

Ordinance No. 122814

Council Bill No. 116313

The City of Seattle - Legislative Department
Council Bill/Ordinance sponsored by: _____

Tom Rasmussen
Councilmember

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent to enter into a Lease Agreement with Building 11 LLC for the purpose of renovating Building 11 and offering multiple uses and recreational opportunities in Building 11 at Magnuson Park; and exempting the use of a portion of the Building from the provisions and requirements of Ordinance 118477.

Committee Action:

Pass as amended 3-0 TR, TB, RC

9-29-08 Passed As Amended 8-1 (No: Godden)

CF No. _____

Date Introduced:	<u>9.8.08</u>	
Date 1st Referred:	To: (committee) <u>Parks & Seattle Center</u>	
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage:	Full Council Vote: <u>8-1</u>	
Date Presented to Mayor:	Date Approved: <u>10.8.08</u>	
Date Returned to City Clerk:	Date Published: <u>3</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:	

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

Law Department

Law Dept. Review

OMP Review

City Clerk Review

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Indexed

ORDINANCE 122814

1
2 AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the
3 Superintendent to enter into a Lease Agreement with Building 11 LLC for the purpose of
4 renovating Building 11 and offering multiple uses and recreational opportunities in
5 Building 11 at Magnuson Park; and exempting the use of a portion of the Building from
6 the provisions and requirements of Ordinance 118477.

7 WHEREAS, the Department of Parks and Recreation (DPR) has jurisdiction over, and manages
8 Warren G. Magnuson Park, including the buildings therein; and

9 WHEREAS, in 2005 Building 11 LLC was incorporated for the explicit purpose of expanding
10 recreational opportunities and programs in Building 11 at Magnuson Park; and

11 WHEREAS, in 2005, DPR issued a Request for Proposals (RFP) to find partners to expand
12 Magnuson Park's public recreation opportunities, including among other things, a multi-
13 purpose recreation center; and

14 WHEREAS, in response to the RFP, Building 11 LLC submitted a proposal to DPR, which was
15 reviewed by a committee and accepted by the Superintendent of Parks and Recreation as
16 having met the requirements of the RFP; and

17 WHEREAS, DPR and Building 11 LLC are both committed to providing high quality
18 recreational programs to the citizens of Seattle; and

19 WHEREAS, DPR and Building 11 LLC desire to collaborate in order to achieve their shared
20 long-term vision and goals with respect to the development of recreation activities at
21 Magnuson Park; and

22 WHEREAS, the parties agree that the public benefits from Building 11 LLC's financial and
23 program commitments to remodel, improve, maintain and operate Building 11 at
24 Magnuson Park will be substantial; and

25 WHEREAS, essential building upgrades are necessary at this time to allow for Building 11's
26 continued use for parks and recreation-related activities and services, and

27 WHEREAS, the proposed agreement allows for a certain portion of the space to be used for
28 commercial uses, such as office space that will generate revenues sufficient to fund these
upgrades as well as to subsidize rents for the parks and recreation-related activities and
services for the term of the agreement; and



1 WHEREAS, once these building upgrades are financed and completed, the total square footage
2 of space in the building available for parks and recreation-related activities and services
will substantially increase; and

3 WHEREAS, DPR and Building 11 LLC wish to enter into a long term Lease Agreement for the
4 purpose of setting forth the terms and conditions under which Building 11 LLC will
5 occupy and use portions of Building 11, including the proposed terms and conditions
6 under which the renovation project shall be financed, constructed, and operated; NOW,
THEREFORE,

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

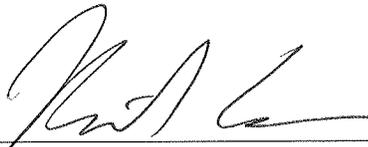
8 Section 1. The Superintendent of Parks and Recreation (“Superintendent”) is authorized
9 to execute, for and on behalf of the City, a thirty-year Lease Agreement with Building 11 LLC,
10 in substantially the form attached hereto as Attachment 1. The Lease Agreement also includes
11 the option of three extension periods of five years at the option of Building 11 LLC, provided
12 certain conditions are met.

13
14 Section 2. To the extent that the Lease Agreement allows a portion of Building 11 to be
15 used for commercial uses, the Seattle City Council hereby finds that the requirements of
16 Ordinance 118477 adopting Initiative 42, regarding exchanges of land held for park and
17 recreation purposes, are hereby superseded for purposes of this ordinance.

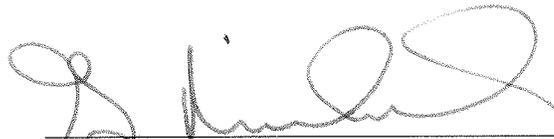
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22 Section 3. This ordinance shall take effect and be in force thirty (30) days from and after
23 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days
24 after presentation, it shall take effect as provided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



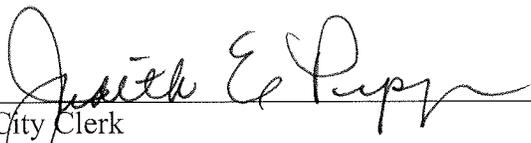
1 Passed by the City Council the 29th day of September, 2008, and
2 signed by me in open session in authentication of its passage this
3 29th day of September, 2008.

4
5 
6 President _____ of the City Council

7
8 Approved by me this 8 day of October, 2008.

9
10 
11 Gregory J. Nickels, Mayor

12
13 Filed by me this 8th day of October, 2008.

14
15 
16 City Clerk

17 (Seal)

- 18 Attachment 1: Lease Agreement between The City of Seattle and Building 11 LLC
19 Exhibit A - Legal Description
20 Exhibit B - Site Plan Showing Premises
21 Exhibit C - Parking Area
22 Exhibit D - Initial Capital Improvement Offset categories
23 Exhibit E- Bill of Sale
24 Exhibit F - Master Plan
25 Exhibit G - Public Benefits
26 Exhibit H - Letter of Intent between Lessee and Sail Sand Point



LEASE

THIS LEASE ("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 Department of Parks and Recreation ("Parks") and the Superintendent thereof ("Superintendent"), and **Building 11 LLC** ("Lessee"), a limited liability company 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 consists of an approximately 58,780 square foot existing building (the "Building") commonly referred to as Building 11 at Warren G. Magnuson Park located at 7777 Sand Point Way NE, Seattle, King County, Washington 98115 situated on a portion of the real property legally described on Exhibit A and depicted on Exhibit B. Lessee shall notify City on or before the Commencement Date, as defined in Section 1.3, whether it elects to lease the two (2) outbuildings adjacent to the Building and depicted on Exhibit B (the "Outbuildings"), in which case the Outbuildings will be included in the Premises at no additional cost and subject to the terms and conditions herein. Alternatively, Lessee may elect not to lease the Outbuildings and may demolish the Outbuildings at Lessee's own cost and expense, and in compliance with all applicable laws and regulations. The cost of demolishing the Outbuildings will be considered part of Lessee's Initial Capital Improvements, as defined in Section 5.1, and Lessee shall be entitled to include such costs in its Capital Improvement Rental Offset as set forth in Section 5 below.

1.2 **Effective Date.** This Lease shall be effective starting on the date when authorized by Seattle City Council and signed by the Superintendent and Lessee. Beginning on the "Effective Date", Lessee and its employees, agents and contractors shall have the right to enter the Premises during business hours and after reasonable advance written notice to City for purposes of inspecting the Building and the Premises.

1.3 **Commencement Date; Possession.** The Lease Term shall commence when all contingencies in Section 7 have been satisfied or waived and the Lessee and City have specified the "Commencement Date" in writing, as further described in Section 7.5.

1.4 Expiration Date. The Lease Term (defined below) shall expire on the date that is thirty (30) years after the Commencement Date, unless the Term of this Lease is terminated earlier as provided in this Lease or extended pursuant to Section 3.2.

1.5 Rent Commencement Date. The Rent Commencement Date shall be the same date as the Commencement Date.

1.6 Rent.

1.6.1 Base Rent: \$235,120 annually (\$19,593.33 monthly), and adjusted as described in Section 5.

1.6.2 Additional Rent: Additional Rent is equal to 10% of Subtenant Rent. For purposes of calculating Additional Rent, "Subtenant Rent" means and includes all base rent, percentage rent and fees of any kind collected by Lessee from third parties, including licensees and subtenants, for use and occupancy of the Premises for Permitted Commercial Uses (as defined in Section 2.5.3). If Lessee receives any non-monetary compensation for use and occupancy of the Premises by subtenants or licensees, the Superintendent shall calculate the reasonable cash value of such compensation for purposes of calculating Subtenant Rent; provided, however, that tenant improvements made for subtenant's benefit and at subtenant's cost will not be considered non-monetary compensation for purposes of calculating Subtenant Rent. Subtenant Rent does not include amounts paid to Lessee as reimbursement for Lessee's subtenant and licensee related expenditures, such as common area maintenance, taxes, including leasehold excise tax charged to subtenants, insurance, and utilities, nor does it include amounts paid to Lessee by subtenants and licensees for use and occupation of the Premises for Primary Park and Recreation Uses and Other Park and Recreation Uses (as defined in Sections 2.5.1 and 2.5.2).

1.7 Notice Addresses.

To City: The City of Seattle
Department of Parks and Recreation
Attention: Manager
Contracts and Business Resources
6310 NE 74th Street
Seattle, WA 98105

To Lessee: Building 11 LLC
c/o TRF Pacific, LLC
Attn: Darrell M. Vange, Development Manager
2620 Second Avenue
Seattle, WA 98121

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

- Exhibit A - Legal Description
- Exhibit B - Site Plan Showing Premises
- Exhibit C - Parking Area
- Exhibit D - Initial Capital Improvement Offset categories
- Exhibit E- Bill of Sale
- Exhibit F - Master Plan
- Exhibit G – Public Benefits
- Exhibit H - Letter of Intent between Lessee and Sail Sand Point

2. Premises.

2.1 Grant. City hereby grants to Lessee and Lessee hereby accepts from City the right to exclusive use, possession, and occupancy of those certain Premises referenced in Section 1.1 (the “Premises”), which are located on a portion of the real property described on Exhibit A and depicted on Exhibit B.

2.2 License to Use Common Areas. Throughout the Term, Lessee and Lessee’s subtenants and their employees, contractors, agents and invitees may use the Magnuson Park common areas as from time to time constituted, including without limitation, roads providing access from public highways, parks, walkways, fields, parking lots, and restrooms (the “Common Areas”), in common with all other users and visitors of the Park and subject to such general rules and regulations as the Superintendent may promulgate (the “License”). Notwithstanding the foregoing, Lessee and Lessee’s subtenants may use Common Areas during hours when Magnuson Park is not open to the general public, but only the parking lot and those Common Areas of the park reasonably necessary for access to the Premises, and for the purpose of access to the Premises only.

2.3 Condition. City grants the Premises and Lessee accepts the Premises in its "as is" condition, except as otherwise set forth herein.

2.4 Parking. At the request of Lessee, City will install signs at up to twenty-five (25) parking stalls within the area depicted on Exhibit C as “Short Term Parking” limiting parking in those stalls to two (2) hours for general public use. Additionally, throughout the Term, the City shall maintain a minimum of 300 parking stalls for general public use within the area depicted on Exhibit C as “Parking Area”. City and Lessee acknowledge that they intend to enter into a “Tri-Party Parking Agreement” with the tenant of Building 27 to specify the rights and obligations of the parties with regard to the Parking Area. If the Tri-Party Parking Agreement is not signed by March 31, 2009, then the Superintendent will reasonably allocate the parking rights for all parties involved on or before April 30, 2009. In the event that the parking rights provided to the Lessee are not reasonably satisfactory to Lessee, Lessee may terminate this Lease upon thirty (30) days prior written notice delivered on or before May 31, 2009. Lessee acknowledges and agrees that the Tri-Party Parking Agreement will not guarantee any exclusive parking

rights to any party, nor will the Superintendent allocate exclusive parking rights to Lessee or any tenant at Magnuson Park.

2.5 Permitted Uses. City acknowledges and agrees that Lessee intends to sublease all of the Premises to multiple subtenants, and Lessee acknowledges and agrees that the City's willingness to enter this Lease is premised, in part, upon Lessee's proposed use of the Premises. As a result, Lessee and/or its subtenants shall use the Premises only for the purposes set forth in this Section 2.5 (collectively, the "Permitted Uses").

2.5.1 Primary Park and Recreation Uses. Lessee shall use a minimum of 16,890 square feet of the Premises for Primary Park and Recreation Uses, with a focus on providing water-related recreation such as sailing, kayaking, canoeing and other non-motorized boating activities. "Primary Park and Recreation Uses" also includes land-based recreation activities such as cycling, hiking, running, exercise, and sports, Recreation Oriented Retail Sales and Services, health and fitness sales and services, and environmental stewardship as envisioned in the Sand Point Physical Development Plan. As used in this Lease, "Recreation Oriented Retail Sales and Services" are defined as retail sales that are consistent with and complimentary to recreation activities or directly support the general public's use and enjoyment of the park and its amenities. Recreation Oriented Retail Sales and Services shall not exceed twenty-five percent (25%) of the total occupiable square footage of the groundfloor of the Building, except to the extent such Recreation Oriented Retail Sales and Services qualify as Water Related Uses under Section 2.5.4.

2.5.2 Other Park and Recreation Uses. Lessee may also use a portion of the Premises not to exceed 16,890 square feet for the support and enjoyment of Other Park Uses. As used herein, "Other Park and Recreation Uses" means only the following uses: (i) childcare, (ii) artist studios and workshops, and (iii) food and beverage services for the benefit of visitors and users of the park. Food and beverage services are limited to 10,000 square feet in total, and individual food and beverage services subtenants are further limited to a portion of the Premises not to exceed 2,500 square feet.

2.5.3 Permitted Commercial Uses. Lessee may use a portion of the Premises not to exceed 25,000 square feet for any use that complies with all applicable laws, statutes, ordinances, rules and regulations, as the same may be amended or adopted during the Lease Term, and that does not violate any other provision of this Lease, such as meeting space, general office use, and storage ("Permitted Commercial Uses"). Permitted Commercial Uses are further limited to the second floor of the Premises, the West side of the ground floor, and no more than 10 percent of the building frontage and depth on the East Side of the ground floor. This frontage is primarily to provide an entrance and associated common areas.

2.5.4. Water Related Uses. Consistent with the Sand Point Physical Development Plan's vision for a small watercraft center in the Northshore area, at all times during the Lease Term and any Extended Terms, Lessee shall reserve a minimum of eight thousand (8,000) square feet of the ground floor space for water-related uses,

such as recreational sailing, rowing, kayaking, sailboard and surfing programs, dry storage of boats, sales and rentals of small boats, boating equipment and supplies, and for-profit or non-profit organizations dedicated to the preservation, education, safety or enhancement of the marine environment ("Water Related Uses"). Additionally, at all times during the Term, Lessee shall ensure that some portion of the space reserved for Water Related Uses is used for the purpose of providing non-motorized boat rentals on a walk-in basis to the general public, affordable at levels comparable to sailing programs at the Center for Wooden Boats. In order to further the goals in the Sand Point Physical Development Plan, the space reserved for Water Related Uses shall be made available at an average lease rate not to exceed eighty percent (80%) of the average of all rents in the building ("Market Rent"). Lessee will retain the current tenant, Sail Sand Point, and all of its operations as a sub-lessee of Building 11 as the focal point of the Water-Related Uses; provided that Sail Sand Point executes a lease consistent with the letter of intent between Lessee and Sail Sand Point dated August 11, 2008 (Attached as Exhibit H). If Lessee is unable to maintain a subtenant in compliance with this Section and some portion of the space remains vacant for more than a three month period, then Lessee will notify the Superintendent and the City shall have the right to propose subtenant(s) that will continue the Water Related Uses in the space reserved by this Section. Provided the proposed subtenant agrees to a standard lease at rental rates of no less than 80% of the Market Rent for the building at the time, Lessee shall be obligated to lease the space to the City's proposed subtenant(s). If the City has not found any subtenant that will fulfill the requirements in this Section within three months after the City has the right to propose subtenant(s), then Lessee may use the space reserved for Water Related Uses for Park and Recreation Uses or Other Park and Recreation Uses. Lessee may not renew any such leases without first demonstrating to City that it has used all reasonable efforts to fill the space with new Water-Related Uses.

2.6 Premises Encumbrances. City represents and warrants that it has disclosed all covenants, conditions and restrictions, encumbrances, or other agreements that City has actual knowledge of at the time of executing this Lease and that in any way prohibit or materially limit the Permitted Uses or Lessee's rights hereunder. This representation and warranty is not intended to be in lieu of Lessee's own due diligence with respect to ascertaining whether the Premises are suitable for its intended use and purposes.

2.7 Quiet Enjoyment. City warrants that Lessee, on payment of the Rent and performance of the covenants herein contained, shall peaceably and quietly have, hold and enjoy the Premises during the Lease Term.

