

Ordinance No. 122643


Council Bill No. 116146

AN ORDINANCE relating to the Seattle Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to enter into a Lease Agreement with the Victory Heights Cooperative Preschool to provide preschool education and recreation programs for children and adults at the Victory Heights Shelterhouse.

CF No. _____

Date Introduced: <u>March 3, 2008</u>		
Date 1st Referred:	To: (committee) <u>Parks and Seattle Center</u>	
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage: <u>3-17-08</u>	Full Council Vote: <u>90</u>	
Date Presented to Mayor: <u>3-18-08</u>	Date Approved: <u>3-21-08</u>	
Date Returned to City Clerk: <u>3-24-08</u>	Date Published:	T.O. <u>2</u> F.T. _____
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: 
Councilmember

Committee Action:

pass 2-0 TR, JD

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 122643

AN ORDINANCE relating to the Seattle Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to enter into a Lease Agreement with the Victory Heights Cooperative Preschool to provide preschool education and recreation programs for children and adults at the Victory Heights Shelterhouse.

WHEREAS, preschool education for children and adults with a recreational component are an important service for Seattle citizens and the Department of Parks and Recreation ("DPR") has provided facilities for such services for 28 years; and

WHEREAS, Victory Heights Cooperative Preschool has provided and successfully implemented preschool education classes and recreation programs that serve the public, including diverse communities that normally do not have access to these programs, at the City's Victory Heights Shelterhouse facility for the last 28 years; and

WHEREAS, DPR wishes to continue this relationship with the Victory Heights Cooperative Preschool to maintain the delivery of such services to the public at this public building;

NOW, THEREFORE,

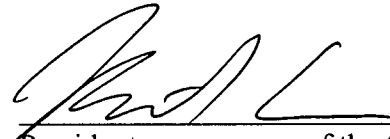
BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of Parks and Recreation ("Superintendent"), or his or her designee, is authorized to execute, for and on behalf of the City of Seattle ("City"), a Lease Agreement with Victory Heights Cooperative Preschool in substantially the form attached hereto as Attachment 1, with such minor additions, modifications, or deletions as the Mayor or said Superintendent deems to be in the best interest of the City.



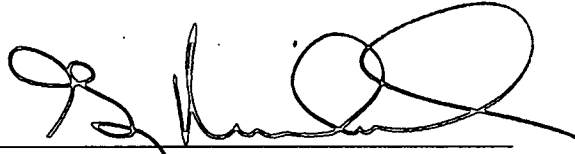
Section 2. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 17th day of march, 2008, and signed by me in open session in authentication of its passage this 17th day of march, 2008.



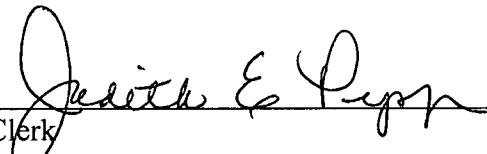
President _____ of the City Council

Approved by me this 21st day of March, 2008.



Gregory J. Nickels, Mayor

Filed by me this 24th day of March, 2008.



City Clerk

(Seal)

Attachment 1: Victory Heights Cooperative Preschool Lease Agreement between the City of
Seattle and the Victory Heights Cooperative Preschool
Exhibit A to Attachment 1: Legal Description

Attachment 1

VICTORY HEIGHTS COOPERATIVE PRESCHOOL LEASE AGREEMENT
BETWEEN
THE CITY OF SEATTLE
AND
THE VICTORY HEIGHTS COOPERATIVE PRESCHOOL

THIS LEASE ("Lease") is entered into this ____ day of _____, 20__, by and between **THE CITY OF SEATTLE** ("City"), a city of the first class of the State of Washington, acting by and through its Department of Parks and Recreation ("DPR") and the Superintendent thereof ("Superintendent"), and **Victory Heights Cooperative Preschool** ("Lessee") a Washington not-for-profit corporation organized under the laws of the State of Washington.

AGREEMENT

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

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

1.1 **Premises.** The "Premises" are defined for purposes of this Agreement as the interior spaces of the Victory Heights Shelterhouse located at 1747 NE 106th Street, Seattle, WA 98125, situated on real property described in Exhibit A.

1.2 **Commencement Date.** Upon execution by the Superintendent.

1.3 **Expiration Date.** March 1, 2013, unless extended under Subsection 3.2.

1.4 **Rent and Additional Charges.**

1.4.1 **Rent:** Lessee shall pay a monthly base rent of \$1,555 to the City for each calendar month when school is in session (September 1st through June 30th each year) except as may be adjusted pursuant to Section 4.

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

1.5 **Notice Addresses.**

To City: City of Seattle Department of Parks and Recreation
Magnuson Park & Business Resources
Attention: Concessions Coordinator
6310 NE 74th Street, #109E
Seattle, WA 98115



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To Lessee: Victory Heights Co-op Preschool
1747 NE 106th Street
Seattle, WA 98125

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

Exhibit A - Legal Description

2. Premises.

2.1 Grant. City hereby leases to Lessee and Lessee hereby leases from City those certain premises referenced in Section 1 (the "Premises"), which are located on the real property described on Exhibit A ("Property"). The Lessee shall have use of the Premises during the months of September through June during each calendar year in the Lease Term, and during the hours specified in Section 35. The City reserves to itself the right to license the use of the Premises as a place for public voting on election days, and on election days, Lessee's use will be non-exclusive. The City also reserves to itself the right to license the use of the Premises during the months of July and August when school is not in session, and during hours that do not conflict with Lessee's hours of use specified in Section 35.

2.2 Condition. City leases the Premises and Lessee accepts the Premises in their "as is" condition.

2.3 Permitted Use. Lessee shall use the Premises for operating a cooperative preschool and all necessary and related administrative activities. Lessee shall not use the Premises for any purpose whatsoever other than the uses specifically permitted herein (collectively, the "Permitted Use").

