

3. Cooperation; Responsibility. SEAS shall cooperate fully with City as necessary and appropriate with respect to construction of SEAS Work.

E. GENERAL CONDITIONS.

The following provisions shall be applicable to all SEAS Work.

1. Lighting not consistent with Seattle's Energy Code or the Energy Edge Program shall not be installed without the prior approval of City and City's Architect, which may be withheld in the sole discretion of City.

2. If SEAS requests that City install any fixtures in the Premises or perform any alterations, additions or improvements to the Premises that are in addition to or subsequent to City Work and SEAS Work, and if City consents to such request, such additional work shall be installed at SEAS' sole cost and expense and the terms and conditions of Section D of this Exhibit shall govern all such work.

F. SPECIAL PROVISIONS.

If a portion of the SEAS Work or any other installation within the Premises is to be performed by someone other than City's contractor or subcontractor, then the following terms and conditions shall apply:

1. Such work shall proceed upon City's written approval of (i) SEAS' contractor; (ii) public liability and property damage insurance satisfactory to City carried by SEAS' contractor; (iii) detailed plans and specifications for such work; and (iv) the amount of general conditions to be paid by SEAS to City for the service(s) still provided by City's contractor.

2. All work shall be done in conformity with a valid building permit, when required, a copy of which shall be delivered to City before such work is commenced, and in any case, all such work shall be performed in accordance with all applicable governmental regulations. Notwithstanding any failure by City to object to any such



EXHIBIT 1.2

work, City shall have no responsibility for SEAS' failure to meet all applicable regulations.

3. All work by SEAS or SEAS' contractor shall be scheduled through City.
4. SEAS or SEAS' contractor shall arrange for necessary utility and hoisting with City.
5. SEAS shall promptly reimburse City for costs incurred by City due to faulty work done by SEAS or by any of its contractors, or by reason of inadequate clean-up.
6. Prior to commencement of any work on the Premises by SEAS or any contractor of SEAS, SEAS and SEAS' contractor shall enter into an indemnity agreement and a lien priority agreement satisfactory to City indemnifying and holding harmless City and City's contractor for any liability, losses or damages directly or indirectly from lien claims affecting the Building or the Premises arising out of SEAS' or SEAS' contractor's work or that of every subcontractor or supplier, and subordinating each such lien to the liens of construction and permanent financing for the Building.
7. City shall have the right to post a notice or notices in conspicuous places in or about the Premises announcing its non-responsibility for the work being performed therein.



EXHIBIT 1.2 (A)

DOCUMENTS FOR CITY WORK

City Work: 100% of the tenant improvements; the exhibit concrete, waterproofing and electrical scope as substantially described in the following documents which may be subject to further amendment.

- 1) Pier 59 Expansion and Renovation - Tenant Improvements:
Permit Set - May 24, 2006
Project Manual - May 24, 2006
- 2) Exhibit Bid Package #2 - Aquarium Pier 59/Redevelopment
Windows to Washington Exhibit
100% Bid Construction Documents, April 7, 2006
EX-1.1 to EX-1.7; EX-2.1 to 2.11; EX- 3.1 to EX - 3.3; EX-SO.1
to EX-S4.3

Aquatic Exhibit Technical Specifications—
Sections 19210, 19240, 19281, & 19282
- 3) Exhibit Bid Package #3 – Windows to Washington Exhibit -
May 19, 2006 EX-8.1 to EX-8.6

Aquatic Exhibit Technical Specifications - May 19, 2006
Section 19952 - Exhibit Aquatic Lighting



EXHIBIT 1.2 (B)

DOCUMENTS FOR SEAS WORK

SEAS Work: 100% of the exhibit, excluding only the concrete, waterproofing and electrical scope included in Exhibit 1.2 (A) above.

