

Ordinance No. 122630

Council Bill No. 116118

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of a ground lease with Seattle Opera for property that includes Mercer Arena at Seattle Center.

CF No. _____

Date Introduced:	<u>Dec. 17, 2007</u>	
Date 1st Referred:	To: (committee) <u>Parks, Education, Libraries</u>	
Date Re - Referred:	To: (committee) <u>And Labor</u>	
Date Re - Referred:	To: (committee)	
Date of Final Passage:	Full Council Vote: <u>6-0</u>	
Date Presented to Mayor:	Date Approved: <u>2-25-08</u>	
Date Returned to City Clerk:	Date Published: <u>2</u>	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: *Nick Licata*
Councilmember

Committee Action:

2-12 pass as amended 4-0 TR, RC, TB, JD

2-19-08 Passed 6-0
(Excused: Clark, Godden, McTuck)

This file is complete and ready for presentation to Full Council. Committee: _____ (initial/date)

Law Department

Law Dept. Review	OMP Review	City Clerk Review	Electronic Copy Loaded	Indexed
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ORDINANCE 122630

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of a ground lease with Seattle Opera for property that includes Mercer Arena at Seattle Center.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As requested by the Seattle Center Director and recommended by the Mayor, the Seattle Center Director or his designee is authorized to execute, for and on behalf of The City of Seattle, a ground lease with Seattle Opera, substantially in the form of the agreement attached hereto and identified as "MERCER ARENA GROUND LEASE BETWEEN THE CITY OF SEATTLE AND SEATTLE OPERA" (Attachment 1), under which Seattle Opera shall lease the property at Seattle Center on which the Mercer Arena is located, for an initial term of thirty years.

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

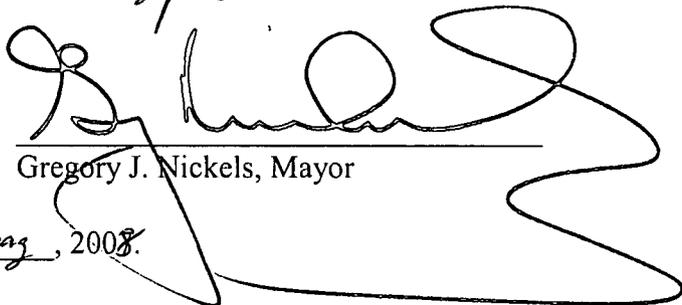


1 Section 3. This ordinance shall take effect and be in force thirty (30) days from and after
2 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days
3 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

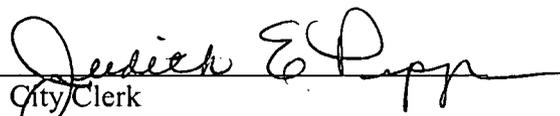
4 Passed by the City Council the 19 day of Feb., 2008 and signed by me in open
5 session in authentication of its passage this 19 day of Feb, 2008
6
7

8 
9 _____
10 President _____ of the City Council

11 Approved by me this 25th day of February, 2008

12 
13 _____
14 Gregory J. Nickels, Mayor

15 Filed by me this 25th day of February, 2008.

16
17 
18 _____
19 City Clerk

(Seal)

20 Attachment 1: Mercer Arena Ground Lease Between The City of Seattle and Seattle Opera
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**MERCER ARENA GROUND LEASE
BETWEEN
THE CITY OF SEATTLE
AND
SEATTLE OPERA**



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Exhibits:

- Exhibit 1.1.1 – Legal Description**
- Exhibit 1.1.2 – Premises Site Plan**
- Exhibit 12.1 – Conceptual Plan for Initial Improvements**
- Exhibit 18.1 – Insurance Requirements**
- Exhibit 34.1 – Memorandum of Lease**



MERCER ARENA GROUND LEASE

THIS MERCER ARENA GROUND LEASE (this "Lease") is entered into this ____ day of _____, 2008, by and between **THE CITY OF SEATTLE** ("City"), a city of the first class of the State of Washington, acting by and through its Seattle Center Department and the Director thereof, and **SEATTLE OPERA** ("Opera"), a not-for-profit corporation organized under the laws of the State of Washington.

IN CONSIDERATION of the mutual covenants contained herein, and subject to the terms and provisions set forth herein, City and Opera covenant and agree as follows:

1. Summary Lease Data; Exhibits.

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

1.1 Premises. Subject to the provisions of Section 2.2 and the last paragraph of Section 12, the real property legally described in Exhibit 1.1.1 and depicted on Exhibit 1.1.2, together with the building commonly known as Mercer Arena, 301 Mercer Street, Seattle, King County, Washington 98109, which building contains approximately 59,850 square feet as of the Effective Date, reserving to City the ground rights below Opera's Improvements as constructed, and the air rights more than 85 feet above the finished grades surrounding the existing Mercer Arena, measured in accordance with the provisions of SMC 23.86.006 as in effect on the Effective Date.

1.2 Effective Date. The date this Lease is fully executed, as provided in Section 36.

1.3 Rent Commencement Date. The first day of the month following the date when Opera receives a building permit from the Seattle Department of Planning and Development to construct the Initial Improvements to the Premises, or July 1, 2009, whichever is earlier, unless the Rent Commencement Date is extended in accordance with Section 3.2. Opera shall be entitled to exclusive use of the Premises on the Rent Commencement Date.

1.4 Expiration Date. Thirty (30) years after the Rent Commencement Date.

1.5 Rent.

Base Rent: The initial annual Base Rent is \$220,000.00.

Percentage Rent: Fifteen percent (15%) of Opera's gross receipts from Subtenants, as further described in Section 4.4.

1.6 Good Faith Deposit. \$110,000.00.



1.7 Initial Improvements. The improvements that Opera makes to the Premises, pursuant to the Construction Agreement described in Section 12, which improvements are generally described in Exhibit 12.1.

1.8 Parking. If the master use permit issued by the City of Seattle's Department of Planning and Development in connection with the Initial Improvements requires parking for the Permitted Use and if on the Rent Commencement Date Seattle Center has available unrestricted parking capacity, the parties shall negotiate and execute a covenant and agreement (the "Covenant Agreement") for the required parking for up to the entire Term. The Covenant Agreement shall be in the form prescribed by Title 23 of the Seattle Municipal Code or any successor provision or if no form is then required by ordinance, then in commercially reasonable form and provide for Opera to pay a commercially reasonable rate for such parking.

1.9 Notice Addresses.

To City: Seattle Center Director
Seattle Center House
305 Harrison Street
Seattle, Washington, 98109

To Opera: Seattle Opera
Attention: Kelly Tweeddale
Executive Director
1020 John Street
Seattle Washington, 98109

With a copy to: Russell F. Tousley, P.S.
Tousley Brain Stephens, PLLC
1700 Seventh Avenue, Suite 2200
Seattle, WA 98101-4416

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

- Exhibit 1.1.1 – Legal Description
- Exhibit 1.1.2 – Premises Site Plan
- Exhibit 12.1 – Conceptual Plan for Initial Improvements
- Exhibit 18.1 – Insurance Requirements
- Exhibit 34.1 – Memorandum of Ground Lease

2. Premises.

2.1 Grant. City hereby leases the Premises to Opera and Opera hereby leases the Premises from City, all subject to and in accordance with the terms and provisions of this Lease. For the duration of this Lease, Opera shall have a nonexclusive license to use the ramp and loading dock at the south side of the Premises in common with occupants of Marion



Oliver McCaw Hall ("McCaw Hall"). Opera shall coordinate its use of the licensed facilities with Seattle Center McCaw Hall staff.

2.2 Lot Line Adjustment. Opera, at its sole cost, shall diligently pursue and shall obtain a lot line adjustment that will as nearly as possible establish the Premises as extending to the south margin of the Mercer Street pedestrian sidewalk, on the north; approximately 23 feet west of the west margin of the Fourth Avenue North pedestrian sidewalk, to the east; the south face of the existing Mercer Arena building, to the south; and the centerline of the common wall between McCaw Hall and Mercer Arena, to the west. When the lot line adjustment is completed, the parties shall annex hereto and file with the City Clerk an amended Exhibit 1.1.1. City shall provide all reasonable cooperation requested by Opera in obtaining such lot line adjustment.

2.3 Condition. Opera is familiar with and has inspected the Premises, which City leases to Opera and Opera accepts from City in their "AS IS" condition.

2.4 Permitted Use. Opera shall use the Premises to construct and operate its administrative offices, rehearsal and technical support facilities and other incidental purposes related thereto or to its principal business as an opera company. With the Director's prior written approval and as further described in Section 19, Opera may sublease or license portions of the Premises for uses that are compatible with Seattle Center's overall mission. It is the parties' intent that the Premises will be developed and used in a manner that actively engages the public, including along the Mercer Street frontage.

2.5 Party Wall. The parties acknowledge and agree that the west wall of the Premises and the east wall of McCaw Hall form a common wall. For the duration of this Lease, Opera shall have the right to use such party wall jointly with the City upon the following terms and conditions:

- A. Each party may continue in the present use of the wall, including continuation of such use in connection with any alteration or replacement of the Premises with a different facility; provided, however, (i) Opera shall not cut any openings in the wall without the approval of the Director and the McCaw Hall Operating Board, and the wall may be put to no use that will impair its strength or injure McCaw Hall in any way, and (ii) City shall not cut any openings in the wall without the approval of Opera and the McCaw Hall Operating Board, and the wall may be put to no use that will impair its strength or injure Opera's Improvements (as defined in Section 12 in any way).
- B. Each of Opera and City shall have the right, at its sole expense, to drill into, cut into or otherwise gain access to the interior of the common wall for the purpose of maintaining, repairing or restoring and, if consent be first obtained pursuant to subparagraph A above, remodeling or altering, water, utility, soundproofing or other services or amenities to their buildings adjacent to the wall subject to (i) the obligation to restore the



common wall to the same condition it was in immediately before such act and (ii) each party's responsibility to the other party for any damages caused thereby.

- C. Each of Opera and City shall have an easement over the adjacent McCaw Hall and Opera's Improvements, respectively, for the following purposes: (i) to have the common wall remain and be rebuilt in its same location as when originally built; (ii) to use, for common wall purposes, that portion of the adjoining building upon which the common wall is built; and (iii) for access through, in or upon any portion of the adjoining building reasonably necessary to effect repairs to, maintenance of or reconstruction of the common wall or that portion of any foundation, exterior wall or roof of the structure which meets with, adjoins or is connected to the common wall.
- D. For the purposes of this Section, the term "common wall" means and includes the wall between McCaw Hall and Opera's Improvements as such wall now or hereafter exists, and everything, if anything, located within such wall (such as studs, framing, insulation, soundproofing material, pipes, wires, joints, junction boxes and other materials or equipment related to utilities) and below the wall (such as the surface of the ground and footings located in the ground).
- E. Except as specifically set forth above, repair and maintenance of the common wall shall be subject to the provisions of Sections 13.2 and 13.3 below.

3. **Lease Term.**

3.1 **Initial Term.** This Lease shall be for a term (the "Initial Term") beginning on the Rent Commencement Date specified in Section 1.3 plus any partial calendar month between the date when Opera receives its building permit and the Rent Commencement Date, and ending on the Expiration Date specified in Section 1.4, unless the Lease Term is terminated earlier in accordance with the provisions of this Lease or extended as provided in Section 3.3 below. As used herein, "Lease Year" means the period from the Rent Commencement Date to the day prior to the Rent Commencement Date of the following calendar year.

3.2 **Option to Extend Rent Commencement Date:** Opera shall have the option to extend the Rent Commencement Date for up to two (2) periods of one (1) year, each (the "Extension Options"). In each instance, Opera shall be required to give City written notice of its election to exercise one of the Extension Options at least sixty (60) days prior to the commencement of the applicable Extension Option period and to pay City, for each such option exercised, an Extension Option fee in the amount of \$110,000, cash. Notwithstanding anything in this Lease to the contrary, if Opera has not taken possession of the Premises and



commenced paying Rent by July 1, 2011, this Lease shall automatically terminate and the parties shall have no further rights or obligations hereunder with respect to one another.

3.3 Extended Term. At the expiration of the Initial Term, Opera shall have the option to extend this Lease for one (1) successive term of thirty (30) years (the "Extended Term") on the same terms and conditions set forth herein, except for Base Rent, which will be calculated as provided in Section 4.3, and except that the renewed Lease shall contain no further renewal option. Opera may extend the Lease Term by giving City written notice of its intention to do so at least one (1) year prior to the beginning of the Extended Term. As used in this Lease, "Lease Term" means the Initial Term and if established by Opera hereunder, the Extended Term.

3.4 Access Prior to Commencement of Term. Opera may enter the Premises prior to the Rent Commencement date to examine and conduct such studies of the land and the Arena building subject to the Director's approval, which approval shall not be unreasonably withheld or delayed. In connection with any desired entry by Opera, or its agents, employees or contractors onto the Premises, Opera shall give City reasonable advance notice of such entry and shall conduct such entry and any inspections in connection therewith in compliance with all applicable laws. Opera shall maintain, and shall assure that its contractors maintain, public liability and property damage insurance in amounts and in form and substance adequate to insure against all liability of Opera and its agents, employees or contractors, arising out of any entry or inspections of the Premises of not less than \$1,000,000 per person and per occurrence, and Opera shall provide City with evidence of such insurance coverage upon request by City. Opera shall indemnify and hold City harmless from and against any costs, damages, liabilities, losses, expenses, liens or claims (including, without limitation, court costs and reasonable attorneys' fees and disbursements) arising out of or relating to any entry on the Premises by Opera, its agents, employees or contractors in the course of performing the inspections, testings or inquiries provided for in this Lease, including, without limitation, any release of Hazardous Materials or any damage to the Premises; provided that Opera shall not be liable to City solely as a result of the discovery by Opera of a pre-existing condition on the Premises to the extent the activities of Opera, its agents, representatives, employees, contractors or consultants do not exacerbate the condition. The provisions of this Section 3.4 shall survive beyond the termination of this Lease.

3.5 Notice of Building Permit Application. Opera shall promptly notify the Director when it files its building permit application for the Initial Improvements and City shall remove its personal property from the Premises prior to the date the building permit is issued.

4. Base Rent, Percentage Rent and Additional Charges.

4.1 Base Rent. Beginning on the Rent Commencement Date and thereafter, in advance, on each anniversary of the Rent Commencement Date throughout the Lease Term, Opera 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, the Base



Rent. Base Rent shall be prorated on a daily basis for any partial Lease Year within the Lease Term.

4.2 Adjustments to Base Rent. Beginning on the fifth (5th) anniversary of the Rent Commencement Date and on every fifth anniversary thereafter until the expiration or termination of the Initial Term (each, a "Base Rent Adjustment Date"), the Base Rent shall be increased to an amount that is 110% of the Base Rent payable during the year immediately preceding the Base Rent Adjustment Date.

4.3 Rent During Extended Term. If Opera exercises its option to extend the Lease Term pursuant to Section 3.3, then, the Base Rate shall be adjusted as of the first day of the Extended Term to an amount that the parties have negotiated in good faith, taking into account the physical condition of the Premises, the significant role Opera plays as a Seattle Center tenant and the public benefits Opera is then providing hereunder. If the parties have not agreed on the rent for the Extended Term within three (3) months from the date Opera notifies City of its intent to extend the Lease, then the matter shall be determined by mediation in accordance with the procedures described in Section 33.

4.4 Percentage Rent. Each year throughout the Lease Term, in addition to and together with the Base Rent, Opera shall pay City fifteen percent (15%) of the gross receipts it receives from subtenants and licensees of the Premises (each, a "Subtenant"), except for Subtenants that are exempt from Federal income taxation pursuant to 26 U.S.C 501(c)(3) ("Exempt Subtenants"). If Opera receives any non-monetary consideration from any such Subtenant, then the Director shall calculate the reasonable cash value of such consideration for purposes of calculating Opera's gross receipts. As used in this Section, "gross receipts" shall not include amounts paid to Opera as reimbursement for Opera's subtenant-related expenditures, such as for utilities, taxes or other services, including any reasonable and customary administrative fee. This Section shall not apply to Opera's short-term use of the Premises to recognize or honor its charitable contributors. Percentage Rent shall be paid in arrears, except that for the final year of the Lease Term, Percentage Rent shall be due and payable within thirty (30) days of the last day of the Lease Term.

4.5 Additional Charges. Whether or not so designated, all other sums due from Opera under this Lease shall constitute Additional Charges, payable as and when specified elsewhere in this Lease, but if not specified, then within ten (10) days after written demand.

5. Records and Reports.

5.1 Reports to City from Opera and Subtenants. Throughout the Lease Term, together with each payment of Base Rent and Percentage Rent, Opera shall submit to City a written statement, certified by Opera, setting forth in reasonable detail: (a) the amount of all gross receipts received by Opera from Subtenants (including Exempt Subtenants) during the preceding twelve months (each such 12-month period a "Lease Year"); (b) a computation of the Percentage Rent due City for such Lease Year; and (c) a description of public benefits provided during the preceding Lease Year, as required by Section 38. Together with such statement, Opera shall also provide City with proof of each Subtenant's Federal tax-exempt



status. All certificates required above shall be by an authorized officer of Opera. In addition, upon ten (10) calendar days' prior written notice, City shall have access at the Premises to any reports required by Opera to be provided by Subtenants under the subleases or licenses; provided, however, that if at the time of request Opera has commenced dress rehearsals for a production at McCaw Hall, Opera may delay the access until not more than ten (10) calendar days after the end of the final performance of the production.

5.2 Opera's Records. Opera shall keep true, full, and accurate books of account setting forth Opera's gross receipts from Subtenants (including Exempt Subtenants), together with any other information which will affect the determination of Percentage Rent. City shall be allowed after ten (10) calendar days' prior written notice to Opera, to inspect Opera's books of account at Opera's office and to procure audits thereof by an auditor at City's sole cost and expense (except as provided below); provided, however, that if at the time of request Opera has commenced dress rehearsals for a production at McCaw Hall, Opera may delay the access until not more than ten (10) calendar days after the final performance of the production. If in the reasonable judgment of such auditor Opera's books of account are incomplete or improperly reflect the information necessary for an accurate determination of the Percentage Rent, or if the audit shall show that the reports submitted by Opera understated Opera's Receipts by more than the greater of (i) \$25,000.00 or (ii) three percent (3%) thereof, for any year covered by the audit, the costs and fees for such audit shall be paid by Opera to City; provided, however, if the incompleteness, inaccuracy or understatement results from any Subtenant's understatement to Opera of the gross receipts (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 Opera's gross receipts, then, at City's option, Opera may be required to pay City a penalty of the greater of \$1,000.00 or two (2) times the amount of the understatement. If future audits disclose three (3) or more willful or intentional understatements of Opera's gross receipts in any five (5)-year period, then the penalty will double, to the greater of \$2,000.00 or four (4) times the amount of the understatement, with successive penalties continuing to double for each occurrence. Opera shall retain all yearly books of accounting and any other information which will affect the determination of Percentage Rent for a period of six (6) years from the end of each Lease Year. Opera's obligations under this paragraph shall survive expiration or termination of this Lease.

5.3 Subtenants' Records. Opera shall require all Subtenants that pay Opera a percentage rent or licensee fee to: (i) keep true, full, and accurate books of account setting forth gross receipts, together with any other information which will affect the determination of the rent or fee (if any); (ii) cause such Subtenant's chief financial officer, if any, and its chief executive officer, if any, to certify, annually, the accuracy of its annual report to Opera in connection with such payments; and (iii) give Opera commercially reasonable audit rights with respect to such books for a period of three (3) years from the end of each Subtenant's lease year. The subleases and licenses shall require that Subtenants' obligations under this paragraph shall survive expiration or termination of the subleases or licenses.

6. Late Charge; Interest.



If Opera fails to pay City any sum when due, such amount shall bear interest at the rate of 12% per annum from the date due until the date paid.

7. **Good Faith Deposit.**

Within ten (10) days after execution of this Lease, Opera shall deposit the sum of \$110,000.00, cash, with City as security for Opera's timely progress on and completion of the Initial Improvements. If Opera takes possession of the Premises and commences paying Rent, then City shall apply \$60,000.00 of the Good Faith Deposit toward Opera's first annual Base Rent payment and City shall retain the balance. If this Lease is terminated pursuant the provisions of Section 3.2, City shall retain the entire deposit.

8. **Opera's Operations.**

8.1 **Use of Premises.** Opera shall use the Premises only for the Permitted Use. As City's willingness to enter into this Lease with Opera was predicated, in part, on the nature of Opera's business, and the compatibility of such business with the use of the remainder of Seattle Center, Opera 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. Opera shall promptly comply, at its sole cost and expense, with such reasonable rules and regulations relating to the use of the Premises and Seattle Center as City, from time to time, may promulgate. Any newly promulgated rules and regulations shall not materially interfere with Opera's business for the Permitted Use. In the event of any conflict between the rules and regulations promulgated by City and the terms of this Lease, the terms of this Lease shall prevail. Opera shall maintain the Premises in a clean, orderly and neat fashion to conform with the standards of Seattle Center (provided that Opera shall not be responsible for maintaining those portions of the Premises that are City's responsibility to maintain under terms of this Lease), permitting no objectionable odors or noises to be emitted from the Premises which would disturb or injure the occupant of any adjacent property, and shall neither commit waste nor permit any waste to be committed thereon. Opera shall not permit any accumulation of trash on or about the Premises. Opera shall not create or contribute to the creation of a nuisance in either the Premises or on Seattle Center grounds and Opera shall not engage in or permit any action that will disturb the quiet enjoyment of any other Seattle Center tenant or occupant.

8.2 **Compliance with Laws.**

8.2.1 **Unlawful Use.** Opera 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 applicable to the Premises, or for any purpose offensive to the standards of the community of which the Premises are a part. Opera 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 Opera shall not be responsible for maintaining in compliance with laws those portions of the Premises that are City's responsibility to maintain under terms of this Lease).



8.2.2 Nondiscrimination. Without limiting the generality of the foregoing, Opera agrees to and shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington and City of Seattle, including but not limited to Chapters 14.04, 14.10, and 20.42 of the Seattle Municipal Code ("SMC") as they may be amended from time to time, and rules, regulations, orders, and directives of the associated administrative agencies and their officers. Nothing contained herein is intended to restrict Opera's casting decisions when made for artistic purposes.

8.3 Liens. Opera agrees that no liens of mechanics, materialmen, laborers, surveyors, engineers, architects, artisans, contractors, subcontractors, suppliers or any other lien of any kind whatsoever (a "Lien") shall be created against or imposed upon the Premises, and that in the event any such Liens shall be asserted or filed by any persons, firms or corporations performing labor or services or furnishing material or supplies in connection with Opera's Improvements, Opera shall pay off in full or cause the same to be discharged of record within thirty (30) days of notification thereof. Opera reserves the right to contest the validity or amount of any such Lien in good faith provided that, within thirty (30) days after the filing of such Lien, Opera discharges said Lien of record or records a bond which complies with the requirements of RCW 60.04.161 eliminating said Lien as an encumbrance against the Premises. In the event Opera shall fail to so remove any such Lien, City may take such action as City shall reasonably determine to remove such Lien and all costs and expenses incurred by City including, without limitation, amounts paid in good faith settlement of such Lien and attorneys' fees and costs, together with interest thereon, shall be paid by Opera as Additional Charges.

9. Compliance with Environmental Laws.

9.1 Definitions. For the purpose of this Section, the following terms shall be defined as provided below unless the context clearly requires a different meaning:

A. "Environmental Law" means, as amended from time to time, the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq., Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., Federal Hazardous Materials Transportation Control Act of 1980, 42 U.S.C. Section 1801 et seq., Federal Clean Air Act, 42 U.S.C. Section 7401 et seq., Federal Water Pollution Control Act, Federal Water Act of 1977, 93 U.S.C. Section 1251 et seq., Federal Insecticide, Fungicide and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. Section 136 et seq., Federal Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., Federal Safe Drinking Water Act, 42 U.S.C. Section 300f et seq., Washington Water Pollution Control Act, RCW Chapter 90.48, Washington Clean Air Act, RCW Chapter 70.94, Washington Solid Waste Management Recovery and Recycling Act, RCW Chapter 70.95, Washington Hazardous Waste Management Act, RCW Chapter 70.105, Washington Hazardous Waste Fees Act, RCW Chapter 70.95E, Washington Model Toxics Control Act, RCW Chapter 70.105D, Washington Nuclear Energy and Radiation Act, RCW Chapter 70.98, Washington Radioactive Waste Storage and Transportation Act,



RCW Chapter 70.99, Washington Underground Petroleum Storage Tanks Act, RCW Chapter 70.148, and any regulations promulgated thereunder from time to time.

B. “Hazardous Substance” means any matter including petroleum products and by-products, asbestos, infectious waste and any other materials, which is now or hereafter designated as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq., or that is now or hereafter regulated by applicable Environmental Laws.

9.2 Compliance with Environmental Laws and Regulations. All operations or activities upon, or any use or occupancy of the Premises, or any portion thereof, by Opera or any occupant of the Premises shall throughout the Lease Term comply in all material respects with all state, federal and local Environmental Laws and regulations governing or in any way relating to the generation, handling, storage, use, transportation, discharge or disposal (whether legal or illegal, accidental or intentional) of any Hazardous Substances (as herein defined).

9.3 Existing Hazardous Substances; Right of Termination. City has advised Opera that City abated certain Hazardous Substances revealed by survey and encountered during construction of the Mercer Arena Arts Temporary Venue and the parties acknowledge and agree that the presence of any hidden or unapparent conditions that Opera may encounter have been taken into consideration in the determination of the Base Rent. Therefore, throughout the Lease Term, Opera shall bear all costs and expenses of remedying any and all environmental contamination by a Hazardous Substance, the presence of which contamination is discovered in preparation for or during any construction, renovation or maintenance undertaken by or for Opera. Notwithstanding the foregoing, Opera shall have the right, within six (6) months from the Effective Date of this Lease, to engage an environmental professional acceptable to City to take and analyze core samples of the soil beneath the Premises. Prior to causing any work to be commenced, Opera shall inform City of the sampling methods and locations, and any anticipated impacts of such work upon the Premises and City may require that following such sampling, Opera restore the Premises to their condition immediately prior thereto, at Opera's cost and expense. If such sampling reveals the presence of Hazardous Substances requiring remediation and in the opinion of Opera, the costs of remediation are unacceptable, then, within eight (8) months of the Effective Date, Opera may terminate this Lease by written notice to City, which notice shall include copies of all reports documenting the presence of any such Hazardous Substances on or about the Premises. Opera will bear the costs it has expended through the date of termination relating to the Lease. In the event of a termination pursuant to this Section, City shall return to Opera \$60,000.00 of Opera's Good Faith Deposit and City shall retain the balance.

9.4 Indemnification; Remedial Work. Opera shall not cause or permit any Hazardous Substances to be brought upon, kept or used in or about the Premises by Opera, its agents, employees, contractors, sublessees or invitees, except in compliance with all Environmental Laws. If Opera breaches its obligations set forth above or if the presence of



Hazardous Substances on or about the Premises caused or permitted by Opera results in contamination of the Premises or if contamination of the Premises or surrounding area by Hazardous Substances otherwise occurs during the Lease Term (except for contamination of the Premises caused by the actions of City, its agents or employees during the Lease Term) then Opera shall protect, defend, indemnify and hold City harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Premises), damages for the loss or restrictions on use of any space in the Premises, damages arising from any adverse impact on marketability of the Premises, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Lease Term to the extent caused by such contamination. This indemnification of City by Opera includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Substances present in the soil or ground water on, under or about the Premises. If the presence of any Hazardous Substance on or about the Premises caused or permitted by Opera results in any contamination of the Premises or surrounding area, or causes the Premises or surrounding area to be in violation of any Environmental Laws, Opera shall promptly take at its sole cost and expense all actions necessary to return the Premises and surrounding area to the condition existing prior to the introduction of such Hazardous Substance; provided that City's approval shall first be had and obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises or surrounding area.

9.5 Breach as Material Default. Opera hereby specifically acknowledges and agrees that (a) each of Opera's covenants, obligations, agreements, representations and warranties set forth in this Section 9 is a material inducement to City to enter into this Lease, and (b) breach by Opera of any of Opera's covenants, obligations, agreements, representations and warranties set forth in this Section 9 shall constitute a material breach of this Lease by Opera entitling City to all of the rights and remedies provided to City under this Lease or under applicable law.

9.6 Survival. Each of the covenants, agreements, obligations, representations and warranties of Opera set forth in this Section 9 shall survive the expiration or earlier termination of this Lease.

10. Utilities.

10.1 General. Opera may request that City provide heating, ventilation and air conditioning ("HVAC") services to the Premises and if, at the time of the request, Seattle Center has sufficient excess capacity, City shall supply such service to the extent reasonably necessary for the operation of the Premises for the Permitted Use provided Opera has installed separate meters for the measurement of such service. In the event City provides HVAC service to the Premises, City will inspect and repair HVAC supply and exhaust fans, pumps, belts and controls as needed. Opera shall arrange and pay for augmenting the fire sprinkler system for Opera's occupancy of the Premises and City shall monitor and maintain such



system. Opera shall reimburse City for its actual costs for regular monitoring, maintenance and confidence testing of the Premises' fire alarm system and for maintenance and repair of the HVAC system, including personnel salaries and benefits. Opera shall arrange for water and sewer, storm water drainage, electricity and telecommunications services to the Premises and, to the extent feasible, shall cause all utilities to be separately metered. Opera shall pay when due, directly to the appropriate company or to City based on metered readings and prevailing rates, all bills for HVAC and HVAC system maintenance, fire alarm, water, sewer, storm water drainage, electricity, data and telecommunications services for the Premises.

10.2 Contests. Opera shall have the right to contest any utility charge provided that (i) nothing in this Section is intended to restrain the exercise of any remedy by any City utility for nonpayment, and (ii) notwithstanding any protest or challenge, Opera shall timely pay such amounts as are necessary to avoid interruption in service that would occur from application of the normal policy or procedure of any City utility.

10.3 Refuse Collection. Opera shall arrange for private garbage and recycling services or may request that Seattle Center provide such services. In the latter case, Opera 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. Opera and its Subtenants shall comply with Seattle Center sorting and recycling standards. City reserves the right to refuse to collect or accept from Opera any waste product that is not sorted and separated as required by law, ordinance, rule or regulation, and to require Opera to arrange for the collection of the same at Opera's sole cost and expense using a contractor satisfactory to City. Opera shall pay all costs, fines, penalties, and damages that may be imposed on City or Opera as a consequence of Opera's failure to comply with the provisions of this Section. City reserves the right to specify the location of all exterior waste receptacles, the means of access thereto, and the frequency of collection service.

10.4 Interruption. City shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption or failure of services due to any cause whatsoever, including, but not limited to, electrical surges, or from failure to make any repairs or perform any maintenance. No temporary interruption or failure of such services incident to the making of repairs, alterations or improvements or due to accident, strike or conditions or events beyond City's reasonable control shall be deemed an eviction of Opera or to relieve Opera from any of Opera's obligations hereunder or to give Opera a right of action against City for damages. Opera acknowledges that there may be planned utility outages affecting the Premises and that such outages may interfere, from time to time, with Opera's use of the Premises. In the event of a planned outage by a City-owned utility, Seattle Center shall work with such utility in an attempt to minimize the operational impacts of the outage on Opera. Seattle Center shall provide Opera with not less than 48 hours' prior written notice of any City-planned electricity outage in the Premises of which it has knowledge. City has no obligation to provide emergency or backup power to Opera. 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 Opera.



11. **Licenses and Taxes.**

11.1 **Payment of Fees and Taxes.** Without any deduction or offset whatsoever, Opera shall be liable for, and shall pay prior to delinquency, all taxes, license and excise fees and occupation taxes applicable to the business conducted on the Premises and Opera's leasehold interest in the Premises, and all personal property taxes and other impositions levied with respect to all personal property located at the Premises. Opera shall collect and timely remit directly to the Department of Revenue all applicable leasehold excise taxes due from Subtenants.

11.2 **Contests.** Opera 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 Opera 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 Opera, and Opera hereby covenants to indemnify and hold City harmless from any such costs or expenses. The indemnification obligation of this Section shall survive the expiration or earlier termination of this Lease.

12. **Initial Improvements and Subsequent Alterations by Opera.**

The parties acknowledge and agree that the renovation or replacement of Mercer Arena is a fundamental purpose of this Lease and Opera agrees to use commercially reasonable efforts to complete the Initial Improvements and to obtain a certificate of occupancy for the Permitted Use, subject to delays caused by Seattle Center or *force majeure*, within twenty-four (24) months after the Rent Commencement Date. Opera's conceptual plan for the Initial Improvements, contained in Exhibit 12.1, is anticipated to cost approximately \$40 million in hard and soft costs and is intended to include construction of a new roof and exterior walls. At the conceptual design stage and prior to Seattle Design Commission initial review, Opera shall present its proposed plan for Opera's Improvements to the Parks and Seattle Center Committee of the Seattle City Council. The City Council shall endorse Opera's plan as presented or by resolution transmitted to the Design Commission, may provide comments and suggest modifications thereto. Thereafter, the specific terms and conditions of construction shall be contained in a separate construction agreement, the "Construction Agreement," that the parties shall negotiate and execute before Opera enters into a construction contract for the work. If Opera fails to commence the Initial Improvements by July 1, 2011, this Lease shall automatically terminate and, subject to the provisions of Section 9.3, Opera shall restore the Premises as nearly as possible to their condition existing as of the Effective Date, at Opera's expense, and the parties shall have no further rights or obligations with respect to one another arising out of or in connection with this Lease. If the Initial Improvements result in a change to the building footprint, then the parties shall amend this Lease by appending hereto a revised Exhibit 1.1.2 that more accurately depicts the location of the building, as improved, on the Premises.

Before commencing the Initial Improvements, Opera shall demonstrate to the reasonable satisfaction of the City's Finance Director that it has sufficient financial resources to complete



the Initial Improvements in accordance with approved design documents and shall thereafter commence construction of such Initial Improvements and diligently prosecute such work to its completion.

Opera shall not make any alterations, additions or improvements in or to the Premises without first submitting to City professionally-prepared plans and specifications for such work and obtaining City's prior written approval thereof. Opera covenants that it will cause all alterations, additions and improvements to the Premises to be completed at Opera's sole cost and expense by a contractor approved by City and in a manner that (a) is consistent with City-approved plans and specifications, the Construction Agreement, and any conditions reasonably 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 Premises and/or Marion Oliver McCaw Hall or any of the Premises' systems; and (e) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Premises. Opera shall secure all governmental permits and approvals required for the Initial Improvements and comply with all other applicable governmental requirements and restrictions applicable to the Initial Improvements. Except as provided in Section 17 with regard to concurrent negligence, Opera 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 Opera's performance of such alterations, additions and improvements, including, but not limited to, all which arise from or out of Opera's breach of its obligations under the terms of this Section 12. Upon the expiration or termination of this Lease, all alterations, additions and improvements (expressly including all light fixtures; heating and ventilation units; floor, window and wall coverings; and electrical wiring), except Opera's 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 become the property of City without any obligation on its part to pay for any of the same, unless City bond financing has been used in the construction of any improvements, in which case such improvements shall become City's property at the time they are constructed or installed. Opera shall not remove all or any portion of such improvements upon the termination of this Lease. Within ninety (90) days after the completion of any alteration, addition or improvement to the Premises, Opera 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 Opera. The provisions of this paragraph shall apply to the Initial Improvements and, after the City issues a certificate of occupancy for the Initial Improvements, all subsequent alterations, additions or improvements to the Premises that, in the aggregate over any calendar year, are reasonably likely to result in total construction costs in excess of five hundred thousand dollars (\$500,000.00), as such amount is increased by the percentage increase of the Index (as such term is defined below) published most recently prior to the calendar year during which improvements are made compared to the Index published most recently prior to the Rent Commencement Date. Notwithstanding the foregoing, however, in the case of Minor Alterations, (i) the first sentence and clause (a) of the second sentence of this paragraph shall not apply, (ii) City hereby waives the right to approve Opera's



contractor with respect to Minor Alterations, and (iii) Opera will deliver a set of "as-built" plans only if the extent or nature of the Minor Alterations is such that Opera retains the services of an architect to prepare plans and specifications with respect thereto. "Minor Alterations" means alterations, additions or improvements to the Premises (i) made subsequent to the Initial Improvements and (ii) which, when combined with other anticipated projects, is not reasonably likely to result in total construction cost expenditures of more than five hundred thousand dollars (\$500,000.00) in any calendar year, as such amount is increased by the percentage increase of the Index, published most recently prior to the calendar year during which improvements are made compared to the Index published most recently prior to the Rent Commencement Date and (iii) do not involve any shared systems or shared access with the City or any of its buildings in Seattle Center or any building elements for which the City has major maintenance responsibility such as the roof and exterior walls or any building component or system for which City has major maintenance responsibilities under this Lease, such as the roof and exterior walls. Opera shall not intentionally divide improvement projects into discrete units of work, nor schedule them in such a manner, as to artificially bring them within the definition of Minor Alterations.

As used in this Lease, "Opera's Improvements" means the Initial Improvements and any improvements to the Premises made subsequent to the date the Initial Improvements have been completed; and "Index" means the Consumer Price Index for All Urban Consumers, U.S. city average for all items (1982-84=100) published by the Bureau of Labor Statistics of the United States Department of Labor (the "Bureau"); provided, however, that (a) if the Bureau publishes a revised version of the Index, then the revised version shall be used, and (b) if the Index is discontinued, the parties shall follow any official consumer price index, whether so named or designated or not, issued by any authorized agency of the United States which supplants the Index and (c) if the Index is discontinued without being supplanted, the parties shall use any comparable general wholesale or retail price index for the United States reasonably selected by City as being the closest to the Index and reasonably approved by Opera.