2.8 Continuous Operation. One of the City's primary purposes in entering into this Lease is to ensure that there is continuous programming and occupancy in the Building. As a result, Lessee shall include language in each of its subleases for the Premises requiring the subtenant under the sublease to keep its subleased premises open for business during the usual business hours of each and every business day as is customary for businesses of like character, except for reasonable closures for remodeling, repair or renovation, and Lessee shall use reasonable efforts to enforce the same. In the

event that a subtenant fails to comply with the foregoing sublease requirement, Lessee shall diligently pursue its remedies under the sublease, which remedies shall include termination of the sublease if subtenant does not comply, subject to reasonable notice and opportunity to cure provisions.

3. Lease Term.

3.1 Initial Term. This Lease shall be for a thirty (30) year term (“Lease Term” or “Term”) beginning on the Commencement Date specified in Subsection 1.3 and ending on the Expiration Date specified in Subsection 1.4, unless the Lease Term is terminated earlier in accordance with the provisions of this Lease or extended as provided in Subsection 3.2 below.

3.2 Extended Term. Lessee shall have the option to extend this Lease for three (3) additional extended terms of five (5) years (“Extended Term”) each on the same terms and conditions set forth herein; however, Lessee’s right to exercise any option to extend is conditioned upon Lessee’s not being in default under this Lease beyond applicable notice and cure period and Lessee’s achievement, in aggregate, of the maximum Public Benefit Program Rent Offset (as defined below) during the preceding Term or Extended Term. Lessee may extend the Lease Term to include the Extended Terms by giving the Superintendent written notice of its intention to do so no more than two-hundred-seventy (270) days and no less than one-hundred-eighty (180) days prior to the Expiration Date of the then current Term.

3.3 Early Termination. Lessee may terminate this Lease in its sole discretion, effective any time on or after the date which is five (5) years following the Commencement Date, upon at least sixty (60) days prior written notice to City, in which case all improvements and alterations made to the Premises by Lessee shall become the property of City at no cost to the City and as set forth in Section 10.4.

4. Rent.

4.1 Rent Payment. Commencing on the Rent Commencement Date, and thereafter on or before the tenth (10th) day of each month during the Lease Term, Lessee shall pay to City at the address and to the account specified by City in writing, without notice or demand, in lawful money of the United States in advance, the monthly amount of Base Rent specified in Subsection 1.6.1 and Additional Rent specified in Subsection 1.6.2, subject to the Rent Offsets described in Section 5. Base Rent and Additional Rent are collectively referred to herein as “Rent.” Rent shall be prorated on a daily basis for any partial month within the Lease Term.

4.2 Adjustments to Rent.

4.2.1 Annual Rental Adjustments. Except as set forth below, beginning on the first anniversary of the Rent Commencement Date and every year thereafter until the expiration or termination of this Lease (each, a “Rent Adjustment Date”), Base Rent

shall be adjusted upward only to reflect increases in the total non-compounded 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. City shall notify Lessee in writing at least three (3) months prior to each Rent Adjustment Date of the new monthly Base Rent amount that will be due starting on such Rent Adjustment Date.

By way of example only, if the CPI on the Rent Commencement Date is 100 and the CPI most recently issued three (3) months prior to the first Rent Adjustment Date is 102 and the annual Base Rent due under this Lease is \$60,000, then the total CPI adjustment would be two (2%) and annual Base Rent under this Lease would increase to \$61,200 effective as of the Rent Adjustment Date.

In no event shall the Base Rent, as adjusted for any period, be less than Base 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, and the fees and costs incurred in connection with such arbitration shall be borne equally by City and Lessee.

4.2.2 Alternative Rental Adjustments. Beginning on the tenth (10th) anniversary of the Rent Commencement Date and every five (5) years thereafter, the City shall have the option to adjust the Base Rent by either (i) the CPI increase, as set forth above or (ii) the percentage increase in the gross revenue from the "Revenue Base Year" to the relevant "Revenue Adjustment Year," as defined and illustrated in the table below. As used in this Lease, "gross revenue" means all income Lessee receives from any person or entity for any use or occupancy of the Premises, excluding amounts collected by Lessee as reimbursement for Lessee's actual operating expenses related to the Premises, such as common area maintenance, insurance, utilities, and taxes. In the event the City elects to adjust rent based upon the percentage increase and not the CPI, the adjusted Rent will be in effect for the duration of the relevant Rental Adjustment Period specified on the table below.

Rental Adjustment Period	Revenue Base Year	Revenue Adjustment Year
Year 11 through Year 15	Third full year after the Commencement Date	Tenth full year after the Commencement Date
Year 16 through Year 20	Third full year after the Commencement Date	Fifteenth full year after the Commencement Date
Year 21 through Year 25	Third full year after the Commencement Date	Twentieth full year after the Commencement Date

Year 26 through Year 30	Third full year after the Commencement Date	Twenty-fifth full year after the Commencement Date
Year 31 through Year 35	Third full year after the Commencement Date	Thirtieth full year after the Commencement Date
Year 36 through Year 40	Third full year after the Commencement Date	Thirty-fifth full year after the Commencement Date
Year 41 through Year 45	Third full year after the Commencement Date	Fortieth full year after the Commencement Date

Notwithstanding the foregoing, in no event shall the Base Rent, as adjusted during any Rental Adjustment Period, be less than Base Rent payable during the immediately preceding period.

5. Rent Offsets

Throughout the Term and any Extended Term, Lessee may offset Rent due under this Lease subject to the procedures and limitations in this Section.

5.1 Capital Improvement Rent Offset. Subject to the procedures and limitations in this Section, Lessee shall be entitled to an offset against total Rent during the entire Lease Term, including the Extended Term, in a total amount up to Lessee’s actual and reasonable costs (including hard and soft costs such as, but not limited to, labor, materials, architect and engineering fees, permits, construction or project management, sales tax, and consultants’ fees) for the approved initial renovation of the Premises (“Initial Capital Improvements”) and any subsequent repair, improvement, or replacement approved by City under Section 11.1 that would be capitalized for federal income tax purposes (“Subsequent Improvements”) (the Initial Capital Improvements and the Subsequent Improvements are collectively referred to herein as the “Capital Improvements”). During the initial sixty (60) months of the Term, Lessee’s Capital Improvement Offset shall not exceed seventy-five percent (75%) of the total Rent due in any given month. For the balance of the term, Lessee’s Capital Improvement Offset shall not exceed sixty-seven percent (67%) of the Rent due in any given month.

5.2 Procedure for Capital Improvement Rent Offset.

5.2.1 Submittal of Costs.

(a) Prior to Completion of the Capital Improvements. Commencing upon the Commencement Date and terminating upon Lessee’s substantial completion of construction of the Initial Capital Improvements, as evidenced by a certificate of occupancy (the “Construction Period”), and during the construction of any Subsequent Improvements, Lessee may, on a quarterly basis, submit an accounting of its costs

incurred and actually expended in connection with the design and construction of such Capital Improvements, together with such supporting documentation as the Superintendent may reasonably request.

(b) After Completion of the Capital Improvements. Not later than sixty (60) days following the Construction Period of the Initial Capital Improvements or completion of any Subsequent Improvements, as applicable, Lessee shall provide the Superintendent with an accounting of its costs associated with the Capital Improvements completed to the Premises and not previously included in the Capital Improvement Rent Offset, together with such supporting documentation as the Superintendent may reasonably request.

5.2.3 Certification. The Superintendent acting in accordance with generally accepted accounting principles, and in his or her reasonable discretion, shall certify the total amount of those reasonable costs actually expended by Lessee on the Capital Improvements and this amount shall be added to Lessee's "Capital Improvement Rent Offset". For the Initial Capital Improvements, the Superintendent shall certify reasonable costs incurred in the categories itemized on The Initial Capital Improvement Rent Offset Categories on Exhibit D, which is attached and incorporated herein. The Superintendent shall provide written notice of such certification or a statement as to why an amount is not being certified as submitted within thirty (30) days of Lessee's request therefor. In the event the Superintendent fails to timely provide such certification or written notice, the Initial Costs or Subsequent Costs, as applicable, submitted to the Superintendent for certification shall be deemed certified and added to the Capital Improvement Rent Offset.

5.2.4 Application of Capital Improvement Rent Offset. Each month, Lessee shall report to the Park's Finance Director the amount of Capital Improvement Rent Offset it is applying to Rent that would otherwise be due and owing. If the Capital Improvement Rent Offset exceeds the total Rent due under this Lease during the Initial Term and Extended Terms, if any, the remaining value of Lessee's Capital Improvements shall be deemed to have been donated to City at the termination or expiration of this Lease, and the Capital Improvements shall be surrendered with the Premises as provided in Section 14, without the need for further action by Lessee or City.

5.3. Public Benefit Program Rent Offset. Lessee shall be entitled to an offset against Rent during the entire Lease Term and any Extended Terms, in an amount up to the equivalent dollar value of any free or discounted program or membership made available at or from the Premises to the general public or to specific groups such as children, seniors, or the handicapped (the "Public Benefit Program Rent Offset"), as described more fully in section 8.7.

5.3.1 Application of Public Benefit Rent Offset. In cases where public benefits are provided at a discount relative to market rates, the public benefit shall be calculated based on the difference between the market and discounted rates. The monthly offset amount shall be one-twelfth (1/12) of the annual value of the program as certified by the Superintendent. The Public Benefit Program Rent Offset may not exceed a total of

twenty-three percent (23%) of the Rent due in any given month. Public Benefit Program Offsets shall be pre-approved by the Parks Superintendent pursuant to Section 8.7, and subject to confirmation at the end of each year.

5.3.2 Minimum Public Benefits Required. Each year during the Term of this Agreement, Concessionaire shall provide public benefits with a total value of no less than ten percent (10%) of the Rent for that particular year, and consistent with the programs described in Exhibit G. These public benefits may be applied as Public Benefit Rent Offsets as described in Section 5.3 and 5.3.1. Failure to provide these required benefits will constitute a default by Lessee as described in Section 21.

6. Late Charge; Interest.

If Lessee fails to pay City any sum within ten (10) days after written demand therefore, such amount shall bear interest at the rate of twelve percent (12%) per annum from the date due until the date paid.

7. Contingencies.

7.1 Preliminary Contingencies.

This Lease is contingent upon the satisfaction of all contingencies stated in this Section 7.1 in the time periods stated (the "Preliminary Contingencies").

7.1.1 Deed Restrictions. The City shall work with the National Park Service and appropriate government entities in order to permit Lessee to use no more than 25,000 square feet of the Premises for Permitted Commercial Uses notwithstanding covenants in the Quitclaim Deed recorded by the King County Recorder's Office under recording number 9905041194 whereby the United States of America granted Building 11 and other portions of Magnuson Park to the City (the "USA Deed"). The resolution of this issue is a necessary condition to Lessee's use of the Premises for Other Commercial Uses. Consequently, if the City has not resolved the issues relating to the USA Deed's restrictions regarding use of the Premises in a manner that allows for Other Commercial Uses by April 30, 2009, either party may terminate this lease by written notice to the other party no later than May 31, 2009.

7.1.2 Phase II Environmental Study. The City shall retain an environmental consultant to complete a Phase II Environmental Assessment on the Premises and the Outbuildings (the "Phase II"). Both the City and Lessee will work together with the consultant to develop the scope of the Phase II, which shall include without limitation, taking soil samples from locations identified by Lessee as potential locations for new building footings, soil samples from locations Lessee intends to perform underground work for the installation or improvement of utilities, soil samples from borings through the interior slab of the Building, soil samples from the area around the Outbuildings, and quantification of lead based paint, asbestos and asbestos containing materials within the Buildings. The City shall engage its environmental consultant to commence the Phase II no later than ten (10) days following the Effective Date and shall use commercially

reasonable efforts to insure timely delivery of the same. The City will promptly provide a copy of all Phase II assessment results to Lessee and shall provide a copy of the Phase II final report for Lessee's review and approval no later than March 30, 2009. In the event that the Phase II is not complete or approved by Lessee and the City on or before April 30, 2009, either party may terminate this Lease by written notice to the other party delivered not later than May 31, 2009, in which case the parties shall have no further rights or obligations under this Lease. In the event that this Lease is not terminated by May 31, 2009, Lessee will reimburse the City for one hundred percent (100%) of the cost of the Phase II (as evidenced by an invoice and other documentation reasonably requested by Lessee) within ten (10) days following the Commencement Date, which cost shall be included in Lessee's Capital Improvement Rent Offset.

7.1.3 Land Use Code Amendments. Lessee and the Superintendent shall reasonably cooperate to develop and Superintendent shall propose to City Council, amendments to Seattle Municipal Code Chapter 23.72 (Sand Point Overlay District). If the Seattle Municipal Code Chapter 23.72 is not amended to the reasonable satisfaction of both parties by April 30, 2009, Lessee may terminate this Lease by providing written notice to City not later than May 31, 2009, and the parties shall have no further rights or obligations under this Lease.

7.1.4 Shoreline Use Restriction Resolution. Lessee and the Superintendent shall reasonably cooperate to gain all necessary approvals from the City Department of Planning and Development, Seattle City Council, and the State Department of Ecology for an Amendment to the Seattle Shoreline Master Program (SMC Chapter 23.60) to allow the uses described in Section 2.5, as long as such approvals do not limit public access to the shoreline relative to existing conditions. If by April 30, 2009, the Shoreline Master Program (SMC Chapter 23.60) is not amended or other approval received permitting the Premises to be used for the Permitted Uses, including without limitation general office use, restaurant use, and general retail use, Lessee may terminate this Lease by providing written notice to City not later than May 31, 2009, and the parties shall have no further rights or obligations under this Lease.

7.1.5 Notice upon Satisfaction of Preliminary Contingencies. When Lessee is satisfied that all Preliminary Contingencies have been met, Lessee shall provide the City with written notice ("Lessee's Preliminary Notice"). If City disagrees as to whether any Preliminary Contingency has been satisfied, City shall notify Lessee in writing within thirty (30) days of receipt of the Lessee's Preliminary Notice. If the City does not receive Lessee's Preliminary Notice by May 31, 2009, either party may terminate this Lease by written notice and the parties will have no further rights or obligations under this Lease.

7.2 City Contingencies. This Lease is contingent upon the satisfaction by Lessee or waiver by City of the contingencies in this Section 7.2 within the times stated (the "City Contingencies").

7.2.1 Lessee Financing. No later than fourteen (14) days prior to applying for the building permits from City's Department of Planning and Development as set forth in

Section 7.2.3 below, Lessee shall provide to the Parks Finance Director, for his/her review and approval (which approval shall not be unreasonably withheld, conditioned or delayed), reasonable evidence that it has funding committed to complete all Building alterations necessary to obtain a certificate of occupancy ("Funding"). If Lessee fails to provide reasonable evidence it has secured adequate Funding within nine (9) months after delivery of Lessee's Preliminary Notice, City may terminate this Lease upon thirty (30) days written notice to Lessee and the parties shall have no further rights or obligations under this Lease. Notwithstanding the foregoing, in the event that Lessee obtains such Funding within the thirty (30) day period, this Lease shall continue in full force and effect. City shall be deemed to have approved the Funding unless it rejects the Funding in writing within thirty (30) days of Lessee's request for approval.

7.2.2 Lessee Third Party User Commitments. No later than nine (9) months after delivery of Lessee's Preliminary Notice, Lessee shall provide City with reasonable evidence, such as letters of intent, that it has sublease commitments with third parties accounting for fifty percent (50%) of the rentable square feet within the Building. If Lessee fails to secure such subtenant commitments within nine (9) months of the delivery of Lessee's Preliminary Notice, City may terminate this Lease by providing written notice to Lessee and the parties shall have no further rights or obligations under this Lease.

7.2.3 Building Permits. No later than three (3) months after delivery of Lessee's Preliminary Notice, Lessee shall apply for the Master Use Permit necessary to undertake the Initial Capital Improvements. No later than six (6) months after approval of the Master Use Permit, Lessee shall apply for building permits necessary to complete the Initial Capital Improvements. If Lessee fails to apply for a Master Use Permit or building permits within the times required in this section, the City may terminate this Lease by providing written notice to Lessee and the parties shall have no further rights or obligations under this Lease.

7.3 Lessee Contingencies. This Lease is contingent upon the satisfaction by the City or waiver by Lessee of the contingencies in this Section 7.3 within the times stated (the "Lessee's Contingencies").

7.3.1 Approval of Signage Plan for the Premises. No later than nine (9) months after delivery of Lessee's Preliminary Notice, Lessee shall submit a plan for signage to the Superintendent for review and approval, including without limitation standards for the placement of signs, notices, pictures, posters, or any other advertising matter within or about the Premises. The Superintendent shall approve or deny the plan with reference to the Magnuson Park Signage and Wayfinding Master Plan. The Superintendent shall be deemed to have approved the signage plan unless it rejects the plan in writing within sixty (60) days of receipt of same. Notwithstanding the foregoing, if the Superintendent does not approve the signage plan within sixty (60) days of receipt, Lessee may terminate this Lease by providing written notice not later than ninety (90) days after submitting the signage plan to the Superintendent and the parties shall have no further rights or obligations under this Lease.