- 1) Exhibit Bid Package #1 - Under Pier LSS Intake Plumbing –
March 14, 2006
- 2) Exhibit Bid Package #2 - Windows to Washington Exhibit 100% Bid
Construction Documents, April 7, 2006
All but EX-1.1 to EX-1.7; EX-2.1 to 2.11; EX- 3.1 to EX
3.3; EX-SO.1 to EX-S4.3

Aquatic Exhibit Technical Specifications Sections 19780 & 19910

- 3) Exhibit Bid Package #3 - Windows to Washington Exhibit
May 19, 2006
All except EX-8.1 to EX-8.6

Aquatic Exhibit Technical Specifications - May 19, 2006
All except Section 19952 - Exhibit Aquatic Lighting



1 FIRST FLOOR LEASE PLAN
SCALE: NTS

SCALE: NTS

4/26/06



Exhibit 1.2.2

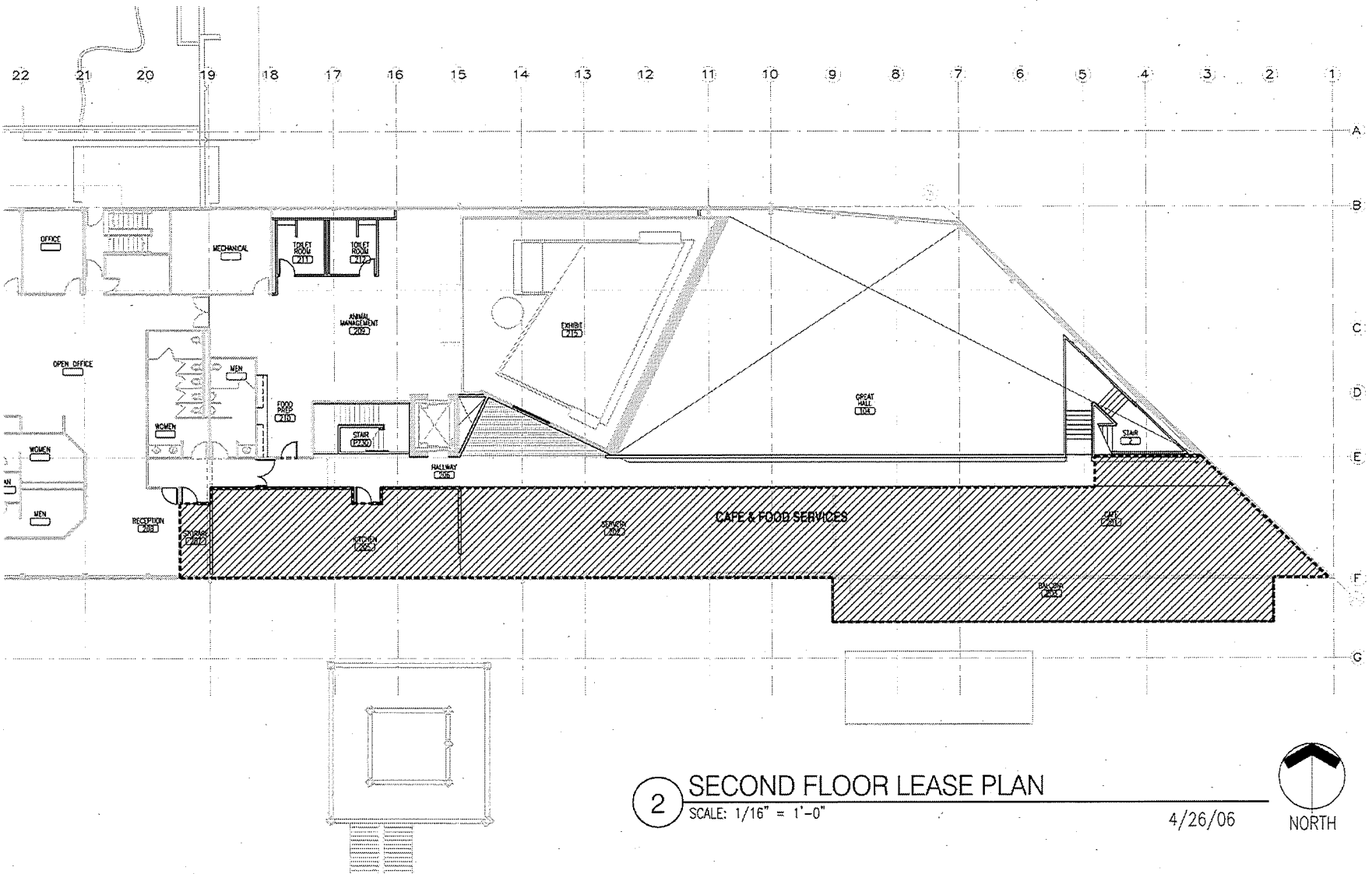


EXHIBIT 1.5**BASE RENT SCHEDULE – INITIAL TERM**

		A	B	C	D
Year	Year	Debt Service – Shell Improvements	Principal Amount of Bonds for City Work	Estimated Interest on Bonds for City Work	Estimated Total Payments
1	2007	\$ 180,000.00	\$ 0	\$ 328,776.00	\$ 508,776.00
2	2008	\$ 180,000.00	\$ 0	\$ 328,776.00	\$ 508,776.00
3	2009	\$ 180,000.00	\$ 0	\$ 328,776.00	\$ 508,776.00
4	2010	\$ 180,000.00	\$ 350,000.00	\$ 328,776.00	\$ 858,776.00
5	2011	\$ 180,000.00	\$ 570,000.00	\$ 311,276.00	\$ 1,061,276.00
6	2012	\$ 180,000.00	\$ 850,000.00	\$ 282,776.00	\$ 1,312,776.00
7	2013	\$ 180,000.00	\$ 1,210,000.00	\$ 240,276.00	\$ 1,630,276.00
8	2014	\$ 180,000.00	\$ 1,660,000.00	\$ 179,776.00	\$ 2,019,776.00
9	2015	\$ 180,000.00	\$ 1,935,520.00	\$ 96,776.00	\$ 2,212,296.00
10	2016	\$ 180,000.00	\$ 0	\$ 0	\$ 180,000.00

BASE RENT SCHEDULE – EXTENDED TERM(S)

		A	B	C	D
Year	Year	Debt Service – Shell Improvements	Principal Amount of Bonds for City Work	Estimated Interest on Bonds for City Work	Estimated Total Payments
11	2017	\$ 180,000.00	\$ 0	\$ 0	\$ 180,000.00
12	2018	\$ 180,000.00	\$ 0	\$ 0	\$ 180,000.00
13	2019	\$ 180,000.00	\$ 0	\$ 0	\$ 180,000.00
14	2020	\$ 180,000.00	\$ 0	\$ 0	\$ 180,000.00
15	2021	\$ 180,000.00	\$ 0	\$ 0	\$ 180,000.00
16	2022	\$ 180,000.00	\$ 0	\$ 0	\$ 180,000.00