2.4 Common Areas. During the Term, Lessee and its licensees, invitees and customers shall have the non-exclusive right to use the adjacent playground and other public areas of the Property (the "Common Areas") in common with the general public. City shall at all times have exclusive control and management of the Common Areas and no diminution thereof shall be deemed a constructive or actual eviction or entitle Lessee to compensation or a reduction or abatement of rent.

2.5 Alterations. City, in its discretion, may increase, decrease or change the number, locations and dimensions of any hallways, lobby areas, Common Areas and other improvements shown on the Property that are not within the Premises. Such increase, decrease, or change shall not materially interfere with Lessee's business as permitted in Subsection 2.3. Permitted Use. City reserves the right from time to time (i) to install, use, maintain, repair, relocate and replace pipes, ducts, conduits, wires and appurtenant meters and equipment for service to the Premises, or to other parts of the Building/Property where the Premises are located in areas above the suspended ceiling surfaces, below the floor surfaces, within the walls and elsewhere in the Building; (ii) to alter or expand the Building/Property; and (iii) to alter, relocate or substitute any of the Common Areas. In performing any work described in (i), (ii), and (iii) of this subsection, City shall make every reasonable effort to work with Lessee in order to minimize any interruption or adverse affect on Lessee's use of the Premises.



3. **Lease Term.**

3.1 **Initial Term.** This Lease shall be for a term ("Lease Term" or "Term") beginning on the Commencement Date specified in Subsection 1.2 and ending on the Expiration Date specified in Subsection 1.3, unless the Lease Term is terminated earlier in accordance with the provisions of this Lease or extended as provided in Subsection 3.2 below. It is agreed that Lessee will only occupy the premises 10 months of each year. Lessee will not occupy or use the building during the months of July and August.

3.2 **Extended Terms.** City shall have the option to offer Lessee an extension of this Lease for up to one (1) successive individual extended term of five (5) years, hereafter called "the Extended Term," on the same terms and conditions set forth herein. City may extend the Lease Term to include any Extended Term by giving Lessee written notice of its willingness to do so at least ninety (90) days prior to the Expiration Date specified in Subsection 1.3. Lessee shall provide City with written notice of its acceptance of the Extended Term no later than 45 days prior to the Expiration Date specified in Subsection 1.3. As used in this Lease, the "Lease Term" means the original term commencing on the Commencement Date and ending on the Expiration Date specified in Subsection 1.3, and any and all Extended Term(s) established by City hereunder.

4. **Rent.**

4.1 **Rent Commencement Date.** Commencing March 10, 2008 ("Rent Commencement Date") Lessee shall pay to City at the address and to the account specified by City, without notice or demand or any setoff or deduction whatsoever, in lawful money of the United States (a) the monthly amount of Rent specified in Subsection 1.4.1 in advance on the tenth day of each month; and (b) Additional Charges as and when specified elsewhere in this Lease, but if not specified, then within ten (10) days after written demand. Rent and, if appropriate, as reasonably determined by City, Additional Charges shall be prorated on a daily basis for any partial month within the Lease Term, and for any partial initial month in the Lease Term shall be paid on the first day of the Lease Term.

4.2 **Additional Utility Charge.** Commencing on the Rent Commencement Date, Lessee shall pay to City a monthly Additional Utility Charge of \$150 for Lessee's use of utilities at the Premises, including but not limited to: electricity, water and sewer services and data and telecommunications services. The Additional Utility Charge is payable at the same time and in the same manner as Rent.

4.3 **Adjustments to Rent and Additional Utility Charge During Extended Term.** In the event that the Term is extended under Section 3.2, beginning on the first day when rent is due under the Extended Term and every year thereafter until the expiration or termination of this Agreement (each, a "Rent Adjustment Date"), Rent and the Additional Utility Charge shall be adjusted upward only to reflect increases in the total noncompounded percentage change in the Consumer Price Index for All Urban Consumers (All Items) in the Seattle-Tacoma-Bremerton region (1982-84 = 100) ("CPI"), published by the Bureau of Labor Statistics, United States Department of Labor between the first and last years being adjusted, provided, however, that in no event shall Rent and the Additional Utility Charge increase by more than four percent (4%)

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per year. The City shall notify Lessee in writing at least three (3) months prior to each Rent Adjustment Date of the new monthly Rent and Additional Utility Charge amount that will be due starting on such Rent Adjustment Date.

By way of example only, if the CPI on the commencement date of this Agreement is 100 and the CPI most recently issued prior to the first Rent Adjustment Date is 110 and the annual Rent due under this Agreement is \$60,000, then the total CPI adjustment would be no more than 4% and annual Rent under this Agreement would increase to \$62,400 effective as of the Rent Adjustment Date. In no event shall the Rent, as adjusted for any period, be less than Rent payable during the immediately preceding period. In the event the CPI is discontinued, the parties shall agree upon another similar index to be used to calculate the contemplated adjustment and, in the event of an inability to agree, the parties shall request the American Arbitration Association or its successor to appoint a qualified arbitrator to establish an appropriate adjustment standard to measure inflation.

4.4 Public Benefit Offset. By March 15 annually, Lessee may request a Public Benefit Offset against Rent to reflect expenditures made to provide benefits to the public (such as scholarship programs or public classes). Lessee may identify the amount of Public Benefit Offset it is requesting for the subsequent school year and the justification for the request. The Superintendent will act reasonably in reviewing the request and will respond within 30 days stating the amount, if any, of the Public Benefit Offset allowed for the upcoming school year. The amount of the Public Benefit Offset for a given year shall rest in the Superintendent's sole discretion. Any Public Benefit Offset shall be credited against the Rent only in monthly installments, in such amounts as the Superintendent determines. With each monthly payment, Lessee shall report to the DPR Finance Director the amount of Public Benefit Offset being applied to Rent. In no instance shall the monthly rent adjustment be lower than that specified in Section 4.5 below.