7.3.2 Park Signage and Access Improvements. The parties shall use reasonable efforts to agree on a specific plan to improve signage and access, consistent with the Magnuson Park Signage and Wayfinding Master Plan on or before April 30, 2009. The plan shall include a funding plan that allocates funding responsibility proportionally to park tenants based on relative benefit to each tenant.

7.4 Lessee's Notice. Lessee shall provide written notice to the City within fifteen (15) days of the time when both of the following conditions have been met: (i) Lessee has received all permits necessary for construction of the Initial Capital Improvements, and (ii) Lessee's contingencies have been satisfied or waived ("Lessee's Notice"). In the event that Lessee does not provide Lessee's notice by January 31, 2010, the City may, in its discretion, (i) terminate this Lease, or (ii) extend the time period for receipt of Lessee's Notice. In any case, the City is not required to terminate any existing permits or leases at the Premises prior to receipt of Lessee's Notice.

7.5 Termination of Existing Leases; Delivery of Premises and Commencement of Term. No later than sixty (60) days after receiving Lessee's Notice, and provided that the City Contingencies have been satisfied or waived, City shall terminate the existing use permits and leases at the Premises and shall deliver the Premises free and clear of prior tenants and their personal property, excepting any tenants who will remain on the Premises under a sublease with Lessee. City has provided Lessee with copies of the existing leases and use permits with the current tenants in the Building ("Existing Leases"). Lessee shall have the right, commencing upon the Effective Date of this Lease, to enter into negotiations with the tenants and permit holders under the Existing Leases for subleases for the Premises during the Lease Term. From and after the Effective Date of this Lease, City shall not enter into any new leases or use permits without the prior written consent of Lessee. The City shall notify Lessee in writing at least fourteen (14) days in advance of the date on which the City proposes to deliver possession of the Premises, and unless Lessee objects in writing and for good cause within ten (10) days after City's delivery of the notice, the Commencement Date shall be the date in the City's notice for delivery of possession. Notwithstanding the foregoing, in the event that the City fails to deliver possession on or before the date set forth in the City's notice, the Commencement Date shall be the date the City actually delivers possession of the Premises to Lessee. In the event that City fails to deliver possession of the Premises within sixty (60) days of receiving Lessee's Notice, Lessee may elect to (i) terminate this Lease upon twenty (20) days written notice to City, in which case the parties shall have no further rights or obligations under this Lease or (ii) delay the Commencement Date until such time as all of the Existing Leases have been terminated.

7.6 Sole Remedy. Termination of the lease under the circumstances and in the manner provided for in this Section 7 is intended by the parties to be the sole remedy for the failure of any of the contingencies to be satisfied.

8. Lessee's Operations.

8.1 Lessee Building Alteration Requirements. Lessee shall make any and all approved Initial Capital Improvements to the Premises necessary to obtain a certificate of occupancy within twenty-four (24) months after the Commencement Date. City shall provide no funds for the Initial Capital Improvements and Building alterations, except that Lessee shall be entitled to the Capital Improvement Rent Offset as set forth herein. If Lessee fails to obtain a certificate of occupancy within twenty-four (24) months after the Commencement Date due to Lessee's negligent acts or omissions or failure to diligently pursue such Initial Capital Improvements to completion, City may terminate this Lease upon sixty (60) days written notice to Lessee and may pursue any and all remedies available to the City at law. Notwithstanding the foregoing, in the event that Lessee completes such alterations within the sixty (60) day period, this Lease shall continue in full force and effect.

8.2 Use of Premises. Lessee shall not use the Premises for any purpose other than the Permitted Uses. Lessee shall promptly comply, at its sole cost and expense, with such reasonable rules and regulations relating to the use of the Premises and the Park as City, from time to time, may promulgate. Any newly promulgated rules and regulations shall not materially interfere with Lessee's or any of its subtenant's use of the Premises for the Permitted Uses. 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 and City shall not permit objectionable odors to be emitted from the Premises or the Common Areas, as applicable, and shall not commit waste nor permit any waste to be committed thereon. Lessee shall not permit any accumulation of trash on or about the Premises and City shall not permit the accumulation of trash on or about the Common Areas. Lessee shall not create or contribute to the creation of a nuisance in either the Premises or the Park, and Lessee shall not engage in or permit any action that will disturb the quiet enjoyment of the Park by the general public. Notwithstanding the foregoing, any use of the Premises that falls within the Permitted Uses shall not be deemed a nuisance or to be a disturbance of the quiet enjoyment of the Park.

8.3 Coordination of Large Events. Magnuson Park has limited capacity to handle multiple events with large numbers of attendees. Therefore, if Lessee or its subtenant reasonably anticipates that more than 150 people at one time will attend any event on the Premises, the Lessee or its subtenant shall provide the City with no less than thirty (30) days advance written notice. If the City reasonably determines that the event would conflict with other high capacity events that have already been scheduled to take place at the same time, the City shall notify the Lessee or its subtenant within five (5) business days after receipt of the Lessee's or subtenant's notice. Upon receipt of such notice, the Lessee or subtenant must either reschedule the event or limit the attendance at the event to less than 150 attendees at one time. Lessee shall include language in its subleases for the Premises specifying the terms of this section.

8.4 Management and Operations Plan. Lessee shall prepare and submit to the Superintendent, for his or her approval (which shall not be unreasonably withheld,

conditioned, or delayed), an annual plan for the management and operation of the Premises. The first plan shall be due on or before the date that is thirty (30) days prior to the Commencement Date, and plans for subsequent calendar years shall be due on or before October 1st of each year thereafter. The Management and Operations Plan shall include such information as the Superintendent may reasonably specify from time to time for comparable Park's facilities, but at a minimum shall include a description of the operations for the upcoming year; anticipated user fees/rental rate for the upcoming year; Lessee's marketing and outreach efforts for the past year and plans for the upcoming year; and information supporting Lessee's requested Public Benefit Program Rent Offset (described in Section 8.7). City shall be deemed to have approved the plan (and all uses and events noted therein) unless it rejects the plan in writing within sixty (60) days of receipt thereof. Lessee may amend or modify the plan from time to time with the prior approval of the Superintendent, which approval shall not be unreasonably withheld, conditioned, or delayed. City shall be deemed to have approved the amended plan (and all uses and events noted therein) unless it rejects the amended plan in writing within forty-five (45) days of receipt thereof.

8.5 Alcohol sales. Lessee and its subtenants may sell beer and wine upon the Premises conditioned upon obtaining a valid permit from the Washington State Liquor Control Board and compliance with applicable laws, ordinances, rules and regulations. Lessee shall not permit any other variety of intoxicating beverages to be used, sold, consumed, or dispensed upon the Premises unless the Superintendent has approved such use, sale, consumption, or dispensing in advance, in writing, which approval shall not be unreasonably withheld, conditioned or delayed. Any such use sale, consumption or dispensing shall comply with applicable laws, ordinances, rules, and regulations then in force.

8.6 Exclusive Uses.

8.6.1 Restaurant. Provided that Lessee or a subtenant of Lessee opens and continuously operates at the Premises a restaurant that exceeds one thousand (1,000) square feet and is open to the public with interior seating, the City shall not permit the operation of a restaurant or other food and beverage service within Magnuson Park but outside of the Premises area, that is open to the public, is greater than one thousand (1,000) square feet and has interior seating areas in excess of twenty (20) seats dedicated to food and beverage customers, unless the Lessee gives its approval in writing; however, Building 27, may have interior seating area(s) of up to fifty (50) seats set aside exclusively for food and beverage customers without the written approval of Lessee. The City agrees to limit the food and beverage service operations within Building 27 to an operation that is intended to primarily serve the members and guests of the Building 27 tenants, that has no exterior signage, and that has no exterior seating set aside exclusively for food and beverage customers. This limitation, except as it related to Building 27, shall expire ten (10) years after the Commencement Date of the Lease.

8.6.2 Daycare. Provided that Lessee or a subtenant of Lessee opens and continuously operates, according to the standard of continuous operation described in

Section 2.8, a child daycare business on the Premises, City shall not permit the operation of a child daycare business north of the National Oceanic and Atmospheric Administration (NOAA) access roadway in Magnuson Park. As used in this section, a child daycare business means a business that offers childcare on a regular basis for parents who may or may not be using Park amenities. Child daycare business does not include childcare services provided on a short term basis for visitors and users of Magnuson Park Facilities, nor does it include daycamps.

8.6.3 Health Club. Lessee acknowledges that City has a pending agreement with Arena Sports, the concessionaire in Building 27, that will grant the exclusive right to operate a health and fitness club of over 5,000 square feet at Magnuson Park as follows (the "Building 27 Provision"):

So long as this Agreement is in effect and Concessionaire continuously operates a health and fitness facility that exceeds 10,000 square feet on the Premises, City shall not permit the operation of another health and fitness facility that exceeds 5,000 square feet or a self service health club, self service gym, or self service fitness center of any size within Magnuson Park without Concessionaire's written approval. As used in the preceding sentence, "continuously" means that the health and fitness facility maintains the hours that a typical facility of its kind maintains, subject to occasional closings for holidays, maintenance and repairs. This provision shall cease to apply if Concessionaire is in default under this Agreement and such default has remained uncured beyond the applicable cure period.

During the Term of this Lease, Lessee shall abide by the Building 27 Provision, and shall defend, indemnify and hold the City harmless from any damage, claim or liability arising from Lessee's use of the Premises in a manner that violates the Building 27 Provision.

8.7 Public Benefit Programs. Given that the Premises are located within a public park with an ideal of universal access by the public to both facilities and programs, Lessee agrees to encourage all of its tenants to develop programs and services that provide free or discounted use of its facilities and services that are available to the general public regardless of income level (collectively, "Public Benefits"). To further this goal, Lessee may request a Public Benefit Program Rent Offset. In the annual Management and Operations Plan described in Section 8.4, Lessee may identify the amount of Public Program Rent Offset it is requesting for the subsequent calendar year and the justification for the request. The Superintendent will review the request with reference to the recognized Public Benefits described on Exhibit G, and will act reasonably in reviewing the request. Provided the proposed Public Benefits are consistent with the Public Benefits in Exhibit G and meet the goals stated in this Section, the Superintendent will approve such Public Benefits and will respond within 30 days stating the amount of the Public Program Rental Offset allowed for the upcoming calendar year. Any Public Program Rental Offset shall be credited against the Rent due, in monthly installments, in amounts not to exceed twenty-three percent (23%) of the Rent due in any given month.

With each monthly payment, Lessee shall report to the DPR Finance Director the amount of Public Program Rental Offset being applied to Rent. At the end of each calendar year, the Lessee shall submit to the Superintendent a report detailing Lessee's actual performance in providing the public benefits proposed for that year (the "Public Benefits Report"). Following the Superintendent's review of the Public Benefits Report, the Parks Department shall submit it to the City Clerk's Office for filing with the Agreement.

8.8 Compliance with Laws; Nondiscrimination.

8.8.1 General Obligation. City warrants that as of the time of City's execution of this Lease, it has not received a notice of violation of any statute, ordinance, regulation or law at the Premises. 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. 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 renovation or improvement of the Premises or use or occupancy of the Premises.

8.8.2 Nondiscrimination. Without limiting the generality of Subsection 8.8.1, Lessee shall comply with any 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.

8.9 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 City in writing of any lien filed against the Premises within ten (10) days of the filing date of the lien. Notwithstanding the foregoing, the City acknowledges that Lessee intends to seek financing for the construction of the Capital Improvements ("Construction Financing"). If any lien is filed against the Premises due to Lessee's use and occupancy of the Premises during the Lease Term (except to the extent of liens filed as a result of leasehold mortgages or leasehold deeds of trust evidencing the Construction Financing), Lessee shall either cause the same to be fully discharged and released of record within ten (10) days after City's written demand therefor or, within such period, provide City with cash or other security acceptable to City in an amount equal to one and one-half (1½) times the amount of the claimed lien as security for its prompt removal. City shall have the right to disburse such security to cause the removal of the lien if City deems such disbursement necessary, in City's sole discretion. The indemnification and defense obligation of this subsection shall survive the expiration or earlier termination of this Lease.

8.10 Hazardous Substances. As used in this Lease, "Hazardous Substances" means any substance or material 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.

8.10.1 Lead Paint and Asbestos. Lessee is hereby informed and does acknowledge that the Premises contain lead-based paints and asbestos and asbestos-containing materials. Lessee acknowledges that it has received the opportunity to participate in developing the scope of the Phase II assessment described in Section 6.1.2 and has had the opportunity to perform its own inspection for purposes of assessing the existence and quantity of lead paint and asbestos in the Premises. In the event the Lessee does not terminate the Lease under Section 7.1.2 after receiving the results of the Phase II, Lessee covenants and agrees (i) to be responsible for any remediation of lead-based paint or lead-based paint hazards and asbestos or asbestos containing materials on the Premises as required by federal, state, or local laws or regulations in connection with the construction of any improvements to the Premises by Lessee; and (ii) that in its use and occupancy of the Premises, Lessee will comply, at its sole cost and expense, with all federal, state and local laws and regulations relating to lead-based paint, asbestos, and asbestos containing materials. Lessee may include in its Capital Improvement Rental Offset the cost of remediation or removal of lead-based paint and asbestos or asbestos containing materials existing on the Premises prior to the Commencement Date. Lessee further acknowledges and agrees that the City assumes no liability for damages for personal injury, illness, disability or death, to Lessee or to any other person, including members of the general public, to the extent caused by the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos or lead-based paint on the Premises after the date on which Lessee takes control and possession of the Premises, whether Lessee has properly warned or failed properly to warn the individual(s) injured.

8.10.2 Existing Hazardous Substances. Subject to the restrictions herein, as between the Lessee and the City, the City shall be responsible for the removal, disposal, or other remediation of any Hazardous Substances, excluding lead-based paint, asbestos or asbestos hazards, that exist on the Premises prior to the Commencement Date as required by federal, state, or local laws or regulations.

8.10.3 Hazardous Substances Covenants. Lessee acknowledges that it has received and reviewed the Quitclaim Deed recorded by the King County Recorder's Office under recording number 9905041194 whereby the United States of America granted Building 11 and other portions of Magnuson Park to the City (the "USA Deed"), including Section 8 – Hazardous Materials Covenants. Lessee shall ensure that at all times during the Lease Term, Lessee's use of the Premises and any use of the adjacent Park property will not violate the USA Deed's provisions regarding Hazardous Materials. Additionally, Lessee covenants that it will not undertake, without first obtaining the written approval of the Superintendent, any utility work, maintenance, construction, or work of any type that: (i) penetrates Building 11's foundation or interior slab, (ii) penetrates any type of pavement covering the ground in areas adjoining the Building or in the vicinity of the Building, or (iii) requires excavation of soil at depths in excess of 12 inches at any location. The Superintendent's approval of said work may be conditioned or restricted, in which case

Lessee agrees to comply with the restrictions or conditions. Lessee shall include provisions in its subleases requiring its subtenants and licensees to comply with this Section.

8.10.4 Lessee Warrants. Lessee shall not, without City's prior written consent, keep on or about the Premises any substance designated as, or containing any Hazardous Substance except that Lessee and its subtenants may keep customary office, kitchen, cleaning and other supplies reasonably related to the Permitted Uses 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 therefore, 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 reasonable costs incurred by City and associated with City's inspections of the Premises and City's monitoring of Lessee's compliance with this Subsection, including City's attorneys' fees and costs, shall be due and payable to City within ten (10) days after City's demand therefore, if Lessee's material violation of this Section 8.10 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.

8.10.5 Indemnification. Lessee shall indemnify, defend and hold City harmless from any and all of the costs, fees, penalties, claims, liabilities, damages, charges and expenses assessed against, or imposed, upon City (as well as City's reasonable attorneys' fees and costs) as a result of (i) the failure of Lessee or its subtenants to comply with any of Lessee's obligations in this Section 8.10, and (ii) Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances on or about the Premises. City shall indemnify, defend and hold Lessee harmless from any and all of the costs, fees, penalties, claims, liabilities, damages, charges and expenses assessed against, or imposed, upon Lessee (as well as Lessee's reasonable attorneys' fees and costs) as a result of (i) any Hazardous Substances existing on or about the Premises prior to the Commencement Date, other than lead-based paint and asbestos or asbestos containing materials, and (ii) City's use, disposal, transportation, generation and/or sale of Hazardous Substances on or about the Premises during the Lease Term. The indemnification and defense obligations of this subsection shall survive the expiration or earlier termination of this Lease.

9. Utilities.

9.1 General. Starting on the Commencement Date, Lessee shall pay when due to the appropriate providers, all charges for utilities for the Premises, including but not

limited to, electricity, water and sewer services and data and telecommunications services.

9.2 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 Parks' 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.

9.3 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, 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. 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. Notwithstanding the foregoing, (i) City shall use reasonable efforts to restore the services and (ii) in the event of an interruption of such services for more than twenty-four (24) hours due to Parks' negligent acts or omissions, Rent shall abate from the first day of the interruption until the interrupted utilities or services are fully restored.

10. Licenses and Taxes.

10.1 Lessee Responsibility. 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 Lessee's business conducted on the Premises and all personal property taxes and other impositions levied with respect to Lessee's 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).