17	2023	\$ 180,000.00	\$ 0	\$ 0	\$ 180,000.00
18	2024	\$ 180,000.00	\$ 0	\$ 0	\$ 180,000.00
19	2025	\$ 180,000.00	\$ 0	\$ 0	\$ 180,000.00
20	2026	\$ 0.00	\$ 0	\$ 0	\$ 0.00



EXHIBIT 15.1

CITY'S BUILDERS RISK INSURANCE

At all times during City Work and/or SEAS Work ("Project Work") and until substantial completion of both, the City shall maintain Builder's Risk property insurance upon the Project Work for the full cost of replacement as of the time of any loss and include Contractor, Subcontractors and Sub-subcontractors as additional insured as their interests may appear. This insurance shall insure against loss from the perils commonly known in the insurance industry as "All Risks" of physical loss or damage to include the following: Fire, Theft, Vandalism, Testing (hot and cold), Earthquake, Flood and Boiler and Machinery Perils consisting of boiler explosion, electrical injury and mechanical breakdown; and resultant loss from faulty workmanship or design error. Coverage extensions for Delayed Opening – Loss of Earnings and Operation of Building Codes – demolition, contingent liability and increased cost of construction shall be included. Limits applicable to Debris Removal, Pollutant Cleanup and Removal, Operation of Building Codes and Delayed Opening – Loss of Earnings shall be in addition to the policy limit available for direct damage to the Project Work. The policy shall not contain any coinsurance penalty provision or any occupancy clauses.

The policy may contain sub-limits. Any loss or claim in excess of the limits or sub-limits of the Builder's Risk insurance shall be borne by City.

The Builder's Risk property insurance coverage shall include all materials, supplies, and equipment that are intended for specific installation in the Project while such materials, supplies and equipment are located at the Project site, in transit or while temporarily located away from the Project site.