4.5 Limitation on Offsets. Notwithstanding anything in this Agreement to the contrary, in no event shall Lessee's monthly Rent be less than \$600.

4.6 Taxes. Lessee shall pay to DPR monthly whatever leasehold excise tax is assessed pursuant to Chapter 82.29A RCW as a consequence of Lessee's use and occupancy of the Premises under this Agreement. In addition, Lessee shall pay before their delinquency, all other taxes that may be due and payable with respect to property owned by and the activities of Lessee on the Premises to the extent failure to do so could result in a lien against the Premises.

4.7 Offset Inapplicable to Taxes. The reduction and offsetting of any Rent pursuant to Section 4.4 hereof shall have no effect on the amount of any leasehold excise tax due and payable to the City or any other tax obligation of Lessee. Unless Lessee is exempt from the payment of leasehold excise taxes, all such taxes shall be payable only in cash or cash equivalents. The City shall not contest any application by Lessee for an exemption from the leasehold excise tax.

4.8 Rent, Additional Utility Charge, and Leasehold Excise Tax Payment Date and Address. Rent, Additional Utility Charge and leasehold excise tax due and payable under this Agreement shall be remitted on the tenth (10th) calendar day of each month during the term of this Agreement to the City at the address shown in Section 1.5 hereof, or to such other place as DPR may hereafter designate.



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4.9 Late Charge; Interest. If Lessee fails to pay the 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. In addition, Lessee shall pay the City a Twenty Dollar (\$20.00) charge for each check refused payment for insufficient funds or any other reason.

5. Lessee 's Operations.

5.1 Use of Premises. Lessee shall use the Premises only for the Permitted Use. As City's willingness to enter into this Lease with Lessee was predicated, in part, on the nature of Lessee 's business, and the compatibility of such business with the use of the Building, Lessee 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. Lessee shall promptly comply, at its sole cost and expense, with such reasonable rules and regulations relating to the use of the Premises and Common Areas, as City, from time to time, may promulgate. Any newly promulgated rules and regulations shall not materially interfere with Lessee's business for the Permitted Use. In the event of any conflict between the rules and regulations promulgated by City and the terms of this Lease, the terms of this Lease shall prevail. Lessee shall maintain the Premises in a clean, orderly and neat fashion and to a standard established for other similar DPR properties, permitting no objectionable odors to be emitted from the Premises and shall neither commit waste nor permit any waste to be committed thereon. Lessee shall not permit any accumulation of trash on or about the Premises. Lessee shall not create or contribute to the creation of a nuisance in either the Premises and Lessee shall not engage in or permit any action that will disturb the quiet enjoyment of any other occupant in the Building.

5.2 Compliance with Laws; Nondiscrimination.

5.2.1 General Obligation. Lessee shall not use or permit the Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, ordinance or regulation, or for any purpose offensive to the standards of the community. Lessee shall promptly comply, at its sole cost and expense, with all laws, ordinances and regulations now in force or hereafter adopted relating to or affecting the condition, use or occupancy of the Premises.

5.2.2 Nondiscrimination. Without limiting the generality of Subsection 5.2.1, Lessee agrees to and shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and The City of Seattle, including but not limited to Chapters 14.04, 14.10 and 20.42 of the Seattle Municipal Code, as they may be amended from time to time, and rules, regulations, orders and directives of the associated administrative agencies and their officers.

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



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

5.4 Hazardous Substances. Lessee shall not, without City's prior written consent, keep on or about the Premises any substance designated as, or containing any component now or hereafter designated as hazardous, dangerous, toxic or harmful and/or subject to regulation under any federal, state or local law, regulation or ordinance ("Hazardous Substances"), except customary office, kitchen, cleaning and other related supplies in normal quantities handled in compliance with applicable laws. With respect to any Hazardous Substances stored with City's consent, Lessee shall promptly, timely and completely comply with all governmental requirements for reporting and record keeping; submit to City true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities; within five (5) days after City's request therefor, provide evidence satisfactory to City of Lessee's compliance with all applicable governmental rules, regulations and requirements; and comply with all governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment and disposal of Hazardous Substances. Any and all costs incurred by City and associated with City's inspections of the Premises and City's monitoring of Lessee's compliance with this Subsection 5.4, including City's attorneys' fees and costs, shall be Additional Charges and shall be due and payable to City within ten (10) days after City's demand therefor, if Lessee's violation of this Subsection 5.4 is discovered as a result of such inspection or monitoring. Lessee shall be fully and completely liable to City for any and all cleanup costs and expenses and any and all other charges, expenses, fees, fines, penalties (both, civil and criminal) and costs imposed with respect to Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances in or about the Premises. Lessee shall indemnify, defend and hold City harmless from any and all of the costs, fees, penalties, charges and expenses assessed against, or imposed, upon City (as well as City's attorneys' fees and costs) as a result of Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances on or about the Premises. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Lease.

6. Utilities.

6.1 General. Lessee shall pay a monthly fee as stated in subsection 4.2 to DPR for their use of utilities at the Premises, including but not limited to, electricity, water and sewer services and data and telecommunications services.

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

6.3 Interruption. City shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption or failure of services due to any



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

7. **Licenses and Taxes.** Without any deduction or offset whatsoever, Lessee shall be liable for, and shall pay prior to delinquency, all taxes, license and excise fees and occupation taxes covering the business conducted on the Premises and all personal property taxes and other impositions levied with respect to all personal property located at the Premises; Lessee shall be responsible for, and shall pay prior to delinquency, all fees, charges, or costs, for any governmental inspections or examinations relating to Lessee's use and occupancy of the Premises, and pay all taxes on the leasehold interest created by this Lease (e.g., leasehold excise taxes).