10.2 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.

11. Alterations by Lessee.

11.1 Approval of Alterations. Lessee shall not make any alterations, additions or improvements in or to the Premises, including without limitation, the Initial Capital Improvements, without first submitting to City professionally-prepared plans for such work and obtaining Superintendent's prior written approval thereof, which approval shall not be unreasonably withheld, conditioned or delayed. Upon receipt of the plans, the City shall submit them to the State Historic Preservation Officer for his or her concurrent review and comment to the Superintendent prior to the Superintendent approving the plans. The City shall be deemed to have approved the plans unless it rejects the plans in writing within ninety (90) days. Notwithstanding the foregoing, Lessee may make improvements not to exceed Twenty-Five Thousand Dollars (\$25,000) in any twelve (12) month period without City's prior consent. 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 Washington State licensed contractor and in a manner that (a) is built in accordance with City-approved plans and any reasonable conditions imposed by City in connection therewith; (b) is in conformity with other similar Parks facilities; (c) includes reasonably acceptable insurance coverage for City's benefit; (d) does not negatively affect the structural integrity of the Premises 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. In addition, Lessee shall meet with City's Green Building Team and shall use commercially reasonable efforts to incorporate green building practices and sustainable design into its design for the Building alterations.

11.2 Permits and Additional Construction Requirements. Lessee shall secure all governmental permits and approvals required for the Initial Capital Improvements and any and all Subsequent Improvements permitted under this Lease and shall comply and cause its contractors to comply with all other applicable governmental requirements and restrictions, and shall reimburse City for any and all expenses incurred in connection therewith. For any contract for the Initial Capital Improvements, Lessee shall require its contractors to pay a wage commensurate with prevailing wages as described in RCW 39.12. Except as provided in Section 15 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 11.

11.3 Historic Site Preservation. If Lessee wishes to undertake any installation, alteration, modification, repair, renovation or any other work on or to the exterior of the Premises, the Lessee shall comply with all applicable laws, regulations and ordinances concerning historic preservation, including the Sand Point Historic Properties Reuse and Protection Plan and City agrees to reasonably cooperate, at no cost to City, in Lessee's efforts to obtain the necessary approvals therefor.

11.4 Alterations as Property. 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 and Lessee's subtenant's

moveable trade fixtures and appliances and equipment not permanently 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, in substantially the same form attached as Exhibit E, 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 the Initial Capital Improvements 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 as part of the Initial Capital Improvements. Additionally, upon City's request, Lessee shall deliver a full set of "as-built" plans of the Premises following completion of any additional major renovations, repairs or improvements made to the Premises during the term of the Lease.

12. Care and Maintenance of Premises.

12.1 Lessee's Maintenance Obligation. Lessee shall maintain the Premises in a clean, orderly, and neat fashion, and to a standard found at other Parks properties similar in age, level of public use, and public visibility. Except as provided otherwise in this Section 12, Lessee shall be responsible for all minor and major maintenance of the Premises during the Term of this Lease including but not limited to repairs of cracking and breaking glass, regular exterior painting and masonry maintenance, roof repairs and replacement, and HVAC repair and replacement. If any portion of the Premises or any system or equipment in the Premises that Lessee is obligated to repair cannot be fully repaired or restored, Lessee shall promptly replace such portion of the Premises or system or equipment in the Premises ("Replacement") at Lessee's sole cost and expense. Notwithstanding the foregoing, if the total amount of the Capital Improvement Rent Offset related to any such Replacement would exceed the total amount of Rent due during the remainder of the Lease Term, Lessee and City shall use good faith efforts to agree to a plan for completing and paying for such Replacement (the "Replacement Plan"). In the event that Lessee and City can not agree to a Replacement Plan within thirty (30) days of their initial meeting to discuss the same, Lessee may terminate this Lease upon thirty (30) days prior written notice.

12.2 Prior Approval. Prior to making any expenditure in excess of twenty-five thousand dollars (\$25,000) necessary to comply with the terms and provisions of this Section, Lessee shall submit to City professionally-prepared preliminary plans for such work and obtain City's prior written approval thereof, which approval shall not be unreasonably withheld, conditioned or delayed. City shall be deemed to have approved the plans and specifications unless it rejects the plans and specifications in writing within thirty (30) days.

12.3 City's Maintenance Obligation. City shall maintain and repair the Common Areas in good order, condition and repair, at no cost to Lessee and to a standard found at other Parks properties similar in age, level of public use, and public visibility. City's work under this Section shall be accomplished with the least possible amount of interference to the conduct of Lessee's and Lessee's subtenants' businesses and, to the extent practicable, shall be done after normal business hours.

12.4 Joint Annual Inspection of Premises; Remedial Action Obligation. Lessee shall participate in an annual inspection of the Premises with City and shall take any and all action that is consistent with the terms of this Lease that City may reasonably specify as necessary to maintain and operate the Premises in a clean and safe manner.

12.5 City Remedy Upon Lessee's Failure to Maintain Premises. If Lessee fails to maintain the Premises in good order, condition, and repair, City shall give Lessee notice to undertake such work as is reasonably required to so maintain the Premises. If Lessee fails to commence such work within thirty (30) calendar days after the effective date of City's notice and to diligently prosecute it to completion, then City shall have the right, at its option and in addition to all other remedies, to undertake such work and to invoice Lessee for the costs reasonably incurred by City in connection therewith. City shall have no liability to Lessee for any damage, inconvenience, or interference with Lessee's use of the Premises as a result of City's performing any such work, except to the extent of its or its agents or contractor's negligence or intentional misconduct.

12.6 Custodial Service for Premises. In addition, Lessee shall at its own expense, at all times, keep the entrance to the Premises and areas within ten (10) feet of the exterior Premises' walls in a neat, clean, safe, and sanitary condition comparable to other Parks' properties similar in age, level or public use and public visibility; and keep the glass of all windows and doors serving the Premises clean and presentable. Lessee shall require all subtenants to provide all necessary janitorial service to adequately maintain the inside of the Premises to a standard comparable to similar privately-owned commercial facilities. If, after City provides written notice to Lessee of Lessee's failure to comply with this Section, and Lessee fails to so comply within thirty (30) days after receipt of such notice, City, at its option, may, upon reasonable advance written notice, enter the Premises for the purpose of cleaning glass within, or providing janitorial service to, the Premises, 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.

12.7 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 lease 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.

13. Signs and Advertising.

13.1 On-Premises Signs. Lessee may install permanent exterior signage in accordance with the Signage Plan as set forth Section 7.3.1 and as otherwise approved by Superintendent.

13.2 Signs, Generally. Lessee may also inscribe, post, place, or display any sign, notice, picture, poster, or any other advertising matter anywhere within the interior of 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.

13.3 Recognition. In accordance with the approved exterior signage plan, Lessee, shall install one or more signs (to be provided by City) on or about the exterior of the Premises with a statement and the Parks logo recognizing Seattle Parks and Recreation's ownership of the Building and memorializing the history of the Building as part of the Sand Point Naval Air Station.

14. Surrender of Premises.

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 at the time of City's approval of such alterations pursuant to Section 11), reasonable wear and tear and casualty excepted. Notwithstanding the foregoing, in no event shall Lessee be required to remove any of the Initial Capital Improvements unless the City so directs as and when specified in Section 11.4. 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 14 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 the specified alterations, moveable trade fixtures and appliances and to redeliver the Premises on a timely basis.

15. Indemnification.

15.1 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, 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 negligent act or omission of Lessee or any subtenant, licensee, or assignee of Lessee, or of any officer, agent, employee, guest or invitee of any of the same in or about the Premises, except to the extent caused by the City's negligent acts, intentional misconduct or breach of this Lease. City agrees that the foregoing indemnity specifically excludes injury of any person or loss or damage to property resulting from conditions on property adjacent to the Premises. As used herein, "adjacent to the Premises" means areas outside the area where Lessee provides custodial service, as further described in Subsection 12.6. The indemnification and defense obligation of this subsection shall survive termination or expiration of this Lease. Lessee agrees that the foregoing indemnity specifically covers actions brought by its own employees; as a result, the foregoing indemnity is specifically and expressly intended to constitute a waiver of Lessee's immunity under Washington's Industrial Insurance Act, RCW Title 51, but only as to City and 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 15.

15.3 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 building facilities or services; broken glass; water leakage; the collapse of any building component, except to the extent caused by the City's negligent acts or omissions, intentional misconduct or breach of this Lease.

15.4 Limitation of 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.

15.5 City's Indemnification. Except as otherwise provided in this section, City shall indemnify, defend (using legal counsel reasonably acceptable to Lessee) and save Lessee, Lessee's officers, agents, employees and contractors, harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including Lessee'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) City's breach of its obligations hereunder, or (ii) any negligent act or omission of City or of any officer, agent, employee, guest or invitee of City in or about the Park, except to the extent caused by the Lessee's negligent acts, intentional misconduct or breach of this Lease. The indemnification and defense obligation of this subsection shall survive termination or expiration of this Lease. City agrees that the foregoing indemnity specifically covers actions brought by its own employees; as a result, 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, but only as to Lessee and to the extent necessary to provide Lessee with a full and complete indemnity from claims made by City and its employees, to the extent of their negligence. **CITY AND LESSEE ACKNOWLEDGE THAT THEY SPECIFICALLY NEGOTIATED AND AGREED UPON THE INDEMNIFICATION PROVISIONS OF THIS SECTION 0.**

15.5 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.

16. Insurance.

16.1 Minimum Insurance Coverages and Limits of Liability. Beginning on the Commencement Date, and thereafter throughout the entire Lease Term, Lessee shall maintain in full force and effect, at no expense to City, insurance coverages and limits of liability of not less than those specified below:

16.1.1 COMMERCIAL GENERAL LIABILITY ("CGL") insurance including:

- Premises/Operations
- Products/Completed Operations
- Personal/Advertising Injury
- Contractual Liability

- Stop Gap/Employers Liability
- Independent Contractors Liability
- Host Liquor Liability

Such insurance must provide minimum limits of liability of \$2,000,000 each occurrence combined single limit bodily injury and property damage (“CSL”) except:

- \$1,000,000 each offense Personal/Advertising Injury

- \$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);

16.1.2 Automobile Liability insurance, including coverage for owned, non-owned, leased or hired vehicles, as appropriate, with a minimum limit of liability of \$2,000,000 CSL;

16.1.3 Workers Compensation securing Lessee’s liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington; provided, that if Lessee is qualified as a self-insurer in accordance with chapter 51.14 of the Revised Code of Washington, Lessee shall certify that qualification by a letter that is signed by a corporate officer of Lessee and delivered to the City that sets forth Lessee’s self-insured retention and the limits of liability any excess workers compensation policy covering its employees; and,

16.1.4 Property Insurance under which (i) the Premises, (ii) Lessee’s furniture, fixtures, equipment and inventory (“Business Contents”) and (iii) all alterations, additions and improvements that Lessee makes to the Premises (“Tenant Improvements”) are insured throughout the Lease Term in an amount equal to the current replacement cost thereof and not subject to any coinsurance clause against all risks of direct physical loss or damage, including earthquake and flood. Such insurance shall also include coverage for loss from business interruption and extra expense, with sufficient coverage and limits of liability to provide for the payment of rent and other fixed costs during any interruption of Lessee’s business due to casualty covered by Property Insurance. The Premises shall be insured at the inception of coverage on the Commencement Date for a value of not less than \$12,433,260. Prior to commencing any Capital Improvements, Lessee’s insurance broker of record shall survey the Premises and, incorporating the proposed Capital Improvements, perform a Marshall & Swift analysis to calculate the full current replacement cost of the Premises after the completion of the Capital Improvements (the “Completed Value”). The Completed Value shall be subject to the City Risk Manager’s review and approval prior to the commencement of the Capital Improvements and shall be used (1) during the period of construction as the amount of builder’s risk property insurance and (2) thereafter as the replacement cost amount of property insurance on the Premises, subject however to annual adjustment to current

replacement valuation as agreed by the City upon each insurance policy anniversary. The deductible for said property insurance shall not exceed \$10,000 without the City's written approval, which approval shall not be unreasonably withheld, conditioned or delayed; however, the deductible for earthquake insurance only may be an amount up to ten percent (10%) of the replacement cost of the Building.

16.2 Subtenant's Minimum Insurance Coverages and Limits of Liability. Beginning on the Commencement Date, and thereafter throughout the entire Lease Term, prior to any subtenant's beneficial occupancy of the Premises, Lessee shall cause such subtenant to maintain in full force and effect, at no expense to City, CGL and Automobile liability insurance coverages as specified in Subsections 16.1.1, 16.1.2, and 16.3, provided that subtenant(s) may have CGL and Automobile limits of liability of not less than \$1,000,000 CSL that complies with the General Requirements of Subsection 16.4.

16.3 Lessee's Contractors Minimum Insurance Coverages and Limits of Liability. Prior to Lessee permitting any of its contractors to mobilize on City property or the Premises for the purpose of any structural renovation, new construction or Capital Improvements, Lessee shall require in writing that the contractor (i) indemnify and hold the City of Seattle harmless to the same extent to which Lessee is required to do so under Section 15 (Indemnification), and (ii) maintain in full force and effect, at no expense to City, CGL and Automobile liability insurance coverages as specified in Subsections 16.1.1, 16.1.2, and 16.1.3, provided that contractor may have limits of liability of not less than \$1,000,000 CSL that complies with the General Requirements of Subsection 16.4.

16.4 General Requirements Regarding Lessee's, Lessee's Subtenants, and Lessee's Contractor's Insurance (Not Applicable to Workers Compensation):

16.4.1 The liability insurance required by Subsections 16.1.1 (CGL insurance) and 16.1.2 (Automobile Liability insurance) shall include the City of Seattle as an additional insured for primary and non-contributory limits of liability.

16.4.2 The limits of liability specified in Subsection 16.1.1 and 16.1.2 for CGL and Automobile insurance are minimum limits of liability only and, aside from the limits of liability of each policy, shall not be construed to limit the liability of Lessee or any of its insurers. The City shall be an additional insured for the full available limits of liability under each policy Lessee's insurance program, whether such limits are primary, excess, contingent or otherwise. For the purpose of this Subsection 16.4.2, the term "insurance" shall include self-insurance, including but not limited to any form of risk financing.

16.4.3 The property insurance required by Subsection 16.1.4 as respects the Premises only (excluding Business Contents and Tenant Improvements) shall include the City of Seattle either as an additional insured or additional named insured and shall also provide a waiver of subrogation in favor of the City. Separately, Lessee shall waive all rights of recovery in favor of the City.

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

16.4.5 No insurance policy may 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 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) (e), for both liability and property insurance the City is deemed to be a "mortgagee, pledgee, or other person shown by the policy to have an interest in any loss which may occur thereunder." Written notice shall be mailed to the City of Seattle (Attention: Risk Management), P. O. Box 94669, Seattle, WA 98124-4669 or delivered electronically by fax to number (206) 470-1270 or by email to riskmanagement@seattle.gov.

16.4.6 Any deductible or self-insured retention ("S.I.R.") in excess of \$10,000 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.

16.4.7 The City shall have the right to periodically review the appropriateness of insurance coverages and limits of liability stated herein in view of inflation and/or changing industry conditions and to require a reasonable increase in such coverage or limits upon ninety (90) day prior written notice.

16.5 Evidence of Insurance (Does not Apply to Workers Compensation). As evidence of insurance coverage, on or before the Commencement Date, and thereafter, not later than five (5) days prior to the expiration or renewal date of each such policy, the following certification must be delivered to the City at its address as specified in Subsection 1.7 hereof with a copy delivered electronically by fax to fax number (206) 470-1270 or by email to riskmanagement@seattle.gov:

16.5.1 A copy of the CGL additional insured policy provision(s), whether blanket or designated additional insured language, shall be provided that documents that the City of Seattle is (i) an additional insured, and (ii) that such additional insured status is primary and non-contributory with any insurance or self-insurance that the City maintains. If this documentation is not available because policies have not been issued,

received and/or reviewed, a binder of insurance that evidences additional insured status for primary and non-contributory limits may be substituted.

16.5.2. Documentation shall be provided that coverage will not be cancelled without at least thirty (30) day written notice of such cancellation, except at least 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).

16.6 Waiver of Subrogation. City and Lessee release and relieve the other, and waive their entire right of recovery for loss or damage to property located within or constituting a part or all of the Premises to the extent that the loss or damage is covered by (a) the injured party's insurance, or (b) the insurance the injured party is required to carry under this Section 16, whichever is greater. This waiver applies whether or not the loss is due to the negligent acts or omissions of City or Lessee, or their respective officers, directors, employees, agents, contractors, or invitees. Each of City and Lessee shall have their respective property insurers endorse the applicable insurance policies to reflect the foregoing waiver of claims, provided however, that the endorsement shall not be required if the applicable policy of insurance permits the named insured to waive rights of subrogation on a blanket basis, in which case the blanket waiver shall be acceptable.

16.7 Assumption of Risk. The placement and storage of its contents and other personal property in or about the Premises shall be the responsibility, and at the sole risk, of Lessee.