The Builder's Risk property insurance shall be subject to a general deductible of \$100,000 for any one loss event. The cost of any one loss claim up to \$100,000 shall be the responsibility of Contractor for any loss of its work prior to substantial completion or its remaining work in progress prior to completion. If City elects to have different deductible amounts for certain types of losses, City shall be responsible for the cost of any such loss or claim in excess of \$100,000 up to the amount of any larger deductible or self insured retention that may apply to the loss.



EXHIBIT 15.7

SEAS' CONTRACTOR'S INSURANCE

A. General.

Prior to commencement of any SEAS Work, SEAS shall ensure that each and every one of its contractors ("Contractor") has obtained all the insurance required herein and provide evidence satisfactory to the City that such insurance has been procured. City's review of Contractor's insurance shall not relieve or decrease any Contractor's liability. Companies writing the insurance to be obtained hereunder shall be (i) licensed to do business under Chapter 48 RCW or comply with the Surplus Lines Law of the State of Washington; (ii) rated A-VII or better in the A.M. Best Key Rating guide; and (iii) acceptable to City with respect to insurance company qualifications, policy form and coverage, and the primary nature of the insurance. The A.M. Best rating of each insuring company shall be indicated on the insurance certificates.

B. Liability Insurance.

Contractor shall maintain the following insurance coverage, at its expense, during the work and for one year after completion.

1. 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 Liability
- Contractual Liability
- Independent Contractors Liability
- Stop Gap/Employers Liability
- Explosion, Collapse, or Underground Property Damage (XCU)
- Broad Form Property Damage
- Fire Damage Legal
- Designated Construction Projects (CG2503)

Such insurance is to provide the following minimum limits:

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



EXHIBIT 15.7

- Stop Gap Employers Liability
 - \$1,000,000 Each Accident
 - \$1,000,000 Disease – Policy Limit
 - \$1,000,000 Disease – Each Employee

2. Business Automobile Liability Insurance, including coverage for any owned, non-owned, leased or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent, and as specified by Insurance Services Office Symbol 1 (any auto). If “pollutants” as defined in exclusion 11 of the commercial auto policy are to be transported, endorsement CA9948 and MCS 90 are required. Such insurance is to provide the following minimum limits:

- Bodily Injury and Property Damage
 - \$1,000,000 Per Accident

3. Pollution Liability Insurance providing insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work. Such insurance is to provide coverage for:

- Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death
- Property damage including physical injury to or destruction of tangible property including the loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed
- Defense including cost charges and expensed incurred in the investigation, adjustment or defense of claims for such compensatory damages.

Such insurance is to have the following minimum limits:
\$1,000,000 Per Aggregate

4. Excess Liability Insurance, above the primary general and automobile liability policies, that will provide a minimum total limit of insurance of \$25,000,000. The excess policy must be as broad as the primary policies.

5. Contractor’s Equipment Floater insurance, providing coverage for the Contractor’s equipment for the actual cash value of such equipment as of the time of any loss. This insurance shall insure against loss from the perils of fire and other risks of direct physical loss or damage also known as “All Risk” perils protection.

C. Workers’ Compensation.

SEAS shall ensure that its Contractor complies with the Washington State Industrial Insurance Act and Title 51 of the RCW and with the Federal Longshoremen’s



EXHIBIT 15.7

and Harbor Workers' Act and the Jones Act, if applicable. If Contractor is qualified as a self-insurer in accordance with Chapter 51.14 of the RCW, SEAS shall obtain from Contractor a letter signed by an authorized corporate officer so certifying and setting forth the limits of any policy of excess insurance covering its employees. SEAS shall insure that each of its contracts for construction contains a waiver of Title 51 immunity in favor of City. If applicable, Contractor shall secure its liability for any Federal Workers' Compensation Act exposure by purchasing other insurance coverage as may be appropriate.

D. Other Insurance Requirements

1. All insurance coverages (except Washington State Industrial Insurance Act) shall protect against claims for damages for personal and bodily injury or death, as well as claims for property damage, which may arise from operations in connection with the Work whether such operations are by Contractor or any Subcontractor.