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

8. **Alterations by Lessee.** Lessee 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. Lessee covenants that it will cause all alterations, additions and improvements to the Premises to be completed at Lessee's sole cost and expense by a contractor approved by City and in a manner that (a) is consistent with the City-approved plans and specifications and any conditions imposed by City in connection therewith; (b) is in conformity with first-class, commercial standards; (c) includes acceptable insurance coverage for City's benefit; (d) does not affect the structural integrity of the Premises or any of the Premises' systems; (e) does not disrupt the use of the Premises by any third party City licenses or leases the Premises to for use during the months or hours when Lessee does not use and occupy the Premises; and (f) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Premises. Lessee shall secure all governmental permits and approvals required for the work; shall comply with all other applicable governmental requirements and restrictions; and reimburse City for any and all expenses incurred in



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connection therewith. Except as provided in Section 12 with regard to concurrent negligence, Lessee shall indemnify, defend and hold City harmless from and against all losses, liabilities, damages, liens, costs, penalties and expenses (including attorneys' fees, but without waiver of the duty to hold harmless) arising from or out of Lessee's performance of such alterations, additions and improvements, including, but not limited to, all which arise from or out of Lessee's breach of its obligations under terms of this Section 8. All alterations, additions and improvements (expressly including all light fixtures; heating and ventilation units; floor, window and wall coverings; and electrical wiring), except Lessee's moveable trade fixtures and appliances and equipment not affixed to the Premises (including without limitation furniture, computers, point of sale systems and registers) shall become the property of City at the expiration or termination of this Lease without any obligation on its part to pay for any of the same. At City's request, Lessee shall execute a deed or bill of sale in favor of City with respect to such alterations and/or improvements. Notwithstanding the foregoing, Lessee shall remove all or any portion of such alterations and/or improvements on the expiration or termination of this Lease if City specifically so directs, in writing, at the time of City's issuance of its approval thereof. Within ninety (90) days after the completion of any alteration, addition or improvement to the Premises, Lessee shall deliver to City a full set of "as-built" plans of the Premises showing the details of all alterations, additions and improvements made to the Premises by Lessee.

9. Care of Premises.

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

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

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

9.3 City Maintenance Obligations. All normal repairs necessary to maintain the Premises (including the structural aspects and exterior of the Premises), the Common Areas, and the heating, ventilation, utility, electric and plumbing and other systems and equipment serving the Premises in a reasonably good operating condition, as determined by City, shall be performed by City at its expense. The foregoing sentence does not extend to maintenance occasioned by an



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act or omission of Lessee or its officers, agents, employees, or contractors. Except in the event of City's gross negligence or intentional misconduct, there shall be no abatement or reduction of rent arising by reason of City's making of repairs, alterations or improvements.

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

9.5 Lessee's Indemnification of City Against Liability under Visual Artists Rights Act of 1990. Lessee shall protect, defend, and hold City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of (a) the installation or integration of any work of visual art on or into the Premises; or (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any breach of Subsection 9.4 of this Lease; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by Lessee or any of its officers, employees or agents. This indemnification obligation shall exist regardless of whether City or any other person employed by City has knowledge of such installation, integration, or removal or has consented to any such action or is not required to give prior consent to any such action. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Lease.

10. Signs and Advertising.

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

10.2 On-Premises Signs. Lessee may install approved permanent exterior signage. Temporary signs or banners not more than 24 square feet in size may be displayed on or about the Premises to advertise a special event beginning two weeks immediately before the event advertised, through the conclusion of such event. Exterior signage shall include the Premises' name, Lessee's name and the DPR logo and shall be constructed in a style and size consistent with the DPR sign policy.

10.3 Recognition. On materials printed after the date this Lease becomes effective, Lessee shall include a statement and the DPR logo in its printed materials stating, in effect, that: "We would like to thank Seattle Parks and Recreation for providing a location for Victory Heights Cooperative Preschool."



11. **Surrender of Premises.**

11.1 **General Matters.** At the expiration or sooner termination of the Lease Term, Lessee shall return the Premises to City in the same condition in which received on the Commencement Date (or, if altered, then the Premises shall be returned in such altered condition unless otherwise directed by City pursuant to Section 8), reasonable wear and tear, casualty and condemnation damages not resulting from or contributed to by negligence of Lessee, excepted. Prior to such return, Lessee shall remove its moveable trade fixtures and appliances and equipment that have not been attached to the Premises, and shall repair any damage resulting from their removal. In no event shall Lessee remove floor coverings; heating or ventilating equipment; lighting equipment or fixtures; or floor, window or wall coverings unless otherwise specifically directed by City, in writing, at the time when City's approval of their installation is issued. Lessee's obligations under this Section 11 shall survive the expiration or termination of this Lease. Lessee shall indemnify City for all damages and losses suffered as a result of Lessee's failure to remove voice and data cables, wiring and communication lines and moveable trade fixtures and appliances and to redeliver the Premises on a timely basis.

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

12. **Waiver; Indemnification.**

12.1 **Lessee's Indemnification.** Except as otherwise provided in this section, Lessee shall indemnify, defend (using legal counsel reasonably acceptable to City) and save City, City's officers, agents, employees and contractors, and other occupants of the Building harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable personnel and overhead costs and attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to, any property arising out of or in connection with (i) Lessee's occupation, use or improvement of the Premises, or that of any of its employees, agents or contractors, (ii) Lessee's breach of its obligations hereunder, or (iii) any act or omission of Lessee or any subtenant, licensee, assignee or concessionaire of Lessee, or of any officer, agent, employee, guest or invitee of any of the same in or about the Premises/Building; provided that Lessee shall not be required to indemnify the City for damages resulting from the sole negligence of the City, its officers, agents, employees and contractors. Lessee 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



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indemnity is specifically and expressly intended to, constitute a waiver of Lessee'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 Lessee and its employees, to the extent of their negligence. Lessee shall promptly notify City of casualties or accidents occurring in or about the Premises. **CITY AND LESSEE ACKNOWLEDGE THAT THEY SPECIFICALLY NEGOTIATED AND AGREED UPON THE INDEMNIFICATION PROVISIONS OF THIS SECTION 12.**

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

12.3 Limitation of Lessee'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 City or Lessee (the "Indemnitor") agrees to indemnify the other (the "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, (i) shall not apply to damages caused by or resulting from the sole negligence of the Indemnitee, its agents or employees, and (ii) to the extent caused by or resulting from the concurrent negligence of (a) the Indemnitee or the Indemnitee's agents or employees, and (b) the Indemnitor or the Indemnitor's agents or employees, shall apply only to the extent of the Indemnitor's negligence; PROVIDED, HOWEVER, the limitations on indemnity set forth in this section shall automatically and without further act by either City or Lessee be deemed amended so as to remove any of the restrictions contained in this section no longer required by then applicable law.