Notwithstanding any other provisions of this Lease reserving to City portions of the Premises below Opera's Improvements or more than 85 feet above the finished grade of the sidewalk on Mercer Street, nothing in this Lease is intended to prevent Opera from future expansion of the Initial Improvements from time to time to the extent such expansion would otherwise be allowed under then applicable law and/or zoning and is otherwise in compliance with applicable provisions of this Section 12, provided, however, that any expansion of the Initial Improvements into the ground (except for footings for a replacement building) or into the air rights reserved by Seattle Center would be subject to negotiation with City and may require the payment of additional Base Rent appropriate in view of the nature and use of the expansion improvements.

13. Care of Premises.

13.1 Custodial Service for Premises. Opera shall at its own expense, at all times, keep the Premises in a neat, clean, safe, and sanitary condition; and keep the glass of all windows and doors serving the Premises clean and presentable. Opera shall furnish all



cleaning supplies, materials and janitorial services needed to maintain and operate the Premises in the manner prescribed in this Lease. City shall be responsible for maintaining the areas immediately adjacent to the perimeter of the Premises and for keeping them free of litter and clean of spills, to the same standard employed throughout the Seattle Center.

13.2 City's Repairs and Maintenance. Throughout the Lease Term, City shall perform all maintenance and repairs necessary to maintain the Seattle Center common utility systems serving the Premises and the hardscape and landscape areas immediately adjacent to the Premises in a reasonably good operating condition, except for maintenance and repairs occasioned by an act or omission of Opera or its officers, agents, employees, or contractors. With respect to the wastewater and sewer lines serving the Premises, City shall only be responsible for those services up to the point of entry to the building.

In addition, and provided Opera constructs a new roof and exterior walls as part of the Initial Improvements, City shall perform such major capital repairs and maintenance as may be required to keep the roof, exterior windows and exterior walls including, subject to and in accordance with Section 2.5, the common wall of the Premises in good order, condition and repair. Major capital repairs and maintenance means work required because a building component has reached the end of its useful life and must be replaced. All City maintenance and repairs shall be to a standard comparable to that employed at other Seattle Center major use facilities.

Notwithstanding the foregoing, but subject to Section 18.2, Opera shall reimburse City for all damage done to the exterior of the Premises that results from any act or omission of Opera or any of Opera's officers, contractors, agents, invitees, licensees or employees, including, but not limited to, the cracking or breaking of glass.

13.3 Opera's Maintenance and Repairs. Throughout the Lease Term Opera shall perform all maintenance and repairs not required to be made by City, including routine maintenance of the Premises' roof, exterior windows and exterior walls, and shall make such necessary and prudent investments in the Premises as may be required to preserve the building asset and to maintain it to a standard comparable to a Class B office/theatre facility. Without limiting the generality of the foregoing, Opera shall maintain the Premises' exterior doors and locks, and the electric, plumbing and other systems and equipment independently serving the Premises to keep them in good working order. If, after City provides not less than 30 days' prior written notice to Opera of Opera's failure to repair and maintain the Premises as required by this Section 13, Opera fails to do so, City, at its option, may do so, and in such event, upon receipt of written statements from City, Opera shall promptly pay the entire actual and reasonable cost, including associated administrative fees thereof as an Additional Charge. City shall have the right to enter the Premises for such purposes. If, however, the nature of such failure requires more than 30 days to correct, City will have no self-help right under this Section 13.3 with respect to such failure if Opera commences to correct it within such 30-day period and continues to complete its correct with diligence.

14. Installation of Artwork.



14.1 Prohibition against Installation or Integration of Works of Visual Art on Premises. Opera shall not permit the installation or integration on or in the Premises of any “work of visual art,” as that term is defined in the Visual Artists Rights Act of 1990, as now existing or as later amended, if the removal of such artwork is reasonably likely to result in its distortion, mutilation, modification or destruction unless Opera delivers to City an executed waiver of the creator’s right of integrity regarding such art work, for the benefit of City and its successors and assigns, in a form that satisfies both City and the requirements of 17 U.S.C. §106A(e), as the same now exists or is hereafter modified.

14.2 Opera’s Indemnification of City against Liability under Visual Artists Rights Act of 1990. Opera 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 Section 14.1 of this Lease; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by Opera or any of its officers, employees or agents. This indemnification obligation shall exist regardless of whether City or any other person employed by City has knowledge of such installation, integration, or removal or has consented to any such action or is not required to give prior consent to any such action. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Lease.

15. Continuous Operation.

Except for the period necessary to complete any approved remodeling or improvements, and subject to *force majeure* or periods of damage or destruction, Opera shall keep the public areas of the Premises open and use them to transact business with the public during its normal business hours daily, except on weekends or holidays. Opera shall immediately close if the Director determines there is an emergency endangering the health or safety of the general public or any Seattle Center staff or occupant.

16. Surrender of Premises.

16.1 General Matters. At the expiration or sooner termination of the Lease Term, Opera shall deliver the Premises with Opera’s Improvements to City in good repair and in a clean and neat condition. Prior to such delivery, Opera 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. Opera shall indemnify City for all damages and losses suffered as a result of Opera’s failure to remove voice and data cables, wiring and communication lines and moveable trade fixtures and appliances and to redeliver the Premises on a timely basis. Opera’s obligations under this Section 16 shall survive the expiration or termination of this Lease.

16.2 Cable and Wiring. Notwithstanding any provision to the contrary in this Lease and if City, acting reasonably, so directs, on or by the Expiration Date, or if this Lease is terminated before the Expiration Date, within fifteen (15) days after the effective termination



date, whichever is earlier, Opera shall remove all voice and data communication and transmission cables and wiring installed by or for Opera to serve any telephone, computer or other equipment located in that portion of the Opera's Improvements, 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 Opera's Improvements or located in any building equipment room, vertical or horizontal riser, raceway, conduit, channel, or opening connecting to the portion of Opera's Improvements to be vacated and surrendered to City as of such Expiration Date or earlier termination date. Opera shall leave the mud rings, faceplates and floor boxes in place.

17. **Waiver; Indemnification.**

17.1 **Opera's Indemnification.** Except as otherwise provided in this Section, Opera shall indemnify, defend (using legal counsel reasonably acceptable to City) and save City, City's officers, agents, employees and contractors harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable personnel and overhead costs and 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 (a) Opera's occupation, use or improvement of the Premises, or that of any of its employees, agents or contractors, (b) Opera's breach of its obligations hereunder, or (c) any act or omission of Opera or any Subtenant, assignee or concessionaire of Opera, or of any officer, agent, employee, guest or invitee of any of the same in or about the Premises. Opera agrees that the foregoing indemnity specifically covers actions brought by its own employees. This indemnity with respect to acts or omissions during the Lease Term shall survive termination or expiration of this Lease. The foregoing indemnity is specifically and expressly intended to, constitute a waiver of Opera's 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 Opera and its employees, to the extent of their negligence. Opera shall promptly notify City of casualties or accidents occurring in or about the Premises. **CITY AND OPERA ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS LEASE WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.**

17.2 **City's Indemnification.** Except as otherwise provided in this Section 17, City shall indemnify, defend (using legal counsel reasonably acceptable to Opera) and save Opera, Opera's officers, agents, employees and contractors harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including Opera'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 (a) City's occupation, use or improvement of the Premises, or that of any of its employees, agents or contractors, (b) City's breach of its obligations hereunder, or (c) any act or omission of City in or about the Premises unless the City is immune from liability for such act or omission pursuant to RCW 4.24.210 or any



successor provision or other applicable law. City agrees that the foregoing indemnity, to the extent applicable, specifically covers actions brought by its own employees. This indemnity with respect to acts or omissions during the Lease Term shall survive termination or expiration of this Lease. The foregoing indemnity is specifically and expressly intended to, constitute a waiver of City's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the extent necessary to provide Opera with a full and complete indemnity from claims made by City and its employees, to the extent of their negligence. **CITY AND OPERA ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS LEASE WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.**

17.3 Limitation of Opera's Indemnification. In compliance with RCW 4.24.115 as in effect on the date of this Lease, all provisions of this Lease pursuant to which either party ("Indemnitor") agrees to indemnify the other party ("Indemnitee") 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 Premises, (a) shall not apply to damages caused by or resulting from the sole negligence of the Indemnitee, its agents, contractors or employees, and (b) to the extent caused by or resulting from the concurrent negligence of (i) City or City's agents, contractors or employees, and (ii) Opera or Opera's agents, contractors 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 Opera be deemed amended so as to remove any of the restrictions contained in this Section no longer required by then applicable law.

17.4 Opera's Release of Claims. Except in the event of City's gross negligence or intentional misconduct, Opera 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 Opera or any person claiming through Opera 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; broken glass; water leakage; the collapse of any building component; or any act, omission or negligence of Subtenants or any other persons or occupants of the building.

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

18. Insurance.

18.1 Generally. Throughout the Lease Term Opera and Opera's contractors, employees, licensees and subtenants, as applicable, shall maintain such insurance coverages as are specified in Exhibit 18.1, Sections and otherwise comply with the terms and conditions for insurance contained therein. Unless Opera otherwise directs from time to time by not less than sixty (60) days' notice to City, City shall, at Opera's cost and expense, procure and maintain in force and effect property insurance for the Premises and Opera's Improvements, as described



in the attached Exhibit 18.1. Opera shall reimburse City for the cost of such insurance as an Additional Charge, based upon the total square footage of Opera's Improvements multiplied by City's then-current All Risks property insurance rate. If the total square footage and/or the replacement value of the Opera's Improvements change as a result of the Initial Improvements or any subsequent major structural alterations, such change shall be reflected in the City's first premium reimbursement calculation following completion of the improvements.

18.2 Waivers of Subrogation. Whether the loss or damage is due to the negligence of either City or Opera, their agents or employees, or any other cause, City and Opera do each herewith and hereby release and relieve the other from responsibility for, and waive their entire claim of recovery for any loss resulting from business interruption at the Premises or loss of income from the Improvements or any loss or damage to the real or personal property of either of them located anywhere on or under the Premises arising out of or incident to the occurrence of any of the perils which are covered by any insurance policy now or from time to time carried by the parties hereto. Each party shall cause its insurance carriers to consent to such waiver and to waive all rights of subrogation against the other party.

19. Subleases and Assignments.

19.1 Generally. Except as provided in this Section 19 or in Section 20 of this Lease, Opera shall not voluntarily, involuntarily or by operation of law, assign, license, mortgage, hypothecate, sublet or in any manner transfer this Lease, any interest herein or any title or interest in all or a portion of Opera's interest in any improvements to the Premises, nor shall Opera authorize, allow or permit any person (the employees of Opera excepted), to occupy or use the Premises or any portion thereof, without first obtaining the written consent and approval of the Director. The Director may withhold, delay or condition said consent and approval as he or she may determine in the exercise of that official's sole discretion. Any assignment, license, mortgage, sublease, hypothecation, transfer, occupancy or use of the Premises in violation of this paragraph shall be null and void and of no force and effect and shall further constitute a breach of this Lease by Opera. The giving by the Director of such consent and approval shall not be deemed to be a consent or approval to any subsequent assignment, license, mortgage, sublease, hypothecation, transfer, occupancy or use by any other person nor shall it release Opera of any of Opera's obligations to pay the rent and perform all other continuing obligations to be performed by Opera hereunder. Any dissolution, merger, consolidation or other reorganization of Opera shall constitute and be deemed an assignment for purposes of this Section.

19.2 Subletting, Renting, and Licensing. As long as Opera is not in default under any of the terms of this Lease, it is agreed that, subject only to this Section 19.2, Opera shall have the right to sublease, sublet, rent, or license any part of the Premises for any time or times during the Lease Term not to exceed the Initial Term and the Extended Term, if exercised, provided that the terms and conditions of any such sublease, rental agreement or license agreement do not violate the terms and conditions of this Lease, do not relieve Opera of its obligations under this Lease, and the proposed use is compatible with Seattle Center's mission, as the Director may reasonably determine. Notwithstanding the foregoing, the subletting of all



or substantially all of the Premises shall be considered an assignment of this Lease, subject to City's consent as provided in Section 19.1 above.

19.3 Rights of Mortgagee. Notwithstanding the foregoing provisions of this Section 19, Opera shall have the right to grant or deliver a leasehold mortgage to a Lender, all subject to and as provided in Section 20 of this Lease.

20. Encumbrance of Leasehold Estate.

20.1 Permitted Encumbrance. Opera may, at any time and from time to time during the Lease Term and any extension or renewal thereof, encumber to any person or entity, hereinafter called "Lender," by deed of trust or mortgage or other security instrument ("Leasehold Mortgage") any or all of Opera's interest under this Lease and the leasehold estate hereby created in Opera for purposes of financing the construction of the Initial Improvements or any improvements, additions or modifications to the Premises or the Initial Improvements subsequently made, without City's consent; *provided*, however, no encumbrance incurred by Opera pursuant to this Section 20 shall, and Opera shall not have the power to incur any encumbrance that will, constitute in any manner a lien or encumbrance on the fee or any other interest of City in the Premises. In the event Opera incurs any encumbrance pursuant to this Section 20, the Lender having such encumbrance shall have the right at any time during the Lease Term and the existence of said encumbrance to do any act or thing required of Opera under this Lease, and any such act or thing done and performed by Lender shall be as effective to prevent a forfeiture or Opera's rights under this Lease as if done by Opera itself.

20.2 Notices to City and Lender. Immediately after the recording of any Leasehold Mortgage executed by Opera pursuant to this Section 20 and containing a power of sale as defined by the State of Washington law, Opera shall, at Opera's sole cost and expense, record in the office of the County Recorder of King County a written request executed and acknowledged by City for a copy of any notice of default and a copy of any notice of sale evidencing said Leasehold Mortgage to be mailed to City at the address specified by City in the request.

20.3 Notice of Default and Rights to Cure. If the Lender forwards to City an executed counterpart of the Leasehold Mortgage together with a written notice setting forth the name and address of the Lender, then, until the time, if any, that the obligations of Opera under such Leasehold Mortgage shall be satisfied of record or the Lender shall give to City written notice that the obligations of Opera under such Leasehold Mortgage have been satisfied, the following shall be applicable:

A. No action or agreement hereafter taken or entered into by Opera to cancel, surrender, or modify this Lease shall be binding upon the Lender or affect the lien of the Leasehold Mortgage, without the prior written consent of the Lender.

B. If City shall give any notice or demand under this Lease to Opera, City shall at the same time give a copy of each such notice to the Lender at the address theretofore designated by the Lender. Such copies of notices shall be sent by



registered or certified mail, and shall be deemed given at the time such copy is deposited in a United States Post Office with postage charges prepaid, enclosed in an envelope addressed to the Lender.

C. The Lender shall have the right to perform any term, covenant, condition or agreement and to remedy any default by Opera under the Lease, and City shall accept such performance by the Lender with the same force and effect as if accomplished by Opera; *provided*, however, that the Lender shall not thereby or hereby be subrogated to the rights of City.

D. Opera may delegate irrevocably to the Lender the authority to exercise any or all of Opera's rights hereunder, but no such delegation shall be binding upon City unless and until either Opera or the Lender shall give to the a true copy of a written instrument effecting such delegation. Such delegation of authority may be affected by the terms of the Leasehold Mortgage itself, in which case the service upon City of an executed counterpart of the Leasehold Mortgage in accord with this paragraph, together with a written notice specifying the provisions therein which delegate such authority to the Lender, shall be sufficient to give City notice of such delegation.

E. In case of a default of Opera in the performance or observation of any term, covenant, condition or agreement on Opera's part to be performed under this Lease, other than a term, covenant, condition or agreement requiring the payment of rent or other sum of money, if such default is of such a nature that the same cannot practicably be cured by the Lender without taking possession of the Premises, then City shall not serve a notice of election to terminate this Lease pursuant to Section 24 hereof or otherwise terminate the leasehold estate of Opera hereunder by reason of such default, if and so long as:

(1) in the case of a default which cannot practicably be cured by the Lender without taking possession of the Premises, the Lender shall deliver to City, prior to the date on which City shall be entitled to give notice of election to terminate this Lease, a written instrument wherein the Lender notifies City that it intends to foreclose and otherwise attempt to obtain title to and possession of Opera's leasehold interest and if after obtaining title to and possession of Opera's estate, the Lender shall cure any such defaults; and

(2) in the case of a default which cannot practicably be cured by the Lender without taking possession of the Premises, the Lender shall proceed diligently to obtain possession of the Premises as mortgagee (including possession by a receiver) and, upon obtaining such possession, shall proceed diligently to cure such default; and

(3) in the case of a default which is not susceptible of being cured by the Lender, the Lender shall institute foreclosure proceedings and diligently



prosecute the same to completion (unless in the meantime the Lender shall acquire Opera's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure).

The Lender shall not be required to proceed to obtain possession, or to continue in possession as mortgagee, of the Premises pursuant to Section (2) above, or to continue to prosecute foreclosure proceedings pursuant to Section (3) above, if and when such default shall be cured. Nothing herein shall preclude City from exercising any of its rights or remedies with respect to any other default by Opera during any period of such forbearance, but in such event the Lender shall have all of the rights and protections hereinabove provided for. If the Lender, or its nominee, or a purchaser at a foreclosure sale, shall acquire title to Opera's leasehold estate hereunder, and shall cure all defaults of Opera hereunder which are susceptible of being cured by the Lender, or by the purchaser, as the case may be, then the defaults of any prior holder of Opera's leasehold estate hereunder which are not susceptible of being cured by the Lender (or by the purchaser) shall no longer be deemed to be defaults hereunder.

F. Notwithstanding anything in this Section to the contrary, the failure or inability of Opera or of any Lender to operate the Premises in the manner and for the purposes contemplated by the parties hereto and described in Section 2.4 of this Lease shall under no circumstances be considered a "default which is not susceptible of being cured" under this Section 20 and upon such failure or inability, the Lender shall have no further rights hereunder and City may proceed to terminate this Lease in accordance with the provisions of Section 24 hereof.

G. In case of a default by Opera in the performance or observation of any term, covenant, condition or agreement of this Lease requiring the payment of Rent or other sums of money, if, before the expiration of ten (10) days after the date of service of a notice to terminate this Lease for such cause, the Lender shall have paid to City all Rent and Additional Charges or other sum of money and shall continue thereafter to pay to City all Rent and Additional Charges or other sum of money called for in this Lease during the operable period of this provision, City shall not have the right to cancel or terminate this Lease for a default by Opera pursuant to Section 24 hereof.

H. If this Lease shall be terminated pursuant to Section 24 hereof, or shall otherwise be terminated by reason of a default of Opera hereunder, or if the Lease is rejected by Opera or any other party pursuant to a decree in any bankruptcy, reorganization, arrangement, insolvency or other similar type of proceedings, and if within thirty (30) days after such termination the Lender, by written notice to City, shall request City to enter into a new lease of the Premises pursuant to this section, then City shall enter into a new Lease with the Lender or its nominee acceptable to City, in City's reasonable discretion, within thirty (30) days after the giving of the



written notice by the Lender, if the Lender shall comply with the following provisions:

Simultaneously with the giving of the notice, the Lender shall deliver to City a written instrument unconditionally guaranteeing the curing of all defaults of Opera under this Lease (other than defaults which are not susceptible of being cured by the Lender) and all defaults of the tenant under the new Lease which shall exist on the actual date of delivery of the new lease. The new Lease shall commence, and rent and all obligations of the tenant under the new Lease shall accrue, as of the date of termination of this Lease. The term of the new lease shall continue for the period which would have constituted the remainder of the Lease Term had this Lease not been terminated, and shall be upon all of the terms, covenants, conditions, conditional limitations and agreements contained herein which were in force and effect on the date of termination of this Lease.

The new Lease, and this covenant, shall be superior to all rights, liens and interests intervening between the date of this Lease and the granting of the new Lease caused by or resulting from City's actions, and shall be free of any and all rights of Opera hereunder. The provisions of the immediately preceding sentence shall be self-executing, and City shall have no obligation to do anything other than, upon City's approval of the new tenant, execute and acknowledge the new Lease as herein provided, to assure the Lender or the tenant under the new Lease good title to the leasehold estate granted thereby. All subleases, rental agreements and license agreements for space in the Premises in force and effect immediately prior to the delivery of the new Lease shall be assigned and transferred without recourse by City to the tenant under such new lease and each subtenant under such subleases shall attorn to the tenant under the new Lease. The Lender shall, simultaneously with the delivery of the new Lease, pay to City (a) all Rent and other sums of money due under this Lease on the date of termination of this Lease and remaining unpaid; plus (b) all rent and other sums of money due under the new lease for the period from the date of commencement of the term thereof to the date of delivery of the new Lease; plus (c) all costs and expenses, including reasonable attorneys' fees, court costs and litigation expenses, incurred by City in connection with such termination, the recovery of possession of the Premises, putting the Premises, including all buildings and improvements thereon in good condition and repair, and the preparation, execution and delivery of the new Lease. Simultaneously therewith, City shall pay to the Lender any rentals, less costs and expenses of collection, received by City between the date of termination of this Lease and the date of execution of the new Lease, from subtenants or other occupants of the Premises which shall not theretofore have been applied by City toward the payment of Rent or any other sum of money payable by Opera hereunder or toward the cost of operating the Premises and all buildings and improvements thereon or performing the obligations of Opera hereunder.



If in any instance more than one Lender exercises its right to obtain a new lease pursuant to this section, then the Lender holding the lien of the highest priority shall be entitled to the new lease.

If the Lender shall exercise its right to obtain a new Lease pursuant to this Section, but shall fail to execute such a new lease within 30 days after being tendered by City, or shall fail to comply with other material provisions of this Section, then the Lender shall have no further rights to a new Lease or any other rights under this Section.

Except as provided in this Section, no mortgage now or hereafter a lien upon this Lease shall extend to or affect the reversionary interest and estate of City in and to the Premises and the improvements made thereto by Opera or in any manner attach to or affect the Premises or the improvements from and after any expiration or termination of this Lease.

I. In case of an assignment of the Leasehold Mortgage or change in address of the Lender, the assignee or Lender, by written notice to City, may change the address to which such copies of notices are to be sent. City shall not be bound to recognize any assignment of the Leasehold Mortgage unless and until City shall be given notice of such assignment and the name and address of the assignee, and thereafter such assignee shall be deemed to be the "Lender" under this paragraph.

20.4 Assignment and Subletting. After foreclosure by the Lender or transfer of the leasehold interest of Opera in lieu of foreclosure, the then successor to Opera's interest in this Lease shall, by acceptance of the benefits of this Lease, assume Opera's obligations under this Lease, but only as long as such successor shall hold the leasehold interest, and such successor, with the Director's consent pursuant to Section 19.1, shall be entitled to assign this Lease and to sublet portions of the Premises, and upon such an assignment only, such successor shall thereupon be released from all liability for the performance or observance of the covenants and conditions of this Lease to be performed by Opera from and after the date of such assignment, provided that City shall receive an executed copy of such assignment together with the name and address of the assignee and shall have consented to such assignment.

20.5 Estoppel Certificate. At the request of Opera, City shall from time to time, without additional consideration within ten (10) business days after request, execute and deliver to the Lender, a potential lender or such other person whom Opera designates, a certificate in writing setting forth the status of the Rent payments under this Lease, whether City claims any Default under the terms of this Lease on the part of Opera, and whether there have been any amendments or modifications to the written provisions of this Lease, and such other factual statements as Opera or any Lender, prospective Lender, subtenant, or person or entity designated by Opera as a potential "major contributor" in connection with improvements to the Premises requiring the consent or approval of the Director, may request. As used herein, "major contributor" means a contributor donating \$1,000,000.00 or more to Opera.



21. **Assignment by City.**

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

22. **Damage and Destruction During Lease Term.**

22.1 **Repairs, Alterations and Further Improvements.** In the event of damage to or destruction of any or all of the Opera's Improvements (excluding therefrom ordinary wear and tear requiring maintenance and routine repairs) during the term of this Lease, this Article 22 shall apply.

22.2 **Minor Damage or Destruction.** If the cost of repairing or reconstructing the Opera's Improvements to the condition and form prior to such damage or destruction does not exceed the Floor Amount ("Minor Damage"), Opera shall promptly commence and thereafter diligently complete such repair and reconstruction of the portion of the Opera's Improvements so damaged or destroyed to substantially its condition prior to the occurrence of such Minor Damage with such alterations as Opera shall reasonably determine prudent or valuable under the circumstances, including any changes required to comply with applicable law and with the then prevailing construction practices and together with such other changes that Opera may desire, provided such other changes are approved by City, acting reasonably. City and Opera agree that the proceeds derived from insurance maintained pursuant to Section 18 shall be made available to effect such repair. "Floor Amount" means \$1,000,000.00, increased by the percentage increase in the Index from the Index published most recently prior to the Rent Commencement Date to the Index published most recently prior to the date of damage or destruction of the Improvements.

22.3 **Major Damage or Destruction.** If the cost of repairing or reconstructing the Opera's Improvements to the condition and form prior to such damage or destruction exceeds the Floor Amount ("Major Damage"), then within ninety (90) days after the casualty event giving rise to such Major Damage, Opera shall notify the City of Opera's election either to repair such Major Damage and reconstruct Opera's Improvements in accordance with Section 22.4 below or to terminate this Lease.

22.4 **Repair and Reconstruction of Major Damage.** If Opera elects to repair Major Damage and reconstruct Opera's Improvements pursuant to Section 22.3 above, Opera shall promptly after such election and diligently thereafter effect such repair and reconstruction of the portion of Opera's Improvements so damaged or destroyed to substantially its condition prior to the occurrence of such Major Damage with such alterations as Opera shall reasonably determine prudent or valuable under the circumstances, including any changes required to comply with applicable law and with the then prevailing construction practices and together with such other changes that Opera may desire, provided such other changes are approved by



the City, acting reasonably. City and Opera agree that the proceeds derived from insurance maintained pursuant to Article 18 shall be made available to effect such repair. If the available insurance proceeds are not adequate to cover the estimated cost of repair, then, within a reasonable time after such shortfall is determined and, in any event, prior to the commencement of any repair work (other than emergency repairs), Opera shall provide City's Finance Director with assurances satisfactory to such official that a sufficient sum will be made available to cover such shortfall. All repair and reconstruction work under this Section 22.4 shall be conducted substantially in the same manner and in accordance with the requirements and procedures set forth in the Construction Agreement arising out of this Lease.

22.5 Termination of Lease Following Major Damage. If Opera elects not to repair Major Damage, and, instead, elects to terminate this Lease, unless the parties otherwise agree, such termination of this Lease shall take effect ninety (90) days following Opera's notice to the City of its election to terminate the Lease. In such case all insurance proceeds shall be retained by or disbursed to City.

23. **Eminent Domain.**

23.1 Definitions.

A. "Eminent domain" is the right of the people or government to take private property for public use. As used in this Section 23, the words "condemned" and "condemnation" are coextensive with such right, and a voluntary conveyance by the City to the condemnor under threat of a taking under the power of eminent domain in lieu or after commencement of formal proceedings shall be deemed a taking within the meaning of this Section 23.

B. "Total condemnation" and "total taking" mean the taking of the entire Premises under the power of eminent domain or a taking of so much of the Premises under such power as to prevent or substantially impair the conduct of Opera's business thereon.

C. "Partial condemnation" and "partial taking" mean any condemnation of the Premises other than a total taking as defined above.

23.2 Effect of Total Condemnation. In the event that there shall be a total taking of the Premises during the term of this Lease, or any renewal or extension thereof, under the power of eminent domain as defined in this Section, the leasehold estate hereby created in the Premises shall cease and terminate as of the date title to the Premises is taken by the condemnor. On termination of this Lease by a total taking of the Premises under the power of eminent domain, all rentals and other charges payable by either party to or on behalf of the other under the provisions of this Lease shall be paid (or refunded to the extent rent has been prepaid) up to the date on which actual physical possession of the Premises shall be taken by the condemnor, and the parties hereto shall thereafter be released from all further liability in relation thereto.



23.3 Effect of Partial Condemnation. In the event that there shall be a partial taking of the Premises during the term of this Lease, or any renewal or extension thereof, under the power of eminent domain as defined in this Section, this Lease shall terminate as to the portion of the Premises so taken on the date title is taken by the condemnor or at the time the condemnor is authorized to take possession of said real property as stated in the order for possession, whichever is earlier. This Lease shall also terminate on such date as to the balance of the Premises once more than ten percent (10%) of the floor area of the Premises have been taken and Opera gives written notice of termination to the City within thirty (30) calendar days after the City shall have given Opera written notice of said taking, or in the absence of said notice, within ten (10) calendar days after the condemnor is authorized to take possession as stated in the order for possession. If less than such percentage of floor area is taken or Opera fails to timely elect to terminate, this Lease shall continue in full force and effect as to the remainder of the Premises not so taken, but the Base Rent to be paid by Opera shall thereafter be reduced in proportion to the amount of the condemned Premises. If the parties cannot agree upon a just proportion of rent to be abated, the amount shall be determined in accordance with the procedures set forth in Section 33.

23.4 Award. Any compensation or damages awarded or payable because of the taking of all or any portion of the Premises by eminent domain shall be allocated between the City and Opera as follows:

A. City shall receive the present value of any lost future rents resulting from the eminent domain action which would otherwise be payable to the City by Opera under this Lease together with the present value of the reversion upon expiration of this Lease of that portion of the Premises taken in the eminent domain action, both as of the time of taking; the remainder of the award shall be payable to Opera. The values of City's and Opera's respective interests in the Premises shall be established by the same court of law or other trier of fact that establishes the amount of the condemnation award, but if there is no court of law available or willing to determine City's and Opera's respective interests, those interests shall be determined in accordance with the procedures set forth in Section 33. The foregoing shall not limit Opera's right to separately pursue compensation or damages for lost revenues, business interruption and moving expenses, and Opera shall be solely entitled to any such compensation or damages free and clear of any claim by the City.

B. The term "time of taking" as used in this subsection shall mean 12:01 a.m. of whichever shall occur first, the date title or the date physical possession of the Premises or any portion thereof is taken by the agency or entity exercising the eminent domain power.

23.5 Temporary Taking. If the whole or any part of the Premises or of Opera's interest under this Lease be taken or condemned by any competent authority for its temporary



use or occupancy, and Opera shall continue to pay, in the manner and at the times herein specified, the full amounts of the Base Rent, and all other charges payable by Opera hereunder, then this Lease shall continue and, except only to the extent that Opera may be prevented from so doing pursuant to the terms of the order of the condemning authority, Opera shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of Opera to be performed and observed, as though such taking or condemnation had not occurred. In the event of any such temporary taking, or condemnation Opera shall be entitled to receive the entire amount of any award made for such taking, whether paid by way of damages, rent or otherwise, unless such period of temporary use or occupancy shall extend to or beyond the expiration date of the term of this Lease, in which case such award shall be apportioned between City and Opera as of such date of expiration of the term of this Lease.

24. **Default by Opera.**

24.1 **Definition.** The occurrence of any one or more of the following events shall constitute a default by Opera under this Lease ("Default"):

- (a) Failure by Opera to make any payment required as and when due, where such failure continues after 10-days written notice from City;
- (b) Failure by Opera to observe or perform any of the covenants, conditions, or provisions of this Lease, other than the making of any payment, where such failure shall continue after 30 days' written notice from City; provided, however, that if the nature of Opera's obligation is such that more than 30 days are required for performance, Opera shall not be in default if Opera commences performance within 30 days after City's notice and thereafter completes such performance diligently and within a reasonable time; or
- (c) Opera files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for Opera's assets or if Opera makes an assignment for the benefit of creditors, or if Opera is adjudicated insolvent, or becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or liquidated, voluntarily or otherwise.

24.2 **City Remedies.** If Opera has defaulted and such default continues or has not been remedied to the reasonable satisfaction of the Director within thirty (30) days after written notice thereof has been provided to Opera, then City shall have the following nonexclusive rights and remedies at its option: (a) to cure such default on Opera's behalf and at Opera's sole expense and to charge Opera for all actual and reasonable costs and expenses incurred by City in effecting such cure as an Additional Charge, or (b) if but only if the default (i) is failure to pay Base Rent or (ii) to complete construction of the Initial Improvements in accordance with the requirements of this Lease and the Construction Agreement in a material and substantial respect, to terminate this Lease; provided, however, that if the nature of Opera's obligation (other than monetary obligations and other than vacation or abandonment



of the Premises) is such that more than thirty (30) days is required for performance, then Opera shall not be in default if it commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In the event of any inconsistency between the foregoing clause (b) and any other provision of this Section 24, the provisions of this clause (b) shall apply and control.

24.3 Reentry by City upon Termination. Upon the termination of this Lease, City may reenter the Premises, using such means as permitted by law, take possession thereof, and remove all persons therefrom, for which actions Opera shall have no claim thereon or hereunder. Opera 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 Opera. City shall have the right to sell such stored property, after reasonable prior notice to Opera 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 Opera to City; the balance, if any, shall be paid to Opera.

24.4 City's Non-exclusive Remedies upon Termination due to Default of Opera. Notwithstanding any reentry by City and anything to the contrary in this Lease, in the event of the termination of this Lease due to Opera's Default, Opera's liability for all sums due under this Lease provided herein shall not be extinguished for the balance of the Lease Term. Opera 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 Opera's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any costs incurred in authorizing others the use and occupancy of the Premises and in preparing the Premises for such use and occupancy, and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington. The provisions of this Section 24.4 shall survive the expiration or earlier termination of this Lease.

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



25. **Default by City.**

City shall be in default if City fails to perform its obligations under this Lease within thirty (30) days after its receipt of notice of nonperformance from Opera; 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, Opera 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.

26. **Attorneys' Fees.**

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

27. **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 Opera's Improvements as City may deem necessary or desirable. If Opera 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 Lease. Unless the parties agree otherwise or in case of an emergency, Opera shall change the locks to the Premises only through City and upon paying City for all actual and reasonable costs related thereto.

28. **Holding Over.**

If Opera remains in possession of all or any part of the Premises after the expiration of the Term hereof with City's express or implied consent, such tenancy shall be from month-to-month only, and not a renewal hereof or an extension for any further term, and in such case, Opera shall pay City rent in an amount that the parties shall negotiate; provided, however, that if the parties cannot agree on the amount of rent within 30 days from the expiration of the Term, then such holding over shall be deemed to be without City's consent. If Opera remains in possession of all or any part of the Premises without City's consent, such tenancy shall be from month-to-month only, and not a renewal hereof or an extension for any further term, and in such case, Opera shall pay City rent in an amount equal to One Hundred Fifty Percent (150%) of the then-current Base Rent for the entire time Opera thus remains in possession and Opera shall hold City harmless from all damages resulting from Opera's failure to surrender the Premises or any portion thereof, including, without limitation, claims made by a succeeding tenant resulting from Opera's failure to surrender the Premises or any portion thereof. All provisions of this Lease, except those pertaining to the amount of Base Rent payable and Term, shall apply to such month-to-month tenancy.



29. **Quiet Enjoyment.**

If Opera performs all of the obligations under this Lease on its part to be performed, it shall have quiet enjoyment of the Premises throughout the Lease Term without hindrance or disturbance by any person holding by or through City.

30. **Notices.**

Any notice, demand or request required hereunder shall be given in writing to the party's address set forth in Section 1.9 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.

31. **Successors or Assigns.**

All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon City, Opera and, subject to the terms of Section 19, 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.

32. **Opera Authority and Liability.**

Opera warrants that this Lease has been duly authorized, executed and delivered by Opera, and that Opera has the requisite power and authority to enter into this Lease and perform its obligations hereunder. Opera covenants to provide City with evidence of its authority and the authorization of this Lease upon request.

33. **Dispute Resolution.**

The parties shall make their best efforts to resolve disputes as expeditiously as possible through negotiations at the lowest possible decision-making level, and in the event such negotiations are unsuccessful, to participate in good faith in the mediation process described below prior to either party initiating any judicial process.



If an issue cannot be resolved by negotiations between subordinate staff of Opera and Seattle Center, the matter shall be referred to the Director and the Opera Executive Director. If those officials are unable to resolve the dispute within a period of 15 days after the matter has been formally referred to them for resolution, they shall meet during the immediately succeeding seven (7) days to select a mediator to assist in the resolution of such dispute. If the Director and the Opera's Executive Director cannot agree upon a mediator within such seven (7) day period, either party may apply to the American Arbitration Association for the appointment of a mediator according to the process that is established by such entity for such action. Opera and City shall share equally the cost charged for the mediation of any dispute.

34. **Recording.**

The parties agree that a memorandum of this Lease substantially in the form of Exhibit 34.1, attached, shall be recorded in the office of the King County Recorder with reasonable promptness after Opera obtains a lot line adjustment for the Premises.

35. **Force Majeure.**

Neither City nor Opera 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 ("*force majeure*"), 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, inability to obtain permits despite Opera's documented diligent pursuit thereof, terrorist act or war; provided, however, that the foregoing shall not excuse Opera from the timely payment of Rent and Additional Charges due hereunder, when due.

36. **Execution by City and Opera.**

Neither City nor Opera shall be deemed to have made an offer to the other party by furnishing the other party with a copy of this Lease with particulars inserted. No contractual or other rights shall exist or be created between City and Opera until this Lease has been approved by appropriate legislative authority and executed by the parties hereto. City shall have no liability to Opera and shall have the right to terminate this Lease upon written notice to Opera if this Lease is legislatively disapproved.