2. All insurance coverages shall be endorsed to include "The City of Seattle" as an additional insured.

3. Insurance maintained by Contractor shall not be reduced or cancelled without sixty (60) days prior written notice to City. Contractor's insurance shall be primary as respects City, and any other insurance maintained by City shall be excess of and non-contributing insurance with Contractor's insurance.

4. If any policy(ies) described in this Exhibit is written on a claims made form, the retroactive date shall be prior to the or coincident with the effective date of this Agreement. The policy shall state the retroactive date. If renewal becomes unavailable or prohibitive, Contractor shall purchase an extended reporting period "tail" or execute another form of guarantee acceptable to City.

5. Any deductible or self-insured retention must be disclosed and is subject to review and disapproval by City. The cost of any claim falling within the deductible shall be the responsibility of Contractor.

E. Evidence of Insurance Coverage

Prior to commencement of any work, SEAS or its Contractor shall provide the following documents to City as evidence of insurance coverage:

- A copy of the policy's declaration pages, showing the insuring company, policy effective dates, limits of liability and the schedule of forms and endorsements.



EXHIBIT 15.7

- A copy of the endorsement naming City of Seattle as an additional insured, showing the policy number, and signed by an authorized representative of the insurance company on Form CG20 10 (ISO) or equivalent form for Commercial General Liability insurance, and CA20 48 (ISO) or equivalent form for Business Auto Liability Insurance.
- A copy of the endorsements form list to the policy or policies showing endorsements issued on the policy, including any company-specific or manuscript endorsements.
- A copy of an endorsement stating that the coverages provided by this policy to City or any other named insured shall not be cancelled without providing at least sixty (60) days prior written notice to City.
- A copy of a "Separation of Insureds" or "Severability of Interests" clause.

All policies shall be subject to review and disapproval by the City for insurance company qualifications, policy form and coverage, and the primary nature of the insurance. The insurance company must be rated A-VII or better in the A.M. Best Key Rating guide and licensed to do business in the State of Washington or issued as a surplus lines by a Washington surplus lines broker. Review by City of the evidence of insurance does not constitute a waiver of the requirements of this Agreement or acceptance of insurance that is deficient.



FISCAL NOTE FOR CAPITAL PROJECTS ONLY

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Parks and Recreation	John Braden / 386-4334	Dwight Dively / 684-0503

Legislation Title: AN ORDINANCE relating to the Seattle Aquarium; authorizing the loan of funds from the City's Consolidated (Residual) Cash Pool, or its participating funds, to the 2007 Multipurpose LTGO Bond Fund; increasing an appropriation in the 2006 Adopted Budget; amending the Adopted 2006-2011 Capital Improvement Program; and authorizing an agreement with the Seattle Aquarium Society for use and further development of portions of the Aquarium; all by a three-fourths vote of the City Council.

Summary and background of the Legislation:

This legislation provides funding of \$6.3 million to allow construction to proceed on a major exhibit and other improvements to the Seattle Aquarium (Aquarium) referred to in the legislation as City Work upon completion of the current structural work on Pier 59 (Aquarium Pier Piling Replacement -- Project K732202) and shifts the responsibility of constructing the City Work from the Seattle Aquarium Society (the Society) to the City. Additionally, the Bill authorizes the execution of a Concession Agreement with the Society pursuant to which the Society will repay the cost of the City Work.

The Society is in the process of, and has made substantial progress toward, raising \$17.1 million for construction of the "Window on Washington Waters" exhibit and other Aquarium improvements, including the City Work, located at the east end of Pier 59, which upon completion, will be given as a gift to the City of Seattle (City). The Society intends to use the same general contractor for its project that the City is using for the Aquarium Pier Piling Replacement (K732202). If the City performs the City Work now, the general contractor will be able to achieve certain efficiencies and complete the expansion in time for the peak summer season in 2007. The Concession Agreement provides a detailed description of the construction work for the entire project to be managed by the City and by the Society.

Under the terms of the Concession Agreement, the Society will pay the City for all costs of constructing and financing the City Work as well as the debt service on bonds that were issued in 2005 to support construction of structural improvements to Pier 59 through a quarterly base rent charge over a ten year term. As contemplated in the Memorandum of Agreement entered into by the Society and the City in 2005, the Society will have the authority to sublease defined space in the Aquarium for a gift shop and food facilities. In addition to its base rent charge, SEAS will pay to the City 50% of the surplus it generates each year from the rents it collects from its subtenants. The City will use this surplus for the operation and maintenance of the Aquarium. The Society, at its option, can extend the Concession Agreement for two five year terms.