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

13. Insurance.

13.1 Lessee Furnished Insurance. Lessee shall maintain, or cause its Subtenant(s), if any, to maintain at no expense to City throughout the entire Lease Term minimum levels of insurance coverages and limits of liability as specified below:

13.1.1 Commercial General Liability (CGL) insurance including:

- Premises/Operations
- Products/Completed Operations



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- Personal/Advertising Injury
- Contractual
- Stop Gap
- Host Liquor
- Tenant/Fire Legal.

Such insurance must provide a minimum limit of liability of \$1,000,000 each occurrence combined single limit bodily injury and property damage except:

- \$1,000,000 each offense Personal/Advertising Injury
- \$ 100,000 each occurrence Tenant/Fire Legal Liability
- \$1,000,000 each Accident/ Disease/Employee Stop Gap (alternatively, may be evidenced as Employer's Liability insurance under Part B of a Workers Compensation insurance policy).

The limits of liability described above are minimum limits of liability only. They shall neither (1) be intended to establish a maximum limit of liability to be maintained by Lessee as respects this Agreement, including additional limits of liability conferred by the Lessor's placement of excess and/or umbrella liability insurance policies, nor (2) be construed as limiting the liability of any of Lessee's insurers, which must continue to be governed by the stated limits of liability of the relevant insurance policies.

13.1.2 Property insurance under which the Lessee's furniture, equipment, inventory and trade fixtures, excluding tenant improvements ("Business Personal Property") are insured for "all risks" of physical loss or damage with an amount of insurance not less than the replacement cost thereof and not subject to any coinsurance clause.

13.2 City Furnished Property Insurance. The City shall maintain throughout the entire Lease Term minimum levels of property insurance and/or self-insurance providing "all risks" of physical loss or damage in an amount of insurance not less than the replacement cost of the Victory Heights Shelter House at 1747 NE 106th Street, Seattle, WA 98125 ("Building"). The City furnished coverage shall include the Premises, including tenant improvements, but exclude Lessee's Business Personal Property. Any premium charge to the Lessee for such City furnished property insurance shall be stated in the Lease.

13.3 General Requirements Regarding Lessee and City Furnished Property Insurance.

13.3.1 The City and the Lessee shall mutually waive their respective property insurers' rights of subrogation in favor of the other.

13.3.2 The City and the Lessee shall mutually waive their respective rights of recovery for property insurance deductibles in favor of the other except to the extent that (1) Lessee is responsible for the damage to or destruction of the Premises and, (2) Lessee's Tenant/Fire Legal Liability applies to the resultant claim.

13.3.3 Lessee shall be responsible for reviewing and adjusting as necessary upon each insurance renewal of Lessee's Property insurance the adequacy of the replacement values of Lessee's Business Personal Property.



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13.4 General Requirements Regarding Lessee's CGL and other Liability Insurance.

The CGL insurance and, in addition, any and all Excess and/or Umbrella liability insurance, if any, shall include the City of Seattle as an additional insured for primary and non-contributory limits of liability for the total available limits of liability of each policy. The term "insurance" in this paragraph shall include insurance, self-insurance (whether funded or unfunded), alternative risk transfer techniques, capital market solutions or any other form of risk financing.

13.5 General Requirements for Lessee's Property and CGL Insurance.

13.5.1 Coverage shall not be cancelled without thirty (30) day written notice of such cancellation, except ten (10) day written notice as respects cancellation for non-payment of premium, to the City at its notice address except as may otherwise be specified in Revised Code of Washington (RCW) 48.18.290 (Cancellation by insurer.). The City and the Lessee mutually agree that for the purpose of RCW 48.18.290 (1) (b), for both liability and property insurance the City is deemed to be a "mortgagee, pledge, or other person shown by (the required insurance policies) to have an interest in any loss which may occur thereunder."

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

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

13.5.4 The City shall have the right to periodically review the adequacy of property and liability insurance coverages and limits of liability in view of inflation, changing industry conditions and/or similar considerations and to require an adjustment in such coverage or limits upon ninety (90) day prior written notice.

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

13.6.1 A copy of the CGL and Property insurance policy's declarations pages;

13.6.2 A copy of the CGL insurance policy provision(s) documenting that the City of Seattle is an additional insured on a primary and non-contributory basis;



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13.6.3 A copy of the CGL and Property insurance policy provisions that document that coverage shall not be cancelled without thirty (30) day written notice of such cancellation, except ten (10) day written notice as respects cancellation for non-payment of premium, unless otherwise specified in Revised Code of Washington (RCW) 48.18.290 (Cancellation by insurer.); and,

13.6.4 If the insurance policy documentation as otherwise required herein is not available because policies have not been issued, received and/or reviewed, binders of insurance that otherwise evidence compliance with this Section may be substituted until such copies of policy declarations pages, additional insured and cancellation provisions are reasonably available. A certificate of insurance form alone will not satisfy the requirements for documentation specified in this Subsection.