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

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

38. **Public Benefits.**

City's willingness to enter into this Lease with Opera is predicated, in part, on the nature of Opera's business and the compatibility of such business with the use of the remainder of Seattle Center and the benefits accruing to the public through Opera's use of the Premises. The parties agree that, with respect to the Initial Improvements, anticipated benefits include (i) Opera's capital investment in the Premises, (ii) the sustainable technologies that will be utilized in development of the site, and (iii) the expected LEED certification for the Premises. Opera shall report to the City regarding implementation of such benefits within 60 days of receipt of the Certificate of Occupancy for the Initial Improvements. In addition, continuously throughout the Lease Term, Opera agrees to provide the following benefits, or an equivalent replacement approved by the Director, and to submit an annual report thereof to the Director as required by Section 5.1: (i) education programs for students, reported by the number and age groups of students served; (ii) education events, activities and outreach efforts provided to the public by Opera, reported by the number and type and of event; (iii) Opera employment, reported by number of Opera employees, both full and part-time; (iv) if and to the extent and for such periods as Opera has no need for the space itself, collaboration with other groups to make office and rehearsal space available to activate and invigorate the Mercer corridor; and (v) when relevant, other collaborative efforts of benefit to the public and Seattle Center.

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

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

39.1 **Change of Vicinity.** City may increase, reduce, or change in any manner whatsoever the number, dimensions, and locations of the walks, buildings, landscaping, utility lines and poles, service areas, roads, sidewalks and parking areas in the vicinity of the Premises. Notwithstanding the foregoing, if City's Seattle Center department controls or determines any construction or reconstruction of Mercer Street and/or Memorial Stadium that adversely affects Opera's truck access to the Premises and to McCaw Hall from the south side of the Premises, City agrees to provide equivalent alternative access both during and after any such construction. In addition, City shall use its best efforts to ensure that any such construction or reconstruction does not unreasonably disrupt Opera's normal business operations at the Premises.

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



39.3 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.

39.4 Change of Businesses. City may determine or change the size, number, and type and identity of concessions, stores, businesses and operations being conducted or undertaken in the vicinity of the Premises and to operate and to authorize others to engage in any and all forms and locations of business activity at the Seattle Center.

39.5 Entrance Charges. City may impose a reasonable charge for admission to the Seattle Center and the facilities thereon, but shall not impose any charge for access to the Premises.

39.6 Rules and Regulations. City may promulgate, from time to time, reasonable rules and regulations regarding the use and occupancy of all areas of the Seattle Center other than the Premises.

39.7 Hours of Operation. City may determine the days and hours the Seattle Center and various business operations other than the Premises will be open to the public.

40. **Naming Rights.**

Opera may propose to rename the Mercer Arena and to name any internal rooms, areas and components thereof for no longer than the Lease Term. Names and naming rights agreements shall be subject to the Director's approval, which shall not be unreasonably withheld.

41. **Signs and Advertising.**

41.1 Signs. Opera may install permanent signage on the exterior of the Premises and may display temporary signs or banners on or about the Premises to advertise its opera or special events. All aspects of the signs are subject to the Director's prior written approval, whose approval shall be given or withheld in his or her reasonable discretion within seven (7) business days of a written request; provided, however, that the Director's failure to respond in writing shall constitute approval of the request. Three-sheet posters used to advertise Opera's current season performances shall not require the Director's approval.

41.2 Advertising. Except as provided in Section 41.1, Opera shall not install or display nor permit others to install or display any commercial advertising on the exterior of the Premises.

42. **Entire Lease; Applicable Law; Amendments.**

This Lease and the Exhibits attached hereto, and by this reference incorporated herein, together with the Construction Agreement and Covenant Agreement, if and when executed, set forth the entire agreement of City and Opera concerning the Premises, and there are no other agreements or understanding, oral or written, between City and Opera concerning the



Premises. Any subsequent modification or amendment of this Lease shall be binding upon City and Opera only if reduced to writing and signed by the Director and an authorized officer of Opera. This Lease shall be governed by, and construed in accordance with the laws of the State of Washington.

43. **Partial Invalidity.**

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

44. **Counterparts.**

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

45. **Headings.**

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

46. **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. Words such as "herein," "hereunder" and the like refer to this Lease in its entirety and not to a particular section or subsection hereof.

47. **Negotiated Lease.**

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



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

CITY OF SEATTLE

SEATTLE OPERA

By: _____

Robert Nellams, Director
Seattle Center Department

By: _____

Kelly Tweeddale,
Executive Director
Seattle Opera



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

On this ____ day of _____, 200_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared _____, known to me to be the _____ of the Seattle Center Department of **CITY OF SEATTLE**, the party that executed the foregoing instrument as City, and acknowledged said instrument to be the free and voluntary act and deed of said party, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

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

[Signature] _____
[Printed Name]
NOTARY PUBLIC in and for the State of Washington residing at _____
My commission expires _____.

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

On this ____ day of _____, 200_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of **SEATTLE OPERA**, the entity that executed the foregoing instrument as Opera; and acknowledged to me that he signed the same as the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and that he was authorized to execute said instrument for said entity.

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

[Signature] _____
[Printed Name]
NOTARY PUBLIC in and for the State of Washington residing at _____
My commission expires _____.



EXHIBIT 1.1

Legal Description

Block 53, D.T. Denny's Home Addition to City of Seattle, Volume 3 of Plats, Page 115.
Reserving unto City the exclusive use of any portion thereof lying outside the current footprint of the Mercer Arena building and, except as set forth in the Lease, the ground rights below Opera's Improvements as constructed, and the air rights more than 85 feet above the finished grades surrounding the existing Mercer Arena building, measured in accordance with the provisions of SMC 23.86.006 as in effect on the Effective Date.

EXHIBIT 1.1.2

Premises Site Plan

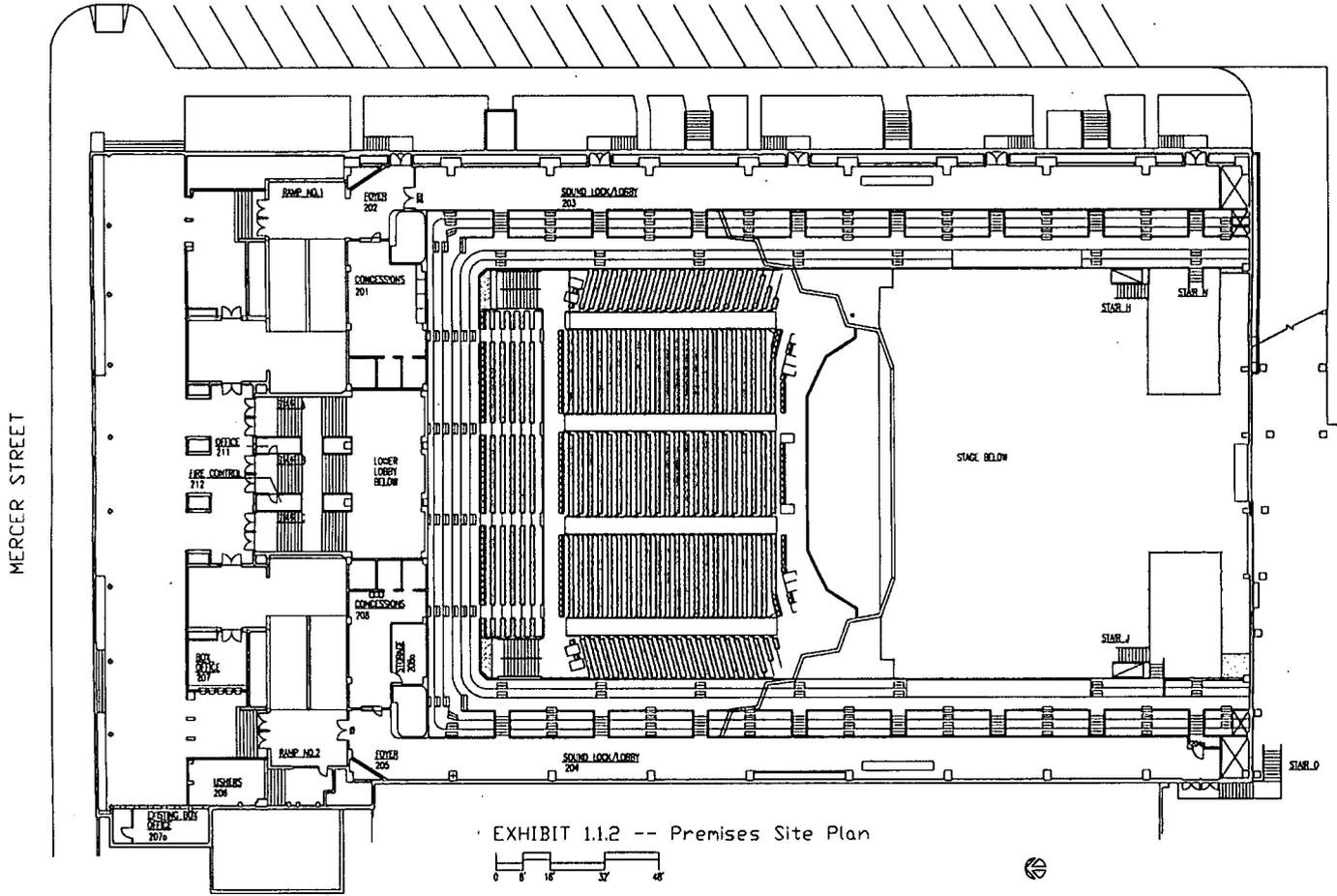


EXHIBIT 12.1

Conceptual Plan for Initial Improvements

The site of the Mercer Arena will become the new home for Seattle Opera, housing the administrative offices, rehearsal, and technical support facilities which are anticipated to include both costume and scene shops. The current building, located at the southwest corner of Mercer Street and 4th Ave. North, is approximately 59,850 sq. ft. and is directly adjacent to and shares a wall with McCaw Hall, Seattle Opera's main performance venue. Opera proposes to replace or renovate the existing Mercer Arena with a new facility that provides at least 120,000 sq. ft. of actual program space (program to be confirmed by selected architect) preliminarily illustrated in the drawing shown on Exhibit 12.1, page 2. One component of the technical support facilities will be a scene shop, ideally located directly adjacent to the rear of the McCaw Hall stage and connected by an acoustical door, enabling scenery to be moved between the two facilities. City and Opera are also in agreement that the street level must be activated to enhance the pedestrian experience. No final decision has been made regarding how this will be accomplished, but the design architect in partnership with Seattle Opera and Seattle Center will explore several possibilities. Additionally, there is a potential for limited co-development and/or sublease options for other organizations compatible with Seattle Center and the theater district.



EXHIBIT 18.1

Opera-Furnished Property and Liability Insurance

18.1.1. General. Opera (and, during the course of construction of Initial Improvements unless otherwise indicated, Opera's construction contractor(s)) shall obtain and thereafter maintain continuously throughout the term of this Agreement, at no expense to the City, insurance that complies with this Exhibit 18.1. For all required coverages, the minimum limits of liability may be satisfied by a primary policy or a combination of primary and excess/umbrella policies. In addition, all insurance policies and coverages shall be subject to commercially reasonable deductibles.

18.1.2. Coverages and Minimum Limits of Liability.

18.1.2.1 Commercial General Liability (CGL) Insurance:

<u>Coverages</u>	<u>Limits of Liability</u>
Premises/Operations)	\$5,000,000 each occurrence bodily injury
Contractual)	and property damage combined single
Independent Contractors)	limit (CSL)
Host Liquor Liability*)	
Personal/Advertising Injury*	\$1,000,000 each offense
Stop Gap	\$1,000,000 each Accident/Disease/Employee
Fire/Tenant Legal *	\$1,000,000 each Occurrence

*Not applicable to Opera's construction contractor

18.1.2.2. **Liquor Liability Insurance***. If alcoholic beverages are sold at any event, Opera shall obtain and maintain Liquor Liability Insurance with minimum limits of liability of \$2,000,000 each Common Cause (an Opera caterer may satisfy this requirement by furnishing evidence of insurance that meets the requirements of this Exhibit).

*Not applicable to Opera's construction contractor

18.1.2.3. **Pyrotechnic Liability Insurance***. If the Seattle Fire Marshall requires a pyrotechnics permit for any activity, Opera shall obtain and maintain Pyrotechnic Liability Insurance with a minimum limit of liability of \$2,000,000 CSL (an Opera pyrotechnic operator may satisfy this requirement by furnishing evidence of insurance that meets the requirements of this Exhibit). The minimum limits of liability may be satisfied with primary limits, or any combination of primary and excess/umbrella liability limits.

*Not applicable to Opera's construction contractor



18.1.2.4. **Automobile Liability Insurance** for owned, non-owned, leased or hired vehicles, with a minimum limit of liability of \$1,000,000 CSL.

18.1.2.5. **Property Insurance*** on an all risks basis, excluding earthquake and flood, covering trade fixtures and business personal property on a replacement cost basis.

*Not applicable to Opera's construction contractor

18.1.3. General Conditions.

18.1.3.1. Opera's insurance policies shall be issued by insurers rated A-VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington or procured as surplus lines under the provisions of chapter 48.15 RCW.

18.1.3.2. Opera's liability insurance shall include The City of Seattle as an additional insured for primary and non-contributory limits of liability and contain to a severability of interest clause. With respect to CGL insurance (including, if applicable, liquor and pyrotechnic liability insurance), it must be documented that the City is an additional insured either through appropriate blanket additional insured policy wording or by attaching an appropriate additional insured endorsement to the policy.

18.1.3.3. Opera's property insurance shall contain a waiver of the property insurer's rights of subrogation against City.

18.1.3.4. Opera is responsible for payment of any claim within any deductible or self-insured retention.

18.1.3.5. In the event of cancellation, Opera's insurer shall provide the City with written notice thereof, including the reason therefor, delivered or mailed at least 45 days prior to the effective date of the cancellation, except that with respect to surplus lines insurance procured under the provisions of Chapter 48.15 RCW, the notice period shall be not less than 30 days, and with respect to cancellations due to nonpayment of premiums, the notice period shall be not less than 10 days.

18.1.3.6. The limits of liability specified herein are minimum limits of liability only and shall not be construed to limit the liability of Opera, Opera's contractors or any of their insurers under applicable policies with higher limits than those specified herein. Where the City is required to be an additional insured under subparagraph 3.2, it shall be an additional insured for primary and non-contributory limits of liability for the total limits of Opera's and Operas' contractors' insurance programs, whether such limits are primary, excess, contingent or otherwise.



18.1.4. Evidence of Insurance.

18.1.4.1. Opera's and Opera's contractor's authorized insurance representatives shall furnish City with a certificate of insurance evidencing compliance with the coverage, minimum limits of liability and other terms and conditions of this Exhibit, including true copies of the additional insured policy provisions of the CGL and, where required, Liquor and Pyrotechnic Liability insurance policies.



18.1.4.2. Insurance certification shall be sent to each of the following.

(Electronic copy only)

City of Seattle
Risk Management Division
Fax: (206) 470-1279
Email: riskmanagement@seattle.gov

City of Seattle
Attention: _____
305 Harrison Street
Seattle, WA 98109
Fax: (206) 233-3950
Email: _____

City-Furnished Property Insurance

18.2.1. **Property Insurance.** Unless Opera otherwise directs from time to time by not less than sixty (60) days' notice to, City shall, at Opera's cost and expense, maintain property insurance and/or self-insurance providing "all risks" of physical loss or damage, including earthquake and flood, with an amount of insurance or self-insurance not less than the replacement cost of Opera's Improvements. Opera shall cooperate with City to allow City's property insurance representatives access to the building from time to time to for inspection purposes.

18.2.2. **Limitations on City Property Insurance Coverage.** City-furnished property insurance shall include Opera's Improvements, but shall exclude Opera's or any Subtenant's trade fixtures or business personal property.

18.2.3. **Insurance During Construction.** At the time any Opera contractor mobilizes on or about the Premises for purposes of constructing the Initial Improvements or any subsequent major structural alterations, and continuously until the completion of such construction, City shall provide Builder's Risk property insurance for the Premises, including Opera's Improvements. Opera shall notify City's Risk Management Division by telephone at (206) 615-1507 or by fax at (206) 470-1275 not less than thirty (30) days prior to the mobilization of any Opera contractor on the Premises and shall fully cooperate and assist in the completion of applications and in any other tasks necessary to facilitate securing such insurance coverage. Opera shall reimburse City as an Additional Charge for the cost of such Builder's Risk insurance based upon City's Builder's Risk rate multiplied by the completed value of the improvements (*i.e.*, the initial replacement value of the building plus the hard costs and soft costs of the improvements).

18.2.3. **Evidence of Insurance.** City shall cause its authorized insurance broker to issue evidence of property insurance to Opera and, when applicable, its contractor.



18.2.4 Damage and Destruction. If the Premises or the Building are rendered partially or wholly untenantable by fire or other casualty:

18.2.4.1. City shall proceed with reasonable diligence as soon as sufficient insurance, self-insurance and/or other funds are available therefor, to prepare plans and specifications for, and thereafter to carry out, all work necessary to repair or replace the Premises or Building or any portions thereof that were damaged or destroyed by a fire or other casualty. However, City retains the sole option to not repair or replace the Building or Premises for any reason, in which case City shall advise Opera of City's election to terminate this Lease by giving at least a thirty (30) day notice to Opera.

18.2.4.2. If City elects to repair or replace the Building or Premises, Opera shall proceed with reasonable diligence as soon as sufficient insurance, self-insurance and/or other proceeds and other funds are available therefor (in any event, within twenty-four (24) months from the date of the occurrence of a fire or other casualty), to repair or replace trade fixtures and business personal property that has been damaged or destroyed.

18.2.4.3. Rent and Additional Charges shall be abated in the proportion that the untenantable portion of the Premises bears to the whole Premises, in the City's sole determination, for the period from the date of the fire or other casualty until either the completion of the repairs and restoration or the termination of this lease at the City's option as provided herein.

18.2.4.4. If the Building or Premises cannot be repaired or replaced within twenty-four (24) months from the date of the occurrence of the fire or other casualty, or if thirty percent (30%) or more of the Building interior area is damaged or destroyed (regardless of whether the Premises are damaged or not) Opera may terminate this Lease upon sixty (60) days' written notice to the City.

18.2.4.5. Except in the event of City's gross negligence, intentional misconduct or breach of this Lease, City shall not be liable to Opera 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 or to the termination of this Lease as provided herein.



EXHIBIT 34.1
Form of Memorandum of Ground Lease

RECORDED AT THE REQUEST OF AND
AFTER RECORDING RETURN TO:

Russell F. Tousley, P.S.
Tousley Brain Stephens, PLLC
1700 Seventh Avenue, Suite 2200
Seattle, WA 98101-4416

MEMORANDUM OF GROUND LEASE
(City of Seattle/Seattle Opera)

Grantor/Lessor: THE CITY OF SEATTLE, a Washington municipal corporation

Grantee: SEATTLE OPERA, a Washington non-profit corporation

Abbreviated Description: Portion of Block 53, D.T. Denny's Home Addition to City of Seattle

Legal Description: Complete Legal Description is set forth in Exhibit A attached hereto

Assessor's Tax Parcel ID #: 198820-0700

Reference # (if applicable): N/A

THIS MEMORANDUM OF GROUND LEASE is dated as of _____, 200_, by and between THE CITY OF SEATTLE, a municipal corporation of the State of Washington ("Lessor") and SEATTLE OPERA, a Washington non-profit corporation ("Lessee").

1. Premises. Lessor has leased to Lessee, upon the terms and conditions of that certain lease between the parties dated as of _____, (the "lease"), which terms are incorporated by this reference, that certain real property situated in the City Seattle, King, County Washington, more particularly described on Exhibit A, attached hereto.



2. Term. The Lease is for a term of thirty (30) years commencing on _____ and ending on _____, unless extended. Lessee has the right to extend the term of the Lease for one (1) additional term of thirty (30) years, which extension right, if exercised, would result in the term of the Lease first expiring on _____.

3. New Lease. The Lease provides that under certain circumstances a lender with a leasehold mortgage on Lessee's leasehold estate interest in the Premises may cause a new replacement lease for the Premises on substantially the same terms as the Lease to come into existence.

4. Purpose of Memorandum of Lease. This Memorandum of Ground Lease is prepared for the purpose of recordation and in no way modifies the Lease.

DATED as of the day and year first above written.

LESSOR: THE CITY OF SEATTLE, a municipal corporation of the State of Washington

By: _____
Its: _____

LESSEE: SEATTLE OPERA, a Washington non-profit corporation

By: _____
Its: _____



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

On this ____ day of _____, 200_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared _____, known to me to be the _____ of the Seattle Center Department of **CITY OF SEATTLE**, the party that executed the foregoing instrument as City, and acknowledged said instrument to be the free and voluntary act and deed of said party, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

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

[Signature] *[Printed Name]*
NOTARY PUBLIC in and for the State of Washington residing at _____
My commission expires _____.

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

On this ____ day of _____, 200_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of **SEATTLE OPERA**, the entity that executed the foregoing instrument as Opera; and acknowledged to me that he signed the same as the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and that he was authorized to execute said instrument for said entity.

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

[Signature] *[Printed Name]*
NOTARY PUBLIC in and for the State of Washington residing at _____
My commission expires _____.



EXHIBIT A

(EXHIBIT INTENTIONALLY LEFT BLANK)

Legal description to be inserted and document recorded following lot line adjustment.





To: Judith Pippin, City Clerk
From: Diane Woods, Contracts & Concessions
Subject: Seattle Center Files
Date: 4/22/2008
Attached please find the following Agreement:

FILED
CITY OF SEATTLE
03 APR 23 PM 1:03
CITY CLERK

ORDINANCE NO.:	122630
Name:	Seattle Opera
NAME OF AGREEMENT	Mercer Arena Ground Lease between The City of Seattle and Seattle Opera
MAILING ADDRESS	305 Harrison Seattle, WA 98109

Transltr.doc

**MERCER ARENA GROUND LEASE
BETWEEN
THE CITY OF SEATTLE
AND
SEATTLE OPERA**

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Exhibits:

- Exhibit 1.1.1 – Legal Description**
- Exhibit 1.1.2 – Premises Site Plan**
- Exhibit 12.1 – Conceptual Plan for Initial Improvements**
- Exhibit 18.1 – Insurance Requirements**
- Exhibit 34.1 – Memorandum of Lease**

MERCER ARENA GROUND LEASE

THIS MERCER ARENA GROUND LEASE (this "Lease") is entered into this 7th day of April, 2008, by and between **THE CITY OF SEATTLE** ("City"), a city of the first class of the State of Washington, acting by and through its Seattle Center Department and the Director thereof, and **SEATTLE OPERA** ("Opera"), a not-for-profit corporation organized under the laws of the State of Washington.

IN CONSIDERATION of the mutual covenants contained herein, and subject to the terms and provisions set forth herein, City and Opera covenant and agree as follows:

1. **Summary Lease Data; Exhibits.**

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

1.1 **Premises.** Subject to the provisions of Section 2.2 and the last paragraph of Section 12, the real property legally described in Exhibit 1.1.1 and depicted on Exhibit 1.1.2, together with the building commonly known as Mercer Arena, 301 Mercer Street, Seattle, King County, Washington 98109, which building contains approximately 59,850 square feet as of the Effective Date, reserving to City the ground rights below Opera's Improvements as constructed, and the air rights more than 85 feet above the finished grades surrounding the existing Mercer Arena, measured in accordance with the provisions of SMC 23.86.006 as in effect on the Effective Date.

1.2 **Effective Date.** The date this Lease is fully executed, as provided in Section 36.

1.3 **Rent Commencement Date.** The first day of the month following the date when Opera receives a building permit from the Seattle Department of Planning and Development to construct the Initial Improvements to the Premises, or July 1, 2009, whichever is earlier, unless the Rent Commencement Date is extended in accordance with Section 3.2. Opera shall be entitled to exclusive use of the Premises on the Rent Commencement Date.

1.4 **Expiration Date.** Thirty (30) years after the Rent Commencement Date.

1.5 **Rent.**

Base Rent: The initial annual Base Rent is \$220,000.00.

Percentage Rent: Fifteen percent (15%) of Opera's gross receipts from Subtenants, as further described in Section 4.4.

1.6 **Good Faith Deposit.** \$110,000.00.

1.7 Initial Improvements. The improvements that Opera makes to the Premises, pursuant to the Construction Agreement described in Section 12, which improvements are generally described in Exhibit 12.1.

1.8 Parking. If the master use permit issued by the City of Seattle's Department of Planning and Development in connection with the Initial Improvements requires parking for the Permitted Use and if on the Rent Commencement Date Seattle Center has available unrestricted parking capacity, the parties shall negotiate and execute a covenant and agreement (the "Covenant Agreement") for the required parking for up to the entire Term. The Covenant Agreement shall be in the form prescribed by Title 23 of the Seattle Municipal Code or any successor provision or if no form is then required by ordinance, then in commercially reasonable form and provide for Opera to pay a commercially reasonable rate for such parking.

1.9 Notice Addresses.

To City: Seattle Center Director
Seattle Center House
305 Harrison Street
Seattle, Washington, 98109

To Opera: Seattle Opera
Attention: Kelly Tweeddale
Executive Director
1020 John Street
Seattle Washington, 98109

With a copy to: Russell F. Tousley, P.S.
Tousley Brain Stephens, PLLC
1700 Seventh Avenue, Suite 2200
Seattle, WA 98101-4416

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

Exhibit 1.1.1 – Legal Description
Exhibit 1.1.2 – Premises Site Plan
Exhibit 12.1 – Conceptual Plan for Initial Improvements
Exhibit 18.1 – Insurance Requirements
Exhibit 34.1 – Memorandum of Ground Lease

2. Premises.

2.1 Grant. City hereby leases the Premises to Opera and Opera hereby leases the Premises from City, all subject to and in accordance with the terms and provisions of this Lease. For the duration of this Lease, Opera shall have a nonexclusive license to use the ramp

and loading dock at the south side of the Premises in common with occupants of Marion Oliver McCaw Hall ("McCaw Hall"). Opera shall coordinate its use of the licensed facilities with Seattle Center McCaw Hall staff.

2.2 Lot Line Adjustment. Opera, at its sole cost, shall diligently pursue and shall obtain a lot line adjustment that will as nearly as possible establish the Premises as extending to the south margin of the Mercer Street pedestrian sidewalk, on the north; approximately 23 feet west of the west margin of the Fourth Avenue North pedestrian sidewalk, to the east; the south face of the existing Mercer Arena building, to the south; and the centerline of the common wall between McCaw Hall and Mercer Arena, to the west. When the lot line adjustment is completed, the parties shall annex hereto and file with the City Clerk an amended Exhibit 1.1.1. City shall provide all reasonable cooperation requested by Opera in obtaining such lot line adjustment.

2.3 Condition. Opera is familiar with and has inspected the Premises, which City leases to Opera and Opera accepts from City in their "AS IS" condition.

2.4 Permitted Use. Opera shall use the Premises to construct and operate its administrative offices, rehearsal and technical support facilities and other incidental purposes related thereto or to its principal business as an opera company. With the Director's prior written approval and as further described in Section 19, Opera may sublease or license portions of the Premises for uses that are compatible with Seattle Center's overall mission. It is the parties' intent that the Premises will be developed and used in a manner that actively engages the public, including along the Mercer Street frontage.

2.5 Party Wall. The parties acknowledge and agree that the west wall of the Premises and the east wall of McCaw Hall form a common wall. For the duration of this Lease, Opera shall have the right to use such party wall jointly with the City upon the following terms and conditions:

- A. Each party may continue in the present use of the wall, including continuation of such use in connection with any alteration or replacement of the Premises with a different facility; provided, however, (i) Opera shall not cut any openings in the wall without the approval of the Director and the McCaw Hall Operating Board, and the wall may be put to no use that will impair its strength or injure McCaw Hall in any way, and (ii) City shall not cut any openings in the wall without the approval of Opera and the McCaw Hall Operating Board, and the wall may be put to no use that will impair its strength or injure Opera's Improvements (as defined in Section 12 in any way).
- B. Each of Opera and City shall have the right, at its sole expense, to drill into, cut into or otherwise gain access to the interior of the common wall for the purpose of maintaining, repairing or restoring and, if consent be

first obtained pursuant to subparagraph A above, remodeling or altering, water, utility, soundproofing or other services or amenities to their buildings adjacent to the wall subject to (i) the obligation to restore the common wall to the same condition it was in immediately before such act and (ii) each party's responsibility to the other party for any damages caused thereby.

- C. Each of Opera and City shall have an easement over the adjacent McCaw Hall and Opera's Improvements, respectively, for the following purposes: (i) to have the common wall remain and be rebuilt in its same location as when originally built; (ii) to use, for common wall purposes, that portion of the adjoining building upon which the common wall is built; and (iii) for access through, in or upon any portion of the adjoining building reasonably necessary to effect repairs to, maintenance of or reconstruction of the common wall or that portion of any foundation, exterior wall or roof of the structure which meets with, adjoins or is connected to the common wall.
- D. For the purposes of this Section, the term "common wall" means and includes the wall between McCaw Hall and Opera's Improvements as such wall now or hereafter exists, and everything, if anything, located within such wall (such as studs, framing, insulation, soundproofing material, pipes, wires, joints, junction boxes and other materials or equipment related to utilities) and below the wall (such as the surface of the ground and footings located in the ground).
- E. Except as specifically set forth above, repair and maintenance of the common wall shall be subject to the provisions of Sections 13.2 and 13.3 below.

3. **Lease Term.**

3.1 **Initial Term.** This Lease shall be for a term (the "Initial Term") beginning on the Rent Commencement Date specified in Section 1.3 plus any partial calendar month between the date when Opera receives its building permit and the Rent Commencement Date, and ending on the Expiration Date specified in Section 1.4, unless the Lease Term is terminated earlier in accordance with the provisions of this Lease or extended as provided in Section 3.3 below. As used herein, "Lease Year" means the period from the Rent Commencement Date to the day prior to the Rent Commencement Date of the following calendar year.

3.2 **Option to Extend Rent Commencement Date:** Opera shall have the option to extend the Rent Commencement Date for up to two (2) periods of one (1) year, each (the

“Extension Options”). In each instance, Opera shall be required to give City written notice of its election to exercise one of the Extension Options at least sixty (60) days prior to the commencement of the applicable Extension Option period and to pay City, for each such option exercised, an Extension Option fee in the amount of \$110,000, cash. Notwithstanding anything in this Lease to the contrary, if Opera has not taken possession of the Premises and commenced paying Rent by July 1, 2011, this Lease shall automatically terminate and the parties shall have no further rights or obligations hereunder with respect to one another.

3.3 Extended Term. At the expiration of the Initial Term, Opera shall have the option to extend this Lease for one (1) successive term of thirty (30) years (the “Extended Term”) on the same terms and conditions set forth herein, except for Base Rent, which will be calculated as provided in Section 4.3, and except that the renewed Lease shall contain no further renewal option. Opera may extend the Lease Term by giving City written notice of its intention to do so at least one (1) year prior to the beginning of the Extended Term. As used in this Lease, “Lease Term” means the Initial Term and if established by Opera hereunder, the Extended Term.

3.4 Access Prior to Commencement of Term. Opera may enter the Premises prior to the Rent Commencement date to examine and conduct such studies of the land and the Arena building subject to the Director’s approval, which approval shall not be unreasonably withheld or delayed. In connection with any desired entry by Opera, or its agents, employees or contractors onto the Premises, Opera shall give City reasonable advance notice of such entry and shall conduct such entry and any inspections in connection therewith in compliance with all applicable laws. Opera shall maintain, and shall assure that its contractors maintain, public liability and property damage insurance in amounts and in form and substance adequate to insure against all liability of Opera and its agents, employees or contractors, arising out of any entry or inspections of the Premises of not less than \$1,000,000 per person and per occurrence, and Opera shall provide City with evidence of such insurance coverage upon request by City. Opera shall indemnify and hold City harmless from and against any costs, damages, liabilities, losses, expenses, liens or claims (including, without limitation, court costs and reasonable attorneys’ fees and disbursements) arising out of or relating to any entry on the Premises by Opera, its agents, employees or contractors in the course of performing the inspections, testings or inquiries provided for in this Lease, including, without limitation, any release of Hazardous Materials or any damage to the Premises; provided that Opera shall not be liable to City solely as a result of the discovery by Opera of a pre-existing condition on the Premises to the extent the activities of Opera, its agents, representatives, employees, contractors or consultants do not exacerbate the condition. The provisions of this Section 3.4 shall survive beyond the termination of this Lease.

3.5 Notice of Building Permit Application. Opera shall promptly notify the Director when it files its building permit application for the Initial Improvements and City shall remove its personal property from the Premises prior to the date the building permit is issued.

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

4.1 **Base Rent.** Beginning on the Rent Commencement Date and thereafter, in advance, on each anniversary of the Rent Commencement Date throughout the Lease Term, Opera 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, the Base Rent. Base Rent shall be prorated on a daily basis for any partial Lease Year within the Lease Term.

4.2 **Adjustments to Base Rent.** Beginning on the fifth (5th) anniversary of the Rent Commencement Date and on every fifth anniversary thereafter until the expiration or termination of the Initial Term (each, a “Base Rent Adjustment Date”), the Base Rent shall be increased to an amount that is 110% of the Base Rent payable during the year immediately preceding the Base Rent Adjustment Date.

4.3 **Rent During Extended Term.** If Opera exercises its option to extend the Lease Term pursuant to Section 3.3, then, the Base Rate shall be adjusted as of the first day of the Extended Term to an amount that the parties have negotiated in good faith, taking into account the physical condition of the Premises, the significant role Opera plays as a Seattle Center tenant and the public benefits Opera is then providing hereunder. If the parties have not agreed on the rent for the Extended Term within three (3) months from the date Opera notifies City of its intent to extend the Lease, then the matter shall be determined by mediation in accordance with the procedures described in Section 33.

4.4 **Percentage Rent.** Each year throughout the Lease Term, in addition to and together with the Base Rent, Opera shall pay City fifteen percent (15%) of the gross receipts it receives from subtenants and licensees of the Premises (each, a “Subtenant”), except for Subtenants that are exempt from Federal income taxation pursuant to 26 U.S.C 501(c)(3) (“Exempt Subtenants”). If Opera receives any non-monetary consideration from any such Subtenant, then the Director shall calculate the reasonable cash value of such consideration for purposes of calculating Opera’s gross receipts. As used in this Section, “gross receipts” shall not include amounts paid to Opera as reimbursement for Opera’s subtenant-related expenditures, such as for utilities, taxes or other services, including any reasonable and customary administrative fee. This Section shall not apply to Opera’s short-term use of the Premises to recognize or honor its charitable contributors. Percentage Rent shall be paid in arrears, except that for the final year of the Lease Term, Percentage Rent shall be due and payable within thirty (30) days of the last day of the Lease Term.

4.5 **Additional Charges.** Whether or not so designated, all other sums due from Opera under this Lease shall constitute Additional Charges, payable as and when specified elsewhere in this Lease, but if not specified, then within ten (10) days after written demand.

5. **Records and Reports.**

5.1 Reports to City from Opera and Subtenants. Throughout the Lease Term, together with each payment of Base Rent and Percentage Rent, Opera shall submit to City a written statement, certified by Opera, setting forth in reasonable detail: (a) the amount of all gross receipts received by Opera from Subtenants (including Exempt Subtenants) during the preceding twelve months (each such 12-month period a "Lease Year"); (b) a computation of the Percentage Rent due City for such Lease Year; and (c) a description of public benefits provided during the preceding Lease Year, as required by Section 38. Together with such statement, Opera shall also provide City with proof of each Subtenant's Federal tax-exempt status. All certificates required above shall be by an authorized officer of Opera. In addition, upon ten (10) calendar days' prior written notice, City shall have access at the Premises to any reports required by Opera to be provided by Subtenants under the subleases or licenses; provided, however, that if at the time of request Opera has commenced dress rehearsals for a production at McCaw Hall, Opera may delay the access until not more than ten (10) calendar days after the end of the final performance of the production.

5.2 Opera's Records. Opera shall keep true, full, and accurate books of account setting forth Opera's gross receipts from Subtenants (including Exempt Subtenants), together with any other information which will affect the determination of Percentage Rent. City shall be allowed after ten (10) calendar days' prior written notice to Opera, to inspect Opera's books of account at Opera's office and to procure audits thereof by an auditor at City's sole cost and expense (except as provided below); provided, however, that if at the time of request Opera has commenced dress rehearsals for a production at McCaw Hall, Opera may delay the access until not more than ten (10) calendar days after the final performance of the production. If in the reasonable judgment of such auditor Opera's books of account are incomplete or improperly reflect the information necessary for an accurate determination of the Percentage Rent, or if the audit shall show that the reports submitted by Opera understated Opera's Receipts by more than the greater of (i) \$25,000.00 or (ii) three percent (3%) thereof, for any year covered by the audit, the costs and fees for such audit shall be paid by Opera to City; provided, however, if the incompleteness, inaccuracy or understatement results from any Subtenant's understatement to Opera of the gross receipts (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 Opera's gross receipts, then, at City's option, Opera may be required to pay City a penalty of the greater of \$1,000.00 or two (2) times the amount of the understatement. If future audits disclose three (3) or more willful or intentional understatements of Opera's gross receipts in any five (5)-year period, then the penalty will double, to the greater of \$2,000.00 or four (4) times the amount of the understatement, with successive penalties continuing to double for each occurrence. Opera shall retain all yearly books of accounting and any other information which will affect the determination of Percentage Rent for a period of six (6) years from the end of each Lease Year. Opera's obligations under this paragraph shall survive expiration or termination of this Lease.