This legislation will allow the Department of Parks and Recreation (DPR) and the Society to move forward with the Aquarium's exhibit and entry work. Once this work is completed, the Aquarium attendance is expected to increase 10% to 20% per year. A delay in the opening of the new facility would result in the need for the City to provide an operating subsidy for the Aquarium, which is not planned in the current operating budget.

Project Name:	Project I.D.	Project Location	Start Date:	End Date
Aquarium Pier 59 Piling Replacement and Aquarium Redevelopment *	K732202	Aquarium	June 2006	July 2007

Notes: *The title is revised per this legislation

- Please check any of the following that apply:

☐ **This legislation creates, funds, or anticipates a new CIP Project.**

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

☒ **This legislation has financial implications.** (Please complete all relevant sections that follow.)

Appropriations:

Fund Name and Number	Department	Budget Control Level	2006 Appropriation	2007 Anticipated Appropriation
2007 LTGO Multipurpose Bond Fund (35100)	Parks and Recreation	Seattle Aquarium Projects (K72448)	\$6,384,000	\$191,520
Park and Recreation Operating Fund (10200)	Parks and Recreation	Debt Service and Contract Obligations (K72440)	\$0	\$508,776
TOTAL			\$6,384,000	\$700,296

*See budget book to obtain the appropriate Budget Control Level for your department.

Notes: The 2006 appropriation includes \$6.3 million for capital costs and \$84,000 for interest on the interim loan from the Consolidated (Residual) Cash Pool from October 2006 through February 2007 at 3.2%. The 2007 appropriation in Fund 35100 is the anticipated cost of issuing the bonds (equal to 3% of the principal); the appropriation in Fund 10200 is the debt payment on the 2005 bonds (approximately \$180,000 per year) and the 2007 bonds (approximately \$329,000 per year in 2007 - please see Exhibit 1.5 of Attachment 2 to the accompanying ordinance for the estimated debt service payment schedule).

Spending Plan and Future Appropriations for Capital Projects:

Spending Plan and Budget (in \$000's)	2006	2007	2008	2009	2010	2011	Total
Spending Plan (capital costs)	\$1,500	\$4,800	\$0	\$0	\$0	\$0	\$6,300
Spending Plan (bond interest and issuance costs)	\$84	\$192					\$276
Spending Plan (debt service)		\$509	\$509	\$509	\$859	\$1,061	\$3,446
Total Spending Plan	\$1,584	\$5,500	\$509	\$509	\$859	\$1,061	\$10,022
Current Year Appropriation	\$6,384						\$6,384
Future Appropriations		\$700	\$509	\$509	\$859	\$1,061	\$3,638

Notes: The future appropriations shown in 2008 and beyond are for debt service payments on the 2005 and 2007 bonds. Under the proposed schedule, debt service payments on the 2005 bonds extend through 2025 and debt service payments on the 2007 bonds extend through 2015 (please see Exhibit 1.5 of Attachment 2 to the accompanying ordinance). The 2007 bonds are structured with interest only payments through 2010 with principal payments beginning in 2010 and increasing gradually in the remaining five years until the loan balance is paid in full.

Funding source:

Funding Source (Fund Name and Number, if applicable) (in \$000's)	2006	2007	2008	2009	2010	2011	Total
2007 LTGO Multipurpose Bond Fund (35100)	\$6,384	\$192					\$6,576
Park and Recreation Fund (10200) - 10 years Concession Agreement with the Society - base rent pays debt service for existing \$2.4 M debt as well as this new debt.		\$509	\$509	\$509	\$859	\$1,061	\$3,446
TOTAL	\$6,384	\$700	\$509	\$509	\$859	\$1,061	\$10,022

Notes: Under the terms of the Concession Agreement authorized in this legislation, the Society will make payments to the City over a ten year period that will cover all principal and interest expense incurred by the City in constructing the City Work authorized by this legislation. In addition to these expenses, the Society will make payments to the City through the initial term of the Agreement for all principal and interest expenses incurred by

the City in 2005 for \$2.4 million of expenses related to the structural work on Pier 59. If after ten years the Society decides not to extend the Concession Agreement, all concession revenues would be collected by the City, and could be used to cover the remaining interest and principal on the 2005 bond issuance. Pledges to the Society's \$17.1 million capital campaign, which is expected to be completed by June 2007, are expected to be the primary source of repayment, although the Society will have the option of using its share of concession revenue from the new gift shop, café and catering operations.