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

13.7.1 The 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 any portions thereof that were damaged or destroyed by a fire or other casualty. However, the City retains the sole option to not repair or replace the Premises for any reason, in which case the City shall advise Lessee of City's election to terminate this Lease by giving at least a thirty (30) day notice to Lessee.

13.7.2 If the City elects to repair or replace the Premises, Lessee 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 Business Personal Property that has been damaged or destroyed.

13.7.3 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.

13.7.4 If the 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 Premise's interior area is damaged or destroyed Lessee may terminate this Lease upon sixty (60) days' written notice to the City.

13.7.5 Except in the event of City's gross negligence, intentional misconduct or breach of this Lease, City shall not be liable to Lessee for damages, compensation or other sums for inconvenience, loss of business or disruption arising from any repairs to or restoration of any portion of the Building or Premises or to the termination of this Lease as provided herein.



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

14. Assignment or Sublease. Lessee shall not sublet or encumber the whole or any part of the Premises, nor shall this Lease or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court or otherwise without the prior written consent of City, whose consent shall be given or withheld in its sole discretion. The granting of consent to a given transfer shall not constitute a waiver of the consent requirement as to future transfers. Any assignment or sublease, without City's prior written consent, at City's option, shall be void. No assignment or sublease shall release Lessee from primary liability hereunder. Each assignment and sublease shall be by an instrument in writing in form satisfactory to City. If Lessee is a corporation, then any transfer of this Lease by merger, consolidation or liquidation, or any direct or indirect change, in the ownership of, or power to vote the majority of, Lessee's outstanding voting stock, shall constitute an assignment for the purposes of this Lease. If Lessee is a partnership, then a change in general partners in or voting or decision-making control of the partnership shall also constitute an assignment.

15. 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. Lessee shall attorn to City's successor, which assumes and agrees to perform all of City's obligations under this Lease.

16. Eminent Domain.

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



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hereunder shall be reduced from the date Lessee is required to partially vacate the Premises in the same proportion that the Rentable Area taken bears to the total Rentable Area of the Premises prior to taking.

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

17. Default by Lessee.

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

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

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

any other sums of money that may be due from Lessee to City; the balance, if any, shall be paid to Lessee.

17.4 Vacation or Abandonment. If Lessee vacates or abandons the Premises in their entirety and fails to reoccupy them within thirty (30) days after City (1) delivers a notice to Lessee's notice address set forth in Section 1.5 above demanding such reoccupancy and (2) mails by certified or registered mail a copy of the notice to any forwarding address given by Lessee to City in writing, Lessee shall be in default under this Lease.

17.5 City's Non-exclusive Remedies upon Termination due to Default of Lessee. Notwithstanding any reentry by City and anything to the contrary in this Lease, in the event of the termination of this Lease due to the Default of Lessee, the liability of Lessee for all sums due under this Lease provided herein shall not be extinguished for the balance of the Term of this Lease. Lessee shall also be liable to City for any other amount (excluding consequential or specific damages) necessary to compensate City for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any costs incurred in authorizing others the use and occupancy of the Premises and in preparing the Premises for such use and occupancy, and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington. In the event of Termination due to Default of the Lessee, City will use reasonable efforts to mitigate its damages, but such efforts shall not be construed to be a waiver of the City's rights to be made whole by Lessee in the event of such Termination. The provisions of this Subsection 17.5 shall survive the expiration or earlier termination of this Lease.

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

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



20. **Termination for Convenience.** Notwithstanding anything else in this Lease to the contrary, the City may, at any time and without liability of any kind to Lessee, terminate this Lease upon One Hundred Twenty (120) days' written notice to Lessee if the City determines that the Premises are required for a different public purpose.

21. **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.

22. **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 as City may deem necessary or desirable. If Lessee is not personally present to permit entry and an entry is necessary in an emergency, City may enter the same by master key or may forcibly enter the same, without rendering City liable therefor, except in the event of City's gross negligence or intentional misconduct. Nothing contained herein shall be construed to impose upon City any duty of repair or other obligation not specifically stated in this Lease. Lessee shall change the locks to the Premises only through City and upon paying City for all actual and reasonable costs related thereto.

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

24. **Notices.** Any notice, demand or request required hereunder shall be given in writing to the party's address set forth in Subsection 1.5 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.



25. **Successors or Assigns.** All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon City, Lessee and, subject to the terms of Sections 14 and 15, 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.
26. **Authority and Liability.** Lessee warrants that this Lease has been duly authorized, executed and delivered by Lessee, and that Lessee has the requisite power and authority to enter into this Lease and perform its obligations hereunder. Lessee covenants to provide City with evidence of its authority and the authorization of this Lease upon request. All persons and entities named as Lessee herein shall be jointly and severally liable for Lessee's liabilities, covenants and agreements under this Lease.
28. **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.
29. **Force Majeure.** Neither City nor Lessee shall be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to any cause beyond its reasonable control, including, but not limited to an act of Nature, act of civil or military authority, fire, flood, windstorm, earthquake, strike or labor disturbance, civil commotion, delay in transportation, governmental delay, or war; provided, however, that the foregoing shall not excuse Lessee from the timely payment of Rent and Additional Charges due hereunder, when due.
30. **Counterparts.** The parties may execute this Lease in counterparts, which, taken together, constitute the entire Lease.
31. **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.
32. **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.
33. **Execution by City and Lessee; Effective Date.** Neither City nor Lessee shall be deemed to have made an offer to the other party by furnishing the other party with a copy of this Lease with particulars inserted. No contractual or other rights shall exist or be created between City and Lessee until all parties hereto have executed this Lease and the appropriate legislative authority approves it. This Lease shall become effective on the date (the "Effective Date") on which this Lease is executed by City and Lessee and approved by the Seattle City Council. City shall have no liability to Lessee and shall have the right to terminate this Lease upon written notice to Lessee if this Lease is legislatively disapproved.



34. **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."