5.3 Subtenants' Records. Opera shall require all Subtenants that pay Opera a percentage rent or licensee fee to: (i) keep true, full, and accurate books of account setting

forth gross receipts, together with any other information which will affect the determination of the rent or fee (if any); (ii) cause such Subtenant's chief financial officer, if any, and its chief executive officer, if any, to certify, annually, the accuracy of its annual report to Opera in connection with such payments; and (iii) give Opera commercially reasonable audit rights with respect to such books for a period of three (3) years from the end of each Subtenant's lease year. The subleases and licenses shall require that Subtenants' obligations under this paragraph shall survive expiration or termination of the subleases or licenses.

6. **Late Charge; Interest.**

If Opera fails to pay City any sum when due, such amount shall bear interest at the rate of 12% per annum from the date due until the date paid.

7. **Good Faith Deposit.**

Within ten (10) days after execution of this Lease, Opera shall deposit the sum of \$110,000.00, cash, with City as security for Opera's timely progress on and completion of the Initial Improvements. If Opera takes possession of the Premises and commences paying Rent, then City shall apply \$60,000.00 of the Good Faith Deposit toward Opera's first annual Base Rent payment and City shall retain the balance. If this Lease is terminated pursuant the provisions of Section 3.2, City shall retain the entire deposit.

8. **Opera's Operations.**

8.1 **Use of Premises.** Opera shall use the Premises only for the Permitted Use. As City's willingness to enter into this Lease with Opera was predicated, in part, on the nature of Opera's business, and the compatibility of such business with the use of the remainder of Seattle Center, Opera 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. Opera shall promptly comply, at its sole cost and expense, with such reasonable rules and regulations relating to the use of the Premises and Seattle Center as City, from time to time, may promulgate. Any newly promulgated rules and regulations shall not materially interfere with Opera's business for the Permitted Use. In the event of any conflict between the rules and regulations promulgated by City and the terms of this Lease, the terms of this Lease shall prevail. Opera shall maintain the Premises in a clean, orderly and neat fashion to conform with the standards of Seattle Center (provided that Opera shall not be responsible for maintaining those portions of the Premises that are City's responsibility to maintain under terms of this Lease), permitting no objectionable odors or noises to be emitted from the Premises which would disturb or injure the occupant of any adjacent property, and shall neither commit waste nor permit any waste to be committed thereon. Opera shall not permit any accumulation of trash on or about the Premises. Opera shall not create or contribute to the creation of a nuisance in either the Premises or on Seattle Center grounds and Opera shall not engage in or permit any action that will disturb the quiet enjoyment of any other Seattle Center tenant or occupant.

8.2 Compliance with Laws.

8.2.1 Unlawful Use. Opera 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 applicable to the Premises, or for any purpose offensive to the standards of the community of which the Premises are a part. Opera 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 Opera shall not be responsible for maintaining in compliance with laws those portions of the Premises that are City's responsibility to maintain under terms of this Lease).

8.2.2 Nondiscrimination. Without limiting the generality of the foregoing, Opera agrees to and shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington and City of Seattle, including but not limited to Chapters 14.04, 14.10, and 20.42 of the Seattle Municipal Code ("SMC") as they may be amended from time to time, and rules, regulations, orders, and directives of the associated administrative agencies and their officers. Nothing contained herein is intended to restrict Opera's casting decisions when made for artistic purposes.

8.3 Liens. Opera agrees that no liens of mechanics, materialmen, laborers, surveyors, engineers, architects, artisans, contractors, subcontractors, suppliers or any other lien of any kind whatsoever (a "Lien") shall be created against or imposed upon the Premises, and that in the event any such Liens shall be asserted or filed by any persons, firms or corporations performing labor or services or furnishing material or supplies in connection with Opera's Improvements, Opera shall pay off in full or cause the same to be discharged of record within thirty (30) days of notification thereof. Opera reserves the right to contest the validity or amount of any such Lien in good faith provided that, within thirty (30) days after the filing of such Lien, Opera discharges said Lien of record or records a bond which complies with the requirements of RCW 60.04.161 eliminating said Lien as an encumbrance against the Premises. In the event Opera shall fail to so remove any such Lien, City may take such action as City shall reasonably determine to remove such Lien and all costs and expenses incurred by City including, without limitation, amounts paid in good faith settlement of such Lien and attorneys' fees and costs, together with interest thereon, shall be paid by Opera as Additional Charges.

9. Compliance with Environmental Laws.

9.1 Definitions. For the purpose of this Section, the following terms shall be defined as provided below unless the context clearly requires a different meaning:

A. "Environmental Law" means, as amended from time to time, the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq., Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., Federal Hazardous

Materials Transportation Control Act of 1980, 42 U.S.C. Section 1801 et seq., Federal Clean Air Act, 42 U.S.C. Section 7401 et seq., Federal Water Pollution Control Act, Federal Water Act of 1977, 93 U.S.C. Section 1251 et seq., Federal Insecticide, Fungicide and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. Section 136 et seq., Federal Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., Federal Safe Drinking Water Act, 42 U.S.C. Section 300f et seq., Washington Water Pollution Control Act, RCW Chapter 90.48, Washington Clean Air Act, RCW Chapter 70.94, Washington Solid Waste Management Recovery and Recycling Act, RCW Chapter 70.95, Washington Hazardous Waste Management Act, RCW Chapter 70.105, Washington Hazardous Waste Fees Act, RCW Chapter 70.95E, Washington Model Toxics Control Act, RCW Chapter 70.105D, Washington Nuclear Energy and Radiation Act, RCW Chapter 70.98, Washington Radioactive Waste Storage and Transportation Act, RCW Chapter 70.99, Washington Underground Petroleum Storage Tanks Act, RCW Chapter 70.148, and any regulations promulgated thereunder from time to time.

B. “Hazardous Substance” means any matter including petroleum products and by-products, asbestos, infectious waste and any other materials, which is now or hereafter designated as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq., or that is now or hereafter regulated by applicable Environmental Laws.

9.2 Compliance with Environmental Laws and Regulations. All operations or activities upon, or any use or occupancy of the Premises, or any portion thereof, by Opera or any occupant of the Premises shall throughout the Lease Term comply in all material respects with all state, federal and local Environmental Laws and regulations governing or in any way relating to the generation, handling, storage, use, transportation, discharge or disposal (whether legal or illegal, accidental or intentional) of any Hazardous Substances (as herein defined).

9.3 Existing Hazardous Substances; Right of Termination. City has advised Opera that City abated certain Hazardous Substances revealed by survey and encountered during construction of the Mercer Arena Arts Temporary Venue and the parties acknowledge and agree that the presence of any hidden or unapparent conditions that Opera may encounter have been taken into consideration in the determination of the Base Rent. Therefore, throughout the Lease Term, Opera shall bear all costs and expenses of remedying any and all environmental contamination by a Hazardous Substance, the presence of which contamination is discovered in preparation for or during any construction, renovation or maintenance undertaken by or for Opera. Notwithstanding the foregoing, Opera shall have the right, within six (6) months from the Effective Date of this Lease, to engage an environmental professional acceptable to City to take and analyze core samples of the soil beneath the Premises. Prior to causing any work to be commenced, Opera shall inform City of the sampling methods and locations, and any

anticipated impacts of such work upon the Premises and City may require that following such sampling, Opera restore the Premises to their condition immediately prior thereto, at Opera's cost and expense. If such sampling reveals the presence of Hazardous Substances requiring remediation and in the opinion of Opera, the costs of remediation are unacceptable, then, within eight (8) months of the Effective Date, Opera may terminate this Lease by written notice to City, which notice shall include copies of all reports documenting the presence of any such Hazardous Substances on or about the Premises. Opera will bear the costs it has expended through the date of termination relating to the Lease. In the event of a termination pursuant to this Section, City shall return to Opera \$60,000.00 of Opera's Good Faith Deposit and City shall retain the balance.

9.4 Indemnification; Remedial Work. Opera shall not cause or permit any Hazardous Substances to be brought upon, kept or used in or about the Premises by Opera, its agents, employees, contractors, sublessees or invitees, except in compliance with all Environmental Laws. If Opera breaches its obligations set forth above or if the presence of Hazardous Substances on or about the Premises caused or permitted by Opera results in contamination of the Premises or if contamination of the Premises or surrounding area by Hazardous Substances otherwise occurs during the Lease Term (except for contamination of the Premises caused by the actions of City, its agents or employees during the Lease Term) then Opera shall protect, defend, indemnify and hold City harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Premises), damages for the loss or restrictions on use of any space in the Premises, damages arising from any adverse impact on marketability of the Premises, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Lease Term to the extent caused by such contamination. This indemnification of City by Opera includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Substances present in the soil or ground water on, under or about the Premises. If the presence of any Hazardous Substance on or about the Premises caused or permitted by Opera results in any contamination of the Premises or surrounding area, or causes the Premises or surrounding area to be in violation of any Environmental Laws, Opera shall promptly take at its sole cost and expense all actions necessary to return the Premises and surrounding area to the condition existing prior to the introduction of such Hazardous Substance; provided that City's approval shall first be had and obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises or surrounding area.

9.5 Breach as Material Default. Opera hereby specifically acknowledges and agrees that (a) each of Opera's covenants, obligations, agreements, representations and warranties set forth in this Section 9 is a material inducement to City to enter into this Lease, and (b) breach by Opera of any of Opera's covenants, obligations, agreements, representations and warranties set forth in this Section 9 shall constitute a material breach of this Lease by

Opera entitling City to all of the rights and remedies provided to City under this Lease or under applicable law.

9.6 Survival. Each of the covenants, agreements, obligations, representations and warranties of Opera set forth in this Section 9 shall survive the expiration or earlier termination of this Lease.

10. Utilities.

10.1 General. Opera may request that City provide heating, ventilation and air conditioning ("HVAC") services to the Premises and if, at the time of the request, Seattle Center has sufficient excess capacity, City shall supply such service to the extent reasonably necessary for the operation of the Premises for the Permitted Use provided Opera has installed separate meters for the measurement of such service. In the event City provides HVAC service to the Premises, City will inspect and repair HVAC supply and exhaust fans, pumps, belts and controls as needed. Opera shall arrange and pay for augmenting the fire sprinkler system for Opera's occupancy of the Premises and City shall monitor and maintain such system. Opera shall reimburse City for its actual costs for regular monitoring, maintenance and confidence testing of the Premises' fire alarm system and for maintenance and repair of the HVAC system, including personnel salaries and benefits. Opera shall arrange for water and sewer, storm water drainage, electricity and telecommunications services to the Premises and, to the extent feasible, shall cause all utilities to be separately metered. Opera shall pay when due, directly to the appropriate company or to City based on metered readings and prevailing rates, all bills for HVAC and HVAC system maintenance, fire alarm, water, sewer, storm water drainage, electricity, data and telecommunications services for the Premises.

10.2 Contests. Opera shall have the right to contest any utility charge provided that (i) nothing in this Section is intended to restrain the exercise of any remedy by any City utility for nonpayment, and (ii) notwithstanding any protest or challenge, Opera shall timely pay such amounts as are necessary to avoid interruption in service that would occur from application of the normal policy or procedure of any City utility.

10.3 Refuse Collection. Opera shall arrange for private garbage and recycling services or may request that Seattle Center provide such services. In the latter case, Opera 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. Opera and its Subtenants shall comply with Seattle Center sorting and recycling standards. City reserves the right to refuse to collect or accept from Opera any waste product that is not sorted and separated as required by law, ordinance, rule or regulation, and to require Opera to arrange for the collection of the same at Opera's sole cost and expense using a contractor satisfactory to City. Opera shall pay all costs, fines, penalties, and damages that may be imposed on City or Opera as a consequence of Opera's failure to comply with the provisions of this Section. City reserves the right to specify the location of all exterior waste receptacles, the means of access thereto, and the frequency of collection service.

10.4 Interruption. City shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption or failure of services due to any cause whatsoever, including, but not limited to, electrical surges, or from failure to make any repairs or perform any maintenance. No temporary interruption or failure of such services incident to the making of repairs, alterations or improvements or due to accident, strike or conditions or events beyond City's reasonable control shall be deemed an eviction of Opera or to relieve Opera from any of Opera's obligations hereunder or to give Opera a right of action against City for damages. Opera acknowledges that there may be planned utility outages affecting the Premises and that such outages may interfere, from time to time, with Opera's use of the Premises. In the event of a planned outage by a City-owned utility, Seattle Center shall work with such utility in an attempt to minimize the operational impacts of the outage on Opera. Seattle Center shall provide Opera with not less than 48 hours' prior written notice of any City-planned electricity outage in the Premises of which it has knowledge. City has no obligation to provide emergency or backup power to Opera. 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 Opera.

11. Licenses and Taxes.

11.1 Payment of Fees and Taxes. Without any deduction or offset whatsoever, Opera shall be liable for, and shall pay prior to delinquency, all taxes, license and excise fees and occupation taxes applicable to the business conducted on the Premises and Opera's leasehold interest in the Premises, and all personal property taxes and other impositions levied with respect to all personal property located at the Premises. Opera shall collect and timely remit directly to the Department of Revenue all applicable leasehold excise taxes due from Subtenants.

11.2 Contests. Opera 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 Opera 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 Opera, and Opera hereby covenants to indemnify and hold City harmless from any such costs or expenses. The indemnification obligation of this Section shall survive the expiration or earlier termination of this Lease.

12. Initial Improvements and Subsequent Alterations by Opera.

The parties acknowledge and agree that the renovation or replacement of Mercer Arena is a fundamental purpose of this Lease and Opera agrees to use commercially reasonable efforts to complete the Initial Improvements and to obtain a certificate of occupancy for the Permitted Use, subject to delays caused by Seattle Center or *force majeure*, within twenty-four (24) months after the Rent Commencement Date. Opera's conceptual plan for the Initial Improvements, contained in Exhibit 12.1, is anticipated to cost approximately \$40 million in hard and soft costs and is intended to include construction of a new roof and exterior walls. At

the conceptual design stage and prior to Seattle Design Commission initial review, Opera shall present its proposed plan for Opera's Improvements to the Parks and Seattle Center Committee of the Seattle City Council. The City Council shall endorse Opera's plan as presented or by resolution transmitted to the Design Commission, may provide comments and suggest modifications thereto. Thereafter, the specific terms and conditions of construction shall be contained in a separate construction agreement, the "Construction Agreement," that the parties shall negotiate and execute before Opera enters into a construction contract for the work. If Opera fails to commence the Initial Improvements by July 1, 2011, this Lease shall automatically terminate and, subject to the provisions of Section 9.3, Opera shall restore the Premises as nearly as possible to their condition existing as of the Effective Date, at Opera's expense, and the parties shall have no further rights or obligations with respect to one another arising out of or in connection with this Lease. If the Initial Improvements result in a change to the building footprint, then the parties shall amend this Lease by appending hereto a revised Exhibit 1.1.2 that more accurately depicts the location of the building, as improved, on the Premises.

Before commencing the Initial Improvements, Opera shall demonstrate to the reasonable satisfaction of the City's Finance Director that it has sufficient financial resources to complete the Initial Improvements in accordance with approved design documents and shall thereafter commence construction of such Initial Improvements and diligently prosecute such work to its completion.

Opera shall not make any alterations, additions or improvements in or to the Premises without first submitting to City professionally-prepared plans and specifications for such work and obtaining City's prior written approval thereof. Opera covenants that it will cause all alterations, additions and improvements to the Premises to be completed at Opera's sole cost and expense by a contractor approved by City and in a manner that (a) is consistent with City-approved plans and specifications, the Construction Agreement, and any conditions reasonably 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 Premises and/or Marion Oliver McCaw Hall or any of the Premises' systems; and (e) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Premises. Opera shall secure all governmental permits and approvals required for the Initial Improvements and comply with all other applicable governmental requirements and restrictions applicable to the Initial Improvements. Except as provided in Section 17 with regard to concurrent negligence, Opera 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 Opera's performance of such alterations, additions and improvements, including, but not limited to, all which arise from or out of Opera's breach of its obligations under the terms of this Section 12. Upon the expiration or termination of this Lease, all alterations, additions and improvements (expressly including all light fixtures; heating and ventilation units; floor, window and wall coverings; and electrical

wiring), except Opera's 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 become the property of City without any obligation on its part to pay for any of the same, unless City bond financing has been used in the construction of any improvements, in which case such improvements shall become City's property at the time they are constructed or installed. Opera shall not remove all or any portion of such improvements upon the termination of this Lease. Within ninety (90) days after the completion of any alteration, addition or improvement to the Premises, Opera 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 Opera. The provisions of this paragraph shall apply to the Initial Improvements and, after the City issues a certificate of occupancy for the Initial Improvements, all subsequent alterations, additions or improvements to the Premises that, in the aggregate over any calendar year, are reasonably likely to result in total construction costs in excess of five hundred thousand dollars (\$500,000.00), as such amount is increased by the percentage increase of the Index (as such term is defined below) published most recently prior to the calendar year during which improvements are made compared to the Index published most recently prior to the Rent Commencement Date. Notwithstanding the foregoing, however, in the case of Minor Alterations, (i) the first sentence and clause (a) of the second sentence of this paragraph shall not apply, (ii) City hereby waives the right to approve Opera's contractor with respect to Minor Alterations, and (iii) Opera will deliver a set of "as-built" plans only if the extent or nature of the Minor Alterations is such that Opera retains the services of an architect to prepare plans and specifications with respect thereto. "Minor Alterations" means alterations, additions or improvements to the Premises (i) made subsequent to the Initial Improvements and (ii) which, when combined with other anticipated projects, is not reasonably likely to result in total construction cost expenditures of more than five hundred thousand dollars (\$500,000.00) in any calendar year, as such amount is increased by the percentage increase of the Index, published most recently prior to the calendar year during which improvements are made compared to the Index published most recently prior to the Rent Commencement Date and (iii) do not involve any shared systems or shared access with the City or any of its buildings in Seattle Center or any building elements for which the City has major maintenance responsibility such as the roof and exterior walls or any building component or system for which City has major maintenance responsibilities under this Lease, such as the roof and exterior walls. Opera shall not intentionally divide improvement projects into discrete units of work, nor schedule them in such a manner, as to artificially bring them within the definition of Minor Alterations.

As used in this Lease, "Opera's Improvements" means the Initial Improvements and any improvements to the Premises made subsequent to the date the Initial Improvements have been completed; and "Index" means the Consumer Price Index for All Urban Consumers, U.S. city average for all items (1982-84=100) published by the Bureau of Labor Statistics of the United States Department of Labor (the "Bureau"); provided, however, that (a) if the Bureau publishes a revised version of the Index, then the revised version shall be used, and (b) if the Index is

discontinued, the parties shall follow any official consumer price index, whether so named or designated or not, issued by any authorized agency of the United States which supplants the Index and (c) if the Index is discontinued without being supplanted, the parties shall use any comparable general wholesale or retail price index for the United States reasonably selected by City as being the closest to the Index and reasonably approved by Opera.

Notwithstanding any other provisions of this Lease reserving to City portions of the Premises below Opera's Improvements or more than 85 feet above the finished grade of the sidewalk on Mercer Street, nothing in this Lease is intended to prevent Opera from future expansion of the Initial Improvements from time to time to the extent such expansion would otherwise be allowed under then applicable law and/or zoning and is otherwise in compliance with applicable provisions of this Section 12, provided, however, that any expansion of the Initial Improvements into the ground (except for footings for a replacement building) or into the air rights reserved by Seattle Center would be subject to negotiation with City and may require the payment of additional Base Rent appropriate in view of the nature and use of the expansion improvements.

13. **Care of Premises.**

13.1 **Custodial Service for Premises.** Opera shall at its own expense, at all times, keep the Premises in a neat, clean, safe, and sanitary condition; and keep the glass of all windows and doors serving the Premises clean and presentable. Opera shall furnish all cleaning supplies, materials and janitorial services needed to maintain and operate the Premises in the manner prescribed in this Lease. City shall be responsible for maintaining the areas immediately adjacent to the perimeter of the Premises and for keeping them free of litter and clean of spills, to the same standard employed throughout the Seattle Center.

13.2 **City's Repairs and Maintenance.** Throughout the Lease Term, City shall perform all maintenance and repairs necessary to maintain the Seattle Center common utility systems serving the Premises and the hardscape and landscape areas immediately adjacent to the Premises in a reasonably good operating condition, except for maintenance and repairs occasioned by an act or omission of Opera or its officers, agents, employees, or contractors. With respect to the wastewater and sewer lines serving the Premises, City shall only be responsible for those services up to the point of entry to the building.

In addition, and provided Opera constructs a new roof and exterior walls as part of the Initial Improvements, City shall perform such major capital repairs and maintenance as may be required to keep the roof, exterior windows and exterior walls including, subject to and in accordance with Section 2.5, the common wall of the Premises in good order, condition and repair. Major capital repairs and maintenance means work required because a building component has reached the end of its useful life and must be replaced. All City maintenance and repairs shall be to a standard comparable to that employed at other Seattle Center major use facilities.

Notwithstanding the foregoing, but subject to Section 18.2, Opera shall reimburse City for all damage done to the exterior of the Premises that results from any act or omission of Opera or any of Opera's officers, contractors, agents, invitees, licensees or employees, including, but not limited to, the cracking or breaking of glass.

13.3 Opera's Maintenance and Repairs. Throughout the Lease Term Opera shall perform all maintenance and repairs not required to be made by City, including routine maintenance of the Premises' roof, exterior windows and exterior walls, and shall make such necessary and prudent investments in the Premises as may be required to preserve the building asset and to maintain it to a standard comparable to a Class B office/theatre facility. Without limiting the generality of the foregoing, Opera shall maintain the Premises' exterior doors and locks, and the electric, plumbing and other systems and equipment independently serving the Premises to keep them in good working order. If, after City provides not less than 30 days' prior written notice to Opera of Opera's failure to repair and maintain the Premises as required by this Section 13, Opera fails to do so, City, at its option, may do so, and in such event, upon receipt of written statements from City, Opera shall promptly pay the entire actual and reasonable cost, including associated administrative fees thereof as an Additional Charge. City shall have the right to enter the Premises for such purposes. If, however, the nature of such failure requires more than 30 days to correct, City will have no self-help right under this Section 13.3 with respect to such failure if Opera commences to correct it within such 30-day period and continues to complete its correct with diligence.

14. **Installation of Artwork.**

14.1 Prohibition against Installation or Integration of Works of Visual Art on Premises. Opera shall not permit the installation or integration on or in the Premises of any "work of visual art," as that term is defined in the Visual Artists Rights Act of 1990, as now existing or as later amended, if the removal of such artwork is reasonably likely to result in its distortion, mutilation, modification or destruction unless Opera delivers to City an executed waiver of the creator's right of integrity regarding such art work, for the benefit of City and its successors and assigns, in a form that satisfies both City and the requirements of 17 U.S.C. §106A(e), as the same now exists or is hereafter modified.

14.2 Opera's Indemnification of City against Liability under Visual Artists Rights Act of 1990. Opera 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 Section 14.1 of this Lease; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by Opera or any of its officers, employees or agents. This indemnification obligation shall exist regardless of whether City or any other person employed by City has

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

15. **Continuous Operation.**

Except for the period necessary to complete any approved remodeling or improvements, and subject to *force majeure* or periods of damage or destruction, Opera shall keep the public areas of the Premises open and use them to transact business with the public during its normal business hours daily, except on weekends or holidays. Opera shall immediately close if the Director determines there is an emergency endangering the health or safety of the general public or any Seattle Center staff or occupant.

16. **Surrender of Premises.**

16.1 **General Matters.** At the expiration or sooner termination of the Lease Term, Opera shall deliver the Premises with Opera's Improvements to City in good repair and in a clean and neat condition. Prior to such delivery, Opera 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. Opera shall indemnify City for all damages and losses suffered as a result of Opera's failure to remove voice and data cables, wiring and communication lines and moveable trade fixtures and appliances and to redeliver the Premises on a timely basis. Opera's obligations under this Section 16 shall survive the expiration or termination of this Lease.

16.2 **Cable and Wiring.** Notwithstanding any provision to the contrary in this Lease and if City, acting reasonably, so directs, on or by the Expiration Date, or if this Lease is terminated before the Expiration Date, within fifteen (15) days after the effective termination date, whichever is earlier, Opera shall remove all voice and data communication and transmission cables and wiring installed by or for Opera to serve any telephone, computer or other equipment located in that portion of the Opera's Improvements, 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 Opera's Improvements or located in any building equipment room, vertical or horizontal riser, raceway, conduit, channel, or opening connecting to the portion of Opera's Improvements to be vacated and surrendered to City as of such Expiration Date or earlier termination date. Opera shall leave the mud rings, faceplates and floor boxes in place.

17. **Waiver; Indemnification.**

17.1 **Opera's Indemnification.** Except as otherwise provided in this Section, Opera shall indemnify, defend (using legal counsel reasonably acceptable to City) and save City, City's officers, agents, employees and contractors harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable

personnel and overhead costs and 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 (a) Opera's occupation, use or improvement of the Premises, or that of any of its employees, agents or contractors, (b) Opera's breach of its obligations hereunder, or (c) any act or omission of Opera or any Subtenant, assignee or concessionaire of Opera, or of any officer, agent, employee, guest or invitee of any of the same in or about the Premises. Opera agrees that the foregoing indemnity specifically covers actions brought by its own employees. This indemnity with respect to acts or omissions during the Lease Term shall survive termination or expiration of this Lease. The foregoing indemnity is specifically and expressly intended to, constitute a waiver of Opera's 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 Opera and its employees, to the extent of their negligence. Opera shall promptly notify City of casualties or accidents occurring in or about the Premises. **CITY AND OPERA ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS LEASE WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.**

17.2 City's Indemnification. Except as otherwise provided in this Section 17, City shall indemnify, defend (using legal counsel reasonably acceptable to Opera) and save Opera, Opera's officers, agents, employees and contractors harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including Opera'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 (a) City's occupation, use or improvement of the Premises, or that of any of its employees, agents or contractors, (b) City's breach of its obligations hereunder, or (c) any act or omission of City in or about the Premises unless the City is immune from liability for such act or omission pursuant to RCW 4.24.210 or any successor provision or other applicable law. City agrees that the foregoing indemnity, to the extent applicable, specifically covers actions brought by its own employees. This indemnity with respect to acts or omissions during the Lease Term shall survive termination or expiration of this Lease. The foregoing indemnity is specifically and expressly intended to, constitute a waiver of City's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the extent necessary to provide Opera with a full and complete indemnity from claims made by City and its employees, to the extent of their negligence. **CITY AND OPERA ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS LEASE WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.**

17.3 Limitation of Opera's Indemnification. In compliance with RCW 4.24.115 as in effect on the date of this Lease, all provisions of this Lease pursuant to which either party ("Indemnitor") agrees to indemnify the other party ("Indemnitee") 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 Premises, (a) shall not apply to damages caused by or resulting from the sole negligence of the Indemnitee, its agents, contractors or employees, and (b) to the extent caused by or resulting from the concurrent negligence of (i) City or City's agents, contractors or employees, and (ii) Opera or Opera's agents, contractors 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 Opera be deemed amended so as to remove any of the restrictions contained in this Section no longer required by then applicable law.

17.4 Opera's Release of Claims. Except in the event of City's gross negligence or intentional misconduct, Opera 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 Opera or any person claiming through Opera 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; broken glass; water leakage; the collapse of any building component; or any act, omission or negligence of Subtenants or any other persons or occupants of the building.

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

18. Insurance.

18.1 Generally. Throughout the Lease Term Opera and Opera's contractors, employees, licensees and subtenants, as applicable, shall maintain such insurance coverages as are specified in Exhibit 18.1, Sections and otherwise comply with the terms and conditions for insurance contained therein. Unless Opera otherwise directs from time to time by not less than sixty (60) days' notice to City, City shall, at Opera's cost and expense, procure and maintain in force and effect property insurance for the Premises and Opera's Improvements, as described in the attached Exhibit 18.1. Opera shall reimburse City for the cost of such insurance as an Additional Charge, based upon the total square footage of Opera's Improvements multiplied by City's then-current All Risks property insurance rate. If the total square footage and/or the replacement value of the Opera's Improvements change as a result of the Initial Improvements or any subsequent major structural alterations, such change shall be reflected in the City's first premium reimbursement calculation following completion of the improvements.

18.2 Waivers of Subrogation. Whether the loss or damage is due to the negligence of either City or Opera, their agents or employees, or any other cause, City and Opera do each herewith and hereby release and relieve the other from responsibility for, and waive their entire claim of recovery for any loss resulting from business interruption at the Premises or loss of income from the Improvements or any loss or damage to the real or personal property of either

of them located anywhere on or under the Premises arising out of or incident to the occurrence of any of the perils which are covered by any insurance policy now or from time to time carried by the parties hereto. Each party shall cause its insurance carriers to consent to such waiver and to waive all rights of subrogation against the other party.

19. **Subleases and Assignments.**

19.1 **Generally.** Except as provided in this Section 19 or in Section 20 of this Lease, Opera shall not voluntarily, involuntarily or by operation of law, assign, license, mortgage, hypothecate, sublet or in any manner transfer this Lease, any interest herein or any title or interest in all or a portion of Opera's interest in any improvements to the Premises, nor shall Opera authorize, allow or permit any person (the employees of Opera excepted), to occupy or use the Premises or any portion thereof, without first obtaining the written consent and approval of the Director. The Director may withhold, delay or condition said consent and approval as he or she may determine in the exercise of that official's sole discretion. Any assignment, license, mortgage, sublease, hypothecation, transfer, occupancy or use of the Premises in violation of this paragraph shall be null and void and of no force and effect and shall further constitute a breach of this Lease by Opera. The giving by the Director of such consent and approval shall not be deemed to be a consent or approval to any subsequent assignment, license, mortgage, sublease, hypothecation, transfer, occupancy or use by any other person nor shall it release Opera of any of Opera's obligations to pay the rent and perform all other continuing obligations to be performed by Opera hereunder. Any dissolution, merger, consolidation or other reorganization of Opera shall constitute and be deemed an assignment for purposes of this Section.

19.2 **Subletting, Renting, and Licensing.** As long as Opera is not in default under any of the terms of this Lease, it is agreed that, subject only to this Section 19.2, Opera shall have the right to sublease, sublet, rent, or license any part of the Premises for any time or times during the Lease Term not to exceed the Initial Term and the Extended Term, if exercised, provided that the terms and conditions of any such sublease, rental agreement or license agreement do not violate the terms and conditions of this Lease, do not relieve Opera of its obligations under this Lease, and the proposed use is compatible with Seattle Center's mission, as the Director may reasonably determine. Notwithstanding the foregoing, the subletting of all or substantially all of the Premises shall be considered an assignment of this Lease, subject to City's consent as provided in Section 19.1 above.

19.3 **Rights of Mortgagee.** Notwithstanding the foregoing provisions of this Section 19, Opera shall have the right to grant or deliver a leasehold mortgage to a Lender, all subject to and as provided in Section 20 of this Lease.

20. **Encumbrance of Leasehold Estate.**

20.1 **Permitted Encumbrance.** Opera may, at any time and from time to time during the Lease Term and any extension or renewal thereof, encumber to any person or entity,

hereinafter called "Lender," by deed of trust or mortgage or other security instrument ("Leasehold Mortgage") any or all of Opera's interest under this Lease and the leasehold estate hereby created in Opera for purposes of financing the construction of the Initial Improvements or any improvements, additions or modifications to the Premises or the Initial Improvements subsequently made, without City's consent; *provided*, however, no encumbrance incurred by Opera pursuant to this Section 20 shall, and Opera shall not have the power to incur any encumbrance that will, constitute in any manner a lien or encumbrance on the fee or any other interest of City in the Premises. In the event Opera incurs any encumbrance pursuant to this Section 20, the Lender having such encumbrance shall have the right at any time during the Lease Term and the existence of said encumbrance to do any act or thing required of Opera under this Lease, and any such act or thing done and performed by Lender shall be as effective to prevent a forfeiture or Opera's rights under this Lease as if done by Opera itself.

20.2 Notices to City and Lender. Immediately after the recording of any Leasehold Mortgage executed by Opera pursuant to this Section 20 and containing a power of sale as defined by the State of Washington law, Opera shall, at Opera's sole cost and expense, record in the office of the County Recorder of King County a written request executed and acknowledged by City for a copy of any notice of default and a copy of any notice of sale evidencing said Leasehold Mortgage to be mailed to City at the address specified by City in the request.

20.3 Notice of Default and Rights to Cure. If the Lender forwards to City an executed counterpart of the Leasehold Mortgage together with a written notice setting forth the name and address of the Lender, then, until the time, if any, that the obligations of Opera under such Leasehold Mortgage shall be satisfied of record or the Lender shall give to City written notice that the obligations of Opera under such Leasehold Mortgage have been satisfied, the following shall be applicable:

- A. No action or agreement hereafter taken or entered into by Opera to cancel, surrender, or modify this Lease shall be binding upon the Lender or affect the lien of the Leasehold Mortgage, without the prior written consent of the Lender.
- B. If City shall give any notice or demand under this Lease to Opera, City shall at the same time give a copy of each such notice to the Lender at the address theretofore designated by the Lender. Such copies of notices shall be sent by registered or certified mail, and shall be deemed given at the time such copy is deposited in a United States Post Office with postage charges prepaid, enclosed in an envelope addressed to the Lender.
- C. The Lender shall have the right to perform any term, covenant, condition or agreement and to remedy any default by Opera under the Lease, and City shall accept such performance by the Lender with the same force and effect as if

accomplished by Opera; *provided*, however, that the Lender shall not thereby or hereby be subrogated to the rights of City.

D. Opera may delegate irrevocably to the Lender the authority to exercise any or all of Opera's rights hereunder, but no such delegation shall be binding upon City unless and until either Opera or the Lender shall give to the a true copy of a written instrument effecting such delegation. Such delegation of authority may be affected by the terms of the Leasehold Mortgage itself, in which case the service upon City of an executed counterpart of the Leasehold Mortgage in accord with this paragraph, together with a written notice specifying the provisions therein which delegate such authority to the Lender, shall be sufficient to give City notice of such delegation.

E. In case of a default of Opera in the performance or observation of any term, covenant, condition or agreement on Opera's part to be performed under this Lease, other than a term, covenant, condition or agreement requiring the payment of rent or other sum of money, if such default is of such a nature that the same cannot practicably be cured by the Lender without taking possession of the Premises, then City shall not serve a notice of election to terminate this Lease pursuant to Section 24 hereof or otherwise terminate the leasehold estate of Opera hereunder by reason of such default, if and so long as:

(1) in the case of a default which cannot practicably be cured by the Lender without taking possession of the Premises, the Lender shall deliver to City, prior to the date on which City shall be entitled to give notice of election to terminate this Lease, a written instrument wherein the Lender notifies City that it intends to foreclose and otherwise attempt to obtain title to and possession of Opera's leasehold interest and if after obtaining title to and possession of Opera's estate, the Lender shall cure any such defaults; and

(2) in the case of a default which cannot practicably be cured by the Lender without taking possession of the Premises, the Lender shall proceed diligently to obtain possession of the Premises as mortgagee (including possession by a receiver) and, upon obtaining such possession, shall proceed diligently to cure such default; and

(3) in the case of a default which is not susceptible of being cured by the Lender, the Lender shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime the Lender shall acquire Opera's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure).

The Lender shall not be required to proceed to obtain possession, or to continue in possession as mortgagee, of the Premises pursuant to Section (2) above, or to continue to prosecute foreclosure proceedings pursuant to Section (3) above, if and when such default shall be cured. Nothing herein shall preclude City from exercising any of its rights or remedies with respect to any other default by Opera during any period of such forbearance, but in such event the Lender shall have all of the rights and protections hereinabove provided for. If the Lender, or its nominee, or a purchaser at a foreclosure sale, shall acquire title to Opera's leasehold estate hereunder, and shall cure all defaults of Opera hereunder which are susceptible of being cured by the Lender, or by the purchaser, as the case may be, then the defaults of any prior holder of Opera's leasehold estate hereunder which are not susceptible of being cured by the Lender (or by the purchaser) shall no longer be deemed to be defaults hereunder.

F. Notwithstanding anything in this Section to the contrary, the failure or inability of Opera or of any Lender to operate the Premises in the manner and for the purposes contemplated by the parties hereto and described in Section 2.4 of this Lease shall under no circumstances be considered a "default which is not susceptible of being cured" under this Section 20 and upon such failure or inability, the Lender shall have no further rights hereunder and City may proceed to terminate this Lease in accordance with the provisions of Section 24 hereof.

G. In case of a default by Opera in the performance or observation of any term, covenant, condition or agreement of this Lease requiring the payment of Rent or other sums of money, if, before the expiration of ten (10) days after the date of service of a notice to terminate this Lease for such cause, the Lender shall have paid to City all Rent and Additional Charges or other sum of money and shall continue thereafter to pay to City all Rent and Additional Charges or other sum of money called for in this Lease during the operable period of this provision, City shall not have the right to cancel or terminate this Lease for a default by Opera pursuant to Section 24 hereof.

H. If this Lease shall be terminated pursuant to Section 24 hereof, or shall otherwise be terminated by reason of a default of Opera hereunder, or if the Lease is rejected by Opera or any other party pursuant to a decree in any bankruptcy, reorganization, arrangement, insolvency or other similar type of proceedings, and if within thirty (30) days after such termination the Lender, by written notice to City, shall request City to enter into a new lease of the Premises pursuant to this section, then City shall enter into a new Lease with the Lender or its nominee acceptable to City, in City's reasonable discretion, within thirty (30) days after the giving of the written notice by the Lender, if the Lender shall comply with the following provisions:

Simultaneously with the giving of the notice, the Lender shall deliver to City a written instrument unconditionally guaranteeing the curing of all defaults of Opera under this Lease (other than defaults which are not susceptible of being cured by the Lender) and all defaults of the tenant under the new Lease which shall exist on the actual date of delivery of the new lease. The new Lease shall commence, and rent and all obligations of the tenant under the new Lease shall accrue, as of the date of termination of this Lease. The term of the new lease shall continue for the period which would have constituted the remainder of the Lease Term had this Lease not been terminated, and shall be upon all of the terms, covenants, conditions, conditional limitations and agreements contained herein which were in force and effect on the date of termination of this Lease.