Bond Financing Required:

Type	Amount (in \$000's)	Assumed Interest Rate	Term	Timing	Expected Annual Debt Service/Payment
Long Term General Obligation Multipurpose Bonds	\$6,576	5.0%	10 yrs	Mid 2007	\$329k Interest only until year 4; then interest + principal (at increasing amounts for the next 6 years)
TOTAL	\$6,576				

Uses and Sources for Operation and Maintenance Costs for the Project:

O&M	2006	2007	2008	2009	2010	2011	Total
Uses							
Start Up							
On-going							
Sources (itemize)							

Notes:

This legislation provides the capacity to carry out planned improvements more quickly; it does not add additional facilities or operating and maintenance costs. As the expanded Aquarium is expected to generate revenue, the opening of the new facility in 2007 will prevent substantial operating losses at the Aquarium.

After 5 years of steady growth (from 600,000 to 700,000 visitors/year), the Aquarium projects 10% to 20% more visitors with expansion into the east end of Pier 59 that is scheduled to be completed in mid-2007. The 2007/2008 proposed budget assumes a 14% increase to 800,000 visitors/year. Revenue increases (from admissions, membership and concessions) will result from an increased number of visitors and higher fees. This increase will fund additional operating costs, including staff to serve the customers, maintain the additional space, provide care for the animals and higher utility costs, equipment, and supplies for the expanded operations. Advertising expenses will also increase to promote the expanded facility and realize the potential increased revenue.

The \$7 million 2006 Aquarium expense budget is projected to increase to \$8.2 million in 2007 and \$9.5 million in 2008 (the first full year of operating the expanded facility). It is anticipated that this expansion will be fully funded by earned revenue.

Periodic Major Maintenance costs for the project:

Major Maintenance Item	Frequency	Cost	Likely Funding Source
TOTAL			

NA - This legislation changes the funding mechanism for constructing this project; consequently there are no new major maintenance costs associated with this legislation.

Funding sources for replacement of project: Identify possible and/or recommended method of financing the project replacement costs.

NA

Total Regular Positions Created Or Abrogated Through This Legislation, Including FTE Impact: NA

Position Title and Department*	Fund Name	Fund Number	Part-Time/Full Time	2006 Positions	2006 FTE	2007 Positions**	2007 FTE**
n/a							
TOTAL							

Notes: Staff is growing to support the expanded Aquarium. In the 2006 budget, 4 FTE were added (2 biologists, 1 educator and 1 Aquarium Engineer). In 2007, 2.5 more FTE may be proposed (. 5 FTE cashier and 4 half time interpretive staff). These staff changes are not related to this legislation.

- **Do positions sunset in the future?** NA

- **What is the financial cost of not implementing the legislation:** Without this financing, the opening of the “Window on Washington Waters” expansion and the revenue anticipated from the 10% to 20% increase in visitors would be delayed until 2008. A delay in implementation will also delay some costs associated with the expansion. However, the costs to operate the existing operations will continue to rise without the benefit of increasing prices, and the number of visitors is likely to decline during the period during which the delay would take place. The Aquarium would likely need an additional \$570,000 to \$800,000 in General Fund support in 2007-2008 and construction costs could increase by 6% to 10%.
- **What are the possible alternatives to the legislation that could achieve the same or similar objectives:** The project could be delayed until private fundraising by the Society is completed. However, opening the “Window on Washington Waters” exhibit would then be delayed until spring 2008, resulting in greater project costs and operating losses during that period of time.
- **Is the legislation subject to public hearing requirements?** This legislation is not subject to additional public hearing requirements. Because this project was authorized to spend more than \$5 million of City funds prior to this legislation (see resolution 30096), the City Council Budget Committee held a special public hearing (also known as a “CLEAN” hearing) on this project on November 4, 2004 (see City Clerk File Number 306958).
- **Other Issues** *(including long-term implications of the legislation):* NA

Please list attachments to the fiscal note below:

Attachment 1: Contract Summary



City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

July 11, 2006

Honorable Nick Licata
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Licata:

I am pleased to transmit the attached proposed Council Bill that increases expenditure authority for additional renovations to the Seattle Aquarium, authorizes the execution of a Concession Agreement between the City of Seattle (City) and the Seattle Aquarium Society (the Society), and authorizes future work to redevelop Pier 59. The Concession Agreement also authorizes the Society to sublease the Aquarium's gift shop and restaurant operations.