35. **Lessee's Hours of Operation.** Lessee shall keep the Premises open during the school months and use them to transact business with the public daily during hours as designated below or as otherwise may be designated by the Superintendent. Subject to the Superintendent's prior reasonable approval, Lessee may, upon posting a written notice to the public of not less than one (1) week in duration prior to any approved closure, close the Premises or a portion thereof for a reasonable period for repairs or any approved remodeling, or for taking inventory. Lessee shall close to accommodate reasonable operational requirements of City's business, upon thirty (30) days' prior written notice to Lessee, and Lessee shall immediately close in the case of any emergency as determined by the Superintendent; provided, however, that if Lessee shall close pursuant to this sentence at the direction of City, and if Lessee remains closed at the direction of City for more than three (3) days, then Lessee's Rent and Additional Charges shall be prorated for the duration of the closure in the proportion that the number of days of the closure bears to the number of days of the month. Lessee shall furnish an approved sign at the Premises entrance advising the public of any approved closure, unless closed at the Direction of City.

Minimum hours of operation of the business conducted on the Premises are as follows:

Monday thru Friday	8:00 am	5:00 pm
Saturday (Lessee can come in between these times to perform Cleaning of building)	10:00 am	2:00 pm
Sunday (Lessee can come in between these times to perform Cleaning of building)	10:00 am	2:00 pm

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

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

37. **City's Control of Premises and Vicinity.** All common and other facilities provided by City in or about the Premises are subject to the City's exclusive control and management by City.



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Accordingly, City may do any and all of the following (among other activities in support of DPR or other municipal objectives), all without incurring any liability whatsoever to Lessee:

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

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

37.3 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.

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

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

38. Miscellaneous.

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

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



Attachment 1

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

CITY:
THE CITY OF SEATTLE

LESSEE:
**VICTORY HEIGHTS COOPERATIVE
PRESCHOOL**

By: _____
Print Name: Timothy A. Gallager
Title: Superintendent
Department of Parks and Recreation

By: _____
Print Name: _____
Title: _____
Victory Heights Cooperative Preschool

STATE OF WASHINGTON)

) ss. (Acknowledgement for City)

COUNTY OF KING)

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

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

[Signature]

[Printed Name]

NOTARY PUBLIC in and for the State of Washington residing at _____

My commission expires _____.

STATE OF WASHINGTON)

) ss. (Acknowledgement for _____)

COUNTY OF KING)

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

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

[Signature]

[Printed Name]

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

My commission expires _____.



EXHIBIT A

Legal Description

The Victory Heights Shelter House is located on the following property, legally described as follows:

VICTORY HEIGHTS PLAYGROUND

Lots 1,2, Block B, Lots 1,2,3,4, Block C, Replat of Blocks 12 and 13 of Victory Heights,
together with that portion of vacated Seward Place Northeast adjoining
Tax parcel No. 8901500065



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Parks and Recreation	Rita Hollomon / 684-8008 Charles Ng / 684-8001	Jennifer Devore / 615-1328

Legislation Title:

AN ORDINANCE relating to the Seattle Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to enter into a Lease Agreement with the Victory Heights Cooperative Preschool to provide preschool education and recreation programs for children and adults at the Victory Heights Shelterhouse.

- **Summary of the Legislation:** The proposed legislation authorizes the Department of Parks and Recreation (DPR) to enter into a five-year lease agreement with Victory Heights Cooperative Preschool to provide preschool education and recreational programs for children and adults at the City's Victory Heights Shelterhouse. The proposed agreement includes an option to extend the agreement for an additional five years at the discretion of the Superintendent of Parks and Recreation (Superintendent).
- **Background:** The Victory Heights Community Club bought the property and provided volunteer leadership after its development by the Federal Works Progress Association (WPA). The Club was unable to pay the taxes, and the county took ownership of the property. In 1954, the City purchased the Victory Heights Playground and Shelterhouse. In 1978, the play area was installed and improvements were made to the field, shelterhouse and restrooms. The Victory Heights Cooperative Preschool has been operating at this location for over 28 years through a series of concession use agreements.
- *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: N/A

Fund Name and Number	Department	Budget Control Level*	2008 Appropriation	2009 Anticipated Appropriation
TOTAL	N/A			

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

Notes: There is no appropriation requested by this legislation.

Anticipated Revenue/Reimbursement: Resulting From This Legislation:

Fund Name and Number	Department	Revenue Source	2008 Revenue	2009 Revenue
Park and Recreation Fund (10200)	Parks and Recreation	Income from base Fee payment	\$ 4,800	\$ 6,000
TOTAL			\$ 4,800	\$6,000

Notes: This lease is expected to begin on March 1, 2008. DPR will receive \$4,800 of revenue in 2008 based on a minimum payment of \$600 per month for eight months. The preschool does not operate in July or August. For the first five years, the use fee is set at \$1,555 per month. Victory Heights Cooperative Preschool will be allowed to offset a portion of the monthly use fee provided that the net monthly use fee does not fall below \$600. The amount of the Public Benefit Offset for a given year shall be determined at the Superintendent's sole discretion. In the event that the lease is extended beyond the initial term, the fee will be increased by an annual adjustment calculated using the CPI for each year of the agreement during the extended five year term. Offsets can include public benefit discounts such as scholarship programs or public classes. (See Section 4 of the Lease Agreement.)

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

Position Title and Department*	Position Number for Existing Positions	Fund Name and Number	Part-Time/ Full Time	2008 Positions	2008 FTE	2009 Positions **	2009 FTE* *
TOTAL	N/A						

Notes: There are no positions requested as a result of this legislation.

- **Do positions sunset in the future?** N/A

Spending/Cash Flow

Fund Name and Number	Department	Budget Control Level*	2008 Expenditures	2009 Anticipated Expenditures
TOTAL	N/A			

Notes: Not Applicable.