The new Lease, and this covenant, shall be superior to all rights, liens and interests intervening between the date of this Lease and the granting of the new Lease caused by or resulting from City's actions, and shall be free of any and all rights of Opera hereunder. The provisions of the immediately preceding sentence shall be self-executing, and City shall have no obligation to do anything other than, upon City's approval of the new tenant, execute and acknowledge the new Lease as herein provided, to assure the Lender or the tenant under the new Lease good title to the leasehold estate granted thereby. All subleases, rental agreements and license agreements for space in the Premises in force and effect immediately prior to the delivery of the new Lease shall be assigned and transferred without recourse by City to the tenant under such new lease and each subtenant under such subleases shall attorn to the tenant under the new Lease. The Lender shall, simultaneously with the delivery of the new Lease, pay to City (a) all Rent and other sums of money due under this Lease on the date of termination of this Lease and remaining unpaid; plus (b) all rent and other sums of money due under the new lease for the period from the date of commencement of the term thereof to the date of delivery of the new Lease; plus (c) all costs and expenses, including reasonable attorneys' fees, court costs and litigation expenses, incurred by City in connection with such termination, the recovery of possession of the Premises, putting the Premises, including all buildings and improvements thereon in good condition and repair, and the preparation, execution and delivery of the new Lease. Simultaneously therewith, City shall pay to the Lender any rentals, less costs and expenses of collection, received by City between the date of termination of this Lease and the date of execution of the new Lease, from subtenants or other occupants of the Premises which shall not theretofore have been applied by City toward the payment of Rent or any other sum of money payable by Opera hereunder or toward the cost of operating the Premises and all buildings and improvements thereon or performing the obligations of Opera hereunder.

If in any instance more than one Lender exercises its right to obtain a new lease pursuant to this section, then the Lender holding the lien of the highest priority shall be entitled to the new lease.

If the Lender shall exercise its right to obtain a new Lease pursuant to this Section, but shall fail to execute such a new lease within 30 days after being tendered by City, or shall fail to comply with other material provisions of this Section, then the Lender shall have no further rights to a new Lease or any other rights under this Section.

Except as provided in this Section, no mortgage now or hereafter a lien upon this Lease shall extend to or affect the reversionary interest and estate of City in and to the Premises and the improvements made thereto by Opera or in any manner attach to or affect the Premises or the improvements from and after any expiration or termination of this Lease.

I. In case of an assignment of the Leasehold Mortgage or change in address of the Lender, the assignee or Lender, by written notice to City, may change the address to which such copies of notices are to be sent. City shall not be bound to recognize any assignment of the Leasehold Mortgage unless and until City shall be given notice of such assignment and the name and address of the assignee, and thereafter such assignee shall be deemed to be the "Lender" under this paragraph.

20.4 Assignment and Subletting. After foreclosure by the Lender or transfer of the leasehold interest of Opera in lieu of foreclosure, the then successor to Opera's interest in this Lease shall, by acceptance of the benefits of this Lease, assume Opera's obligations under this Lease, but only as long as such successor shall hold the leasehold interest, and such successor, with the Director's consent pursuant to Section 19.1, shall be entitled to assign this Lease and to sublet portions of the Premises, and upon such an assignment only, such successor shall thereupon be released from all liability for the performance or observance of the covenants and conditions of this Lease to be performed by Opera from and after the date of such assignment, provided that City shall receive an executed copy of such assignment together with the name and address of the assignee and shall have consented to such assignment.

20.5 Estoppel Certificate. At the request of Opera, City shall from time to time, without additional consideration within ten (10) business days after request, execute and deliver to the Lender, a potential lender or such other person whom Opera designates, a certificate in writing setting forth the status of the Rent payments under this Lease, whether City claims any Default under the terms of this Lease on the part of Opera, and whether there have been any amendments or modifications to the written provisions of this Lease, and such other factual statements as Opera or any Lender, prospective Lender, subtenant, or person or entity designated by Opera as a potential "major contributor" in connection with improvements

to the Premises requiring the consent or approval of the Director, may request. As used herein, "major contributor" means a contributor donating \$1,000,000.00 or more to Opera.

21. **Assignment by City.**

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

22. **Damage and Destruction During Lease Term.**

22.1 **Repairs, Alterations and Further Improvements.** In the event of damage to or destruction of any or all of the Opera's Improvements (excluding therefrom ordinary wear and tear requiring maintenance and routine repairs) during the term of this Lease, this Article 22 shall apply.

22.2 **Minor Damage or Destruction.** If the cost of repairing or reconstructing the Opera's Improvements to the condition and form prior to such damage or destruction does not exceed the Floor Amount ("Minor Damage"), Opera shall promptly commence and thereafter diligently complete such repair and reconstruction of the portion of the Opera's Improvements so damaged or destroyed to substantially its condition prior to the occurrence of such Minor Damage with such alterations as Opera shall reasonably determine prudent or valuable under the circumstances, including any changes required to comply with applicable law and with the then prevailing construction practices and together with such other changes that Opera may desire, provided such other changes are approved by City, acting reasonably. City and Opera agree that the proceeds derived from insurance maintained pursuant to Section 18 shall be made available to effect such repair. "Floor Amount" means \$1,000,000.00, increased by the percentage increase in the Index from the Index published most recently prior to the Rent Commencement Date to the Index published most recently prior to the date of damage or destruction of the Improvements.

22.3 **Major Damage or Destruction.** If the cost of repairing or reconstructing the Opera's Improvements to the condition and form prior to such damage or destruction exceeds the Floor Amount ("Major Damage"), then within ninety (90) days after the casualty event giving rise to such Major Damage, Opera shall notify the City of Opera's election either to repair such Major Damage and reconstruct Opera's Improvements in accordance with Section 22.4 below or to terminate this Lease.

22.4 **Repair and Reconstruction of Major Damage.** If Opera elects to repair Major Damage and reconstruct Opera's Improvements pursuant to Section 22.3 above, Opera shall promptly after such election and diligently thereafter effect such repair and reconstruction of

the portion of Opera's Improvements so damaged or destroyed to substantially its condition prior to the occurrence of such Major Damage with such alterations as Opera shall reasonably determine prudent or valuable under the circumstances, including any changes required to comply with applicable law and with the then prevailing construction practices and together with such other changes that Opera may desire, provided such other changes are approved by the City, acting reasonably. City and Opera agree that the proceeds derived from insurance maintained pursuant to Article 18 shall be made available to effect such repair. If the available insurance proceeds are not adequate to cover the estimated cost of repair, then, within a reasonable time after such shortfall is determined and, in any event, prior to the commencement of any repair work (other than emergency repairs), Opera shall provide City's Finance Director with assurances satisfactory to such official that a sufficient sum will be made available to cover such shortfall. All repair and reconstruction work under this Section 22.4 shall be conducted substantially in the same manner and in accordance with the requirements and procedures set forth in the Construction Agreement arising out of this Lease.

22.5 Termination of Lease Following Major Damage. If Opera elects not to repair Major Damage, and, instead, elects to terminate this Lease, unless the parties otherwise agree, such termination of this Lease shall take effect ninety (90) days following Opera's notice to the City of its election to terminate the Lease. In such case all insurance proceeds shall be retained by or disbursed to City.

23. **Eminent Domain.**

23.1 Definitions.

A. "Eminent domain" is the right of the people or government to take private property for public use. As used in this Section 23, the words "condemned" and "condemnation" are coextensive with such right, and a voluntary conveyance by the City to the condemnor under threat of a taking under the power of eminent domain in lieu or after commencement of formal proceedings shall be deemed a taking within the meaning of this Section 23.

B. "Total condemnation" and "total taking" mean the taking of the entire Premises under the power of eminent domain or a taking of so much of the Premises under such power as to prevent or substantially impair the conduct of Opera's business thereon.

C. "Partial condemnation" and "partial taking" mean any condemnation of the Premises other than a total taking as defined above.

23.2 Effect of Total Condemnation. In the event that there shall be a total taking of the Premises during the term of this Lease, or any renewal or extension thereof, under the power of eminent domain as defined in this Section, the leasehold estate hereby created in the

Premises shall cease and terminate as of the date title to the Premises is taken by the condemnor. On termination of this Lease by a total taking of the Premises under the power of eminent domain, all rentals and other charges payable by either party to or on behalf of the other under the provisions of this Lease shall be paid (or refunded to the extent rent has been prepaid) up to the date on which actual physical possession of the Premises shall be taken by the condemnor, and the parties hereto shall thereafter be released from all further liability in relation thereto.

23.3 Effect of Partial Condemnation. In the event that there shall be a partial taking of the Premises during the term of this Lease, or any renewal or extension thereof, under the power of eminent domain as defined in this Section, this Lease shall terminate as to the portion of the Premises so taken on the date title is taken by the condemnor or at the time the condemnor is authorized to take possession of said real property as stated in the order for possession, whichever is earlier. This Lease shall also terminate on such date as to the balance of the Premises once more than ten percent (10%) of the floor area of the Premises have been taken and Opera gives written notice of termination to the City within thirty (30) calendar days after the City shall have given Opera written notice of said taking, or in the absence of said notice, within ten (10) calendar days after the condemnor is authorized to take possession as stated in the order for possession. If less than such percentage of floor area is taken or Opera fails to timely elect to terminate, this Lease shall continue in full force and effect as to the remainder of the Premises not so taken, but the Base Rent to be paid by Opera shall thereafter be reduced in proportion to the amount of the condemned Premises. If the parties cannot agree upon a just proportion of rent to be abated, the amount shall be determined in accordance with the procedures set forth in Section 33.

23.4 Award. Any compensation or damages awarded or payable because of the taking of all or any portion of the Premises by eminent domain shall be allocated between the City and Opera as follows:

A. City shall receive the present value of any lost future rents resulting from the eminent domain action which would otherwise be payable to the City by Opera under this Lease together with the present value of the reversion upon expiration of this Lease of that portion of the Premises taken in the eminent domain action, both as of the time of taking; the remainder of the award shall be payable to Opera. The values of City's and Opera's respective interests in the Premises shall be established by the same court of law or other trier of fact that establishes the amount of the condemnation award, but if there is no court of law available or willing to determine City's and Opera's respective interests, those interests shall be determined in accordance with the procedures set forth in Section 33. The foregoing shall not limit Opera's right to separately pursue compensation or damages for lost revenues, business interruption and moving

expenses, and Opera shall be solely entitled to any such compensation or damages free and clear of any claim by the City.

B. The term “time of taking” as used in this subsection shall mean 12:01 a.m. of whichever shall occur first, the date title or the date physical possession of the Premises or any portion thereof is taken by the agency or entity exercising the eminent domain power.

23.5 Temporary Taking. If the whole or any part of the Premises or of Opera's interest under this Lease be taken or condemned by any competent authority for its temporary use or occupancy, and Opera shall continue to pay, in the manner and at the times herein specified, the full amounts of the Base Rent, and all other charges payable by Opera hereunder, then this Lease shall continue and, except only to the extent that Opera may be prevented from so doing pursuant to the terms of the order of the condemning authority, Opera shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of Opera to be performed and observed, as though such taking or condemnation had not occurred. In the event of any such temporary taking, or condemnation Opera shall be entitled to receive the entire amount of any award made for such taking, whether paid by way of damages, rent or otherwise, unless such period of temporary use or occupancy shall extend to or beyond the expiration date of the term of this Lease, in which case such award shall be apportioned between City and Opera as of such date of expiration of the term of this Lease.

24. **Default by Opera.**

24.1 Definition. The occurrence of any one or more of the following events shall constitute a default by Opera under this Lease (“Default”):

- (a) Failure by Opera to make any payment required as and when due, where such failure continues after 10-days written notice from City;
- (b) Failure by Opera to observe or perform any of the covenants, conditions, or provisions of this Lease, other than the making of any payment, where such failure shall continue after 30 days' written notice from City; provided, however, that if the nature of Opera's obligation is such that more than 30 days are required for performance, Opera shall not be in default if Opera commences performance within 30 days after City's notice and thereafter completes such performance diligently and within a reasonable time; or
- (c) Opera files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for Opera's assets or if Opera makes an assignment for the benefit of creditors, or if Opera is adjudicated insolvent, or becomes

subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or liquidated, voluntarily or otherwise.

24.2 City Remedies. If Opera has defaulted and such default continues or has not been remedied to the reasonable satisfaction of the Director within thirty (30) days after written notice thereof has been provided to Opera, then City shall have the following nonexclusive rights and remedies at its option: (a) to cure such default on Opera's behalf and at Opera's sole expense and to charge Opera for all actual and reasonable costs and expenses incurred by City in effecting such cure as an Additional Charge, or (b) if but only if the default (i) is failure to pay Base Rent or (ii) to complete construction of the Initial Improvements in accordance with the requirements of this Lease and the Construction Agreement in a material and substantial respect, to terminate this Lease; provided, however, that if the nature of Opera's obligation (other than monetary obligations and other than vacation or abandonment of the Premises) is such that more than thirty (30) days is required for performance, then Opera shall not be in default if it commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In the event of any inconsistency between the foregoing clause (b) and any other provision of this Section 24, the provisions of this clause (b) shall apply and control.

24.3 Reentry by City upon Termination. Upon the termination of this Lease, City may reenter the Premises, using such means as permitted by law, take possession thereof, and remove all persons therefrom, for which actions Opera shall have no claim thereon or hereunder. Opera 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 Opera. City shall have the right to sell such stored property, after reasonable prior notice to Opera 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 Opera to City; the balance, if any, shall be paid to Opera.

24.4 City's Non-exclusive Remedies upon Termination due to Default of Opera. Notwithstanding any reentry by City and anything to the contrary in this Lease, in the event of the termination of this Lease due to Opera's Default, Opera's liability for all sums due under this Lease provided herein shall not be extinguished for the balance of the Lease Term. Opera 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 Opera's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any costs incurred in authorizing others the use and occupancy of the Premises and in preparing the Premises for such use and occupancy,

and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington. The provisions of this Section 24.4 shall survive the expiration or earlier termination of this Lease.

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

25. Default by City.

City shall be in default if City fails to perform its obligations under this Lease within thirty (30) days after its receipt of notice of nonperformance from Opera; 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, Opera 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.

26. Attorneys' Fees.

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

27. 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 Opera's Improvements as City may deem necessary or desirable. If Opera 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 Lease. Unless the parties agree otherwise or in case of an emergency, Opera shall change the locks to the Premises only through City and upon paying City for all actual and reasonable costs related thereto.

28. **Holding Over.**

If Opera remains in possession of all or any part of the Premises after the expiration of the Term hereof with City's express or implied consent, such tenancy shall be from month-to-month only, and not a renewal hereof or an extension for any further term, and in such case, Opera shall pay City rent in an amount that the parties shall negotiate; provided, however, that if the parties cannot agree on the amount of rent within 30 days from the expiration of the Term, then such holding over shall be deemed to be without City's consent. If Opera remains in possession of all or any part of the Premises without City's consent, such tenancy shall be from month-to-month only, and not a renewal hereof or an extension for any further term, and in such case, Opera shall pay City rent in an amount equal to One Hundred Fifty Percent (150%) of the then-current Base Rent for the entire time Opera thus remains in possession and Opera shall hold City harmless from all damages resulting from Opera's failure to surrender the Premises or any portion thereof, including, without limitation, claims made by a succeeding tenant resulting from Opera's failure to surrender the Premises or any portion thereof. All provisions of this Lease, except those pertaining to the amount of Base Rent payable and Term, shall apply to such month-to-month tenancy.

29. **Quiet Enjoyment.**

If Opera performs all of the obligations under this Lease on its part to be performed, it shall have quiet enjoyment of the Premises throughout the Lease Term without hindrance or disturbance by any person holding by or through City.

30. **Notices.**

Any notice, demand or request required hereunder shall be given in writing to the party's address set forth in Section 1.9 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.

31. **Successors or Assigns.**

All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon City, Opera and, subject to the terms of Section 19, 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.

32. **Opera Authority and Liability.**

Opera warrants that this Lease has been duly authorized, executed and delivered by Opera, and that Opera has the requisite power and authority to enter into this Lease and perform its obligations hereunder. Opera covenants to provide City with evidence of its authority and the authorization of this Lease upon request.

33. **Dispute Resolution.**

The parties shall make their best efforts to resolve disputes as expeditiously as possible through negotiations at the lowest possible decision-making level, and in the event such negotiations are unsuccessful, to participate in good faith in the mediation process described below prior to either party initiating any judicial process.

If an issue cannot be resolved by negotiations between subordinate staff of Opera and Seattle Center, the matter shall be referred to the Director and the Opera Executive Director. If those officials are unable to resolve the dispute within a period of 15 days after the matter has been formally referred to them for resolution, they shall meet during the immediately succeeding seven (7) days to select a mediator to assist in the resolution of such dispute. If the Director and the Opera's Executive Director cannot agree upon a mediator within such seven (7) day period, either party may apply to the American Arbitration Association for the appointment of a mediator according to the process that is established by such entity for such action. Opera and City shall share equally the cost charged for the mediation of any dispute.

34. **Recording.**

The parties agree that a memorandum of this Lease substantially in the form of Exhibit 34.1, attached, shall be recorded in the office of the King County Recorder with reasonable promptness after Opera obtains a lot line adjustment for the Premises.

35. **Force Majeure.**

Neither City nor Opera 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 ("*force majeure*"), 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, inability to obtain permits

despite Opera's documented diligent pursuit thereof, terrorist act or war; provided, however, that the foregoing shall not excuse Opera from the timely payment of Rent and Additional Charges due hereunder, when due.

36. **Execution by City and Opera.**

Neither City nor Opera shall be deemed to have made an offer to the other party by furnishing the other party with a copy of this Lease with particulars inserted. No contractual or other rights shall exist or be created between City and Opera until this Lease has been approved by appropriate legislative authority and executed by the parties hereto. City shall have no liability to Opera and shall have the right to terminate this Lease upon written notice to Opera if this Lease is legislatively disapproved.

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

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

38. **Public Benefits.**

City's willingness to enter into this Lease with Opera is predicated, in part, on the nature of Opera's business and the compatibility of such business with the use of the remainder of Seattle Center and the benefits accruing to the public through Opera's use of the Premises. The parties agree that, with respect to the Initial Improvements, anticipated benefits include (i) Opera's capital investment in the Premises; (ii) the sustainable technologies that will be utilized in development of the site, and (iii) the expected LEED certification for the Premises. Opera shall report to the City regarding implementation of such benefits within 60 days of receipt of the Certificate of Occupancy for the Initial Improvements. In addition, continuously throughout the Lease Term, Opera agrees to provide the following benefits, or an equivalent replacement approved by the Director, and to submit an annual report thereof to the Director as required by Section 5.1: (i) education programs for students, reported by the number and age groups of students served; (ii) education events, activities and outreach efforts provided to the public by Opera, reported by the number and type and of event; (iii) Opera employment, reported by number of Opera employees, both full and part-time; (iv) if and to the extent and for such periods as Opera has no need for the space itself, collaboration with other groups to make office and rehearsal space available to activate and invigorate the Mercer corridor; and (v) when relevant, other collaborative efforts of benefit to the public and Seattle Center.

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

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

39.1 Change of Vicinity. City may increase, reduce, or change in any manner whatsoever the number, dimensions, and locations of the walks, buildings, landscaping, utility lines and poles, service areas, roads, sidewalks and parking areas in the vicinity of the Premises. Notwithstanding the foregoing, if City's Seattle Center department controls or determines any construction or reconstruction of Mercer Street and/or Memorial Stadium that adversely affects Opera's truck access to the Premises and to McCaw Hall from the south side of the Premises, City agrees to provide equivalent alternative access both during and after any such construction. In addition, City shall use its best efforts to ensure that any such construction or reconstruction does not unreasonably disrupt Opera's normal business operations at the Premises.

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

39.3 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.

39.4 Change of Businesses. City may determine or change the size, number, and type and identity of concessions, stores, businesses and operations being conducted or undertaken in the vicinity of the Premises and to operate and to authorize others to engage in any and all forms and locations of business activity at the Seattle Center.

39.5 Entrance Charges. City may impose a reasonable charge for admission to the Seattle Center and the facilities thereon, but shall not impose any charge for access to the Premises.

39.6 Rules and Regulations. City may promulgate, from time to time, reasonable rules and regulations regarding the use and occupancy of all areas of the Seattle Center other than the Premises.

39.7 Hours of Operation. City may determine the days and hours the Seattle Center and various business operations other than the Premises will be open to the public.

40. **Naming Rights.**

Opera may propose to rename the Mercer Arena and to name any internal rooms, areas and components thereof for no longer than the Lease Term. Names and naming rights agreements shall be subject to the Director's approval, which shall not be unreasonably withheld.

41. **Signs and Advertising.**

41.1 **Signs.** Opera may install permanent signage on the exterior of the Premises and may display temporary signs or banners on or about the Premises to advertise its opera or special events. All aspects of the signs are subject to the Director's prior written approval, whose approval shall be given or withheld in his or her reasonable discretion within seven (7) business days of a written request; provided, however, that the Director's failure to respond in writing shall constitute approval of the request. Three-sheet posters used to advertise Opera's current season performances shall not require the Director's approval.

41.2 **Advertising.** Except as provided in Section 41.1, Opera shall not install or display nor permit others to install or display any commercial advertising on the exterior of the Premises.

42. **Entire Lease; Applicable Law; Amendments.**

This Lease and the Exhibits attached hereto, and by this reference incorporated herein, together with the Construction Agreement and Covenant Agreement, if and when executed, set forth the entire agreement of City and Opera concerning the Premises, and there are no other agreements or understanding, oral or written, between City and Opera concerning the Premises. Any subsequent modification or amendment of this Lease shall be binding upon City and Opera only if reduced to writing and signed by the Director and an authorized officer of Opera. This Lease shall be governed by, and construed in accordance with the laws of the State of Washington.

43. **Partial Invalidity.**

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

44. **Counterparts.**

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

45. **Headings.**

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

46. **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. Words such as "herein," "hereunder" and the like refer to this Lease in its entirety and not to a particular section or subsection hereof.

47. **Negotiated Lease.**

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

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

CITY OF SEATTLE

By: _____

Robert Nellams, Director
Seattle Center Department

SEATTLE OPERA

By: _____

Kelly Tweeddale,
Executive Director
Seattle Opera

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

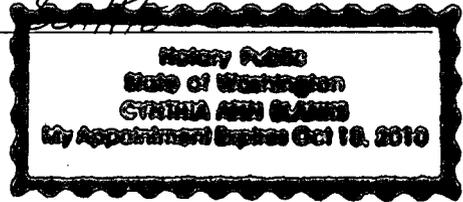
On this 9th day of April, 2008 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared Robert Nellans known to me to be the DIRECTOR of the Seattle Center Department of **CITY OF SEATTLE**, the party that executed the foregoing instrument as City, and acknowledged said instrument to be the free and voluntary act and deed of said party, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

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

Cynthia Ann Blanks
[Signature]

CYNTHIA ANN BLANKS
[Printed Name]

NOTARY PUBLIC in and for the State of Washington residing at _____
My commission expires OCTOBER 10, 2010.



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

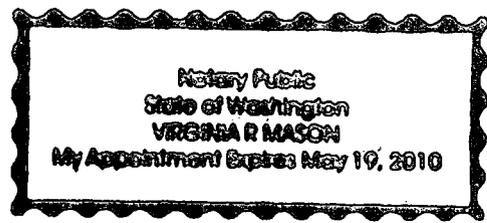
On this 2nd day of April, 2008, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Kelly Tweeddale, to me known to be the Executive Director of **SEATTLE OPERA**, the entity that executed the foregoing instrument as Opera; and acknowledged to me that he signed the same as the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and that he was authorized to execute said instrument for said entity.

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

Virginia R. Mason
[Signature]

Virginia R. Mason
[Printed Name]

NOTARY PUBLIC in and for the State of Washington residing at Snoqualmie
My commission expires May 19, 2010



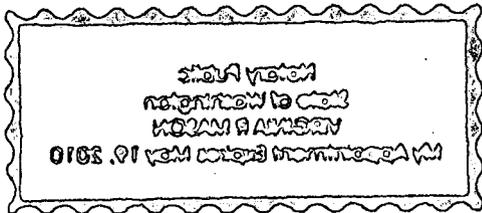
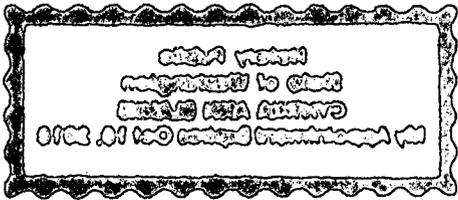


EXHIBIT 1.1

Legal Description

Block 53, D.T. Denny's Home Addition to City of Seattle, Volume 3 of Plats, Page 115.
Reserving unto City the exclusive use of any portion thereof lying outside the current footprint of the Mercer Arena building and, except as set forth in the Lease, the ground rights below Opera's Improvements as constructed, and the air rights more than 85 feet above the finished grades surrounding the existing Mercer Arena building, measured in accordance with the provisions of SMC 23.86.006 as in effect on the Effective Date.

EXHIBIT 1.1.2

Premises Site Plan

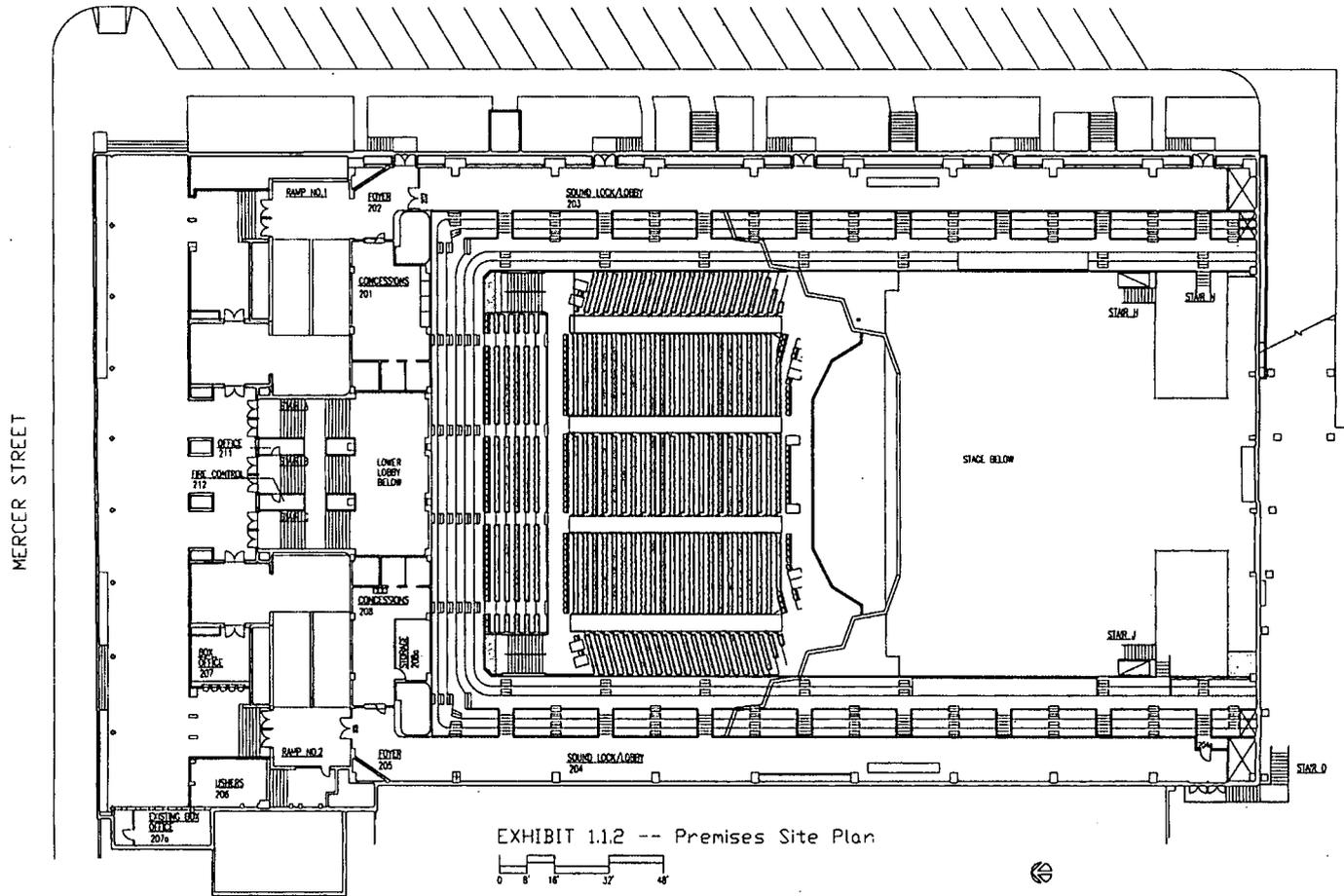


Exhibit 12.1. Conceptual Plan for Initial Improvements - Stacking Diagram

EXHIBIT 12.1

Conceptual Plan for Initial Improvements

The site of the Mercer Arena will become the new home for Seattle Opera, housing the administrative offices, rehearsal, and technical support facilities which are anticipated to include both costume and scene shops. The current building, located at the southwest corner of Mercer Street and 4th Ave. North, is approximately 59,850 sq. ft. and is directly adjacent to and shares a wall with McCaw Hall, Seattle Opera's main performance venue. Opera proposes to replace or renovate the existing Mercer Arena with a new facility that provides at least 120,000 sq. ft. of actual program space (program to be confirmed by selected architect) preliminarily illustrated in the drawing shown on Exhibit 12.1, page 2. One component of the technical support facilities will be a scene shop, ideally located directly adjacent to the rear of the McCaw Hall stage and connected by an acoustical door, enabling scenery to be moved between the two facilities. City and Opera are also in agreement that the street level must be activated to enhance the pedestrian experience. No final decision has been made regarding how this will be accomplished, but the design architect in partnership with Seattle Opera and Seattle Center will explore several possibilities. Additionally, there is a potential for limited co-development and/or sublease options for other organizations compatible with Seattle Center and the theater district.

EXHIBIT 18.1

Opera-Furnished Property and Liability Insurance

18.1.1. General. Opera (and, during the course of construction of Initial Improvements unless otherwise indicated, Opera's construction contractor(s)) shall obtain and thereafter maintain continuously throughout the term of this Agreement, at no expense to the City, insurance that complies with this Exhibit 18.1. For all required coverages, the minimum limits of liability may be satisfied by a primary policy or a combination of primary and excess/umbrella policies. In addition, all insurance policies and coverages shall be subject to commercially reasonable deductibles.

18.1.2. Coverages and Minimum Limits of Liability.

18.1.2.1 Commercial General Liability (CGL) Insurance:

<u>Coverages</u>	<u>Limits of Liability</u>
Premises/Operations)	\$5,000,000 each occurrence bodily injury
Contractual)	and property damage combined single
Independent Contractors)	limit (CSL)
Host Liquor Liability*)	
Personal/Advertising Injury*	\$1,000,000 each offense
Stop Gap	\$1,000,000 each Accident/Disease/Employee
Fire/Tenant Legal *	\$1,000,000 each Occurrence

*Not applicable to Opera's construction contractor

18.1.2.2. **Liquor Liability Insurance***. If alcoholic beverages are sold at any event, Opera shall obtain and maintain Liquor Liability Insurance with minimum limits of liability of \$2,000,000 each Common Cause (an Opera caterer may satisfy this requirement by furnishing evidence of insurance that meets the requirements of this Exhibit).

*Not applicable to Opera's construction contractor

18.1.2.3. **Pyrotechnic Liability Insurance***. If the Seattle Fire Marshall requires a pyrotechnics permit for any activity, Opera shall obtain and maintain Pyrotechnic Liability Insurance with a minimum limit of liability of \$2,000,000 CSL (an Opera pyrotechnic operator may satisfy this requirement by furnishing evidence of insurance that meets the requirements of this Exhibit). The minimum limits of liability may be

satisfied with primary limits, or any combination of primary and excess/umbrella liability limits.

*Not applicable to Opera's construction contractor

18.1.2.4. **Automobile Liability Insurance** for owned, non-owned, leased or hired vehicles, with a minimum limit of liability of \$1,000,000 CSL.

18.1.2.5. **Property Insurance*** on an all risks basis, excluding earthquake and flood, covering trade fixtures and business personal property on a replacement cost basis.

*Not applicable to Opera's construction contractor

18.1.3. General Conditions.

18.1.3.1. Opera's insurance policies shall be issued by insurers rated A-VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington or procured as surplus lines under the provisions of chapter 48.15 RCW.

18.1.3.2. Opera's liability insurance shall include The City of Seattle as an additional insured for primary and non-contributory limits of liability and contain to a severability of interest clause. With respect to CGL insurance (including, if applicable, liquor and pyrotechnic liability insurance), it must be documented that the City is an additional insured either through appropriate blanket additional insured policy wording or by attaching an appropriate additional insured endorsement to the policy.

18.1.3.3. Opera's property insurance shall contain a waiver of the property insurer's rights of subrogation against City.

18.1.3.4. Opera is responsible for payment of any claim within any deductible or self-insured retention.

18.1.3.5. In the event of cancellation, Opera's insurer shall provide the City with written notice thereof, including the reason therefor, delivered or mailed at least 45 days prior to the effective date of the cancellation, except that with respect to surplus lines insurance procured under the provisions of Chapter 48.15 RCW, the notice period shall be not less than 30 days, and with respect to cancellations due to nonpayment of premiums, the notice period shall be not less than 10 days.

18.1.3.6. The limits of liability specified herein are minimum limits of liability only and shall not be construed to limit the liability of Opera, Opera's contractors or any of their insurers under applicable policies with higher limits than those specified herein. Where

the City is required to be an additional insured under subparagraph 3.2, it shall be an additional insured for primary and non-contributory limits of liability for the total limits of Opera's and Operas' contractors' insurance programs, whether such limits are primary, excess, contingent or otherwise.

18.1.4. Evidence of Insurance.

18.1.4.1. Opera's and Opera's contractor's authorized insurance representatives shall furnish City with a certificate of insurance evidencing compliance with the coverage, minimum limits of liability and other terms and conditions of this Exhibit, including true copies of the additional insured policy provisions of the CGL and, where required, Liquor and Pyrotechnic Liability insurance policies.

18.1.4.2. Insurance certification shall be sent to each of the following.

(Electronic copy only)

City of Seattle
Risk Management Division
Fax: (206) 470-1279
Email: riskmanagement@seattle.gov

City of Seattle
Attention: _____
305 Harrison Street
Seattle, WA 98109
Fax: (206) 233-3950
Email: _____

City-Furnished Property Insurance

18.2.1. Property Insurance. Unless Opera otherwise directs from time to time by not less than sixty (60) days' notice to, City shall, at Opera's cost and expense, maintain property insurance and/or self-insurance providing "all risks" of physical loss or damage, including earthquake and flood, with an amount of insurance or self-insurance not less than the replacement cost of Opera's Improvements. Opera shall cooperate with City to allow City's property insurance representatives access to the building from time to time to for inspection purposes.

18.2.2. Limitations on City Property Insurance Coverage. City-furnished property insurance shall include Opera's Improvements, but shall exclude Opera's or any Subtenant's trade fixtures or business personal property.

18.2.3. Insurance During Construction. At the time any Opera contractor mobilizes on or about the Premises for purposes of constructing the Initial Improvements or any subsequent major structural alterations, and continuously until the completion of such construction, City shall provide Builder's Risk property insurance for the Premises, including Opera's Improvements. Opera shall notify City's Risk Management Division by telephone at (206) 615-1507 or by fax at (206) 470-1275 not less than thirty (30) days prior to the mobilization of any Opera contractor on the Premises and shall fully cooperate and assist in the completion of applications and in any other tasks necessary to facilitate securing such insurance coverage. Opera shall reimburse City as an Additional Charge for the cost of such Builder's Risk insurance based upon City's Builder's Risk rate multiplied by the completed value of the improvements (*i.e.*, the initial replacement value of the building plus the hard costs and soft costs of the improvements).

18.2.3. Evidence of Insurance. City shall cause its authorized insurance broker to issue evidence of property insurance to Opera and, when applicable, its contractor.

18.2.4 Damage and Destruction. If the Premises or the Building are rendered partially or wholly untenantable by fire or other casualty:

18.2.4.1. City shall proceed with reasonable diligence as soon as sufficient insurance, self-insurance and/or other funds are available therefor, to prepare plans and specifications for, and thereafter to carry out, all work necessary to repair or replace the Premises or Building or any portions thereof that were damaged or destroyed by a fire or other casualty. However, City retains the sole option to not repair or replace the Building or Premises for any reason, in which case City shall advise Opera of City's election to terminate this Lease by giving at least a thirty (30) day notice to Opera.

18.2.4.2. If City elects to repair or replace the Building or Premises, Opera shall proceed with reasonable diligence as soon as sufficient insurance, self-insurance and/or other proceeds and other funds are available therefor (in any event, within twenty-four (24) months from the date of the occurrence of a fire or other casualty), to repair or replace trade fixtures and business personal property that has been damaged or destroyed.