The City Council adopted Resolution 30737, which authorized the execution of a Memorandum of Agreement between the City and the Society with regard to the expansion of the Seattle Aquarium and redevelopment of Pier 59. Since that time, the Society has made significant progress toward reaching its goal of raising \$17.1 million to construct the "Window on Washington Waters" exhibit at the east end of the facility.

The Society has stated its intent to use the same contractor for its project as the City is using to redevelop the Pier, which will allow for certain efficiencies with both projects being worked on at the same time. The attached legislation loans approximately \$6.3 million from the City's Consolidated Cash Pool to the 2007 Multipurpose LTGO Bond Fund, and authorizes its expenditure, in order to complete certain structural and tenant improvements to Pier 59. The \$6.3 million will be repaid from the Society's capital fundraising campaign efforts in accordance with the terms of the Concession Agreement also authorized by this Bill.

Passage of the attached legislation will allow us to move forward with necessary work to complete construction at the Aquarium before the peak summer season begins in 2007. Once completed, attendance at the Aquarium is expected to increase 10% to 20% per year, which will significantly reduce the need for City support of Aquarium operations that would result from a delay in completing the project. No General Fund support for the Aquarium is planned in the current operating budget. Thank you for your consideration of this legislation. Should you have questions, please contact John Braden at 386-4334.

Sincerely,

A handwritten signature in dark ink, appearing to read "Greg Nickels", written over a horizontal line.

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7th Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360, Email: mayors.office@seattle.gov

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STATE OF WASHINGTON – KING COUNTY

--SS.

202483
CITY OF SEATTLE, CLERKS OFFICE

No. TITLE ONLY

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.

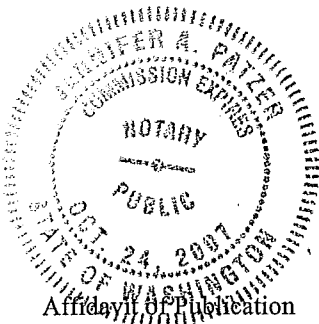
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce; which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:122211,14-122223

was published on

09/15/06

The amount of the fee charged for the foregoing publication is the sum of \$ 144.90, which amount has been paid in full.



Subscribed and sworn to before me on

09/15/06

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

AN ORDINANCE relating to the Neighborhood Parks, Green Spaces, Trails and Zoo Levy; authorizing the acquisition of real property commonly known as the northwest corner of California Avenue SW and SW Beveridge Place; authorizing acceptance of the deed for open space, park, and recreation purposes; and increasing appropriations to the Department of Parks and Recreation in the 2006 Budget; all by a three-fourths vote of the City Council.

ORDINANCE NO. 122214

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to execute and accept from the State of Washington, Department of Natural Resources, on behalf of the City of Seattle, an Aquatic Lands Easement at South Lake Union Park for ingress and egress, construction of bridge improvements; and maintenance and repair of a pedestrian bridge crossing Waterway Number Three (3), Lake Union.

ORDINANCE NO. 122211

AN ORDINANCE relating to the Seattle Aquarium; authorizing the loan of funds from the City's Consolidated (Residual) Cash Pool, or its participating funds, to the 2007 Multipurpose LTGO Bond Fund; increasing an appropriation in the 2006 Adopted Budget; amending the Adopted 2006-2011 Capital Improvement Program; and authorizing an agreement with the Seattle Aquarium Society for use and further development of portions of the Aquarium; all by a three-fourths vote of the City Council.

Publication ordered by JUDITH PIPPIN,
City Clerk

Date of publication in the Seattle Daily
Journal of Commerce, September 15, 2006.
9/15(202483)