What is the financial cost of not implementing the legislation? In 2007, DPR collected approximately \$5,000 in revenues from Victory Heights Cooperative Preschool. The proposed five-year agreement would guarantee DPR at least \$6,000 per year, or \$30,000, over the term of the five-year agreement. If the agreement with Victory Heights Cooperative Preschool is not renewed, DPR might forego at least \$6,000 or more in guaranteed base payments.

DPR would also risk the potential of vandalism and/or damage to the building if it was vacant. Having the building occupied and operated by a group that has a vested interest in maintaining it is optimal for maintaining security of the building, as well as the park where it is located.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** DPR could conduct a public meeting process to determine alternative uses for the building and then advertise a competitive bid process to select another vendor. This would incur additional costs and a potential loss of revenue and services.
- **Is the legislation subject to public hearing requirements?** No.
- **Other Issues:** If this legislation is not passed, there could be a loss of preschool education and recreational program services to the community around the Victory Heights area.

Please list attachments to the fiscal note below:

Attachment A: Contract Summary

Seattle Department of Parks and Recreation

CONTRACT SUMMARY

Date: January 30, 2007

Name of Contracting Party/ Lessee/ Concessionaire/Other: Victory Heights Cooperative Preschool.

Contract Type: Parks and Recreation Department (DPR) Lease Agreement with Victory Heights Cooperative Preschool.

Non-Profit X or **For Profit**

New or **Renewal (or extension of existing Lease)** X - Long Term

Term of Lease: 5 years (03/01/08 - 03/01/13) with a 5 year extension at DPR's option.

Purpose of Lease: To provide preschool education and recreational opportunities for children and adults at the City's Victory Heights Shelterhouse. The Shelterhouse is approximately 2,430 sq. ft.

Public Benefit: Community involvement, reduced enrollment fees for low-income and/or diverse populations, educational and recreational benefits, and parenting classes for the parents of enrolled children from Seattle Community College. The monetary value to the City is at least \$9,550 per year.

Revenue or Offsets (as applicable): Revenue in the amount of \$1,555 per month which may be reduced by public benefit offsets to a minimum payment of \$600. This equates to a maximum of \$955 per month that the Lessee can potentially offset from monthly rent with the Superintendent's approval. The Lessee can request a public benefits offset reduction in rent by submitting a yearly public benefit statement requesting offset approval by the Superintendent and providing documentation of verifiable public benefits offsets. Lessee will pay a monthly utility use fee of \$150 and will also perform regular indoor janitorial cleaning of the facilities. Lessee may identify the amount of Public Benefit Offset it is requesting for the subsequent school year and the justification for the request.

Brief description, overview, history, general terms and other pertinent info:

The Victory Heights Community Club bought the property and provided volunteer leadership after its development by the Federal Works Progress Association (WPA). They were unable to pay the taxes and the Victory Heights Playground and Shelterhouse were purchased by the City from the county in 1954. In 1978, improvements to the play area, the field, shelterhouse and restrooms were made. The Victory Heights Cooperative Preschool has been operating at this location over 28 years through a series of concession use agreements.





City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

February 12, 2008

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill, which authorizes the Superintendent of Parks and Recreation to execute a 5-year lease agreement with Victory Heights Cooperative Preschool to provide preschool education and recreational programs for children and adults at the Department of Parks and Recreation Victory Heights Shelterhouse. The proposed agreement includes an option to extend the agreement for an additional five years at the discretion of the Superintendent.

For more than twenty years, Victory Heights Cooperative Preschool, a well-respected non-profit organization, has implemented culturally diverse preschool educational classes with a recreational component for children and adults. Passage of this legislation will allow Victory Heights Cooperative Preschool to provide five more years of leadership in preschool education, ensuring that participants have opportunities to recreate and play, while continuing to create a positive environment for the general public. In exchange for the right to provide preschool education at the Victory Heights Shelterhouse, Victory Heights Cooperative Preschool will conduct routine maintenance on the interior of the building, carry insurance in accordance with the terms of the agreement, and pay a minimum of \$30,000 to the City of Seattle over the five year period that the agreement is in effect.

Passage of this Bill will allow Victory Heights Cooperative Preschool to continue providing preschool education classes and recreational programs to Seattle residents, including a diverse group of citizens who do not otherwise have access to such programs.

Thank you for your consideration of this legislation. Should you have questions, please contact Eric Friedli at 684-8369.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Nickels", written over the printed name and title.

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

STATE OF WASHINGTON – KING COUNTY

--SS.

222214
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:122641-644&122646

was published on

03/26/08

The amount of the fee charged for the foregoing publication is the sum of \$ 70.25, which amount has been paid in full.



Affidavit of Publication

Subscribed and sworn to before me on

03/26/08

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 ordinance, passed by the City Council on March 17, 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. 122646
AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.
ORDINANCE NO. 122642
AN ORDINANCE relating to the Seattle Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to enter into a Lease Agreement with Madison Park Cooperative Preschool to provide preschool education and recreation programs for children and adults at the Madison Park Bathhouse.
ORDINANCE NO. 122644
AN ORDINANCE authorizing the amendment of a collective bargaining agreement effective through December 31, 2008 between the City of Seattle and the International Association of Fire Fighters, Local 27.
ORDINANCE NO. 122643
AN ORDINANCE relating to the Seattle Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to enter into a Lease Agreement with the Victory Heights Cooperative Preschool to provide preschool education and recreation programs for children and adults at the Victory Heights Shelterhouse.
ORDINANCE NO. 122641
AN ORDINANCE relating to financing certain capital activities of Seattle Department of Transportation; authorizing the loan of funds from the City's Consolidated (Residual) Cash Pool, or its participating funds, to the Transportation Master Fund; making appropriations; and amending the 2008-2013 Capital Improvement Program; all by a three-fourths vote of the City Council.
Publication ordered by JUDITH PIPPIN, City Clerk
Date of publication in the Seattle Daily Journal of Commerce, March 26, 2008.
3/26/2008