18.2.4.3. Rent and Additional Charges shall be abated in the proportion that the untenantable portion of the Premises bears to the whole Premises, in the City's sole determination, for the period from the date of the fire or other casualty until either the completion of the repairs and restoration or the termination of this lease at the City's option as provided herein.

18.2.4.4. If the Building or Premises cannot be repaired or replaced within twenty-four (24) months from the date of the occurrence of the fire or other casualty, or if thirty percent (30%) or more of the Building interior area is damaged or destroyed (regardless of whether the Premises are damaged or not) Opera may terminate this Lease upon sixty (60) days' written notice to the City.

18.2.4.5. Except in the event of City's gross negligence, intentional misconduct or breach of this Lease, City shall not be liable to Opera 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 or to the termination of this Lease as provided herein.

EXHIBIT 34.1
Form of Memorandum of Ground Lease

RECORDED AT THE REQUEST OF AND
AFTER RECORDING RETURN TO:

Russell F. Tousley, P.S.
Tousley Brain Stephens, PLLC
1700 Seventh Avenue, Suite 2200
Seattle, WA 98101-4416

MEMORANDUM OF GROUND LEASE
(City of Seattle/Seattle Opera)

Grantor/Lessor: THE CITY OF SEATTLE, a Washington municipal corporation

Grantee: SEATTLE OPERA, a Washington non-profit corporation

Abbreviated Seattle: Portion of Block 53, D.T. Denny's Home Addition to City of Seattle

Legal Description: Complete Legal Description is set forth in Exhibit A attached hereto

Assessor's Tax Parcel ID #: 198820-0700

Reference # (if applicable): N/A

THIS MEMORANDUM OF GROUND LEASE is dated as of _____, 200_, by and between THE CITY OF SEATTLE, a municipal corporation of the State of Washington ("Lessor") and SEATTLE OPERA, a Washington non-profit corporation ("Lessee").

1. Premises. Lessor has leased to Lessee, upon the terms and conditions of that certain lease between the parties dated as of _____, (the "lease"), which terms are incorporated by this reference, that certain real property situated in the City Seattle, King, County Washington, more particularly described on Exhibit A, attached hereto.

2. Term. The Lease is for a term of thirty (30) years commencing on _____ and ending on _____, unless extended. Lessee has the right to extend the term of the Lease for one (1) additional term of thirty (30) years, which extension right, if exercised, would result in the term of the Lease first expiring on _____.

3. New Lease. The Lease provides that under certain circumstances a lender with a leasehold mortgage on Lessee's leasehold estate interest in the Premises may cause a new replacement lease for the Premises on substantially the same terms as the Lease to come into existence.

4. Purpose of Memorandum of Lease. This Memorandum of Ground Lease is prepared for the purpose of recordation and in no way modifies the Lease.

DATED as of the day and year first above written.

LESSOR: THE CITY OF SEATTLE, a municipal corporation of the State of Washington

By: _____
Its: _____

LESSEE: SEATTLE OPERA, a Washington non-profit corporation

By: _____
Its: _____

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

On this ____ day of _____, 200_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared _____, known to me to be the _____ of the Seattle Center Department of **CITY OF SEATTLE**, the party that executed the foregoing instrument as City, and acknowledged said instrument to be the free and voluntary act and deed of said party, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

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

[Signature] *[Printed Name]*
NOTARY PUBLIC in and for the State of Washington residing at _____
My commission expires _____.

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

On this ____ day of _____, 200_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of **SEATTLE OPERA**, the entity that executed the foregoing instrument as Opera; and acknowledged to me that he signed the same as the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and that he was authorized to execute said instrument for said entity.

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

[Signature] *[Printed Name]*
NOTARY PUBLIC in and for the State of Washington residing at _____
My commission expires _____.

EXHIBIT A

(EXHIBIT INTENTIONALLY LEFT BLANK)

Legal description to be inserted and document recorded following lot line adjustment.

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Seattle Center	Robert Nellams, 684-7334 Kerry Smith, 615-0358 Helaine Honig, Law, 684-8222	Amy Williams, 233-2651

Legislation Title: AN ORDINANCE relating to the Seattle Center Department; authorizing execution of a ground lease with Seattle Opera for property that includes Mercer Arena at Seattle Center.

• **Summary of the Legislation:**

This legislation authorizes execution of a ground lease agreement with Seattle Opera for the Mercer Arena site. Under this agreement, Seattle Opera will enter into a 30-year ground lease with the City for the Mercer Arena site. Additionally, the Opera is planning to renovate or reconstruct the facility to house their administrative offices, rehearsal spaces, and technical facilities. Their current conceptual plan for the initial improvements is anticipated to cost approximately \$40 million.

• **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*

The Mercer Arena was built in 1927 as part of the Civic Center complex, which included the Civic Auditorium (now McCaw Hall), the Civic Playfield (now Memorial Stadium), and the Civic Ice Arena (now Mercer Arena). Over the years, the building has served as a venue for hockey, basketball, concerts, high school graduations, and myriad other public assembly activities.

In 2001, as part of the Opera House renovation (McCaw Hall) project, Mercer Arena was converted for use as a temporary venue for Seattle Opera and the Pacific Northwest Ballet while the Opera House was under construction. Like the Opera House, Mercer Arena has code issues that need to be addressed, including major structural and seismic improvements, life safety system modifications, and significant upgrading of the building's electrical, mechanical, and accessibility systems. Because the facility would be used on a temporary basis for the 18-20 months of McCaw Hall construction, the Department of Construction and Land Use and the Seattle Fire Department permitted alterations to the Mercer Arena without requiring full code compliance. They did so with the understanding that when McCaw Hall opened in June of 2003, the Mercer Arena would be closed to public assembly use until the code issues could be addressed.

In 2002, Seattle Center began to evaluate redevelopment options for Mercer Arena that would balance the long-term needs of the City/Seattle Center with the prohibitive cost of



completing required code improvements. To facilitate the analysis of usage and redevelopment options, the Center developed the following criteria:

1. Compatibility with Seattle Center mission, goals, existing facilities and existing lines of business.
2. Compatibility with and support of the adjacent community, with the intent that the new use would not create new significant parking and traffic impacts.
3. Financial return to the City.
4. Potential for private investment.
5. Compatibility with design proposals for the Seattle Center Theatre District.
6. Appropriate fit with facility needs of the region.
7. Recognition that the Mercer Arena property was an integral part of the Seattle Center campus and should not be sold.

Using those criteria, several redevelopment options were considered ranging from development of a 3,500 to 4,000-seat public assembly facility with an ice floor to a multi-screen theatre complex. However, the option that seemed most compatible with the City's goals was to make Mercer Arena the home of Seattle Opera's administrative offices, rehearsal spaces and technical support facilities. This option was also included in the final recommendation by the Mayor's Task Force for Seattle Center Sustainability in May 2006. Further, the June 2007 report of the Century 21 Committee on Alternative Plans for Seattle Center's Future included Seattle Opera's development of the Mercer Arena in two of their options for development of the campus.

Seattle Opera has long been interested in centralizing its administrative and technical support functions and relocating closer to McCaw Hall. Currently, their support functions are housed in various facilities throughout the region. For the City, the Opera's move to Mercer Arena meets all of the evaluation criteria for use of the Arena. Further, the relocation will enhance and enliven the pedestrian experience on Mercer Street, within the Theater District, and among the campus as whole.

Lease Terms

In the proposed ground lease, Seattle Opera will lease the Mercer Arena site for 30 years with an option for a 30-year extension. The Opera plans to renovate or replace the facility to house their administrative offices, rehearsal spaces, and technical facilities. Their current conceptual plan for these improvements is anticipated to cost approximately \$40 million in hard and soft costs.

Seattle Opera will pay an annual rent of \$220,000 plus 15% of rent from any subleases to commercial tenants. The rent will be adjusted upward every 5 years by 10%. The Opera will be responsible for operation and maintenance of the facility. The City will continue to be responsible for major maintenance of the building shell. Upon execution of the lease, the Opera will pay the City a deposit of \$110,000. Of this deposit, \$60,000 will be applied toward the first year's rent if the Opera has taken possession of the Arena by July 1, 2009. The Opera is in the process of raising funds for the project and hopes to begin construction by July 2009, although the lease provides for extension options through July 2011, for an

annual fee of \$110,000. The City will have design approval of the project, which should be complete within 24 months of building permit approval.

The adaptive reuse of the 1927 facility continues Seattle Center's tradition of creative reuse of existing structures such as the transformation of the Coliseum to the Key Arena and the Opera House to Marion Oliver McCaw Hall. Not only will Seattle Center's long-term maintenance obligations be reduced, but the City's standards for environmental sustainability are also furthered by Seattle Opera's proposed stewardship of this aging structure.

- Please check one of the following:

This legislation does not have any financial implications. (Stop here and delete the remainder of this document prior to saving and printing.)

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

Appropriations: This table should reflect appropriations that are a direct result of this legislation. In the event that the project/ programs associated with this ordinance have appropriations that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below.

Fund Name and Number	Department	Budget Control Level*	2007 Appropriation	2008 Anticipated Appropriation
TOTAL				

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

Notes:



Anticipated Revenue/Reimbursement: Resulting From This Legislation: *This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.*

Fund Name and Number	Department	Revenue Source	2007 Revenue	2008 Revenue
SCOF/11410	Seattle Center	469990		\$50,000
TOTAL				\$50,000

Notes: Upon execution of the lease, the Opera will pay the City a deposit of \$110,000. Of this deposit, \$60,000 will be applied toward the first year's rent if the Opera has taken possession of the Arena by July 1, 2009. The remaining \$50,000 will be considered additional revenue in 2008.

Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact: *This table should only reflect the actual number of positions created by this legislation. In the event that positions have been, or will be, created as a result of previous or future legislation or budget actions, please provide details in the Notes section below the table.*

Position Title and Department*	Position Number for Existing Positions	Fund Name and Number	Part-Time/ Full Time	2007 Positions	2007 FTE	2008 Positions **	2008 FTE* *
TOTAL							

* List each position separately

** 2008 positions and FTE are total 2008 position changes resulting from this legislation, not incremental changes. Therefore, under 2008, please be sure to include any continuing positions from 2007.

Notes:

- **Do positions sunset in the future?** (If yes, identify sunset date):

Spending/Cash Flow: *This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.*

Fund Name and Number	Department	Budget Control Level*	2007 Expenditures	2008 Anticipated Expenditures
TOTAL				

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

Notes:

- **What is the financial cost of not implementing the legislation?** *(Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented.)*

The Mercer Arena is an 80 year-old building with extensive code deficiencies, which makes this facility a significant liability to the City. In its current condition, annual operating expenses for the Arena are estimated at approximately \$35,000 to \$50,000, primarily for utilities and limited repair work sufficient to keep the building safe. While closure minimizes the Center's operating expenses, continued vacancy of the building and limited maintenance will result eventually in further deterioration of the building's appearance and operating systems.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** *(Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.)*

Since 1999, no other options have emerged that are compatible with the Seattle Center Theatre District and the surrounding neighborhood, that make capital improvements with all private funds, or that provide net revenue opportunities for the City.

- **Is the legislation subject to public hearing requirements:** *(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future.)*

No

- **Other Issues** *(including long-term implications of the legislation):*



Kerry Smith/KS
CEN Mercer Arena Lease Fiscal Note.doc
November 27, 2007
Version #1

The renovated Mercer Arena will be the property of the City upon completion of the initial and extended lease term.

Please list attachments to the fiscal note below:



City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

December 4, 2007

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 authorizes a long-term lease agreement with Seattle Opera for the Mercer Arena at Seattle Center. Under this agreement, Seattle Opera will use the Mercer Arena site for its rehearsal spaces, costume and set construction facilities and administrative offices. In addition, Seattle Opera will make this new facility available to other performing arts organizations. Renovation of the facility will activate and enliven Mercer Street and provide opportunities for the public to experience the behind-the-scenes world of the Opera, making the "back of the house" activities an attraction in themselves.

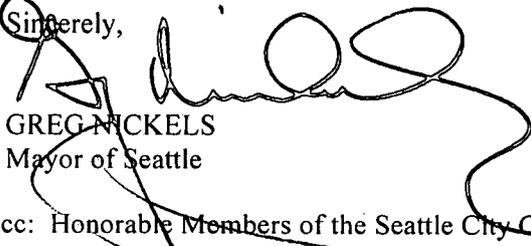
Mercer Arena, built in 1927 as the Civic Ice Arena, has been closed to public assembly use since 2003 due to seismic and related code deficiencies. Seattle Center has been interested in finding a redevelopment option for the Arena that was compatible with the Seattle Center Theatre District and the surrounding neighborhood. Additionally, the Center also wanted an option that would provide net revenue to the City and include alternative funding strategies to finance the improvements. The agreement with Seattle Opera achieves these goals, while simultaneously enabling the Opera to eliminate transportation costs and associated carbon emissions and create a visible presence at Seattle Center.

Under the terms of the agreement, Seattle Opera will lease the Mercer Arena site for 30 years with an option for an additional 30 years. Based on their current conceptual plans for the improvements, Seattle Opera will invest approximately \$40 million in renovating or reconstructing the Arena and will pay an annual rent of \$220,000 plus 15% of rent from any subleases to commercial tenants. The Opera will be responsible for operation and maintenance of the facility. The City will retain responsibility for major maintenance of the building shell. The Opera is in the process of raising funds for the project and hopes to begin construction by July 2009, although the lease provides for extension options through July 2011.

The lease of the Mercer Arena to Seattle Opera continues Seattle Center's tradition of creative reuse of existing structures such as the transformation of the Coliseum to the KeyArena and the Opera House to Marion Oliver McCaw Hall. In addition, the City's standards for environmental sustainability are furthered by Seattle Opera's proposed stewardship of this aging structure.

Thank you for your consideration of this legislation. Should you have questions, please contact Kerry Smith at 615-0358 or Robert Nellams at 684-7334.

Sincerely,



GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

800 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

An equal employment opportunity, affirmative action employer. Accommodations for people with disabilities provided upon request.



**MERCER ARENA GROUND LEASE
BETWEEN
THE CITY OF SEATTLE
AND
SEATTLE OPERA**



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Exhibits:

- Exhibit 1.1.1 – Legal Description**
- Exhibit 1.1.2 – Premises Site Plan**
- Exhibit 12.1 – Conceptual Plan for Initial Improvements**
- Exhibit 18.1 – Insurance Requirements**
- Exhibit 34.1 – Memorandum of Lease**



MERCER ARENA GROUND LEASE

THIS MERCER ARENA GROUND LEASE (this "Lease") is entered into this ____ day of _____, 2008, by and between **THE CITY OF SEATTLE** ("City"), a city of the first class of the State of Washington, acting by and through its Seattle Center Department and the Director thereof, and **SEATTLE OPERA** ("Opera"), a not-for-profit corporation organized under the laws of the State of Washington.

IN CONSIDERATION of the mutual covenants contained herein, and subject to the terms and provisions set forth herein, City and Opera covenant and agree as follows:

1. Summary Lease Data; Exhibits.

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

1.1 Premises. Subject to the provisions of Section 2.2 and the last paragraph of Section 12, the real property legally described in Exhibit 1.1.1 and depicted on Exhibit 1.1.2, together with the building commonly known as Mercer Arena, 301 Mercer Street, Seattle, King County, Washington 98109, which building contains approximately 59,850 square feet as of the Effective Date, reserving to City the ground rights below Opera's Improvements as constructed, and the air rights more than 85 feet above the finished grades surrounding the existing Mercer Arena, measured in accordance with the provisions of SMC 23.86.006 as in effect on the Effective Date.

1.2 Effective Date. The date this Lease is fully executed, as provided in Section 36.

1.3 Rent Commencement Date. The first day of the month following the date when Opera receives a building permit from the Seattle Department of Planning and Development to construct the Initial Improvements to the Premises, or July 1, 2009, whichever is earlier, unless the Rent Commencement Date is extended in accordance with Section 3.2. Opera shall be entitled to exclusive use of the Premises on the Rent Commencement Date.

1.4 Expiration Date. Thirty (30) years after the Rent Commencement Date.

1.5 Rent.

Base Rent: The initial annual Base Rent is \$220,000.00.

Percentage Rent: Fifteen percent (15%) of Opera's gross receipts from Subtenants, as further described in Section 4.4.

1.6 Good Faith Deposit. \$110,000.00.



1.7 Initial Improvements. The improvements that Opera makes to the Premises, pursuant to the Construction Agreement described in Section 12, which improvements are generally described in Exhibit 12.1.

1.8 Parking. If the master use permit issued by the City of Seattle's Department of Planning and Development in connection with the Initial Improvements requires parking for the Permitted Use and if on the Rent Commencement Date Seattle Center has available unrestricted parking capacity, the parties shall negotiate and execute a covenant and agreement (the "Covenant Agreement") for the required parking for up to the entire Term. The Covenant Agreement shall be in the form prescribed by Title 23 of the Seattle Municipal Code or any successor provision or if no form is then required by ordinance, then in commercially reasonable form and provide for Opera to pay a commercially reasonable rate for such parking.

1.9 Notice Addresses.

To City: Seattle Center Director
Seattle Center House
305 Harrison Street
Seattle, Washington, 98109

To Opera: Seattle Opera
Attention: Kelly Tweeddale
Executive Director
1020 John Street
Seattle Washington, 98109

With a copy to: Russell F. Tousley, P.S.
Tousley Brain Stephens, PLLC
1700 Seventh Avenue, Suite 2200
Seattle, WA 98101-4416

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

- Exhibit 1.1.1 – Legal Description
- Exhibit 1.1.2 – Premises Site Plan
- Exhibit 12.1 – Conceptual Plan for Initial Improvements
- Exhibit 18.1 – Insurance Requirements
- Exhibit 34.1 – Memorandum of Ground Lease

2. Premises:

2.1 Grant. City hereby leases the Premises to Opera and Opera hereby leases the Premises from City, all subject to and in accordance with the terms and provisions of this Lease. For the duration of this Lease, Opera shall have a nonexclusive license to use the ramp and loading dock at the south side of the Premises in common with occupants of Marion



Oliver McCaw Hall ("McCaw Hall"). Opera shall coordinate its use of the licensed facilities with Seattle Center McCaw Hall staff.

2.2 Lot Line Adjustment. Opera, at its sole cost, shall diligently pursue and shall obtain a lot line adjustment that will as nearly as possible establish the Premises as extending to the south margin of the Mercer Street pedestrian sidewalk, on the north; approximately 23 feet west of the west margin of the Fourth Avenue North pedestrian sidewalk, to the east; the south face of the existing Mercer Arena building, to the south; and the centerline of the common wall between McCaw Hall and Mercer Arena, to the west. When the lot line adjustment is completed, the parties shall annex hereto and file with the City Clerk an amended Exhibit 1.1.1. City shall provide all reasonable cooperation requested by Opera in obtaining such lot line adjustment.

2.3 Condition. Opera is familiar with and has inspected the Premises, which City leases to Opera and Opera accepts from City in their "AS IS" condition.

2.4 Permitted Use. Opera shall use the Premises to construct and operate its administrative offices, rehearsal and technical support facilities and other incidental purposes related thereto or to its principal business as an opera company. With the Director's prior written approval and as further described in Section 19, Opera may sublease or license portions of the Premises for uses that are compatible with Seattle Center's overall mission. It is the parties' intent that the Premises will be developed and used in a manner that actively engages the public, including along the Mercer Street frontage.

2.5 Party Wall. The parties acknowledge and agree that the west wall of the Premises and the east wall of McCaw Hall form a common wall. For the duration of this Lease, Opera shall have the right to use such party wall jointly with the City upon the following terms and conditions:

- A. Each party may continue in the present use of the wall, including continuation of such use in connection with any alteration or replacement of the Premises with a different facility; provided, however, (i) Opera shall not cut any openings in the wall without the approval of the Director and the McCaw Hall Operating Board, and the wall may be put to no use that will impair its strength or injure McCaw Hall in any way, and (ii) City shall not cut any openings in the wall without the approval of Opera and the McCaw Hall Operating Board, and the wall may be put to no use that will impair its strength or injure Opera's Improvements (as defined in Section 12 in any way).
- B. Each of Opera and City shall have the right, at its sole expense, to drill into, cut into or otherwise gain access to the interior of the common wall for the purpose of maintaining, repairing or restoring and, if consent be first obtained pursuant to subparagraph A above, remodeling or altering, water, utility, soundproofing or other services or amenities to their buildings adjacent to the wall subject to (i) the obligation to restore the



common wall to the same condition it was in immediately before such act and (ii) each party's responsibility to the other party for any damages caused thereby.

- C. Each of Opera and City shall have an easement over the adjacent McCaw Hall and Opera's Improvements, respectively, for the following purposes: (i) to have the common wall remain and be rebuilt in its same location as when originally built; (ii) to use, for common wall purposes, that portion of the adjoining building upon which the common wall is built; and (iii) for access through, in or upon any portion of the adjoining building reasonably necessary to effect repairs to, maintenance of or reconstruction of the common wall or that portion of any foundation, exterior wall or roof of the structure which meets with, adjoins or is connected to the common wall.
- D. For the purposes of this Section, the term "common wall" means and includes the wall between McCaw Hall and Opera's Improvements as such wall now or hereafter exists, and everything, if anything, located within such wall (such as studs, framing, insulation, soundproofing material, pipes, wires, joints, junction boxes and other materials or equipment related to utilities) and below the wall (such as the surface of the ground and footings located in the ground).
- E. Except as specifically set forth above, repair and maintenance of the common wall shall be subject to the provisions of Sections 13.2 and 13.3 below.

3. **Lease Term.**

3.1 **Initial Term.** This Lease shall be for a term (the "Initial Term") beginning on the Rent Commencement Date specified in Section 1.3 plus any partial calendar month between the date when Opera receives its building permit and the Rent Commencement Date, and ending on the Expiration Date specified in Section 1.4, unless the Lease Term is terminated earlier in accordance with the provisions of this Lease or extended as provided in Section 3.3 below. As used herein, "Lease Year" means the period from the Rent Commencement Date to the day prior to the Rent Commencement Date of the following calendar year.

3.2 **Option to Extend Rent Commencement Date:** Opera shall have the option to extend the Rent Commencement Date for up to two (2) periods of one (1) year, each (the "Extension Options"). In each instance, Opera shall be required to give City written notice of its election to exercise one of the Extension Options at least sixty (60) days prior to the commencement of the applicable Extension Option period and to pay City, for each such option exercised, an Extension Option fee in the amount of \$110,000, cash. Notwithstanding anything in this Lease to the contrary, if Opera has not taken possession of the Premises and



commenced paying Rent by July 1, 2011, this Lease shall automatically terminate and the parties shall have no further rights or obligations hereunder with respect to one another.

3.3 Extended Term. At the expiration of the Initial Term, Opera shall have the option to extend this Lease for one (1) successive term of thirty (30) years (the "Extended Term") on the same terms and conditions set forth herein, except for Base Rent, which will be calculated as provided in Section 4.3, and except that the renewed Lease shall contain no further renewal option. Opera may extend the Lease Term by giving City written notice of its intention to do so at least one (1) year prior to the beginning of the Extended Term. As used in this Lease, "Lease Term" means the Initial Term and if established by Opera hereunder, the Extended Term.

3.4 Access Prior to Commencement of Term. Opera may enter the Premises prior to the Rent Commencement date to examine and conduct such studies of the land and the Arena building subject to the Director's approval, which approval shall not be unreasonably withheld or delayed. In connection with any desired entry by Opera, or its agents, employees or contractors onto the Premises, Opera shall give City reasonable advance notice of such entry and shall conduct such entry and any inspections in connection therewith in compliance with all applicable laws. Opera shall maintain, and shall assure that its contractors maintain, public liability and property damage insurance in amounts and in form and substance adequate to insure against all liability of Opera and its agents, employees or contractors, arising out of any entry or inspections of the Premises pursuant to the provisions of not less than \$1,000,000 per person and per occurrence, and Opera shall provide City with evidence of such insurance coverage upon request by City. Opera shall indemnify and hold City harmless from and against any costs, damages, liabilities, losses, expenses, liens or claims (including, without limitation, court costs and reasonable attorneys' fees and disbursements) arising out of or relating to any entry on the Premises by Opera, its agents, employees or contractors in the course of performing the inspections, testings or inquiries provided for in this Lease, including, without limitation, any release of Hazardous Materials or any damage to the Premises; provided that Opera shall not be liable to City solely as a result of the discovery by Opera of a pre-existing condition on the Premises to the extent the activities of Opera, its agents, representatives, employees, contractors or consultants do not exacerbate the condition. The provisions of this Section 3.4 shall survive beyond the termination of this Lease.

3.5 Notice of Building Permit Application. Opera shall promptly notify the Director when it files its building permit application for the Initial Improvements and City shall remove its personal property from the Premises prior to the date the building permit is issued.

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

4.1 Base Rent. Beginning on the Rent Commencement Date and thereafter, in advance, on each anniversary of the Rent Commencement Date throughout the Lease Term, Opera 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, the Base



Rent. Base Rent shall be prorated on a daily basis for any partial Lease Year within the Lease Term.

4.2 Adjustments to Base Rent. Beginning on the fifth (5th) anniversary of the Rent Commencement Date and on every fifth anniversary thereafter until the expiration or termination of the Initial Term (each, a "Base Rent Adjustment Date"), the Base Rent shall be increased to an amount that is 110% of the Base Rent payable during the year immediately preceding the Base Rent Adjustment Date.

4.3 Rent During Extended Term. If Opera exercises its option to extend the Lease Term pursuant to Section 3.3, then, the Base Rate shall be adjusted as of the first day of the Extended Term to an amount that the parties have negotiated in good faith, taking into account the physical condition of the Premises, the significant role Opera plays as a Seattle Center tenant and the public benefits Opera is then providing hereunder. If the parties have not agreed on the rent for the Extended Term within three (3) months from the date Opera notifies City of its intent to extend the Lease, then the matter shall be determined by mediation in accordance with the procedures described in Section 33.

4.4 Percentage Rent. Each year throughout the Lease Term, in addition to and together with the Base Rent, Opera shall pay City fifteen percent (15%) of the gross receipts it receives from subtenants and licensees of the Premises (each, a "Subtenant"), except for Subtenants that are exempt from Federal income taxation pursuant to 26 U.S.C 501(c)(3) ("Exempt Subtenants"). If Opera receives any non-monetary consideration from any such Subtenant, then the Director shall calculate the reasonable cash value of such consideration for purposes of calculating Opera's gross receipts. As used in this Section, "gross receipts" shall not include amounts paid to Opera as reimbursement for Opera's subtenant-related expenditures, such as for utilities, taxes or other services, including any reasonable and customary administrative fee. This Section shall not apply to Opera's short-term use of the Premises to recognize or honor its charitable contributors. Percentage Rent shall be paid in arrears, except that for the final year of the Lease Term, Percentage Rent shall be due and payable within thirty (30) days of the last day of the Lease Term.

4.5 Additional Charges. Whether or not so designated, all other sums due from Opera under this Lease shall constitute Additional Charges, payable as and when specified elsewhere in this Lease, but if not specified, then within ten (10) days after written demand.

5. Records and Reports.

5.1 Reports to City from Opera and Subtenants. Throughout the Lease Term, together with each payment of Base Rent and Percentage Rent, Opera shall submit to City a written statement, certified by Opera, setting forth in reasonable detail: (a) the amount of all gross receipts received by Opera from Subtenants (including Exempt Subtenants) during the preceding twelve months (each such 12-month period a "Lease Year"); (b) a computation of the Percentage Rent due City for such Lease Year; and (c) a description of public benefits provided during the preceding Lease Year, as required by Section 38. Together with such statement, Opera shall also provide City with proof of each Subtenant's Federal tax-exempt



status. All certificates required above shall be by an authorized officer of Opera. In addition, upon ten (10) calendar days' prior written notice, City shall have access at the Premises to any reports required by Opera to be provided by Subtenants under the subleases or licenses; provided, however, that if at the time of request Opera has commenced dress rehearsals for a production at McCaw Hall, Opera may delay the access until not more than ten (10) calendar days after the end of the final performance of the production.

5.2 Opera's Records. Opera shall keep true, full, and accurate books of account setting forth Opera's gross receipts from Subtenants (including Exempt Subtenants), together with any other information which will affect the determination of Percentage Rent. City shall be allowed after ten (10) calendar days' prior written notice to Opera, to inspect Opera's books of account at Opera's office and to procure audits thereof by an auditor at City's sole cost and expense (except as provided below); provided, however, that if at the time of request Opera has commenced dress rehearsals for a production at McCaw Hall, Opera may delay the access until not more than ten (10) calendar days after the final performance of the production. If in the reasonable judgment of such auditor Opera's books of account are incomplete or improperly reflect the information necessary for an accurate determination of the Percentage Rent, or if the audit shall show that the reports submitted by Opera understated Opera's Receipts by more than the greater of (i) \$25,000.00 or (ii) three percent (3%) thereof, for any year covered by the audit, the costs and fees for such audit shall be paid by Opera to City; provided, however, if the incompleteness, inaccuracy or understatement results from any Subtenant's understatement to Opera of the gross receipts (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 Opera's gross receipts, then, at City's option, Opera may be required to pay City a penalty of the greater of \$1,000.00 or two (2) times the amount of the understatement. If future audits disclose three (3) or more willful or intentional understatements of Opera's gross receipts in any five (5)-year period, then the penalty will double, to the greater of \$2,000.00 or four (4) times the amount of the understatement, with successive penalties continuing to double for each occurrence. Opera shall retain all yearly books of accounting and any other information which will affect the determination of Percentage Rent for a period of six (6) years from the end of each Lease Year. Opera's obligations under this paragraph shall survive expiration or termination of this Lease.

5.3 Subtenants' Records. Opera shall require all Subtenants that pay Opera a percentage rent or licensee fee to: (i) keep true, full, and accurate books of account setting forth gross receipts, together with any other information which will affect the determination of the rent or fee (if any); (ii) cause such Subtenant's chief financial officer, if any, and its chief executive officer, if any, to certify, annually, the accuracy of its annual report to Opera in connection with such payments; and (iii) give Opera commercially reasonable audit rights with respect to such books for a period of three (3) years from the end of each Subtenant's lease year. The subleases and licenses shall require that Subtenants' obligations under this paragraph shall survive expiration or termination of the subleases or licenses.

6. Late Charge; Interest.

If Opera fails to pay City any sum when due, such amount shall bear interest at the rate of 12% per annum from the date due until the date paid.

7. **Good Faith Deposit.**

Within ten (10) days after execution of this Lease, Opera shall deposit the sum of \$110,000.00, cash, with City as security for Opera's timely progress on and completion of the Initial Improvements. If Opera takes possession of the Premises and commences paying Rent, then City shall apply \$60,000.00 of the Good Faith Deposit toward Opera's first annual Base Rent payment and City shall retain the balance. If this Lease is terminated pursuant the provisions of Section 3.2, City shall retain the entire deposit.

8. **Opera's Operations.**

8.1 **Use of Premises.** Opera shall use the Premises only for the Permitted Use. As City's willingness to enter into this Lease with Opera was predicated, in part, on the nature of Opera's business, and the compatibility of such business with the use of the remainder of Seattle Center, Opera 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. Opera shall promptly comply, at its sole cost and expense, with such reasonable rules and regulations relating to the use of the Premises and Seattle Center as City, from time to time, may promulgate. Any newly promulgated rules and regulations shall not materially interfere with Opera's business for the Permitted Use. In the event of any conflict between the rules and regulations promulgated by City and the terms of this Lease, the terms of this Lease shall prevail. Opera shall maintain the Premises in a clean, orderly and neat fashion to conform with the standards of Seattle Center (provided that Opera shall not be responsible for maintaining those portions of the Premises that are City's responsibility to maintain under terms of this Lease), permitting no objectionable odors or noises to be emitted from the Premises which would disturb or injure the occupant of any adjacent property, and shall neither commit waste nor permit any waste to be committed thereon. Opera shall not permit any accumulation of trash on or about the Premises. Opera shall not create or contribute to the creation of a nuisance in either the Premises or on Seattle Center grounds and Opera shall not engage in or permit any action that will disturb the quiet enjoyment of any other Seattle Center tenant or occupant.

8.2 **Compliance with Laws.**

8.2.1 **Unlawful Use.** Opera 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 applicable to the Premises, or for any purpose offensive to the standards of the community of which the Premises are a part. Opera 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 Opera shall not be responsible for maintaining in compliance with laws those portions of the Premises that are City's responsibility to maintain under terms of this Lease).



8.2.2 Nondiscrimination. Without limiting the generality of the foregoing, Opera agrees to and shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington and City of Seattle, including but not limited to Chapters 14.04, 14.10, and 20.42 of the Seattle Municipal Code ("SMC") as they may be amended from time to time, and rules, regulations, orders, and directives of the associated administrative agencies and their officers. Nothing contained herein is intended to restrict Opera's casting decisions when made for artistic purposes.

8.3 Liens. Opera agrees that no liens of mechanics, materialmen, laborers, surveyors, engineers, architects, artisans, contractors, subcontractors, suppliers or any other lien of any kind whatsoever (a "Lien") shall be created against or imposed upon the Premises, and that in the event any such Liens shall be asserted or filed by any persons, firms or corporations performing labor or services or furnishing material or supplies in connection with Opera's Improvements, Opera shall pay off in full or cause the same to be discharged of record within thirty (30) days of notification thereof. Opera reserves the right to contest the validity or amount of any such Lien in good faith provided that, within thirty (30) days after the filing of such Lien, Opera discharges said Lien of record or records a bond which complies with the requirements of RCW 60.04.161 eliminating said Lien as an encumbrance against the Premises. In the event Opera shall fail to so remove any such Lien, City may take such action as City shall reasonably determine to remove such Lien and all costs and expenses incurred by City including, without limitation, amounts paid in good faith settlement of such Lien and attorneys' fees and costs, together with interest thereon, shall be paid by Opera as Additional Charges.

9. Compliance with Environmental Laws.

9.1 Definitions. For the purpose of this Section, the following terms shall be defined as provided below unless the context clearly requires a different meaning:

A. "Environmental Law" means, as amended from time to time, the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq., Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., Federal Hazardous Materials Transportation Control Act of 1980, 42 U.S.C. Section 1801 et seq., Federal Clean Air Act, 42 U.S.C. Section 7401 et seq., Federal Water Pollution Control Act, Federal Water Act of 1977, 93 U.S.C. Section 1251 et seq., Federal Insecticide, Fungicide and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. Section 136 et seq., Federal Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., Federal Safe Drinking Water Act, 42 U.S.C. Section 300f et seq., Washington Water Pollution Control Act, RCW Chapter 90.48, Washington Clean Air Act, RCW Chapter 70.94, Washington Solid Waste Management Recovery and Recycling Act, RCW Chapter 70.95, Washington Hazardous Waste Management Act, RCW Chapter 70.105, Washington Hazardous Waste Fees Act, RCW Chapter 70.95E, Washington Model Toxics Control Act, RCW Chapter 70.105D, Washington Nuclear Energy and Radiation Act, RCW Chapter 70.98, Washington Radioactive Waste Storage and Transportation Act,



RCW Chapter 70.99, Washington Underground Petroleum Storage Tanks Act, RCW Chapter 70.148, and any regulations promulgated thereunder from time to time.

B. “Hazardous Substance” means any matter including petroleum products and by-products, asbestos, infectious waste and any other materials, which is now or hereafter designated as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq., or that is now or hereafter regulated by applicable Environmental Laws.

9.2 Compliance with Environmental Laws and Regulations. All operations or activities upon, or any use or occupancy of the Premises, or any portion thereof, by Opera or any occupant of the Premises shall throughout the Lease Term comply in all material respects with all state, federal and local Environmental Laws and regulations governing or in any way relating to the generation, handling, storage, use, transportation, discharge or disposal (whether legal or illegal, accidental or intentional) of any Hazardous Substances (as herein defined).

9.3 Existing Hazardous Substances; Right of Termination. City has advised Opera that City abated certain Hazardous Substances revealed by survey and encountered during construction of the Mercer Arena Arts Temporary Venue and the parties acknowledge and agree that the presence of any hidden or unapparent conditions that Opera may encounter have been taken into consideration in the determination of the Base Rent. Therefore, throughout the Lease Term, Opera shall bear all costs and expenses of remedying any and all environmental contamination by a Hazardous Substance, the presence of which contamination is discovered in preparation for or during any construction, renovation or maintenance undertaken by or for Opera. Notwithstanding the foregoing, Opera shall have the right, within six (6) months from the Effective Date of this Lease, to engage an environmental professional acceptable to City to take and analyze core samples of the soil beneath the Premises. Prior to causing any work to be commenced, Opera shall inform City of the sampling methods and locations, and any anticipated impacts of such work upon the Premises and City may require that following such sampling, Opera restore the Premises to their condition immediately prior thereto, at Opera's cost and expense. If such sampling reveals the presence of Hazardous Substances requiring remediation and in the opinion of Opera, the costs of remediation are unacceptable, then, within eight (8) months of the Effective Date, Opera may terminate this Lease by written notice to City, which notice shall include copies of all reports documenting the presence of any such Hazardous Substances on or about the Premises. Opera will bear the costs it has expended through the date of termination relating to the Lease. In the event of a termination pursuant to this Section, City shall return to Opera \$60,000.00 of Opera's Good Faith Deposit and City shall retain the balance.