17. Assignment or Sublease.

17.1 City Consent Required. The City's willingness to enter this Lease is conditioned, in part, upon the City's determination that Lessee is capable of providing the public benefits, capital renovations, and recreational facilities to be provided by Lessee under this Lease. Except as expressly provided in this Section and Section 17.2, 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, which consent shall be at the discretion of the Superintendent. 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.

17.2 Exceptions to City Consent. Notwithstanding the foregoing, after the tenth (10th) year of the Lease Term, upon the prior written consent of City, which consent shall be in the Superintendent's discretion, Lessee may assign this Lease to a third party ("Assignee") and shall be released from liability hereunder, provided that Superintendent shall not withhold its consent to such assignment and release if the Assignee assumes all obligations of the Lessee under this Lease and can demonstrate the financial strength, operating experience and leasing capabilities reasonably necessary for the successful operation of the Premises. City acknowledges and agrees that Lessee intends to sublease all of the Premises to a number of subtenants throughout the Lease Term. City's consent shall not be required for subleases of all or any portion of the Premises for a Permitted Use and a term of less than seven (7) years; provided however, that such subleases shall be in writing, shall conform to the requirements of this Lease, including insurance requirements, and shall in no event relieve Lessee of any of its obligations to City under this Lease, unless otherwise approved by City, which approval shall be in the discretion of the Superintendent.

18. Assignment by City.

If City sells or otherwise transfers the Premises, such purchaser or transferee 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, provided that such successor accepts the Premises subject to the terms, conditions and covenants of this Lease, assumes and agrees to perform all of City's obligations under this Lease and recognizes Tenant's right to the use and possession of the Premises pursuant to the terms of this Lease as long as Tenant is not in default hereunder beyond any applicable notice and cure period.

19. Destruction.

If the Premises are rendered partially or totally untenantable by fire or other casualty, and if the damage is repairable within twenty-four (24) months from the date of the occurrence, then if insurance proceeds or self-insurance coverages are available to pay the full cost of the repairs (except for the deductible amounts), Lessee shall repair the Premises with due diligence. If the damage to the Premises cannot be repaired within twenty-four (24) months from the date of the occurrence, either party may terminate this Lease upon sixty (60) days' written notice. If thirty percent (30%) or more of the Premises is destroyed or damaged, Lessee may elect to terminate this Lease upon written notice to City no later than thirty (30) days after the occurrence. In the event of damage by casualty, Lessee shall, at its sole cost and expense, repair all damage to its own personal property. In the event this Lease is terminated as a result of casualty to the Premises, (i) the City shall retain the insurance proceeds covering the loss of the Premises except to the extent of the Capital Improvement Rental Offset not previously offset against Rent at the time of the casualty, which shall be paid to Lessee upon the condition that Lessee has maintained the insurance coverage required under Section 15.1.4 of this Lease, and (ii) Lessee shall retain the insurance proceeds payable under coverage of Lessee's personal property and fixtures and any coverage for business interruption

obtained by Lessee pursuant to this Lease or in addition to the coverage required herein. Except in the event of City's 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 Premises.

20. Eminent Domain.

20.1 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 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 Lessee, 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 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, Lessee, at its expense, shall proceed with all reasonable dispatch to restore, to the extent of available proceeds paid to Lessee 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 therefore. The Rent payable 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.

20.2 Award. 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, except to the extent of the Capital Improvement Rental Offset not previously offset against Rent at the time of the award. 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. Notwithstanding the foregoing, Lessee, shall have the right to claim from the condemning authority all compensation that may be recoverable by Lessee on account of any loss of income stream, diminished value of business or losses 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.

21. Default by Lessee.

21.1 Definition. The occurrence of any of the following shall constitute a default (“Default”) by Lessee: (a) a failure to pay Rent or other charge within five (5) days after written notice thereof from City; (b) the abandonment or vacation of the Premises or the failure of Lessee or its permitted subtenants to occupy and operate the Premises) in accordance with this Lease and failure to reoccupy them within thirty (30) days after City (i) delivers a written notice to Lessee’s notice address set forth in Section 1.7 above demanding such re-occupancy, and (ii) mails by certified or registered mail a copy of the notice to any forwarding address given by Lessee to City in writing; (c) a violation, breach, or failure to keep or perform any other term, provision, covenant, or any obligation of this Lease for a period in excess of thirty (30) days after written notice thereof from City (provided that if the nature of Lessee’s obligation 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); (d) a violation of the Minimum Public Benefits Requirements described in Section 5.3.2 and failure to remedy that violation within 12 months after written notice thereof from City, subject to force majeure; or (e) 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.

21.2 City Remedies. If Lessee has defaulted and such Default continues or has not been remedied to the reasonable satisfaction of the Superintendent within the notice and cure periods set forth above, then City shall have the following nonexclusive rights and remedies at its option: (1) 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; or (2) to terminate this Lease.

21.3 Reentry by City Upon Termination. Upon the termination of this Lease, City may reenter the Premises, take possession thereof, and remove all persons there from, 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 there from 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.

21.4 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 there from, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any reasonable costs incurred in authorizing others the use and occupancy of the Premises, and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington. The provisions of this Subsection shall survive the expiration or earlier termination of this Lease.

22. 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, Lease, 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.

23. Default by City.

23.1 Definition. 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.

23.2 Lessee's Remedies. Lessee's Remedies. Upon City's default, Lessee may, without waiving any claim for damages for breach of Lease or any other rights or remedies at law or in equity that may be permitted from time to time by the laws of the State of Washington, terminate this Lease if Lessee's use and occupancy of the Premises or a material portion thereof are materially interfered with, prevented or made dangerous and pursue any other remedy that may be permitted by law or equity.

24. Attorneys' Fees.

If legal proceedings are initiated to enforce any term of this Lease, to recover any Rent due under this Lease, for the breach of any covenant or condition of this Lease, or

for the restitution of the Premises to City and/or eviction of Lessee, each party shall bear its own attorneys' fees.

25. Access by City.

City and its agents shall have the right to enter the Premises (1) at any reasonable time to examine the same, and to show them to prospective purchasers or lenders, and (2) upon forty-eight (48) hours notice to make such repairs, alterations, improvements, additions or improvements to the Premises as City may deem necessary or desirable or to show the Premises to prospective tenants during the last year of the Lease Term or the Extended Term, if applicable. 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 therefore, 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. Lessee shall change the locks to the Premises only through City and upon paying City for all actual and reasonable costs related thereto. Notwithstanding the foregoing, City shall not unreasonably interfere with the use and occupancy of the Premises by Lessee or any of its subtenants.

26. 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; provided that City may, by written notice to Lessee delivered not less than thirty (30) days prior to the next due rental payment, increase such rental rate to one hundred fifty percent (150%) of the Rent for the last month of Lease Term. 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 section shall survive expiration or termination of this Lease.

27. Notices.

Any notice, demand or request required hereunder shall be given in writing to the party's address set forth in Subsection 1.7 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.

28. Successors or Assigns. All of the terms, conditions, covenants of this Lease shall extend to and be binding upon City, Lessee and, subject to the terms of Sections 16 and 17, 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.

29. 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 Leases under this Lease.

30. 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.

31. 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.

32. Counterparts. The parties may execute this Lease in counterparts, which, taken together, constitute the entire Lease.

33. 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.

34. 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.

35. 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 the Effective Date, as defined in Section 1.2.

36. 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.”

37. Standards. Lessee recognizes that, although it is operating its facilities as an independent operator, City is organized and exists in part 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, 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. In the event that City determines that Lessee is not complying with the terms of this Section 36, City shall provide written notice thereof to Lessee and the parties shall reasonably cooperate to meet and resolve the same.

38. City’s Control of Premises and Vicinity. City acknowledges that convenient access to the Premises from public highways and the visibility of the Premises from Sand Point Way NE are vital to Lessee’s use of the Building. All common and other facilities provided by City in or about the Premises are subject to City’s exclusive control and management by City except as otherwise stated herein. Accordingly, provided City does not unreasonably or adversely interfere with Lessee’s use, access to, and occupancy of the Premises, City may do any and all of the following (among other activities in support of City’s or other municipal objectives), all without incurring any liability whatsoever to Lessee:

38.1 Change of Vicinity. City may increase, reduce, or change in any manner whatsoever the number, dimensions, and locations of the walks, buildings, landscaping, exhibit, and service area in the vicinity of, but not including, the Premises;

38.2 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; provided that the City may not reduce the number of parking spaces or move the location of the parking area as shown on the attached Exhibit C (“Parking Area”).

38.3 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.

38.4 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.

38.5 Promotion of Water-Oriented Activities and Implementation of Master Plan. Lessee's interest in entering into this Lease is based, in part, on City's continued emphasis on water-oriented uses for the Northshore Recreation Area in Magnuson Park. City hereby agrees not to substantially modify its Master Plan for the vicinity adjacent to the Premises, as depicted on Exhibit F, without the first consulting with Lessee and including Lessee and Lessee's subtenants in City's planning process for such modifications.

38.6 Change of Businesses. Except as provided in Sections 7.6 and 37.5 above, 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.

39. Lessee's Records. Lessee shall keep true, full, and accurate books of account setting forth Lessee's receipts, together with any other information that will affect the determination of Rent, Additional Rent, and additional charges. City shall be allowed after five (5) days' prior written notice to Lessee to inspect Lessee's books of account at Lessee's office and to procure audits thereof by an auditor at City's sole cost and expense (except as provided below). If in the reasonable judgment of such auditor Lessee's books of account are incomplete or improperly reflect the information necessary for an accurate determination of the Rent, Additional Rent, or additional charges, or if the audit shall show that the reports submitted by Lessee understated Lessee's receipts by more than three percent (3%) thereof for any year covered by the audit, the reasonable costs and fees for such audit shall be paid by Lessee to City. If an audit discloses any willful or intentional effort to understate Lessee's receipts, then, at City's option, Lessee may be required to surrender possession of the Premises under the provisions of Section 21 of this Lease. Lessee shall retain all books of accounting and any other information that will affect the determination of Rent, Additional Rent, and additional charges for a period of six full calendar (6) years after following the completion of each calendar year during the Term, and Lessee shall make them available for inspection at Lessee's office within ten (10) days of City's prior written demand therefore. Lessee's obligations under this section shall survive expiration or termination of this Lease.

40. Miscellaneous.

40.1 Entire Lease; Applicable Law. This Lease and the Exhibits attached hereto, and by this reference incorporated herein, set forth the entire Lease of City and Lessee concerning the Premises, and there are no other Leases 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.

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

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

CITY:

LESSEE:

THE CITY OF SEATTLE

BUILDING 11, LLC

By: _____
Print Name/Title: _____
Department of Parks and Recreation

By: _____

**Seattle City Council
Legislative Department**

LEGISLATIVE ANALYST

Position Overview

Current salary range: \$80K – 94K annually (negotiable). This position is one of the City Council's 17-member Central Staff. Central Staff conducts analysis on public policy and budget issues for the City Council as a whole.

Analysts provide policy review services to the Council by researching, analyzing and making policy recommendations, and drafting legislation on local, regional, and national issues for Council action. Central staff is currently seeking individuals who have expertise in land use and planning, but who are also capable of applying broad-based policy skills to a wide range of local issues. The position will have primary responsibility for a variety of land use matters, but will also be assigned to assist Council on budget-related matters, transportation issues, property transactions, financial analyses, etc.

In addition to a general background in public policy, successful applicants will have the specific skills needed to assist the City Council in addressing a diverse set of land use and planning issues, including those requiring quasi-judicial decisions (such as rezones and Council conditional uses).

Responsibilities will include: analyzing and making recommendations on proposed Land Use Code amendments; drafting and amending legislation; designing decision-making processes; processing quasi-judicial actions, including organizing and summarizing the records of proceedings, helping to determine the sufficiency of record, and drafting findings, conclusions and decision documents; preparing written reports; and conducting oral briefings and presentations.

Solid communication skills are essential for developing written reports and legislation, presenting briefings at public meetings, and participating in policy discussions. Analysts are also expected to design, organize and implement decision-making processes for the Council. Analysts must work with nine full-time Councilmembers, Legislative Assistants, high-level government officials, and a wide variety of stakeholders. Analysts report to the Central Staff Director.

Minimum Qualification:

- A graduate degree or a bachelor's degree and experience equivalent to a graduate degree in land use, urban planning, public policy, law, or a related field.
- Three years of progressively responsible work in areas including land use planning, permitting, and/or regulation, paralegal land use work, land use law, general policy analysis, or legislative staff work.
- Strong analytical and communication skills.

Desired Qualifications:

- Graduate degree in land use, urban planning, public policy, law, or a related field..
- Experience serving elected officials and working successfully with a multiple city departments and/or other government jurisdictions is highly desired.

Knowledge and Abilities:

- Ability to perform fiscal analysis and assess the financial implications of proposed policy actions.
 - Analyze facts, apply criteria and make recommendations.
 - Pinpoint insignificant issues and facts from positions put forth by interested parties.
 - Accurately distill and articulate policy and issue direction produced through group processes.
 - Deal effectively in situations where conflicting viewpoints exist.
 - Build open communications, dialogue, and consensus in multi-cultural and group settings.
 - Write organized, clear and concise reports and legislation.
 - Make cogent and articulate presentations.
 - Work under pressure, meet deadlines, make independent judgments and operate with minimal supervision.
 - Skillfully use a computer and software, including word processing, spreadsheets, e-mail and internet applications.
- ***Examples of Tasks:***
- Identify and analyze policy issues, propose solutions and make recommendations.
 - Prepare thorough and concise written reports of various styles, including proposals, issue papers, and executive summaries.
 - Prepare and deliver oral presentations summarizing key elements of analysis and recommendations.
 - Lead and/or support and display initiative in team projects.

Exhibit A

Legal Description

PARCEL 1 Lot A
NORTH PARK PARCEL
Property Description
(revised 09/18/97)
(revised 01/18/99)jas

Those portions of the southwest quarter (SW⁴) of the northwest quarter (NW⁴) of Section 2, TWP 25N, RNG 04E and Govt. Lots 1 and 2 in said Section, together with the 1st Class Shore Lands adjacent, abutting and attached thereto, as acquired by the U. S. Navy on behalf of the United States of America described as follows:

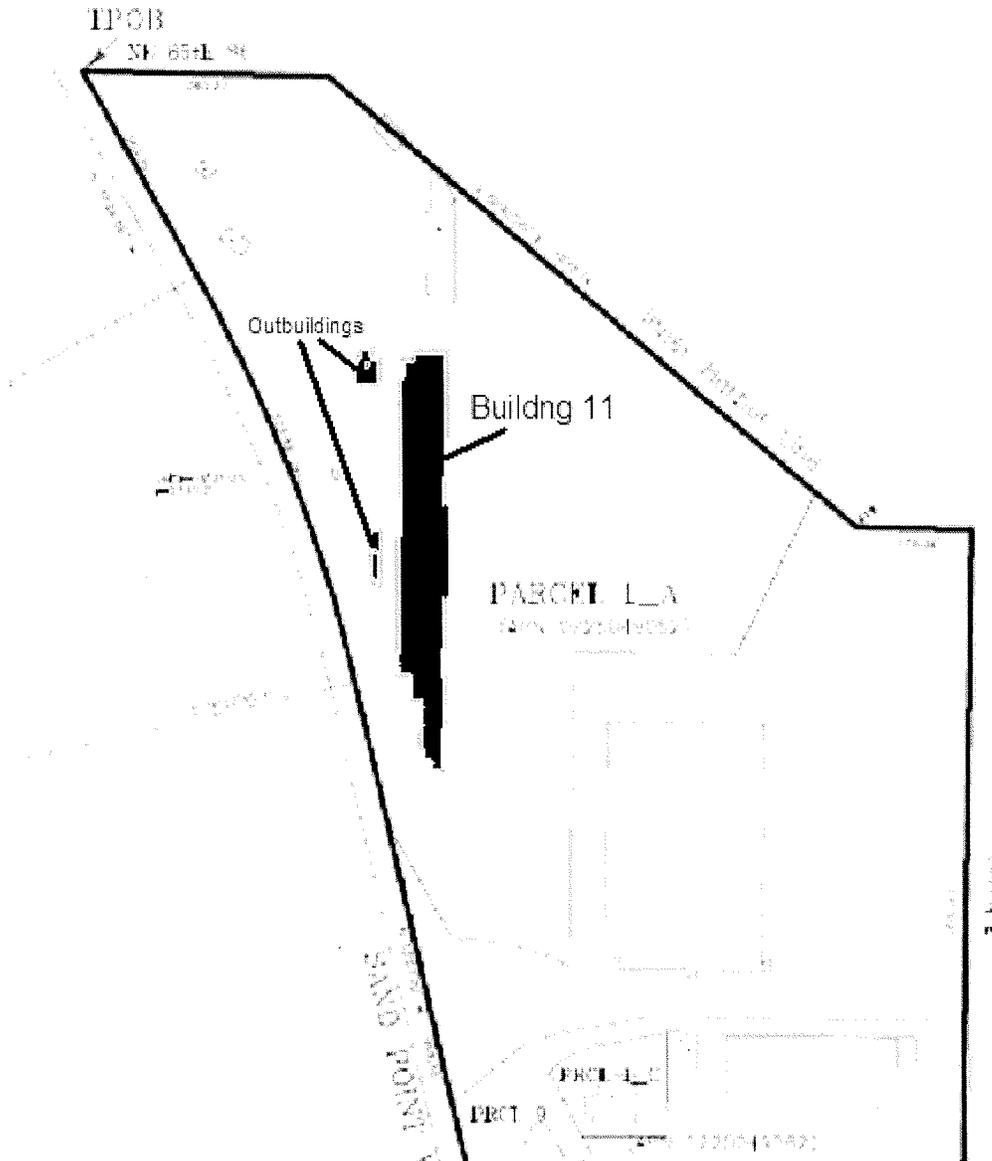
Commencing at the northwest corner of said Section 2, thence S 89°43'27" E on the north line of said Section a distance of 528.79 feet to the east margin of Sand Point Way NE (formerly referred to as the James Kiefer County Rd. No. 1283), and the **True Point of Beginning**; thence S 30°28'08" E on said east margin a distance of 360.75 feet to a point of curvature in said east margin of which the radial center bears S 59° 31' 52" W at a distance of 2336.20 feet, thence continuing on said east margin on a curve concave to the south and west through a central angle of 16°31'03" an arc distance of 673.49 feet, thence S 13° 57' 05" E on said east margin a distance of 225.43 feet, **to a point of intersection with the northerly boundary of a parcel of land under the jurisdiction of the United States Department of Commerce (NOAA) as surveyed and described in a record of survey drawing titled "BOUNDARY SURVEY for National Oceanic & Atmospheric Administration N.O.A.A. Western Regional Center Access Road", project No. 96545.00, by Penhallegon Associated Consulting Engineers, Inc, said point being identified by a 5/8" iron rebar with cap marked P.A.C.E., L.S. 11691 and herein referred to as a rebar marker, thence leaving said east margin and along a line adjoining said N.O.A.A. property the following courses and distances,**
S 30° 43' 19" E, a distance of 199.50 feet **to a rebar marker,**
thence S 85° 48' 24" E a distance of 87.72 feet **to a rebar marker,**
thence S 71° 12' 22" E a distance of 46.87 feet **to a rebar marker,**
thence S 76° 54' 27" E a distance of 20.06 feet **to a rebar marker,**
thence S 62° 39' 42" E a distance of 33.69 feet **to a rebar marker,**
thence N 00° 01' 44" W a distance of 485.07 feet **to a tack in lead,** thence N 89° 59' 11" E a distance of 252.00 feet **to a rebar marker,** thence N 25° 28' 42" E a distance of 277.22 feet to the Inner Harbor Line of the Lake Washington Shore Lands as established by the State of Washington Commissioner of Public Lands and according to the Maps thereof on file in Olympia, Washington, **and a point of departure from said line adjoining N.O.A.A.,**

thence N 50° 40' 00" W on said Inner Harbor Line a distance of 989.06 feet to the intersection with the north line of said Section 2, thence N 89° 43' 27" W on said north line a distance of 380.23 feet to the True Point of Beginning.

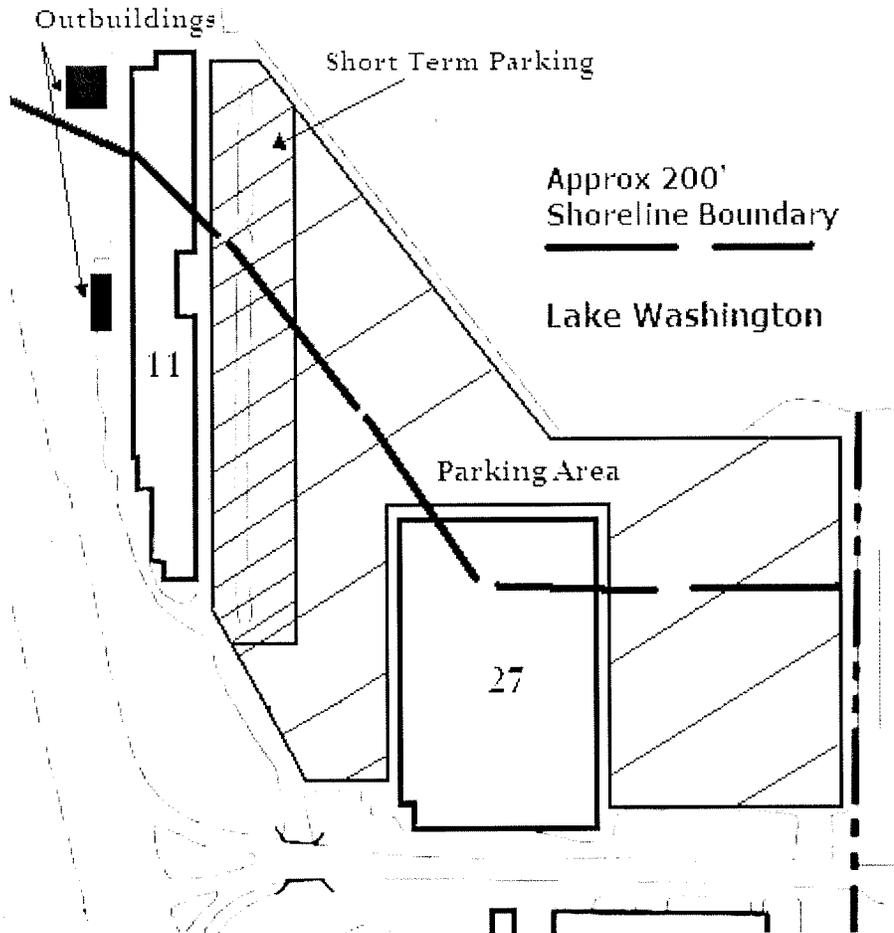


Site Plan Showing Premises

PARCEL 1 LOT A



PARKING AREA



Initial Capital Improvements Offset Categories

SITework:

Demolition
Parking Lot Improvements
Public Plaza
Site Lighting

Pedestrian Amenities
Connection and Utility Fees
Field Office

Site Permits & Fees
Project Signage
Tenant Signage

BUILDING CONSTRUCTION:

General Conditions
Environmental Remediation
Seismic Upgrades
Life Safety/Sprinklers
Plumbing

HVAC
Exterior Repair
Interiors
Electrical
ADA Compliance
Windows, Storefront, Canopies
Roof
Restrooms
Elevator
Interior Walls
Paint
Carpet
Bldg. Permits and Fees

DESIGN FEES:

Architecture
Structural Engineering
Civil Engineering
Landscape Architecture
Graphic
Design
Environmental Review
Tenant Design Review
Specific Design and Engineering
Consultants

DEVELOPMENT COSTS:

Feasibility Analysis
Project Management Costs
Legal Expenses for Construction Related
Improvements
Insurance for Construction Period

TENANT IMPROVEMENTS:

Tenant Building Improvements
(Not cash allowances or
payments)

WHEREVER APPLICABLE:

Contractor Overhead and Fee
WA State Sales Tax



FORM OF BILL OF SALE

BUILDING 11 LLC, a Washington limited liability company ("Seller"), for and in consideration of the sum of \$1.00 and other valuable consideration, the receipt and sufficiency of which is acknowledged, does hereby sell, assign, transfer and convey unto THE CITY OF SEATTLE, a city of the first class of the State of Washington, acting by and through its Department of Parks and Recreation ("Purchaser"), all alterations, additions and improvements (expressly including all light fixtures; heating and ventilating units; floor, window and wall coverings; and electrical wiring) owned by Seller (the "Alterations") and located on the property described on Exhibit A attached hereto (the "Premises") and excluding Seller's and Seller's subtenants' moveable trade fixtures, appliances and equipment not permanently affixed to the Premises (including without limitation furniture; computers, point of sale systems and registers).

Seller has not made and does not make any express or implied warranty or representation of any kind whatsoever with respect to the Alterations, including, but not limited to: merchantability, fitness for any particular purpose, design, condition, quality, capacity, workmanship, compliance with governmental requirements, or latent defects. Purchaser has accepted the Alterations on an "AS-IS", "WHERE-IS" BASIS.

DATED: _____

BUILDING 11 LLC,
a Washington limited liability company

By: _____
Name: _____
Title: _____



Magnuson Park North Shore Recreation Area Master Plan

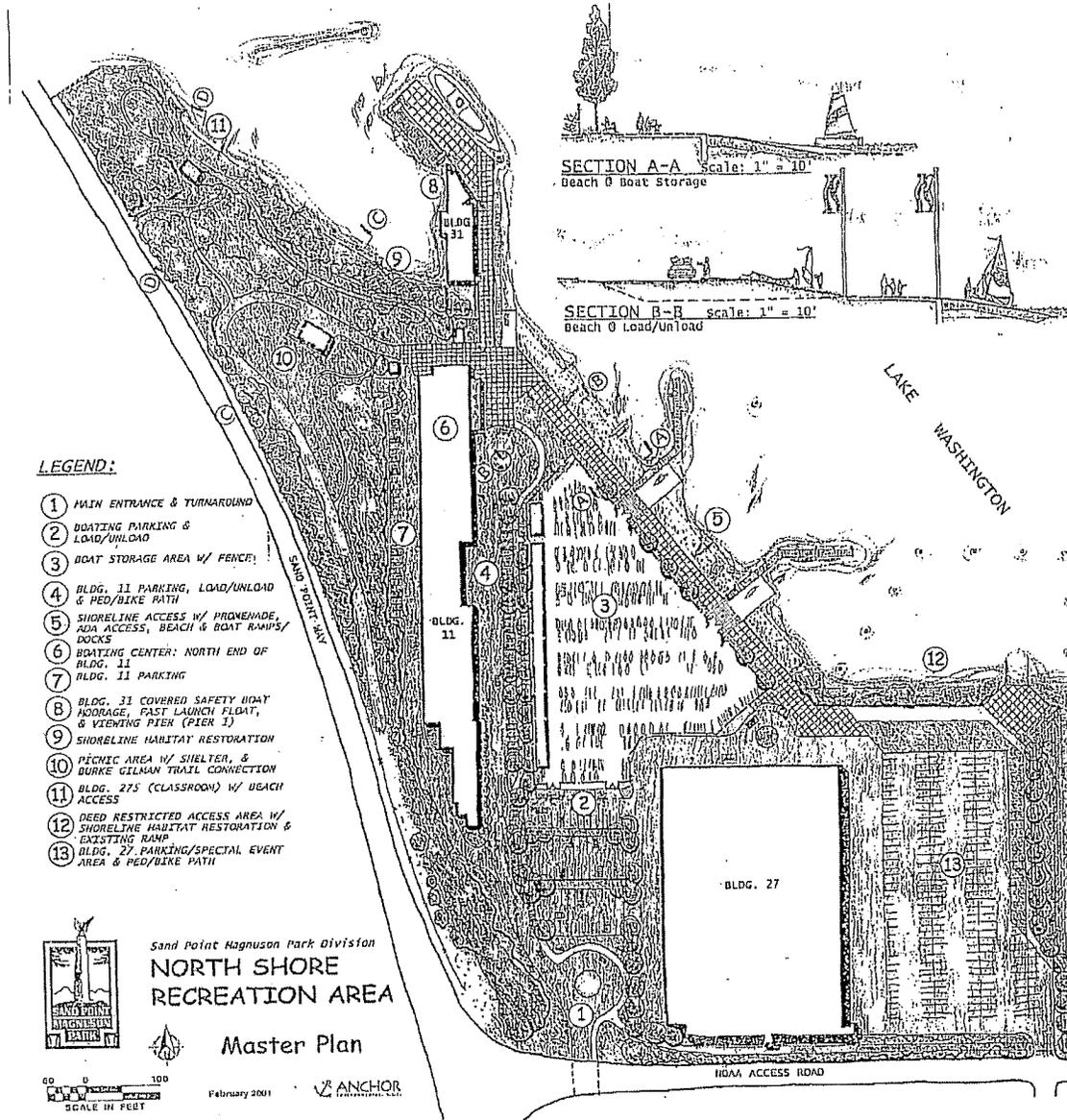


EXHIBIT G
PUBLIC BENEFITS

Building 11 LLC may apply to the Parks Superintendant for public benefit offsets for free and reduced-price programs and services offered to the general public. Applicable programs and services include, but are not limited to, the following:

- Open Sailing Programs that offer free sailing to youth and low-income individuals on a walk-up basis;
- Reduced-Price Season Passes issued at or below 80% of market rate;
- Youth and Adult Racing Team memberships at or below 80% of costs;
- Youth Scholarships for free boat rentals and sailing instruction;
- Partnership with YMCA and other youth recreation programs sponsored at or below 80% of costs;
- College Sailing Program Sponsorships at or below 80% of costs;
- Hobie 101 training offered free to participants;
- US Sailing Level One Instructor Safety Classes offered at an unreimbursed cost; and
- Hand-launched Boats stored in Dry Boat Storage at 50 - 75% of market rates.

Building 11 LLC will also encourage other tenants in the building to develop their own free or reduced-price programs and services for the general public, but until the tenants are identified, these specific programs cannot yet be described. As with offsets for the programs described above, any additional tenant programs will be submitted to the Parks Superintendant for approval as described in the lease.

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**EXHIBIT H
LETTER OF INTENT
BETWEEN BUILDING 11 LLC AND SAIL SAND POINT**

BUILDING 11 LLC
NORTHSHORE RECREATION DISTRICT
MAGNUSON PARK

August 25, 2008

Mr. Jeff Reinhold
Sail Sand Point
Building 11
Magnuson Park

RE: Building 11, Magnuson Park LEASE PROPOSAL

Dear Jeff:

This non-binding proposal outlines the general terms and conditions that Building 11 LLC ("Landlord") will enter into Lease negotiations with Sail Sand Point, a Washington non-profit corporation ("Tenant"). Upon mutual acceptance of the general terms set forth herein, the Landlord shall draft a definitive lease agreement ("Lease") for review and approval. There shall be no agreement between the Landlord and Tenant until after the Landlord has delivered a fully accepted Lease to the Tenant, but both Landlord and Tenant agree to keep the terms of this proposal confidential. The business points of this proposal follow below.

PROJECT: Building 11 is a 58,700 sf two-story building located on the north end of Magnuson Park in Seattle, Washington. Landlord intends to enter into a master lease with the City of Seattle, and sub-lease individual spaces to parks-oriented tenants. The legal description and site location are attached hereto as Exhibit A-1 and Exhibit A-2, respectively.

LANDLORD: Building 11 LLC
2620 Second Avenue
Seattle, WA 98121
206-973-1304
206-985-0102 fax

TENANT: Sail Sand Point
7777 62nd Avenue NE #101
Seattle, WA 98115

Tel. : 206-525-8782
Email: morgan@sailsandpoint.org

TRADE NAME: Sail Sand Point

Sail Sand Point LOI

August 11, 2008

BUILDING 11 LLC
NORTHSHORE RECREATION DISTRICT
MAGNUSON PARK

LEASE PREMISES: Space XXX containing approximately 2,572 square feet shown as hi-lighted on the attached Exhibit C. Square footage will be confirmed by actual measurement.

LEASE TERM: Ten (10) years, with seven options of five (5) years each to extend the lease, on the same terms and conditions as the original lease, exercised at Tenant's option, with notification no less than 180 days prior to the end of the then-current lease term.

LEASE COMMENCEMENT DATE: On the Commencement Date of the lease between Building 11 LLC and the City of Seattle, estimated to be around July 1, 2009. This Date shall coincide with the termination date of the existing Concession Agreement between Sail Sand Point and the City of Seattle, as it may be extended.

RENT COMMENCEMENT DATE: On the Lease Commencement Date.

TERMINATION DATE: Tenth (10th) anniversary from Rent Commencement Date.

TENANT IMPROVEMENT PERIOD: None. Tenant will maintain continuous occupancy, and Landlord will undertake renovation work as required.

FIXED MINIMUM RENT: Year 1: \$12.00 per square foot per year.
Years 2 through 10: Annual rent increases equal to 3% of the Fixed Minimum Rent on each anniversary date.
Option terms: Annual 3% increases, as in the base term.

TAXES, INSURANCE, COMMON AREA MAINTENANCE CHARGES: Landlord is responsible for Leasehold Excise Tax, if any, insurance and common area expenses.

UTILITIES AND HVAC CHARGES FOR TENANT'S PREMISES: Tenant will be responsible for any utilities that are individually-metered for Tenant's space, for which Tenant can be billed directly by utility provider. Landlord shall be responsible for all utilities that are shared with other tenants, or that apply to the common areas.

ADDITIONAL RENT: Tenant will pay as additional rent an amount that is 25% of the actual gross rental income from dry boat storage in excess of a baseline of \$70,000.00 per year. This amount

BUILDING 11 LLC
NORTHSIORE RECREATION DISTRICT
MAGNUSON PARK

shall be payable semi-annually in March and September for the preceding calendar half-year.