9.4 Indemnification; Remedial Work. Opera shall not cause or permit any Hazardous Substances to be brought upon, kept or used in or about the Premises by Opera, its agents, employees, contractors, sublessees or invitees, except in compliance with all Environmental Laws. If Opera breaches its obligations set forth above or if the presence of



Hazardous Substances on or about the Premises caused or permitted by Opera results in contamination of the Premises or if contamination of the Premises or surrounding area by Hazardous Substances otherwise occurs during the Lease Term (except for contamination of the Premises caused by the actions of City, its agents or employees during the Lease Term) then Opera shall protect, defend, indemnify and hold City harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Premises), damages for the loss or restrictions on use of any space in the Premises, damages arising from any adverse impact on marketability of the Premises, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the Lease Term to the extent caused by such contamination. This indemnification of City by Opera includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Substances present in the soil or ground water on, under or about the Premises. If the presence of any Hazardous Substance on or about the Premises caused or permitted by Opera results in any contamination of the Premises or surrounding area, or causes the Premises or surrounding area to be in violation of any Environmental Laws, Opera shall promptly take at its sole cost and expense all actions necessary to return the Premises and surrounding area to the condition existing prior to the introduction of such Hazardous Substance; provided that City's approval shall first be had and obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises or surrounding area.

9.5 Breach as Material Default. Opera hereby specifically acknowledges and agrees that (a) each of Opera's covenants, obligations, agreements, representations and warranties set forth in this Section 9 is a material inducement to City to enter into this Lease, and (b) breach by Opera of any of Opera's covenants, obligations, agreements, representations and warranties set forth in this Section 9 shall constitute a material breach of this Lease by Opera entitling City to all of the rights and remedies provided to City under this Lease or under applicable law.

9.6 Survival. Each of the covenants, agreements, obligations, representations and warranties of Opera set forth in this Section 9 shall survive the expiration or earlier termination of this Lease.

10. Utilities.

10.1 General. Opera may request that City provide heating, ventilation and air conditioning ("HVAC") services to the Premises and if, at the time of the request, Seattle Center has sufficient excess capacity, City shall supply such service to the extent reasonably necessary for the operation of the Premises for the Permitted Use provided Opera has installed separate meters for the measurement of such service. In the event City provides HVAC service to the Premises, City will inspect and repair HVAC supply and exhaust fans, pumps, belts and controls as needed. Opera shall arrange and pay for augmenting the fire sprinkler system for Opera's occupancy of the Premises and City shall monitor and maintain such



system. Opera shall reimburse City for its actual costs for regular monitoring, maintenance and confidence testing of the Premises' fire alarm system and for maintenance and repair of the HVAC system, including personnel salaries and benefits. Opera shall arrange for water and sewer, storm water drainage, electricity and telecommunications services to the Premises and, to the extent feasible, shall cause all utilities to be separately metered. Opera shall pay when due, directly to the appropriate company or to City based on metered readings and prevailing rates, all bills for HVAC and HVAC system maintenance, fire alarm, water, sewer, storm water drainage, electricity, data and telecommunications services for the Premises.

10.2 Contests. Opera shall have the right to contest any utility charge provided that (i) nothing in this Section is intended to restrain the exercise of any remedy by any City utility for nonpayment, and (ii) notwithstanding any protest or challenge, Opera shall timely pay such amounts as are necessary to avoid interruption in service that would occur from application of the normal policy or procedure of any City utility.

10.3 Refuse Collection. Opera shall arrange for private garbage and recycling services or may request that Seattle Center provide such services. In the latter case, Opera 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. Opera and its Subtenants shall comply with Seattle Center sorting and recycling standards. City reserves the right to refuse to collect or accept from Opera any waste product that is not sorted and separated as required by law, ordinance, rule or regulation, and to require Opera to arrange for the collection of the same at Opera's sole cost and expense using a contractor satisfactory to City. Opera shall pay all costs, fines, penalties, and damages that may be imposed on City or Opera as a consequence of Opera's failure to comply with the provisions of this Section. City reserves the right to specify the location of all exterior waste receptacles, the means of access thereto, and the frequency of collection service.

10.4 Interruption. City shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption or failure of services due to any cause whatsoever, including, but not limited to, electrical surges, or from failure to make any repairs or perform any maintenance. No temporary interruption or failure of such services incident to the making of repairs, alterations or improvements or due to accident, strike or conditions or events beyond City's reasonable control shall be deemed an eviction of Opera or to relieve Opera from any of Opera's obligations hereunder or to give Opera a right of action against City for damages. Opera acknowledges that there may be planned utility outages affecting the Premises and that such outages may interfere, from time to time, with Opera's use of the Premises. In the event of a planned outage by a City-owned utility, Seattle Center shall work with such utility in an attempt to minimize the operational impacts of the outage on Opera. Seattle Center shall provide Opera with not less than 48 hours' prior written notice of any City-planned electricity outage in the Premises of which it has knowledge. City has no obligation to provide emergency or backup power to Opera. 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 Opera.



11. **Licenses and Taxes.**

11.1 **Payment of Fees and Taxes.** Without any deduction or offset whatsoever, Opera shall be liable for, and shall pay prior to delinquency, all taxes, license and excise fees and occupation taxes applicable to the business conducted on the Premises and Opera's leasehold interest in the Premises, and all personal property taxes and other impositions levied with respect to all personal property located at the Premises. Opera shall collect and timely remit directly to the Department of Revenue all applicable leasehold excise taxes due from Subtenants.

11.2 **Contests.** Opera 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 Opera 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 Opera, and Opera hereby covenants to indemnify and hold City harmless from any such costs or expenses. The indemnification obligation of this Section shall survive the expiration or earlier termination of this Lease.

12. **Initial Improvements and Subsequent Alterations by Opera.**

The parties acknowledge and agree that the renovation or replacement of Mercer Arena is a fundamental purpose of this Lease and Opera agrees to use commercially reasonable efforts to complete the Initial Improvements and to obtain a certificate of occupancy for the Permitted Use, subject to delays caused by Seattle Center or *force majeure*, within twenty-four (24) months after the Rent Commencement Date. Opera's conceptual plan for the Initial Improvements, contained in Exhibit 12.1, is anticipated to cost approximately \$40 million in hard and soft costs and is intended to include construction of a new roof and exterior walls. The specific terms and conditions of construction shall be contained in a separate construction agreement, the "Construction Agreement," that the parties shall negotiate and execute before Opera enters into a construction contract for the work. If Opera fails to commence the Initial Improvements by July 1, 2011, this Lease shall automatically terminate and, subject to the provisions of Section 9.3, Opera shall restore the Premises as nearly as possible to their condition existing as of the Effective Date, at Opera's expense, and the parties shall have no further rights or obligations with respect to one another arising out of or in connection with this Lease. If the Initial Improvements result in a change to the building footprint, then the parties shall amend this Lease by appending hereto a revised Exhibit 1.1.2 that more accurately depicts the location of the building, as improved, on the Premises.

Before commencing the Initial Improvements, Opera shall demonstrate to the Director's reasonable satisfaction that it has sufficient financial resources to complete the Initial Improvements in accordance with approved design documents and shall thereafter commence construction of such Initial Improvements and diligently prosecute such work to its completion.



Opera shall not make any alterations, additions or improvements in or to the Premises without first submitting to City professionally-prepared plans and specifications for such work and obtaining City's prior written approval thereof. Opera covenants that it will cause all alterations, additions and improvements to the Premises to be completed at Opera's sole cost and expense by a contractor approved by City and in a manner that (a) is consistent with City-approved plans and specifications, the Construction Agreement, and any conditions reasonably 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 Premises and/or Marion Oliver McCaw Hall or any of the Premises' systems; and (e) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Premises. Opera shall secure all governmental permits and approvals required for the Initial Improvements and comply with all other applicable governmental requirements and restrictions applicable to the Initial Improvements. Except as provided in Section 17 with regard to concurrent negligence, Opera 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 Opera's performance of such alterations, additions and improvements, including, but not limited to, all which arise from or out of Opera's breach of its obligations under the terms of this Section 12. Upon the expiration or termination of this Lease, all alterations, additions and improvements (expressly including all light fixtures; heating and ventilation units; floor, window and wall coverings; and electrical wiring), except Opera's 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 become the property of City without any obligation on its part to pay for any of the same, unless City bond financing has been used in the construction of any improvements, in which case such improvements shall become City's property at the time they are constructed or installed. Opera shall not remove all or any portion of such improvements upon the termination of this Lease. Within ninety (90) days after the completion of any alteration, addition or improvement to the Premises, Opera 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 Opera. The provisions of this paragraph shall apply to the Initial Improvements and, after the City issues a certificate of occupancy for the Initial Improvements, all subsequent alterations, additions or improvements to the Premises that, in the aggregate over any calendar year, are reasonably likely to result in total construction costs in excess of five hundred thousand dollars (\$500,000.00), as such amount is increased by the percentage increase of the Index (as such term is defined below) published most recently prior to the calendar year during which improvements are made compared to the Index published most recently prior to the Rent Commencement Date. Notwithstanding the foregoing, however, in the case of Minor Alterations, (i) the first sentence and clause (a) of the second sentence of this paragraph shall not apply, (ii) City hereby waives the right to approve Opera's contractor with respect to Minor Alterations, and (iii) Opera will deliver a set of "as-built" plans only if the extent or nature of the Minor Alterations is such that Opera retains the services of an architect to prepare plans and specifications with respect thereto. "Minor Alterations" means alterations, additions or improvements to the Premises (i) made subsequent



to the Initial Improvements and (ii) which, when combined with other anticipated projects, is not reasonably likely to result in total construction cost expenditures of more than five hundred thousand dollars (\$500,000.00) in any calendar year, as such amount is increased by the percentage increase of the Index, published most recently prior to the calendar year during which improvements are made compared to the Index published most recently prior to the Rent Commencement Date and (iii) do not involve any shared systems or shared access with the City or any of its buildings in Seattle Center or any building elements for which the City has major maintenance responsibility such as the roof and exterior walls or any building component or system for which City has major maintenance responsibilities under this Lease, such as the roof and exterior walls. Opera shall not intentionally divide improvement projects into discrete units of work, nor schedule them in such a manner, as to artificially bring them within the definition of Minor Alterations.

As used in this Lease, "Opera's Improvements" means the Initial Improvements and any improvements to the Premises made subsequent to the date the Initial Improvements have been completed; and "Index" means the Consumer Price Index for All Urban Consumers, U.S. city average for all items (1982-84=100) published by the Bureau of Labor Statistics of the United States Department of Labor (the "Bureau"); provided, however, that (a) if the Bureau publishes a revised version of the Index, then the revised version shall be used, and (b) if the Index is discontinued, the parties shall follow any official consumer price index, whether so named or designated or not, issued by any authorized agency of the United States which supplants the Index and (c) if the Index is discontinued without being supplanted, the parties shall use any comparable general wholesale or retail price index for the United States reasonably selected by City as being the closest to the Index and reasonably approved by Opera.

Notwithstanding any other provisions of this Lease reserving to City portions of the Premises below Opera's Improvements or more than 85 feet above the finished grade of the sidewalk on Mercer Street, nothing in this Lease is intended to prevent Opera from future expansion of the Initial Improvements from time to time to the extent such expansion would otherwise be allowed under then applicable law and/or zoning and is otherwise in compliance with applicable provisions of this Section 12, provided, however, that any expansion of the Initial Improvements into the ground (except for footings for a replacement building) or into the air rights reserved by Seattle Center would be subject to negotiation with City and may require the payment of additional Base Rent appropriate in view of the nature and use of the expansion improvements.

13. **Care of Premises.**

13.1 **Custodial Service for Premises.** Opera shall at its own expense, at all times, keep the Premises in a neat, clean, safe, and sanitary condition; and keep the glass of all windows and doors serving the Premises clean and presentable. Opera shall furnish all cleaning supplies, materials and janitorial services needed to maintain and operate the Premises in the manner prescribed in this Lease. City shall be responsible for maintaining the areas immediately adjacent to the perimeter of the Premises and for keeping them free of litter and clean of spills, to the same standard employed throughout the Seattle Center.



13.2 City's Repairs and Maintenance. Throughout the Lease Term, City shall perform all maintenance and repairs necessary to maintain the Seattle Center common utility systems serving the Premises and the hardscape and landscape areas immediately adjacent to the Premises in a reasonably good operating condition, except for maintenance and repairs occasioned by an act or omission of Opera or its officers, agents, employees, or contractors. With respect to the wastewater and sewer lines serving the Premises, City shall only be responsible for those services up to the point of entry to the building.

In addition, and provided Opera constructs a new roof and exterior walls as part of the Initial Improvements, City shall perform such major capital repairs and maintenance as may be required to keep the roof, exterior windows and exterior walls including, subject to and in accordance with Section 2.5, the common wall of the Premises in good order, condition and repair. Major capital repairs and maintenance means work required because a building component has reached the end of its useful life and must be replaced. All City maintenance and repairs shall be to a standard comparable to that employed at other Seattle Center major use facilities.

Notwithstanding the foregoing, but subject to Section 18.2, Opera shall reimburse City for all damage done to the exterior of the Premises that results from any act or omission of Opera or any of Opera's officers, contractors, agents, invitees, licensees or employees, including, but not limited to, the cracking or breaking of glass.

13.3 Opera's Maintenance and Repairs. Throughout the Lease Term Opera shall perform all maintenance and repairs not required to be made by City, including routine maintenance of the Premises' roof, exterior windows and exterior walls, and shall make such necessary and prudent investments in the Premises as may be required to preserve the building asset and to maintain it to a standard comparable to a Class B office/theatre facility. Without limiting the generality of the foregoing, Opera shall maintain the Premises' exterior doors and locks, and the electric, plumbing and other systems and equipment independently serving the Premises to keep them in good working order. If, after City provides not less than 30 days' prior written notice to Opera of Opera's failure to repair and maintain the Premises as required by this Section 13, Opera fails to do so, City, at its option, may do so, and in such event, upon receipt of written statements from City, Opera shall promptly pay the entire actual and reasonable cost, including associated administrative fees thereof as an Additional Charge. City shall have the right to enter the Premises for such purposes. If, however, the nature of such failure requires more than 30 days to correct, City will have no self-help right under this Section 13.3 with respect to such failure if Opera commences to correct it within such 30-day period and continues to complete its correct with diligence.

14. Installation of Artwork.

14.1 Prohibition against Installation or Integration of Works of Visual Art on Premises. Opera shall not permit the installation or integration on or in the Premises of any "work of visual art," as that term is defined in the Visual Artists Rights Act of 1990, as now existing or as later amended, if the removal of such artwork is reasonably likely to result in its

distortion, mutilation, modification or destruction unless Opera delivers to City an executed waiver of the creator's right of integrity regarding such art work, for the benefit of City and its successors and assigns, in a form that satisfies both City and the requirements of 17 U.S.C. §106A(e), as the same now exists or is hereafter modified.

14.2 Opera's Indemnification of City against Liability under Visual Artists Rights Act of 1990. Opera 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 Section 14.1 of this Lease; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by Opera or any of its officers, employees or agents. This indemnification obligation shall exist regardless of whether City or any other person employed by City has knowledge of such installation, integration, or removal or has consented to any such action or is not required to give prior consent to any such action. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Lease.

15. **Continuous Operation.**

Except for the period necessary to complete any approved remodeling or improvements, and subject to *force majeure* or periods of damage or destruction, Opera shall keep the public areas of the Premises open and use them to transact business with the public during its normal business hours daily, except on weekends or holidays. Opera shall immediately close if the Director determines there is an emergency endangering the health or safety of the general public or any Seattle Center staff or occupant.

16. **Surrender of Premises.**

16.1 General Matters. At the expiration or sooner termination of the Lease Term, Opera shall deliver the Premises with Opera's Improvements to City in good repair and in a clean and neat condition. Prior to such delivery, Opera 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. Opera shall indemnify City for all damages and losses suffered as a result of Opera's failure to remove voice and data cables, wiring and communication lines and moveable trade fixtures and appliances and to redeliver the Premises on a timely basis. Opera's obligations under this Section 16 shall survive the expiration or termination of this Lease.

16.2 Cable and Wiring. Notwithstanding any provision to the contrary in this Lease and if City, acting reasonably, so directs, on or by the Expiration Date, or if this Lease is terminated before the Expiration Date, within fifteen (15) days after the effective termination date, whichever is earlier, Opera shall remove all voice and data communication and transmission cables and wiring installed by or for Opera to serve any telephone, computer or other equipment located in that portion of the Opera's Improvements, 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 Opera's Improvements or located in any building equipment room, vertical or horizontal riser, raceway, conduit, channel, or opening connecting to the portion of Opera's Improvements to be vacated and surrendered to City as of such Expiration Date or earlier termination date. Opera shall leave the mud rings, faceplates and floor boxes in place.

17. **Waiver; Indemnification.**

17.1 **Opera's Indemnification.** Except as otherwise provided in this Section, Opera shall indemnify, defend (using legal counsel reasonably acceptable to City) and save City, City's officers, agents, employees and contractors harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable personnel and overhead costs and 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 (a) Opera's occupation, use or improvement of the Premises, or that of any of its employees, agents or contractors, (b) Opera's breach of its obligations hereunder, or (c) any act or omission of Opera or any Subtenant, assignee or concessionaire of Opera, or of any officer, agent, employee, guest or invitee of any of the same in or about the Premises. Opera agrees that the foregoing indemnity specifically covers actions brought by its own employees. This indemnity with respect to acts or omissions during the Lease Term shall survive termination or expiration of this Lease. The foregoing indemnity is specifically and expressly intended to, constitute a waiver of Opera's 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 Opera and its employees, to the extent of their negligence. Opera shall promptly notify City of casualties or accidents occurring in or about the Premises. **CITY AND OPERA ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS LEASE WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.**

17.2 **City's Indemnification.** Except as otherwise provided in this Section 17, City shall indemnify, defend (using legal counsel reasonably acceptable to Opera) and save Opera, Opera's officers, agents, employees and contractors harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including Opera'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 (a) City's occupation, use or improvement of the Premises, or that of any of its employees, agents or contractors, (b) City's breach of its obligations hereunder, or (c) any act or omission of City in or about the Premises unless the City is immune from liability for such act or omission pursuant to RCW 4.24.210 or any successor provision or other applicable law. City agrees that the foregoing indemnity, to the extent applicable, specifically covers actions brought by its own employees. This indemnity with respect to acts or omissions during the Lease Term shall survive termination or expiration of this Lease. The foregoing indemnity is specifically and expressly intended to, constitute a



waiver of City's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the extent necessary to provide Opera with a full and complete indemnity from claims made by City and its employees, to the extent of their negligence. **CITY AND OPERA ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS LEASE WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.**

17.3 Limitation of Opera's Indemnification. In compliance with RCW 4.24.115 as in effect on the date of this Lease, all provisions of this Lease pursuant to which either party ("Indemnitor") agrees to indemnify the other party ("Indemnitee") 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 Premises, (a) shall not apply to damages caused by or resulting from the sole negligence of the Indemnitee, its agents, contractors or employees, and (b) to the extent caused by or resulting from the concurrent negligence of (i) City or City's agents, contractors or employees, and (ii) Opera or Opera's agents, contractors 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 Opera be deemed amended so as to remove any of the restrictions contained in this Section no longer required by then applicable law.

17.4 Opera's Release of Claims. Except in the event of City's gross negligence or intentional misconduct, Opera 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 Opera or any person claiming through Opera 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; broken glass; water leakage; the collapse of any building component; or any act, omission or negligence of Subtenants or any other persons or occupants of the building.

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

18. **Insurance.**

18.1 Generally. Throughout the Lease Term Opera and Opera's contractors, employees, licensees and subtenants, as applicable, shall maintain such insurance coverages as are specified in Exhibit 18.1, Sections and otherwise comply with the terms and conditions for insurance contained therein. Unless Opera otherwise directs from time to time by not less than sixty (60) days' notice to City, City shall, at Opera's cost and expense, procure and maintain in force and effect property insurance for the Premises and Opera's Improvements, as described in the attached Exhibit 18.1. Opera shall reimburse City for the cost of such insurance as an Additional Charge, based upon the total square footage of Opera's Improvements multiplied by City's then-current All Risks property insurance rate. If the total square footage and/or the replacement value of the Opera's Improvements change as a result of the Initial Improvements



or any subsequent major structural alterations, such change shall be reflected in the City's first premium reimbursement calculation following completion of the improvements.

18.2 Waivers of Subrogation. Whether the loss or damage is due to the negligence of either City or Opera, their agents or employees, or any other cause, City and Opera do each herewith and hereby release and relieve the other from responsibility for, and waive their entire claim of recovery for any loss resulting from business interruption at the Premises or loss of income from the Improvements or any loss or damage to the real or personal property of either of them located anywhere on or under the Premises arising out of or incident to the occurrence of any of the perils which are covered by any insurance policy now or from time to time carried by the parties hereto. Each party shall cause its insurance carriers to consent to such waiver and to waive all rights of subrogation against the other party.

19. Subleases and Assignments.

19.1 Generally. Except as provided in this Section 19 or in Section 20 of this Lease, Opera shall not voluntarily, involuntarily or by operation of law, assign, license, mortgage, hypothecate, sublet or in any manner transfer this Lease, any interest herein or any title or interest in all or a portion of Opera's interest in any improvements to the Premises, nor shall Opera authorize, allow or permit any person (the employees of Opera excepted), to occupy or use the Premises or any portion thereof, without first obtaining the written consent and approval of the Director. The Director may withhold, delay or condition said consent and approval as he or she may determine in the exercise of that official's sole discretion. Any assignment, license, mortgage, sublease, hypothecation, transfer, occupancy or use of the Premises in violation of this paragraph shall be null and void and of no force and effect and shall further constitute a breach of this Lease by Opera. The giving by the Director of such consent and approval shall not be deemed to be a consent or approval to any subsequent assignment, license, mortgage, sublease, hypothecation, transfer, occupancy or use by any other person nor shall it release Opera of any of Opera's obligations to pay the rent and perform all other continuing obligations to be performed by Opera hereunder. Any dissolution, merger, consolidation or other reorganization of Opera shall constitute and be deemed an assignment for purposes of this Section.

19.2 Subletting, Renting, and Licensing. As long as Opera is not in default under any of the terms of this Lease, it is agreed that, subject only to this Section 19.2, Opera shall have the right to sublease, sublet, rent, or license any part of the Premises for any time or times during the Lease Term not to exceed the Initial Term and the Extended Term, if exercised, provided that the terms and conditions of any such sublease, rental agreement or license agreement do not violate the terms and conditions of this Lease, do not relieve Opera of its obligations under this Lease, and the proposed use is compatible with Seattle Center's mission, as the Director may reasonably determine. Notwithstanding the foregoing, the subletting of all or substantially all of the Premises shall be considered an assignment of this Lease, subject to City's consent as provided in Section 19.1 above.



19.3 Rights of Mortgagee. Notwithstanding the foregoing provisions of this Section 19, Opera shall have the right to grant or deliver a leasehold mortgage to a Lender, all subject to and as provided in Section 20 of this Lease.

20. Encumbrance of Leasehold Estate.

20.1 Permitted Encumbrance. Opera may, at any time and from time to time during the Lease Term and any extension or renewal thereof, encumber to any person or entity, hereinafter called "Lender," by deed of trust or mortgage or other security instrument ("Leasehold Mortgage") any or all of Opera's interest under this Lease and the leasehold estate hereby created in Opera for purposes of financing the construction of the Initial Improvements or any improvements, additions or modifications to the Premises or the Initial Improvements subsequently made, without City's consent; *provided*, however, no encumbrance incurred by Opera pursuant to this Section 20 shall, and Opera shall not have the power to incur any encumbrance that will, constitute in any manner a lien or encumbrance on the fee or any other interest of City in the Premises. In the event Opera incurs any encumbrance pursuant to this Section 20, the Lender having such encumbrance shall have the right at any time during the Lease Term and the existence of said encumbrance to do any act or thing required of Opera under this Lease, and any such act or thing done and performed by Lender shall be as effective to prevent a forfeiture or Opera's rights under this Lease as if done by Opera itself.

20.2 Notices to City and Lender. Immediately after the recording of any Leasehold Mortgage executed by Opera pursuant to this Section 20 and containing a power of sale as defined by the State of Washington law, Opera shall, at Opera's sole cost and expense, record in the office of the County Recorder of King County a written request executed and acknowledged by City for a copy of any notice of default and a copy of any notice of sale evidencing said Leasehold Mortgage to be mailed to City at the address specified by City in the request.

20.3 Notice of Default and Rights to Cure. If the Lender forwards to City an executed counterpart of the Leasehold Mortgage together with a written notice setting forth the name and address of the Lender, then, until the time, if any, that the obligations of Opera under such Leasehold Mortgage shall be satisfied of record or the Lender shall give to City written notice that the obligations of Opera under such Leasehold Mortgage have been satisfied, the following shall be applicable:

A. No action or agreement hereafter taken or entered into by Opera to cancel, surrender, or modify this Lease shall be binding upon the Lender or affect the lien of the Leasehold Mortgage, without the prior written consent of the Lender.

B. If City shall give any notice or demand under this Lease to Opera, City shall at the same time give a copy of each such notice to the Lender at the address theretofore designated by the Lender. Such copies of notices shall be sent by registered or certified mail, and shall be deemed given at the time such copy is deposited in a United States Post Office with postage charges prepaid, enclosed in an envelope addressed to the Lender.



C. The Lender shall have the right to perform any term, covenant, condition or agreement and to remedy any default by Opera under the Lease, and City shall accept such performance by the Lender with the same force and effect as if accomplished by Opera; *provided*, however, that the Lender shall not thereby or hereby be subrogated to the rights of City.

D. Opera may delegate irrevocably to the Lender the authority to exercise any or all of Opera's rights hereunder, but no such delegation shall be binding upon City unless and until either Opera or the Lender shall give to the a true copy of a written instrument effecting such delegation. Such delegation of authority may be affected by the terms of the Leasehold Mortgage itself, in which case the service upon City of an executed counterpart of the Leasehold Mortgage in accord with this paragraph, together with a written notice specifying the provisions therein which delegate such authority to the Lender, shall be sufficient to give City notice of such delegation.

E. In case of a default of Opera in the performance or observation of any term, covenant, condition or agreement on Opera's part to be performed under this Lease, other than a term, covenant, condition or agreement requiring the payment of rent or other sum of money, if such default is of such a nature that the same cannot practicably be cured by the Lender without taking possession of the Premises, then City shall not serve a notice of election to terminate this Lease pursuant to Section 24 hereof or otherwise terminate the leasehold estate of Opera hereunder by reason of such default, if and so long as:

(1) in the case of a default which cannot practicably be cured by the Lender without taking possession of the Premises, the Lender shall deliver to City, prior to the date on which City shall be entitled to give notice of election to terminate this Lease, a written instrument wherein the Lender notifies City that it intends to foreclose and otherwise attempt to obtain title to and possession of Opera's leasehold interest and if after obtaining title to and possession of Opera's estate, the Lender shall cure any such defaults; and

(2) in the case of a default which cannot practicably be cured by the Lender without taking possession of the Premises, the Lender shall proceed diligently to obtain possession of the Premises as mortgagee (including possession by a receiver) and, upon obtaining such possession, shall proceed diligently to cure such default; and

(3) in the case of a default which is not susceptible of being cured by the Lender, the Lender shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime the Lender shall acquire Opera's estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure).



The Lender shall not be required to proceed to obtain possession, or to continue in possession as mortgagee, of the Premises pursuant to Section (2) above, or to continue to prosecute foreclosure proceedings pursuant to Section (3) above, if and when such default shall be cured. Nothing herein shall preclude City from exercising any of its rights or remedies with respect to any other default by Opera during any period of such forbearance, but in such event the Lender shall have all of the rights and protections hereinabove provided for. If the Lender, or its nominee, or a purchaser at a foreclosure sale, shall acquire title to Opera's leasehold estate hereunder, and shall cure all defaults of Opera hereunder which are susceptible of being cured by the Lender, or by the purchaser, as the case may be, then the defaults of any prior holder of Opera's leasehold estate hereunder which are not susceptible of being cured by the Lender (or by the purchaser) shall no longer be deemed to be defaults hereunder.

F. Notwithstanding anything in this Section to the contrary, the failure or inability of Opera or of any Lender to operate the Premises in the manner and for the purposes contemplated by the parties hereto and described in Section 2.4 of this Lease shall under no circumstances be considered a "default which is not susceptible of being cured" under this Section 20 and upon such failure or inability, the Lender shall have no further rights hereunder and City may proceed to terminate this Lease in accordance with the provisions of Section 24 hereof.

G. In case of a default by Opera in the performance or observation of any term, covenant, condition or agreement of this Lease requiring the payment of Rent or other sums of money, if, before the expiration of ten (10) days after the date of service of a notice to terminate this Lease for such cause, the Lender shall have paid to City all Rent and Additional Charges or other sum of money and shall continue thereafter to pay to City all Rent and Additional Charges or other sum of money called for in this Lease during the operable period of this provision, City shall not have the right to cancel or terminate this Lease for a default by Opera pursuant to Section 24 hereof.

H. If this Lease shall be terminated pursuant to Section 24 hereof, or shall otherwise be terminated by reason of a default of Opera hereunder, or if the Lease is rejected by Opera or any other party pursuant to a decree in any bankruptcy, reorganization, arrangement, insolvency or other similar type of proceedings, and if within thirty (30) days after such termination the Lender, by written notice to City, shall request City to enter into a new lease of the Premises pursuant to this section, then City shall enter into a new Lease with the Lender or its nominee acceptable to City, in City's reasonable discretion, within thirty (30) days after the giving of the written notice by the Lender, if the Lender shall comply with the following provisions:



Simultaneously with the giving of the notice, the Lender shall deliver to City a written instrument unconditionally guaranteeing the curing of all defaults of Opera under this Lease (other than defaults which are not susceptible of being cured by the Lender) and all defaults of the tenant under the new Lease which shall exist on the actual date of delivery of the new lease. The new Lease shall commence, and rent and all obligations of the tenant under the new Lease shall accrue, as of the date of termination of this Lease. The term of the new lease shall continue for the period which would have constituted the remainder of the Lease Term had this Lease not been terminated, and shall be upon all of the terms, covenants, conditions, conditional limitations and agreements contained herein which were in force and effect on the date of termination of this Lease.

The new Lease, and this covenant, shall be superior to all rights, liens and interests intervening between the date of this Lease and the granting of the new Lease caused by or resulting from City's actions, and shall be free of any and all rights of Opera hereunder. The provisions of the immediately preceding sentence shall be self-executing, and City shall have no obligation to do anything other than, upon City's approval of the new tenant, execute and acknowledge the new Lease as herein provided, to assure the Lender or the tenant under the new Lease good title to the leasehold estate granted thereby. All subleases, rental agreements and license agreements for space in the Premises in force and effect immediately prior to the delivery of the new Lease shall be assigned and transferred without recourse by City to the tenant under such new lease and each subtenant under such subleases shall attorn to the tenant under the new Lease. The Lender shall, simultaneously with the delivery of the new Lease, pay to City (a) all Rent and other sums of money due under this Lease on the date of termination of this Lease and remaining unpaid; plus (b) all rent and other sums of money due under the new lease for the period from the date of commencement of the term thereof to the date of delivery of the new Lease; plus (c) all costs and expenses, including reasonable attorneys' fees, court costs and litigation expenses, incurred by City in connection with such termination, the recovery of possession of the Premises, putting the Premises, including all buildings and improvements thereon in good condition and repair, and the preparation, execution and delivery of the new Lease. Simultaneously therewith, City shall pay to the Lender any rentals, less costs and expenses of collection, received by City between the date of termination of this Lease and the date of execution of the new Lease, from subtenants or other occupants of the Premises which shall not theretofore have been applied by City toward the payment of Rent or any other sum of money payable by Opera hereunder or toward the cost of operating the Premises and all buildings and improvements thereon or performing the obligations of Opera hereunder.

If in any instance more than one Lender exercises its right to obtain a new lease pursuant to this section, then the Lender holding the lien of the highest priority shall be entitled to the new lease.



If the Lender shall exercise its right to obtain a new Lease pursuant to this Section, but shall fail to execute such a new lease within 30 days after being tendered by City, or shall fail to comply with other material provisions of this Section, then the Lender shall have no further rights to a new Lease or any other rights under this Section.

Except as provided in this Section, no mortgage now or hereafter a lien upon this Lease shall extend to or affect the reversionary interest and estate of City in and to the Premises and the improvements made thereto by Opera or in any manner attach to or affect the Premises or the improvements from and after any expiration or termination of this Lease.

I. In case of an assignment of the Leasehold Mortgage or change in address of the Lender, the assignee or Lender, by written notice to City, may change the address to which such copies of notices are to be sent. City shall not be bound to recognize any assignment of the Leasehold Mortgage unless and until City shall be given notice of such assignment and the name and address of the assignee, and thereafter such assignee shall be deemed to be the "Lender" under this paragraph.

20.4 Assignment and Subletting. After foreclosure by the Lender or transfer of the leasehold interest of Opera in lieu of foreclosure, the then successor to Opera's interest in this Lease shall, by acceptance of the benefits of this Lease, assume Opera's obligations under this Lease, but only as long as such successor shall hold the leasehold interest, and such successor, with the Director's consent pursuant to Section 19.1, shall be entitled to assign this Lease and to sublet portions of the Premises, and upon such an assignment only, such successor shall thereupon be released from all liability for the performance or observance of the covenants and conditions of this Lease to be performed by Opera from and after the date of such assignment, provided that City shall receive an executed copy of such assignment together with the name and address of the assignee and shall have consented to such assignment.

20.5 Estoppel Certificate. At the request of Opera, City shall from time to time, without additional consideration within ten (10) business days after request, execute and deliver to the Lender, a potential lender or such other person whom Opera designates, a certificate in writing setting forth the status of the Rent payments under this Lease, whether City claims any Default under the terms of this Lease on the part of Opera, and whether there have been any amendments or modifications to the written provisions of this Lease, and such other factual statements as Opera or any Lender, prospective Lender, subtenant, or person or entity designated by Opera as a potential "major contributor" in connection with improvements to the Premises requiring the consent or approval of the Director, may request. As used herein, "major contributor" means a contributor donating \$1,000,000.00 or more to Opera.

21. Assignment by City.

If City sells or otherwise transfers the Premises, or if City assigns its interest in this Lease, such purchaser, transferee, or assignee thereof shall be deemed to have assumed City's



obligations under this Lease arising after the date of such transfer, and City shall thereupon be relieved of all liabilities under this Lease arising thereafter, but this Lease shall otherwise remain in full force and effect. Opera shall attorn to City's successor, which assumes and agrees to perform all of City's obligations under this Lease.

22. **Damage and Destruction During Lease Term.**

22.1 **Repairs, Alterations and Further Improvements.** In the event of damage to or destruction of any or all of the Opera's Improvements (excluding therefrom ordinary wear and tear requiring maintenance and routine repairs) during the term of this Lease, this Article 22 shall apply.

22.2 **Minor Damage or Destruction.** If the cost of repairing or reconstructing the Opera's Improvements to the condition and form prior to such damage or destruction does not exceed the Floor Amount ("Minor Damage"), Opera shall promptly commence and thereafter diligently complete such repair and reconstruction of the portion of the Opera's Improvements so damaged or destroyed to substantially its condition prior to the occurrence of such Minor Damage with such alterations as Opera shall reasonably determine prudent or valuable under the circumstances, including any changes required to comply with applicable law and with the then prevailing construction practices and together with such other changes that Opera may desire, provided such other changes are approved by City, acting reasonably. City and Opera agree that the proceeds derived from insurance maintained pursuant to Section 18 shall be made available to effect such repair. "Floor Amount" means \$1,000,000.00, increased by the percentage increase in the Index from the Index published most recently prior to the Rent Commencement Date to the Index published most recently prior to the date of damage or destruction of the Improvements.

22.3 **Major Damage or Destruction.** If the cost of repairing or reconstructing the Opera's Improvements to the condition and form prior to such damage or destruction exceeds the Floor Amount ("Major Damage"), then within ninety (90) days after the casualty event giving rise to such Major Damage, Opera shall notify the City of Opera's election either to repair such Major Damage and reconstruct Opera's Improvements in accordance with Section 22.4 below or to terminate this Lease.

22.4 **Repair and Reconstruction of Major Damage.** If Opera elects to repair Major Damage and reconstruct Opera's Improvements pursuant to Section 22.3 above, Opera shall promptly after such election and diligently thereafter effect such repair and reconstruction of the portion of Opera's Improvements so damaged or destroyed to substantially its condition prior to the occurrence of such Major Damage with such alterations as Opera shall reasonably determine prudent or valuable under the circumstances, including any changes required to comply with applicable law and with the then prevailing construction practices and together with such other changes that Opera may desire, provided such other changes are approved by the City, acting reasonably. City and Opera agree that the proceeds derived from insurance maintained pursuant to Article 18 shall be made available to effect such repair. If the available insurance proceeds are not adequate to cover the estimated cost of repair, then, within a



reasonable time after such shortfall is determined and, in any event, prior to the commencement of any repair work (other than emergency repairs), Opera shall provide City with assurance reasonably satisfactory to City's Finance Director that a sufficient sum will be made available to cover such shortfall. To the extent the insurance proceeds are not adequate to cover the actual cost of repair, within a reasonable time after such shortfall is determined, Opera shall provide City's Finance Director with assurances satisfactory to such official that a sufficient sum will be made available to cover such shortfall. All repair and reconstruction work under this Section 22.4 shall be conducted substantially in the same manner and in accordance with the requirements and procedures set forth in the Construction Agreement arising out of this Lease.

22.5 Termination of Lease Following Major Damage. If Opera elects not to repair Major Damage, and, instead, elects to terminate this Lease, unless the parties otherwise agree, such termination of this Lease shall take effect ninety (90) days following Opera's notice to the City of its election to terminate the Lease. In such case all insurance proceeds shall be retained by or disbursed to City.