PERMITTED USES:

A non-motorized small-craft center with boat rentals, dry moorage, classes and training programs and other water-related activities available to members and to the general public.

SECURITY DEPOSIT:

None.

GUARANTOR:

None.

**ADDRESS OF
GUARANTOR:**

None.

**DESCRIPTION OF
LANDLORD'S AND
TENANT'S WORK:**

Landlord will remodel the premises sufficiently to comply with all applicable building codes. Landlord will provide new electrical service and new HVAC systems. Additional improvements shall include interior and exterior paint, and selective door and window replacement.

**BROKERS COMMISSION;
AGENCY DISCLOSURE:**

Neither Landlord nor Tenant is represented by Brokers, so no commissions are due to any third parties.

PARKING:

Tenant, Tenant's guests and invitees may use the available parking on a non-exclusive basis. Under Landlord's Lease with the City of Seattle, City is to provided and maintain 300 parking spaces adjacent to the building for use of Building 11 tenants and guests.

OTHER CONDITIONS

Financials:

This letter of intent to lease space shall be contingent upon the Landlords acceptance of the Tenant's financial condition. The Tenant shall submit a current balance sheet and income statements for the business for the last three years.

Signage:

BUILDING 11 LLC
NORTHSHORE RECREATION DISTRICT
MAGNUSON PARK

Subject to Landlord criteria and sign codes to be developed by the City of Seattle and the Landlord.

Additional City Lease:

The Lease shall be contingent on Sail Sand Point and the City of Seattle executing a separate lease for the exclusive use of covered moorage in Building 31, dry boat storage area as shown on Exhibit C, and the non-exclusive use of Building 275, for a similar term and duration.

**EXCLUSIVE
NEGOTIATIONS BASED
UPON LETTER:**

This is a non binding Proposal except that, upon full acceptance by the Landlord and Tenant, both agree to cooperate with each other and exercise good faith to negotiate, prepare and execute a mutually acceptable Lease.

**ACCEPTANCE OF THIS
PROPOSAL:**

Tenant shall have until 5:00 PM Pacific Time September 2, 2008, for its acceptance of the general business terms set forth in this proposal.

We hope that this Proposal meets with your approval. We started this process in an effort to save Sail Sand Point at its current location, and hope that this agreement will signal to the City our genuine intent for the Building 11 project to be a water-oriented recreational center.

Sincerely,

BUILDING 11 LLC


Darrell M. Vange
Manager

Landlord:	Tenant:
Approved and accepted this	Approved and accepted this
<u>29</u> day of <u>Aug</u> , 2008	<u>31</u> day of August, 2008
Building 11 LLC	Sail Sand Point
By <u>Dave</u>	By <u>Jeff Reinhold, Pres</u>
Its: <u>MAGNUSON</u>	By <u>Jeff Reinhold, Pres</u>



City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

August 26, 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 that authorizes a thirty-year lease agreement with Building 11 LLC for the purpose of renovating Building 11 at Warren G. Magnuson Park and operating it as a multi-use recreation facility. The proposed lease agreement includes the option to extend the lease for three additional terms of five years at the option of Building 11 LLC, provided certain public benefit conditions are met.

Since the mid-1990s, the Department of Parks and Recreation has been developing programs in the various buildings at Magnuson Park through partnerships with private entities. The City is at an important juncture concerning the future of several buildings at Magnuson Park. Due to the age and deteriorating condition of these facilities we must make immediate decisions or the default will be to close them to the public and demolish them at great expense.

There are three options for you to consider for Building 11. First, is to permanently close the building and appropriate sufficient city funds to tear it down. Second, is to invest several million dollars of taxpayer funds to make seismic and life safety improvements that will allow continued use of the building. The third option, which I recommend to you, is to enter into a public private partnership in which a private entity invests its own funds for improvements to the building and leases to tenants who will provide services and public benefits to park users at a modest return that justifies the private investment.

Through a Request for Proposals process conducted in 2006, Building 11 LLC was selected to renovate and operate Building 11 based on their financial and management qualifications and their proposed programming and renovation plans. Building 11 LLC would include limited commercial uses in a portion of the building on the second floor that would finance a \$7 million renovation to address urgent building code issues. They propose to establish dedicated space for water-oriented recreational activities at a long-term, below-market rent structure that will ensure their continued successful operation from Magnuson Park's North Shore Recreation Area for the foreseeable future.

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

Tel: (206) 684-4000, TDD: (206) 615-0476 Fax: (206) 684-5360, Email: mayors.office@seattle.gov

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





City of Seattle

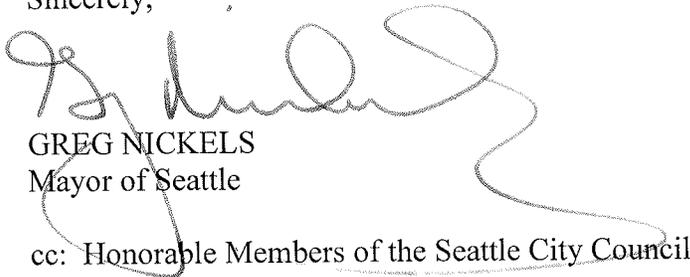
Gregory J. Nickels, Mayor

Office of the Mayor

In addition, Building 11 LLC will pay for all operating expenses and routine and ongoing maintenance of the building. In exchange for the right to manage and operate the facility, Building 11 LLC will make monthly lease payments to the City.

Approval of this lease agreement will provide expanded recreational opportunities for the public in northeast Seattle. Thank you for your consideration of this legislation. Should you have questions, please contact Parks Superintendent Tim Gallagher at 684-8022.

Sincerely,



GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

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

Tel: (206) 684-4000, TDD: (206) 615-0476 Fax: (206) 684-5360, Email: mayors.office@seattle.gov

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FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Parks and Recreation	Eric Friedli / 684-8369	Jennifer Devore/615-1328

Legislation Title:

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent to enter into a Concession Agreement with Arena Sports Magnuson Park LLC to renovate and provide indoor participant sports programs in Building 27 at Warren G. Magnuson Park.

• **Summary of the Legislation:**

The proposed legislation authorizes the Superintendent of Parks and Recreation to enter into a 30 year Lease Agreement with Building 11 LLC to renovate and occupy the former Public Works Administration and Maintenance Building 11 at Warren G. Magnuson Park. The purpose would be to develop a multi-use recreation building, consistent with the Sand Point Physical Development Management Plan. The Lease establishes the conditions under which Building 11 LLC may use and occupy a portion of the facility for a period of 30 years. Options to extend for 3 additional terms of 5 years is available to the lessee, provided they demonstrate that certain public benefit requirements have been met. The Lease memorializes the parties' understandings and objectives pertaining to the provision of recreation opportunities, building renovation, budget, design, construction, project management, and Building 11 LLC financial commitments.

The Department of Parks and Recreation (DPR) is providing no financial contribution to this project. Building 11 LLC has pledged to contribute \$7,070,000 towards building improvements and any additional funds required to complete the project. This would alleviate some near-term City expenses required for major maintenance work to the structure. Prior to submitting applications to the Department of Planning and Development for construction permits, Building 11 LLC is required to certify that they have raised the funds necessary to undertake the building renovations.

The Lease allows Building 11 LLC to reduce its fair market rent based on the value of its initial capital improvements, as well as subsequent major maintenance expenses. The value of the capital improvements will be certified by DPR's Finance Director and may be applied in monthly installments over the term of the Lease.

The Lease requires that Building 11 LLC make available at least 8,000 square feet of the building for water-related recreation activities at rents of no more than 80 percent of the average of market-rate rents in the building. This subsidy is specifically targeted to secure a long-term presence for Sail Sand Point or a similar community boating program as an anchor tenant for the building. In addition, Building 11 LLC will be required to provide public benefits equal to at least 15% of their total rent payment annually. These benefits will be eligible for rent offsets, and must be provided in order for Building 11 LLC to take advantage of the three lease extensions of 5 years that are available after the initial



30 year term. The value of public program offerings will be determined by the Superintendent each year. Building 11 LLC is required to submit an annual program plan in October of each year outlining its intended use of the facility.

Building 11 LLC is responsible for all minor and major maintenance during the term of the Lease. The Lease is contingent on a number of other actions being accomplished as outlined in Section 6 of the Lease. These include completion of an environmental assessment, zoning code amendments, resolution of shoreline zoning issues, and development of plans for signage and access plans.

- **Background:**

Building 11 is located in Magnuson Park just east of Sand Point Way NE just north of the entrance road to the National Oceanic and Atmospheric Administration (NOAA) headquarters. The Sand Point Physical Development Management Plan (PDMP) adopted by City Council Resolution 29429 in 1997 calls for the north end of this building to be developed as a small crafts center for non-motorized boating. The PDMP called for the south end of the building to be developed by the Muckleshoot Tribe into a fisheries research facility. Subsequent to the adoption of the PDMP the Muckleshoot Tribe withdrew their interest in the building. The building currently houses the non-profit group Sail Sand Point, Seattle Raft and Kayak, various artists' studios, storage, and shop space for Seattle Public Libraries. These uses are temporary.

DPR generated \$172,374 in 2006, and is projected to generate \$187,000 in 2007, from rental revenue related to Building 11. Maintenance costs for the building in 2006 were \$24,129 and in 2007 they are projected to be \$25,000. Maintenance costs include routine janitorial services and minor and major repairs provided by the professional trades.

DPR's 2007-2012 Asset Management Plan includes \$1.7 million (unfunded) for the roof replacement for Building 11. There are additional necessary improvements (window, seismic, HVAC) which are not included in the next six year Asset Management Plan. Building 11 LLC's proposed development of Building 11 alleviates the City's need for capital improvement funding to perform major maintenance, and the need to make further improvements to the building for at least 40 years. In addition, the capital investment made by Building 11 LLC to improve this building would alleviate the City's need either to fund major maintenance capital investments to the aging building or to fund complete demolition to avoid safety liabilities.

In 2005, DPR issued a Request for Proposals (RFP) to find organizations interested in developing indoor recreation opportunities such as a theater, indoor soccer, hockey, basketball, climbing walls, tennis center, and velodrome or events venue. Brochures were mailed to businesses and real estate brokers in the northwest and ads were placed in the Puget Sound Business Journal and the National Real Estate Investor. The intent was to identify developers with the expertise and financial capability to develop the facility.

The intent of the RFP process was to:

1. Identify service providers that could offer parks and recreation programs to the public and achieve the vision for the development of Magnuson Park
2. Preserve the integrity of the Sand Point Historic District
3. Relieve the City of the financial liability associated with the buildings.

Building 11 LLC was the only entity that submitted a qualified proposal in response to the RFP for Building 11. A review committee assessed the proposal and determined it met the City's requirements. The Superintendent concurred and Building 11 LLC was selected as the building developer.

- *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				

Notes: None

Anticipated Revenue/Reimbursement: Resulting From This Legislation:

Fund Name and Number	Department	Revenue Source	2008 Revenue	2009 Revenue
TOTAL				

Notes: No revenue is anticipated in 2008 or 2009 as a result of this legislation. Renovation of the building is anticipated in 2009 with revenue beginning in 2010. Attachment 1 shows anticipated revenues and expenses over the thirty year life of the Agreement.



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

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2008 Positions	2008 FTE	2009 Positions*	2009 FTE*
TOTAL							

*

Notes: None

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

Spending/Cash Flow: N/A

Fund Name & #	Department	Budget Control Level*	2008 Expenditures	2009 Anticipated Expenditures
TOTAL				

Notes: N/A

- **What is the financial cost of not implementing the legislation?**

By not implementing this legislation the opportunity to preserve Building 11 will not be realized. DPR engaged in a significant effort to identify an entity that met the parks and recreation mission was consistent with the development of a multi-use regional park and had solid financial viability. The fact that only a single proposal was received indicates there are no other viable options.

The building does not meet current building codes and does not have a permanent certificate of occupancy. Without this Lease the use of the building will be gradually reduced and within 2-3 years all tenants and programs will be discontinued and revenues will fall to zero.

Without this legislation the building would be mothballed and/or demolished in the next 1-3 years. The estimated cost to demolish the building down to the foundation is \$1.5 million. The demolition cost of removing the foundation has not been estimated as the building is constructed on an extensive piling system that supports the building and surrounding parking area. The demolition of the building would result in the loss of a building that contributes to the Sand Point Historic District.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**

The City could fund the renovation of the building and make it available for community use, however, this would not be consistent with the objective to alleviate the City of financial responsibility for improvements to the building



- **Is the legislation subject to public hearing requirements:** No
- **Other Issues:** None

Please list attachments to the fiscal note below:

Attachment 1: Building 11 LLC in Building 11 pro forma
Attachment 2: Contract Summary

BUILDING 11 PRO FORMA SHEET

Building 11 LLC		
Facility:	58,780	sq. ft.
CPI adjustment	3.0%	annual
Base Rent	\$ 4.00	
Base Rent Escalation	15%	cumulative CPI every 5 years
Minimum Rent per month	400	
Percentage of Gross	10.00%	
Total Capital Contribution	7,077,000	
Annual Capital Rent Offset Max	230,320	Capital investment straight-lined over X years - minimum rent
Eligible Gross Revenue		
Interest/discount rate	7.5%	
NET PRESENT VALUE		
Base Rent	3,888,825	
Percentage Rent	109,229	
Rent offset	(2,900,744)	
Public Program Offset	(413,555)	
NET Rent	1,097,310	
City Administration	273,073	
NET TO CITY	824,236	



BUILDING 11 PRO FORMA SHEET

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Eligible Gross Revenue	60,000	61,800	63,654	65,564	67,531	69,556
REVENUES						
Base Rent	15,019,998	235,120	235,120	235,120	235,120	270,388
Percentage Rent	452,408	6,180	6,365	6,556	6,753	6,956
Rent Offset	(9,212,800)	(230,320)	(230,320)	(230,320)	(230,320)	(230,320)
Public Program Offset	(460,640)					
NET Rent	6,259,605	10,980	11,165	11,356	11,553	47,024
EXPENSES						
City Administration	1,131,019	15,450	15,914	16,391	16,883	17,389
NET TO CITY	5,128,587	(4,470)	(4,748)	(5,035)	(5,330)	29,635
Eligible Gross Revenue	71,643	73,792	76,006	78,286	80,635	83,054
REVENUES						
Base Rent	270,388	270,388	270,388	270,388	270,388	310,946
Percentage Rent	7,164	7,601	7,829	8,063	8,305	8,555
Rent Offset	(230,320)	(230,320)	(230,320)	(230,320)	(230,320)	(230,320)
Public Program Offset						
NET Rent	47,232	47,669	47,897	48,131	48,368	48,605
EXPENSES						
City Administration	17,911	19,002	19,572	20,159	20,764	21,386
NET TO CITY	29,322	28,667	28,325	28,531	27,604	27,219



BUILDING 11 PRO FORMA SHEET

	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20	Year 21
Eligible Gross Revenue	90,755	93,478	96,282	99,171	102,146	105,210	108,367
REVENUES							
Base Rent	310,946	357,588	357,588	357,588	357,588	357,588	411,226
Percentage Rent	9,076	9,348	9,628	9,917	10,215	10,521	10,837
Rent offset	(230,320)	(230,320)	(230,320)	(230,320)	(230,320)	(230,320)	(230,320)
Public Program Offset							(230,320)
NET Rent	89,702	136,616	136,896	137,185	137,483	137,789	191,743
EXPENSES							
City Administration	22,689	23,370	24,071	24,793	25,536	26,303	27,092
NET TO CITY	67,013	113,246	112,826	112,393	111,946	111,487	164,651
Eligible Gross Revenue	111,618	114,966	118,415	121,968	125,627	129,395	133,277
REVENUES							
Base Rent	411,226	411,226	411,226	411,226	472,910	472,910	472,910
Percentage Rent	11,162	11,497	11,842	12,197	12,563	12,940	13,328
Rent offset	(230,320)	(230,320)	(230,320)	(230,320)	(230,320)	(230,320)	(230,320)
Public Program Offset	(230,320)						
NET Rent	192,068	192,403	192,748	193,103	255,153	255,530	255,918
EXPENSES							
City Administration	27,904	28,742	29,604	30,492	31,407	32,349	33,319
NET TO CITY	164,164	163,661	163,144	162,611	223,746	223,181	222,599

BUILDING 11 PRO FORMA SHEET

	Year 29	Year 30	Year 31	Year 32	Year 33	Year 34	Year 35
Eligible Gross Revenue	137,276	141,394	145,636	150,005	154,505	159,140	163,914
REVENUES							
Base Rent	472,910	472,910	472,910	472,910	472,910	472,910	472,910
Percentage Rent	13,728	14,139	14,564	15,000	15,450	15,914	16,391
Rent offset	(230,320)	(230,320)	(230,320)	(230,320)	(230,320)	(230,320)	(230,320)
Public Program Offset							
NET Rent	256,318	256,730	257,154	257,591	258,041	258,504	258,982
EXPENSES							
City Administration	34,319	35,348	36,409	37,501	38,626	39,785	40,979
NET TO CITY	221,999	221,381	220,745	220,090	219,415	218,719	218,003
Eligible Gross Revenue	168,832	173,897	179,114	184,487	190,022		
REVENUES							
Base Rent	472,910	472,910	472,910	472,910	472,910		
Percentage Rent	16,883	17,390	17,911	18,449	19,002		
Rent offset	(230,320)	(230,320)	(230,320)	(230,320)	(230,320)		
Public Program Offset							
NET Rent	259,473	259,980	260,502	261,039	261,592		
EXPENSES							
City Administration	42,208	43,474	44,778	46,122	47,505		
NET TO CITY	217,266	216,506	215,723	214,917	214,087		



Seattle Department of Parks and Recreation

CONTRACT SUMMARY

Contracting Party/ Lessee/ Concessionaire/Other: Building 11 LLC

Contract Title and Contract Type: Magnuson Park Building 11 Lease Agreement

Non-Profit _____ or **For Profit** X

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

Premises: Building 11 at Warren G. Magnuson Park.