23. **Eminent Domain.**

23.1 Definitions.

A. "Eminent domain" is the right of the people or government to take private property for public use. As used in this Section 23, the words "condemned" and "condemnation" are coextensive with such right, and a voluntary conveyance by the City to the condemnor under threat of a taking under the power of eminent domain in lieu or after commencement of formal proceedings shall be deemed a taking within the meaning of this Section 23.

B. "Total condemnation" and "total taking" mean the taking of the entire Premises under the power of eminent domain or a taking of so much of the Premises under such power as to prevent or substantially impair the conduct of Opera's business thereon.

C. "Partial condemnation" and "partial taking" mean any condemnation of the Premises other than a total taking as defined above.

23.2 Effect of Total Condemnation. In the event that there shall be a total taking of the Premises during the term of this Lease, or any renewal or extension thereof, under the power of eminent domain as defined in this Section, the leasehold estate hereby created in the Premises shall cease and terminate as of the date title to the Premises is taken by the condemnor. On termination of this Lease by a total taking of the Premises under the power of eminent domain, all rentals and other charges payable by either party to or on behalf of the other under the provisions of this Lease shall be paid (or refunded to the extent rent has been prepaid) up to the date on which actual physical possession of the Premises shall be taken by



the condemnor, and the parties hereto shall thereafter be released from all further liability in relation thereto.

23.3 Effect of Partial Condemnation. In the event that there shall be a partial taking of the Premises during the term of this Lease, or any renewal or extension thereof, under the power of eminent domain as defined in this Section, this Lease shall terminate as to the portion of the Premises so taken on the date title is taken by the condemnor or at the time the condemnor is authorized to take possession of said real property as stated in the order for possession, whichever is earlier. This Lease shall also terminate on such date as to the balance of the Premises once more than ten percent (10%) of the floor area of the Premises have been taken and Opera gives written notice of termination to the City within thirty (30) calendar days after the City shall have given Opera written notice of said taking, or in the absence of said notice, within ten (10) calendar days after the condemnor is authorized to take possession as stated in the order for possession. If less than such percentage of floor area is taken or Opera fails to timely elect to terminate, this Lease shall continue in full force and effect as to the remainder of the Premises not so taken, but the Base Rent to be paid by Opera shall thereafter be reduced in proportion to the amount of the condemned Premises. If the parties cannot agree upon a just proportion of rent to be abated, the amount shall be determined in accordance with the procedures set forth in Section 33.

23.4 Award. Any compensation or damages awarded or payable because of the taking of all or any portion of the Premises by eminent domain shall be allocated between the City and Opera as follows:

A. City shall receive the present value of any lost future rents resulting from the eminent domain action which would otherwise be payable to the City by Opera under this Lease together with the present value of the reversion upon expiration of this Lease of that portion of the Premises taken in the eminent domain action, both as of the time of taking; the remainder of the award shall be payable to Opera. The values of City's and Opera's respective interests in the Premises shall be established by the same court of law or other trier of fact that establishes the amount of the condemnation award, but if there is no court of law available or willing to determine City's and Opera's respective interests, those interests shall be determined in accordance with the procedures set forth in Section 33. The foregoing shall not limit Opera's right to separately pursue compensation or damages for lost revenues, business interruption and moving expenses, and Opera shall be solely entitled to any such compensation or damages free and clear of any claim by the City.

B. The term "time of taking" as used in this subsection shall mean 12:01 a.m. of whichever shall occur first, the date title or the date physical possession of the Premises or any portion thereof is taken by the agency or entity exercising the eminent domain power.



23.5 **Temporary Taking.** If the whole or any part of the Premises or of Opera's interest under this Lease be taken or condemned by any competent authority for its temporary use or occupancy, and Opera shall continue to pay, in the manner and at the times herein specified, the full amounts of the Base Rent, and all other charges payable by Opera hereunder, then this Lease shall continue and, except only to the extent that Opera may be prevented from so doing pursuant to the terms of the order of the condemning authority, Opera shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of Opera to be performed and observed, as though such taking or condemnation had not occurred. In the event of any such temporary taking, or condemnation Opera shall be entitled to receive the entire amount of any award made for such taking, whether paid by way of damages, rent or otherwise, unless such period of temporary use or occupancy shall extend to or beyond the expiration date of the term of this Lease, in which case such award shall be apportioned between City and Opera as of such date of expiration of the term of this Lease..

24. **Default by Opera.**

24.1 **Definition.** The occurrence of any one or more of the following events shall constitute a default by Opera under this Lease ("Default"):

- (a) Failure by Opera to make any payment required as and when due, where such failure continues after 10-days written notice from City;
- (b) Failure by Opera to observe or perform any of the covenants, conditions, or provisions of this Lease, other than the making of any payment, where such failure shall continue after 30 days' written notice from City; provided, however, that if the nature of Opera's obligation is such that more than 30 days are required for performance, Opera shall not be in default if Opera commences performance within 30 days after City's notice and thereafter completes such performance diligently and within a reasonable time; or
- (c) Opera files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for Opera's assets or if Opera makes an assignment for the benefit of creditors, or if Opera is adjudicated insolvent, or becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or liquidated, voluntarily or otherwise.

24.2 **City Remedies.** If Opera has defaulted and such default continues or has not been remedied to the reasonable satisfaction of the Director within thirty (30) days after written notice thereof has been provided to Opera, then City shall have the following nonexclusive rights and remedies at its option: (a) to cure such default on Opera's behalf and at Opera's sole expense and to charge Opera for all actual and reasonable costs and expenses incurred by City in effecting such cure as an Additional Charge, or (b) if but only if the default (i) is failure to pay Base Rent or (ii) to complete construction of the Initial Improvements in



accordance with the requirements of this Lease and the Construction Agreement in a material and substantial respect; provided, however, that if the nature of Opera's obligation (other than monetary obligations and other than vacation or abandonment of the Premises) is such that more than thirty (30) days is required for performance, then Opera shall not be in default if it commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In the event of any inconsistency between the foregoing clause (b) and any other provision of this Section 24, the provisions of this clause (b) shall apply and control.

24.3 Reentry by City upon Termination. Upon the termination of this Lease, City may reenter the Premises, using such means as permitted by law, take possession thereof, and remove all persons therefrom, for which actions Opera shall have no claim thereon or hereunder. Opera 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 Opera. City shall have the right to sell such stored property, after reasonable prior notice to Opera 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 Opera to City; the balance, if any, shall be paid to Opera.

24.4 City's Non-exclusive Remedies upon Termination due to Default of Opera. Notwithstanding any reentry by City and anything to the contrary in this Lease, in the event of the termination of this Lease due to Opera's Default, Opera's liability for all sums due under this Lease provided herein shall not be extinguished for the balance of the Lease Term. Opera 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 Opera's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any costs incurred in authorizing others the use and occupancy of the Premises and in preparing the Premises for such use and occupancy, and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington. The provisions of this Section 24.4 shall survive the expiration or earlier termination of this Lease.

24.5 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 Opera shall not be deemed a waiver of, or alter, affect or prejudice any other right or remedy that City may have under this Lease or by law or in equity. Neither the acceptance of rent nor any other act or omission of City at any time or times after the happening of any event authorizing the cancellation or forfeiture of this Lease shall operate as a waiver of any past or future violation, breach or failure to keep or perform any covenant, agreement, term or condition hereof or to deprive City of its right to cancel or forfeit this Lease, upon the written

notice provided for herein, at any time that cause for cancellation or forfeiture may exist, or be construed so as to estop City at any future time from promptly exercising any other option, right or remedy that it may have under any term or provision of this Lease.

25. **Default by City.**

City shall be in default if City fails to perform its obligations under this Lease within thirty (30) days after its receipt of notice of nonperformance from Opera; 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, Opera 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.

26. **Attorneys' Fees.**

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

27. **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 Premises as City may deem necessary or desirable. If Opera 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 Lease. Unless the parties agree otherwise or in case of an emergency, Opera shall change the locks to the Premises only through City and upon paying City for all actual and reasonable costs related thereto.

28. **Holding Over.**

If Opera remains in possession of all or any part of the Premises after the expiration of the Term hereof with City's express or implied consent, such tenancy shall be from month-to-month only, and not a renewal hereof or an extension for any further term, and in such case, Opera shall pay City rent in an amount that the parties shall negotiate; provided, however, that if the parties cannot agree on the amount of rent within 30 days from the expiration of the Term, then such holding over shall be deemed to be without City's consent. If Opera remains in possession of all or any part of the Premises without City's consent, such tenancy shall be from month-to-month only, and not a renewal hereof or an extension for any further term, and in such case, Opera shall pay City rent in an amount equal to One Hundred Fifty Percent (150%) of the then-current Base Rent for the entire time Opera thus remains in possession and Opera shall hold City harmless from all damages resulting from Opera's failure to surrender the Premises or any portion thereof, including, without limitation, claims made by a



succeeding tenant resulting from Opera's failure to surrender the Premises or any portion thereof. All provisions of this Lease, except those pertaining to the amount of Base Rent payable and Term, shall apply to such month-to-month tenancy.

29. **Quiet Enjoyment.**

If Opera performs all of the obligations under this Lease on its part to be performed, it shall have quiet enjoyment of the Premises throughout the Lease Term without hindrance or disturbance by any person any person holding by or through City.

30. **Notices.**

Any notice, demand or request required hereunder shall be given in writing to the party's address set forth in Section 1.9 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.

31. **Successors or Assigns.**

All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon City, Opera and, subject to the terms of Section 19, 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.

32. **Opera Authority and Liability.**

Opera warrants that this Lease has been duly authorized, executed and delivered by Opera, and that Opera has the requisite power and authority to enter into this Lease and perform its obligations hereunder. Opera covenants to provide City with evidence of its authority and the authorization of this Lease upon request.

33. **Dispute Resolution.**

The parties shall make their best efforts to resolve disputes as expeditiously as possible through negotiations at the lowest possible decision-making level, and in the event such



negotiations are unsuccessful, to participate in good faith in the mediation process described below prior to either party initiating any judicial process.

If an issue cannot be resolved by negotiations between subordinate staff of Opera and Seattle Center, the matter shall be referred to the Director and the Opera Executive Director. If those officials are unable to resolve the dispute within a period of 15 days after the matter has been formally referred to them for resolution, they shall meet during the immediately succeeding seven (7) days to select a mediator to assist in the resolution of such dispute. If the Director and the Opera's Executive Director cannot agree upon a mediator within such seven (7) day period, either party may apply to the American Arbitration Association for the appointment of a mediator according to the process that is established by such entity for such action. Opera and City shall share equally the cost charged for the mediation of any dispute.

34. **Recording.**

The parties agree that a memorandum of this Lease substantially in the form of Exhibit 34.1, attached, shall be recorded in the office of the King County Recorder with reasonable promptness after Opera obtains a lot line adjustment for the Premises.

35. **Force Majeure.**

Neither City nor Opera 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 ("*force majeure*"), 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, inability to obtain permits despite Opera's documented diligent pursuit thereof, terrorist act or war; provided, however, that the foregoing shall not excuse Opera from the timely payment of Rent and Additional Charges due hereunder, when due.

36. **Execution by City and Opera.**

Neither City nor Opera shall be deemed to have made an offer to the other party by furnishing the other party with a copy of this Lease with particulars inserted. No contractual or other rights shall exist or be created between City and Opera until this Lease has been approved by appropriate legislative authority and executed by the parties hereto. City shall have no liability to Opera and shall have the right to terminate this Lease upon written notice to Opera if this Lease is legislatively disapproved.

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

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



Sunday or City holiday. Any reference in this Lease to the word "month" means "calendar month."

38. **Public Benefits.**

City's willingness to enter into this Lease with Opera is predicated, in part, on the nature of Opera's business and the compatibility of such business with the use of the remainder of Seattle Center and the benefits accruing to the public through Opera's use of the Premises. The parties agree that, with respect to the Initial Improvements, anticipated benefits include (i) Opera's capital investment in the Premises, (ii) the sustainable technologies that will be utilized in development of the site, and (iii) the expected LEED certification for the Premises. Opera shall report to the City regarding implementation of such benefits within 60 days of receipt of the Certificate of Occupancy for the Initial Improvements. In addition, continuously throughout the Lease Term, Opera agrees to provide the following benefits, or an equivalent replacement approved by the Director, and to submit an annual report thereof to the Director as required by Section 5.1: (i) education programs for students, reported by the number and age groups of students served; (ii) education events, activities and outreach efforts provided to the public by Opera, reported by the number and type and of event; (iii) Opera employment, reported by number of Opera employees, both full and part-time; (iv) if and to the extent and for such periods as Opera has no need for the space itself, collaboration with other groups to make office and rehearsal space available to activate and invigorate the Mercer corridor; and (v) when relevant, other collaborative efforts of benefit to the public and Seattle Center.

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

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

39.1 **Change of Vicinity.** City may increase, reduce, or change in any manner whatsoever the number, dimensions, and locations of the walks, buildings, landscaping, utility lines and poles, service areas, roads, sidewalks and parking areas in the vicinity of the Premises. Notwithstanding the foregoing, if City's Seattle Center department controls or determines any construction or reconstruction of Mercer Street and/or Memorial Stadium that adversely affects Opera's truck access to the Premises and to McCaw Hall from the south side of the Premises, City agrees to provide equivalent alternative access both during and after any such construction. In addition, City shall use its best efforts to ensure that any such construction or reconstruction does not unreasonably disrupt Opera's normal business operations at the Premises.

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



39.3 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.

39.4 Change of Businesses. City may determine or change the size, number, and type and identity of concessions, stores, businesses and operations being conducted or undertaken in the vicinity of the Premises and to operate and to authorize others to engage in any and all forms and locations of business activity at the Seattle Center.

39.5 Entrance Charges. City may impose a reasonable charge for admission to the Seattle Center and the facilities thereon, but shall not impose any charge for access to the Premises.

39.6 Rules and Regulations. City may promulgate, from time to time, reasonable rules and regulations regarding the use and occupancy of all areas of the Seattle Center other than the Premises.

39.7 Hours of Operation. City may determine the days and hours the Seattle Center and various business operations other than the Premises will be open to the public.

40. **Naming Rights.**

Opera may propose to rename the Mercer Arena and to name any internal rooms, areas and components thereof for no longer than the Lease Term. Names and naming rights agreements shall be subject to the Director's approval, which shall not be unreasonably withheld.

41. **Signs and Advertising.**

41.1 Signs. Opera may install permanent signage on the exterior of the Premises and may display temporary signs or banners on or about the Premises to advertise its opera or special events. All aspects of the signs are subject to the Director's prior written approval, whose approval shall be given or withheld in his or her reasonable discretion within seven (7) business days of a written request; provided, however, that the Director's failure to respond in writing shall constitute approval of the request. Three-sheet posters used to advertise Opera's current season performances shall not require the Director's approval.

41.2 Advertising. Except as provided in Section 41.1, Opera shall not install or display nor permit others to install or display any commercial advertising on the exterior of the Premises.

42. **Entire Lease; Applicable Law; Amendments.**

This Lease and the Exhibits attached hereto, and by this reference incorporated herein, together with the Construction Agreement and Covenant Agreement, if and when executed, set forth the entire agreement of City and Opera concerning the Premises, and there are no other agreements or understanding, oral or written, between City and Opera concerning the



Premises. Any subsequent modification or amendment of this Lease shall be binding upon City and Opera only if reduced to writing and signed by the Director and an authorized officer of Opera. This Lease shall be governed by, and construed in accordance with the laws of the State of Washington.

43. **Partial Invalidity.**

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

44. **Counterparts.**

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

45. **Headings.**

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

46. **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. Words such as "herein," "hereunder" and the like refer to this Lease in its entirety and not to a particular section or subsection hereof.

47. **Negotiated Lease.**

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

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

CITY OF SEATTLE

SEATTLE OPERA

By: _____
Robert Nellams, Director
Seattle Center Department

By: _____
Kelly Tweeddale,
Executive Director
Seattle Opera



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

On this ____ day of _____, 200_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared _____, known to me to be the _____ of the Seattle Center Department of **CITY OF SEATTLE**, the party that executed the foregoing instrument as City, and acknowledged said instrument to be the free and voluntary act and deed of said party, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

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

[Signature]

[Printed Name]

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

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

On this ____ day of _____, 200_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of **SEATTLE OPERA**, the entity that executed the foregoing instrument as Opera; and acknowledged to me that he signed the same as the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and that he was authorized to execute said instrument for said entity.

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

[Signature]

[Printed Name]

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



EXHIBIT 1.1

Legal Description

Block 53, D.T. Denny's Home Addition to City of Seattle, Volume 3 of Plats, Page 115.
Reserving unto City the exclusive use of any portion thereof lying outside the current footprint of the Mercer Arena building and, except as set forth in the Lease, the ground rights below Opera's Improvements as constructed, and the air rights more than 85 feet above the finished grades surrounding the existing Mercer Arena building, measured in accordance with the provisions of SMC 23.86.006 as in effect on the Effective Date.



EXHIBIT 1.1.2
Premises Site Plan

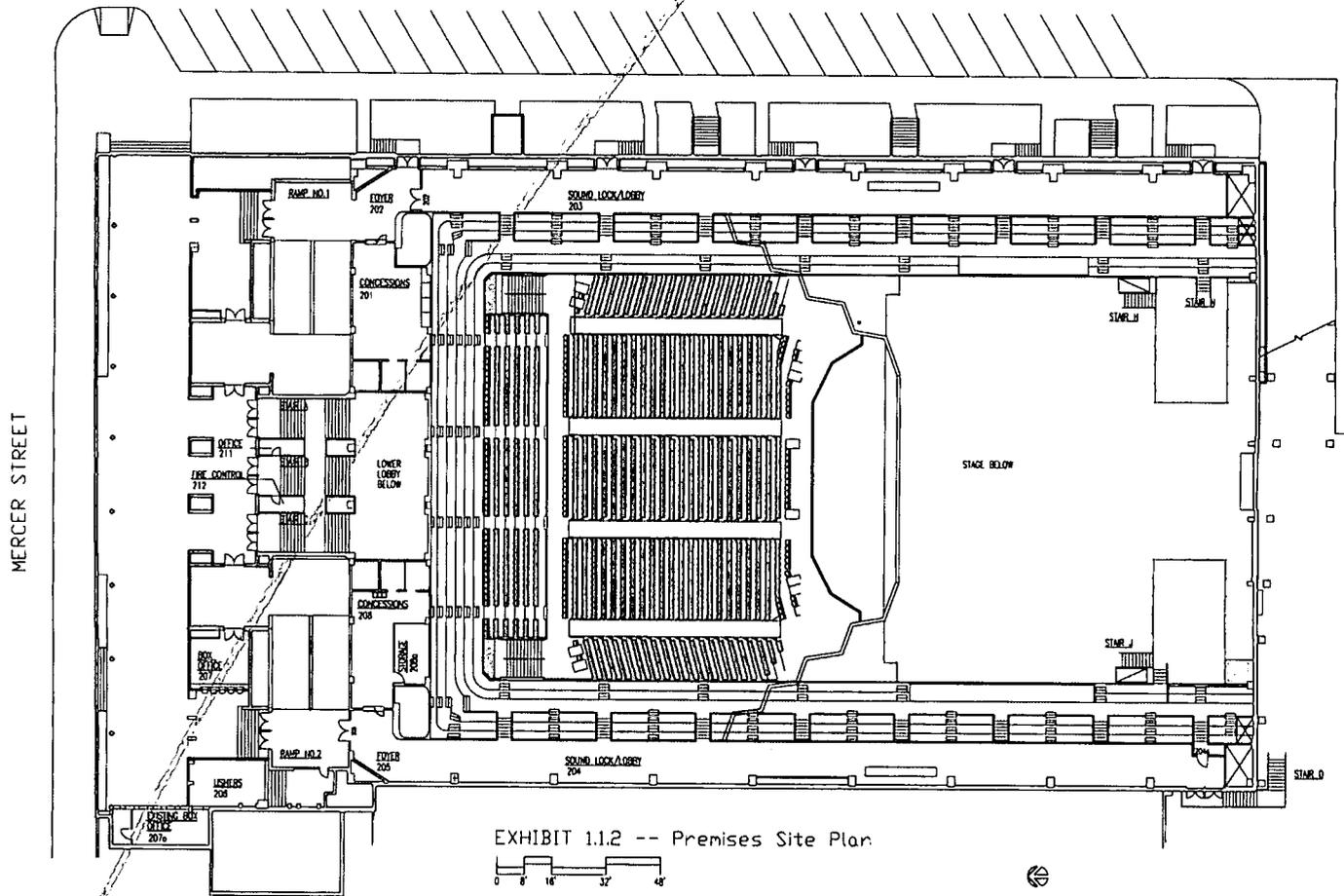


Exhibit 12.1. Conceptual Plan for Initial Improvements - Stacking Diagram

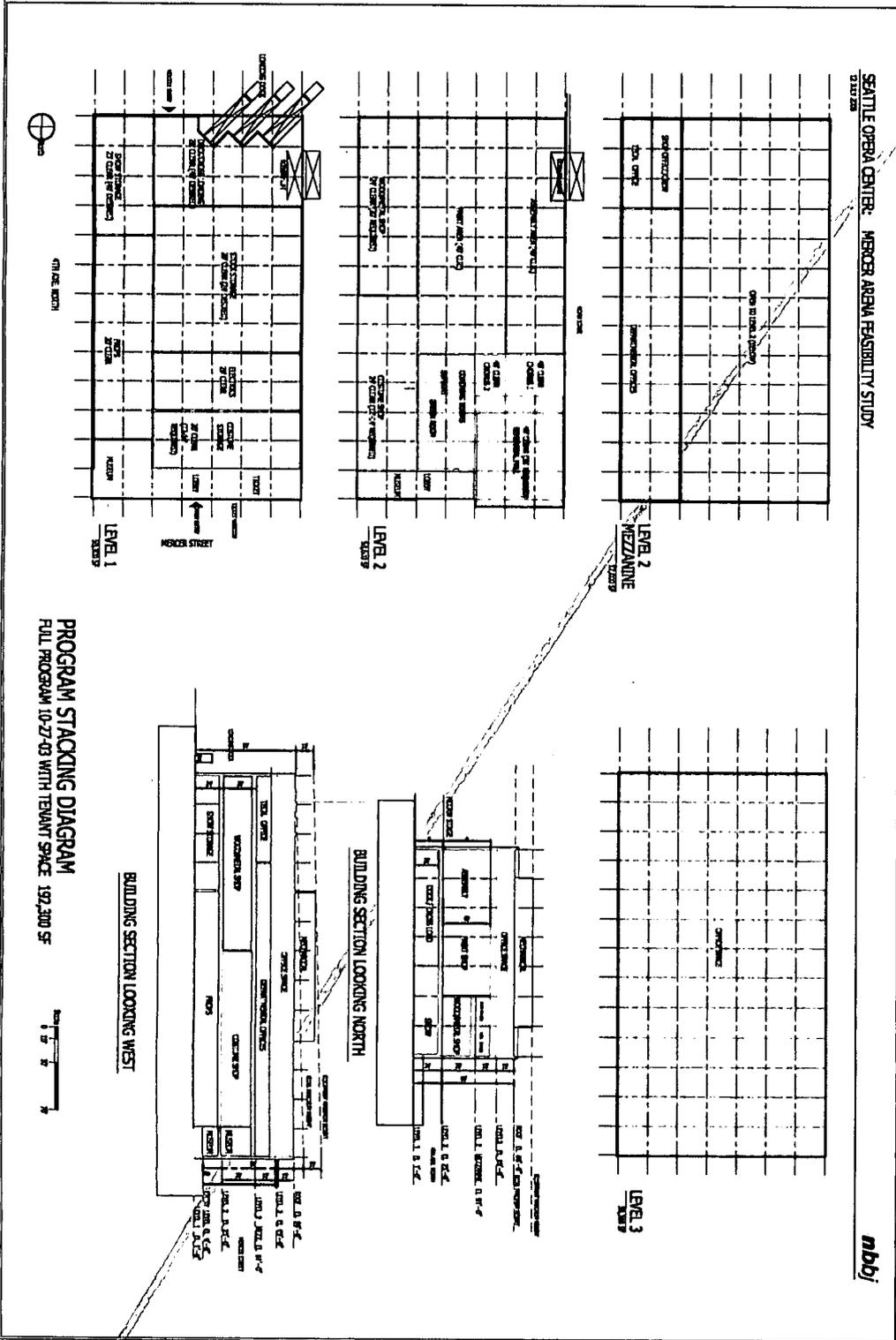


EXHIBIT 12.1

Conceptual Plan for Initial Improvements

The site of the Mercer Arena will become the new home for Seattle Opera, housing the administrative offices, rehearsal, and technical support facilities which are anticipated to include both costume and scene shops. The current building, located at the southwest corner of Mercer Street and 4th Ave. North, is approximately 59,850 sq. ft. and is directly adjacent to and shares a wall with McCaw Hall, Seattle Opera's main performance venue. Opera proposes to replace or renovate the existing Mercer Arena with a new facility that provides at least 120,000 sq. ft. of actual program space (program to be confirmed by selected architect) preliminarily illustrated in the drawing shown on Exhibit 12.1, page 2. One component of the technical support facilities will be a scene shop, ideally located directly adjacent to the rear of the McCaw Hall stage and connected by an acoustical door, enabling scenery to be moved between the two facilities. City and Opera are also in agreement that the street level must be activated to enhance the pedestrian experience. No final decision has been made regarding how this will be accomplished, but the design architect in partnership with Seattle Opera and Seattle Center will explore several possibilities. Additionally, there is a potential for limited co-development and/or sublease options for other organizations compatible with Seattle Center and the theater district.

EXHIBIT 18.1

Opera-Furnished Property and Liability Insurance

18.1.1. General. Opera (and, during the course of construction of Initial Improvements unless otherwise indicated, Opera's construction contractor(s)) shall obtain and thereafter maintain continuously throughout the term of this Agreement, at no expense to the City, insurance that complies with this Exhibit 18.1. For all required coverages, the minimum limits of liability may be satisfied by a primary policy or a combination of primary and excess/umbrella policies. In addition, all insurance policies and coverages shall be subject to commercially reasonable deductibles.

18.1.2. Coverages and Minimum Limits of Liability.

18.1.2.1 Commercial General Liability (CGL) Insurance:

<u>Coverages</u>	<u>Limits of Liability</u>
Premises/Operations)	\$5,000,000 each occurrence bodily injury
Contractual)	and property damage combined single
Independent Contractors)	limit (CSL)
Host Liquor Liability*)	
Personal/Advertising Injury*	\$1,000,000 each offense
Stop Gap	\$1,000,000 each Accident/Disease/Employee
Fire/Tenant Legal *	\$1,000,000 each Occurrence

*Not applicable to Opera's construction contractor

18.1.2.2. **Liquor Liability Insurance***. If alcoholic beverages are sold at any event, Opera shall obtain and maintain Liquor Liability Insurance with minimum limits of liability of \$2,000,000 each Common Cause (an Opera caterer may satisfy this requirement by furnishing evidence of insurance that meets the requirements of this Exhibit).

*Not applicable to Opera's construction contractor

18.1.2.3. **Pyrotechnic Liability Insurance***. If the Seattle Fire Marshall requires a pyrotechnics permit for any activity, Opera shall obtain and maintain Pyrotechnic Liability Insurance with a minimum limit of liability of \$2,000,000 CSL (an Opera pyrotechnic operator may satisfy this requirement by furnishing evidence of insurance that meets the requirements of this Exhibit). The minimum limits of liability may be satisfied with primary limits, or any combination of primary and excess/umbrella liability limits.

*Not applicable to Opera's construction contractor



18.1.2.4. **Automobile Liability Insurance** for owned, non-owned, leased or hired vehicles, with a minimum limit of liability of \$1,000,000 CSL.

18.1.2.5. **Property Insurance*** on an all risks basis, excluding earthquake and flood, covering trade fixtures and business personal property on a replacement cost basis.

*Not applicable to Opera's construction contractor

18.1.3. General Conditions.

18.1.3.1. Opera's insurance policies shall be issued by insurers rated A-VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington or procured as surplus lines under the provisions of chapter 48.15 RCW.

18.1.3.2. Opera's liability insurance shall include The City of Seattle as an additional insured for primary and non-contributory limits of liability and contain to a severability of interest clause. With respect to CGL insurance (including, if applicable, liquor and pyrotechnic liability insurance), it must be documented that the City is an additional insured either through appropriate blanket additional insured policy wording or by attaching an appropriate additional insured endorsement to the policy.

18.1.3.3. Opera's property insurance shall contain a waiver of the property insurer's rights of subrogation against City.

18.1.3.4. Opera is responsible for payment of any claim within any deductible or self-insured retention.

18.1.3.5. In the event of cancellation, Opera's insurer shall provide the City with written notice thereof, including the reason therefor, delivered or mailed at least 45 days prior to the effective date of the cancellation, except that with respect to surplus lines insurance procured under the provisions of Chapter 48.15 RCW, the notice period shall be not less than 30 days, and with respect to cancellations due to nonpayment of premiums, the notice period shall be not less than 10 days.

18.1.4. Evidence of Insurance.

18.1.4.1. Opera's and Opera's contractor's authorized insurance representatives shall furnish City with a certificate of insurance evidencing compliance with the coverage, minimum limits of liability and other terms and conditions of this Exhibit, including true copies of the additional insured policy provisions of the CGL and, where required, Liquor and Pyrotechnic Liability insurance policies.



18.1.4.2. Insurance certification shall be sent to each of the following.

(Electronic copy only)

City of Seattle
Risk Management Division
Fax: (206) 470-1279
Email: riskmanagement@seattle.gov

City of Seattle
Attention: _____
305 Harrison Street
Seattle, WA 98109
Fax: (206) 233-3950
Email: _____

City-Furnished Property Insurance

18.2.1. Property Insurance. Unless Opera otherwise directs from time to time by not less than sixty (60) days' notice to, City shall, at Opera's cost and expense, maintain property insurance and/or self-insurance providing "all risks" of physical loss or damage, including earthquake and flood, with an amount of insurance or self-insurance not less than the replacement cost of Opera's Improvements. Opera shall cooperate with City to allow City's property insurance representatives access to the building from time to time to for inspection purposes.

18.2.2. Limitations on City Property Insurance Coverage. City-furnished property insurance shall include Opera's Improvements, but shall exclude Opera's or any Subtenant's trade fixtures or business personal property.

18.2.3. Insurance During Construction. At the time any Opera contractor mobilizes on or about the Premises for purposes of constructing the Initial Improvements or any subsequent major structural alterations, and continuously until the completion of such construction, City shall provide Builder's Risk property insurance for the Premises, including Opera's Improvements. Opera shall notify City's Risk Management Division by telephone at (206) 615-1507 or by fax at (206) 470-1275 not less than thirty (30) days prior to the mobilization of any Opera contractor on the Premises and shall fully cooperate and assist in the completion of applications and in any other tasks necessary to facilitate securing such insurance coverage. Opera shall reimburse City as an Additional Charge for the cost of such Builder's Risk insurance based upon City's Builder's Risk rate multiplied by the completed value of the improvements (*i.e.*, the initial replacement value of the building plus the hard costs and soft costs of the improvements).

18.2.3. Evidence of Insurance. City shall cause its authorized insurance broker to issue evidence of property insurance to Opera and, when applicable, its contractor.



18.2.4 Damage and Destruction. If the Premises or the Building are rendered partially or wholly untenantable by fire or other casualty:

18.2.4.1. City shall proceed with reasonable diligence as soon as sufficient insurance, self-insurance and/or other funds are available therefor, to prepare plans and specifications for, and thereafter to carry out, all work necessary to repair or replace the Premises or Building or any portions thereof that were damaged or destroyed by a fire or other casualty. However, City retains the sole option to not repair or replace the Building or Premises for any reason, in which case City shall advise Opera of City's election to terminate this Lease by giving at least a thirty (30) day notice to Opera.

18.2.4.2. If City elects to repair or replace the Building or Premises, Opera shall proceed with reasonable diligence as soon as sufficient insurance, self-insurance and/or other proceeds and other funds are available therefor (in any event, within twenty-four (24) months from the date of the occurrence of a fire or other casualty), to repair or replace trade fixtures and business personal property that has been damaged or destroyed.

18.2.4.3. Rent and Additional Charges shall be abated in the proportion that the untenantable portion of the Premises bears to the whole Premises, in the City's sole determination, for the period from the date of the fire or other casualty until either the completion of the repairs and restoration or the termination of this lease at the City's option as provided herein.

18.2.4.4. If the Building or Premises cannot be repaired or replaced within twenty-four (24) months from the date of the occurrence of the fire or other casualty, or if thirty percent (30%) or more of the Building interior area is damaged or destroyed (regardless of whether the Premises are damaged or not) Opera may terminate this Lease upon sixty (60) days' written notice to the City.

18.2.4.5. Except in the event of City's gross negligence, intentional misconduct or breach of this Lease, City shall not be liable to Opera 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 or to the termination of this Lease as provided herein.



EXHIBIT 34.1
Form of Memorandum of Ground Lease

RECORDED AT THE REQUEST OF AND
AFTER RECORDING RETURN TO:

Russell F. Tousley, P.S.
Tousley Brain Stephens, PLLC
1700 Seventh Avenue, Suite 2200
Seattle, WA 98101-4416

MEMORANDUM OF GROUND LEASE
(City of Seattle/Seattle Opera)

Grantor/Lessor: THE CITY OF SEATTLE, a Washington municipal corporation

Grantee: SEATTLE OPERA, a Washington non-profit corporation

Abbreviated Seattle: Portion of Block 53, D.T. Denny's Home Addition to City of Seattle

Legal Description: Complete Legal Description is set forth in Exhibit A attached hereto

Assessor's Tax Parcel ID #: 198820-0700

Reference # (if applicable): N/A

THIS MEMORANDUM OF GROUND LEASE is dated as of _____, 200_, by and between THE CITY OF SEATTLE, a municipal corporation of the State of Washington ("Lessor") and SEATTLE OPERA, a Washington non-profit corporation ("Lessee").

1. Premises. Lessor has leased to Lessee, upon the terms and conditions of that certain lease between the parties dated as of _____, (the "lease"), which terms are incorporated by this reference, that certain real property situated in the City Seattle, King, County Washington, more particularly described on Exhibit A, attached hereto.



2. Term. The Lease is for a term of thirty (30) years commencing on _____ and ending on _____, unless extended. Lessee has the right to extend the term of the Lease for one (1) additional term of thirty (30) years, which extension right, if exercised, would result in the term of the Lease first expiring on _____.

3. New Lease. The Lease provides that under certain circumstances a lender with a leasehold mortgage on Lessee's leasehold estate interest in the Premises may cause a new replacement lease for the Premises on substantially the same terms as the Lease to come into existence.

4. Purpose of Memorandum of Lease. This Memorandum of Ground Lease is prepared for the purpose of recordation and in no way modifies the Lease.

DATED as of the day and year first above written.

LESSOR: THE CITY OF SEATTLE, a municipal corporation of the State of Washington

By: _____
Its: _____

LESSEE: SEATTLE OPERA, a Washington non-profit corporation

By: _____
Its: _____



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

On this ____ day of _____, 200_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared _____, known to me to be the _____ of the Seattle Center Department of **CITY OF SEATTLE**, the party that executed the foregoing instrument as City, and acknowledged said instrument to be the free and voluntary act and deed of said party, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

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

[Signature] [Printed Name]
NOTARY PUBLIC in and for the State of Washington residing at _____
My commission expires _____.

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

On this ____ day of _____, 200_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of **SEATTLE OPERA**, the entity that executed the foregoing instrument as Opera; and acknowledged to me that he signed the same as the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and that he was authorized to execute said instrument for said entity.

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

[Signature] [Printed Name]
NOTARY PUBLIC in and for the State of Washington residing at _____
My commission expires _____.



EXHIBIT A

(EXHIBIT INTENTIONALLY LEFT BLANK)

Legal description to be inserted and document recorded following lot line adjustment.



STATE OF WASHINGTON – KING COUNTY

--SS.

221086
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.

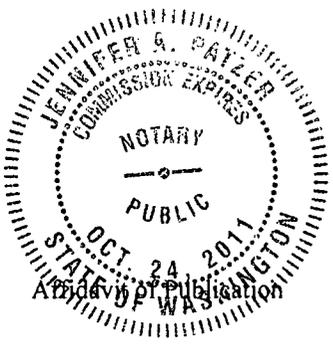
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:122629-122632

was published on

02/28/08

The amount of the fee charged for the foregoing publication is the sum of \$ 63.23, which amount has been paid in full.



[Handwritten Signature]

Subscribed and sworn to before me on

02/28/08

[Handwritten Signature]

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on February 19, 2008, and published here by title only, will be mailed upon request, or can be accessed electronically at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 122630

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

ORDINANCE NO. 122631

AN ORDINANCE relating to the Seattle Department of Parks and Recreation; authorizing the Superintendent to enter into a Lease Agreement with Seattle Junior Golf Foundation (dba The First Tee of Greater Seattle) for space at the City's Jefferson Park Golf Clubhouse.

ORDINANCE NO. 122630

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of a ground lease with Seattle Opera for property that includes Mercer Arena at Seattle Center.

ORDINANCE NO. 122629

AN ORDINANCE relating to the water system of Seattle Public Utilities; declaring as surplus certain subsurface property rights in SPU's Tolt Pipeline right-of-way and authorizing the conveyance of a subsurface easement for such surplus property rights to King County for the King County Brightwater treatment facility's utility tunnel.

Publication ordered by JUDITH PIPPIN,
City Clerk

Date of publication in the Seattle Daily
Journal of Commerce, February 28, 2008.
2/28(221086)