Term of Lease: 30 years with an option for three extensions of 5 years each, provided certain public benefits are provided in the preceding term.

Purpose of Lease (description of license): Lessee shall primarily use the building for the encouragement and development of park and recreation activities, with a focus on water-related recreation such as sailing, kayaking, canoeing and other non-motorized boating activities, the retail sale of recreation-oriented goods and services, and providing services such as child care and food and beverage services for the benefit of users of the park. Lessee may use up to 25,000 square feet of the building for commercial uses allowed under applicable zoning and land use laws, ordinances, statutes, rules and regulations.

Rent: An annual base rent of \$235,120 (\$19,593.33 monthly) plus additional rent equal to 10% of subtenant rent. For purposes of calculating additional rent, "subtenant rent" means and includes all base rent, percentage rent and fees of any kind collected by Lessee from third parties, including licensees and subtenants, for use and occupancy of the building for other permitted uses.

Adjustments to Rent (if any): Up to 23% of the base rent only may be reduced during the first 5 years in the form of public benefit rent offsets, and up to 15% thereafter during the remainder of the term. An additional 75% of the base rent may be reduced in the form of capital improvement rent offset limited to the cost of initial alterations and subsequent major maintenance costs.

Public Benefit (e.g., description of permitted use): Preservation of a contributing building to the Sand Point Historic District. Public programs for the encouragement and development of sailing, kayaking, canoeing and other non-motorized boating activities and meeting rooms, storage, office, child care, food and beverage services, and artist studios will be available. The Lease requires that Building 11 LLC make available at least 8,000 square feet of the building for water-related recreation activities at rents of no more than 80 percent of the average of market-rate rents in the building for the term of the Lease.

Maintenance: Lessee shall be responsible for all minor and major maintenance of the building during the Term of this lease including but not limited to repairs of cracking and



Seattle Department of Parks and Recreation

breaking glass, regular exterior painting and masonry maintenance, roof repairs and replacement, and HVAC repair and replacement.

Other Pertinent Information: The Lease is contingent on a number of other actions being accomplished as outlined in Section 6 of the lease. These include completion and acceptance of an environmental assessment, zoning code amendments and resolution of shoreline zoning issues.



ORDINANCE

1
2 AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the
3 Superintendent to enter into a Lease Agreement with Building 11 LLC for the purpose of
4 renovating Building 11 and offering multiple uses and recreational opportunities in
5 Building 11 at Magnuson Park; and exempting the use of a portion of the Building from
6 the provisions and requirements of Ordinance 118477.

7 WHEREAS, the Department of Parks and Recreation (DPR) has jurisdiction over, and manages
8 Warren G. Magnuson Park, including the buildings therein; and

9 WHEREAS, in 2005 Building 11 LLC was incorporated for the explicit purpose of expanding
10 recreational opportunities and programs in Building 11 at Magnuson Park; and

11 WHEREAS, in 2005, DPR issued a Request for Proposals (RFP) to find partners to expand
12 Magnuson Park's public recreation opportunities, including among other things, a multi-
13 purpose recreation center; and

14 WHEREAS, in response to the RFP, Building 11 LLC submitted a proposal to DPR, which was
15 reviewed by a committee and accepted by the Superintendent of Parks and Recreation as
16 having met the requirements of the RFP; and

17 WHEREAS, DPR and Building 11 LLC are both committed to providing high quality
18 recreational programs to the citizens of Seattle; and

19 WHEREAS, DPR and Building 11 LLC desire to collaborate in order to achieve their shared
20 long-term vision and goals with respect to the development of recreation activities at
21 Magnuson Park; and

22 WHEREAS, the parties agree that the public benefits from Building 11 LLC's financial and
23 program commitments to remodel, improve, maintain and operate Building 11 at
24 Magnuson Park will be substantial; and

25 WHEREAS, essential building upgrades are necessary at this time to allow for Building 11's
26 continued use for parks and recreation-related activities and services, and

27 WHEREAS, the proposed agreement allows for a certain portion of the space to be used for
28 commercial uses, such as office space that will generate revenues sufficient to fund these
upgrades as well as to subsidize rents for the parks and recreation-related activities and
services for the term of the agreement; and



1 WHEREAS, once these building upgrades are financed and completed, the total square footage
2 of space in the building available for parks and recreation-related activities and services
will substantially increase; and

3 WHEREAS, DPR and Building 11 LLC wish to enter into a long term Lease Agreement for the
4 purpose of setting forth the terms and conditions under which Building 11 LLC will
5 occupy and use portions of Building 11, including the proposed terms and conditions
6 under which the renovation project shall be financed, constructed, and operated; NOW,
THEREFORE,

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

8 Section 1. The Superintendent of Parks and Recreation ("Superintendent") is authorized
9 to execute, for and on behalf of the City, a thirty-year Lease Agreement with Building 11 LLC, in
10 substantially the form attached hereto as Attachment 1, with additions, modifications, or
11 deletions as the Mayor or Superintendent deems to be in the best interest of the City. The Lease
12 Agreement also includes the option of three extension periods of five years at the option of
13 Building 11 LLC, provided certain conditions are met.

14 Section 2. To the extent that the Lease Agreement allows a portion of Building 11 to be
15 used for commercial uses, the Seattle City Council hereby finds that the requirements of
16 Ordinance 118477 adopting Initiative 42, regarding exchanges of land held for park and
17 recreation purposes, are hereby superseded for purposes of this ordinance.
18
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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 ____ day of _____, 2008, and
5 signed by me in open session in authentication of its passage this
6 ____ day of _____, 2008.

7
8
9
10 _____
11 Resident _____ of the City Council

12 Approved by me this ____ day of _____, 2008.

13
14 _____
15 Gregory J. Nickels, Mayor

16 Filed by me this ____ day of _____, 2008.

17
18 _____
19 City Clerk

20 (Seal)

- 21 Attachment 1: Lease Agreement between The City of Seattle and Building 11 LLC
22 Exhibit A - Legal Description
23 Exhibit B - Site Plan Showing Premises
24 Exhibit C - Parking Area
25 Exhibit D - Initial Capital Improvement Offset categories
26 Exhibit E- Bill of Sale
27 Exhibit F - Master Plan



LEASE

THIS LEASE ("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 Department of Parks and Recreation ("Parks") and the Superintendent thereof ("Superintendent"), and **Building 11 LLC** ("Lessee"), a limited liability company 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 consists of an approximately 58,780 square foot existing building (the "Building") commonly referred to as Building 11 at Warren G. Magnuson Park located at 7777 Sand Point Way NE, Seattle, King County, Washington 98115 situated on a portion of the real property legally described on Exhibit A and depicted on Exhibit B. Lessee shall notify City on or before the Commencement Date, as defined in Section 1.3, whether it elects to lease the two (2) outbuildings adjacent to the Building and depicted on Exhibit B (the "Outbuildings"), in which case the Outbuildings will be included in the Premises at no additional cost and subject to the terms and conditions herein. Alternatively, Lessee may elect not to lease the Outbuildings and may demolish the Outbuildings at Lessee's own cost and expense, and in compliance with all applicable laws and regulations. The cost of demolishing the Outbuildings will be considered part of Lessee's Initial Capital Improvements, as defined in Section 5.1, and Lessee shall be entitled to include such costs in its Capital Improvement Rental Offset as set forth in Section 5 below.

1.2 **Effective Date.** This Lease shall be effective starting on the date when authorized by Seattle City Council and signed by the Superintendent and Lessee. Beginning on the "Effective Date", Lessee and its employees, agents and contractors shall have the right to enter the Premises during business hours and after reasonable advance written notice to City for purposes of inspecting the Building and the Premises.

1.3 **Commencement Date; Possession.** The Lease Term shall commence when all contingencies in Section 7 have been satisfied or waived and the Lessee and City have specified the "Commencement Date" in writing, as further described in Section 7.5.

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

- Exhibit A - Legal Description
- Exhibit B - Site Plan Showing Premises
- Exhibit C - Parking Area
- Exhibit D - Initial Capital Improvement Offset categories
- Exhibit E- Bill of Sale
- Exhibit F - Master Plan

2. Premises.

2.1 Grant. City hereby grants to Lessee and Lessee hereby accepts from City the right to exclusive use, possession, and occupancy of those certain Premises referenced in Section 1.1 (the "Premises"), which are located on a portion of the real property described on Exhibit A and depicted on Exhibit B.

2.2. License to Use Common Areas. Throughout the Term, Lessee and Lessee's subtenants and their employees, contractors, agents and invitees may use the Magnuson Park common areas as from time to time constituted, including without limitation, roads providing access from public highways, parks, walkways, fields, parking lots, and restrooms (the "Common Areas"), in common with all other users and visitors of the Park and subject to such general rules and regulations as the Superintendent may promulgate (the "License"). Notwithstanding the foregoing, Lessee and Lessee's subtenants may use Common Areas during hours when Magnuson Park is not open to the general public, but only the parking lot and those Common Areas of the park reasonably necessary for access to the Premises, and for the purpose of access to the Premises only.

2.3 Condition. City grants the Premises and Lessee accepts the Premises in its "as is" condition, except as otherwise set forth herein.

2.4 Parking. At the request of Lessee, City will install signs at up to twenty-five (25) parking stalls within the area depicted on Exhibit C as "Short Term Parking" limiting parking in those stalls to two (2) hours for general public use. Additionally, throughout the Term, the City shall maintain a minimum of 300 parking stalls for general public use within the area depicted on Exhibit C as "Parking Area". City and Lessee acknowledge that they intend to enter into a Tri-Party Parking Agreement with the tenant of Building 27 to specify the rights and obligations of the parties with regard to the Parking Area. If the Tri-Party Parking Agreement is not signed by March 31, 2009, then the Superintendent will reasonably allocate the parking rights for all parties involved on or before April 30, 2009. In the event that the parking rights provided to the Lessee are not reasonably satisfactory to Lessee, Lessee may terminate this Lease upon thirty (30) days prior written notice delivered on or before May 31, 2009.

2.5 Permitted Uses. City acknowledges and agrees that Lessee intends to sublease all of the Premises to multiple subtenants, and Lessee acknowledges and agrees



that the City's willingness to enter this Lease is premised, in part, upon Lessee's proposed use of the Premises. As a result, Lessee and/or its subtenants shall use the Premises only for the purposes set forth in this Section 2.5 (collectively, the "Permitted Uses").

2.5.1 Primary Park and Recreation Uses. Lessee shall use a minimum of 16,890 square feet of the Premises for Primary Park and Recreation Uses, with a focus on providing water-related recreation such as sailing, kayaking, canoeing and other non-motorized boating activities. "Primary Park and Recreation Uses" also includes land-based recreation activities such as cycling, hiking, running, exercise, and sports, Recreation Oriented Retail Sales and Services, health and fitness sales and services, and environmental stewardship as envisioned in the Sand Point Physical Development Plan. As used in this Lease, "Recreation Oriented Retail Sales and Services" are defined as retail sales that are consistent with and complimentary to recreation activities or directly support the general public's use and enjoyment of the park and its amenities. Recreation Oriented Retail Sales and Services shall not exceed twenty-five percent (25%) of the total occupiable square footage of the groundfloor of the Building, except to the extent such Recreation Oriented Retail Sales and Services qualify as Water Related Uses under Section 2.5.4.

2.5.2 Other Park and Recreation Uses. Lessee may also use a portion of the Premises not to exceed 16,890 square feet for the support and enjoyment of Other Park Uses. As used herein, "Other Park and Recreation Uses" means only the following uses: (i) childcare, (ii) artist studios and workshops, and (iii) food and beverage services for the benefit of visitors and users of the park. Individual food and beverage services subtenants are further limited to a portion of the Premises not to exceed 2,500 square feet.

2.5.3 Permitted Commercial Uses. Lessee may use a portion of the Premises not to exceed 25,000 square feet for any use that complies with all applicable laws, statutes, ordinances, rules and regulations, as the same may be amended or adopted during the Lease Term, and that does not violate any other provision of this Lease, such as meeting space, general office use, and storage ("Permitted Commercial Uses"). Permitted Commercial Uses are further limited to the second floor of the Premises, the West side of the ground floor, and no more than 10 percent of the building frontage and depth on the East Side of the ground floor.

2.5.4. Water Related Uses. Consistent with the Sand Point Physical Development Plan's vision for a small watercraft center in the Northshore area, at all times during the Lease Term and any Extended Terms, Lessee shall reserve a minimum of eight thousand (8,000) square feet of the ground floor space for water-related uses, such as recreational sailing, rowing, kayaking, sailboard and surfing programs, dry storage of boats, sales and rentals of small boats, boating equipment and supplies, and for-profit or non-profit organizations dedicated to the preservation, education, safety or enhancement of the marine environment ("Water Related Uses"). In order to further the goals in the Sand Point Physical Development Plan, the space reserved for Water Related Uses shall be made available at an average lease rate not to exceed eighty percent (80%) of the average of all rents in the building ("Market Rent"). Lessee will retain the current



tenant, Sail Sand Point, and all of its operations as a sub-lessee of Building 11 as the focal point of the Water-Related Uses; provided that Sail Sand Point executes a lease consistent with the letter of intent between Lessee and Sail Sand Point dated August 11, 2008. If Lessee is unable to maintain a subtenant in compliance with this Section and some portion of the space remains vacant for more than a three month period, then Lessee will notify the Superintendent and the City shall have the right to propose subtenant(s) that will continue the Water Related Uses in the space reserved by this Section. Provided the proposed subtenant agrees to a standard lease at rental rates of no less than 80% of the Market Rent for the building at the time, Lessee shall be obligated to lease the space to the City's proposed subtenant(s). If the City has not found any subtenant that will fulfill the requirements in this Section within three months after the City has the right to propose subtenant(s), then Lessee may use the space reserved for Water Related Uses for Park and Recreation Uses or Other Park and Recreation Uses. Lessee may not renew any such leases without first demonstrating to City that it has used all reasonable efforts to fill the space with new Water-Related Uses.

2.6 Premises Encumbrances. City represents and warrants that it has disclosed all covenants, conditions and restrictions, encumbrances, or other agreements that City has actual knowledge of at the time of executing this Lease and that in any way prohibit or materially limit the Permitted Uses or Lessee's rights hereunder. This representation and warranty is not intended to be in lieu of Lessee's own due diligence with respect to ascertaining whether the Premises are suitable for its intended use and purposes.

2.7 Quiet Enjoyment. City warrants that Lessee, on payment of the Rent and performance of the covenants herein contained, shall peaceably and quietly have, hold and enjoy the Premises during the Lease Term.

2.8 Continuous Operation. One of the City's primary purposes in entering into this Lease is to ensure that there is continuous programming and occupancy in the Building. As a result, Lessee shall include language in each of its subleases for the Premises requiring the subtenant under the sublease to keep its subleased premises open for business during the usual business hours of each and every business day as is customary for businesses of like character, except for reasonable closures for remodeling, repair or renovation, and Lessee shall use reasonable efforts to enforce the same. In the event that a subtenant fails to comply with the foregoing sublease requirement, Lessee shall diligently pursue its remedies under the sublease, which remedies shall include termination of the sublease if subtenant does not comply, subject to reasonable notice and opportunity to cure provisions.

3. Lease Term.

3.1 Initial Term. This Lease shall be for a thirty (30) year term ("Lease Term" or "Term") beginning on the Commencement Date specified in Subsection 1.3 and ending on the Expiration Date specified in Subsection 1.4, unless the Lease Term is

terminated earlier in accordance with the provisions of this Lease or extended as provided in Subsection 3.2 below.

3.2 Extended Term. Lessee shall have the option to extend this Lease for three (3) additional extended terms of five (5) years ("Extended Term") each on the same terms and conditions set forth herein; however, Lessee's right to exercise any option to extend is conditioned upon Lessee's not being in default under this Lease beyond applicable notice and cure period and Lessee's achievement, in aggregate, of the maximum Public Benefit Program Rent Offset (as defined below) during the preceding Term or Extended Term. Lessee may extend the Lease Term to include the Extended Terms by giving the Superintendent written notice of its intention to do so no more than two-hundred-seventy (270) days and no less than one-hundred-eighty (180) days prior to the Expiration Date of the then current Term.

3.3 Early Termination. Lessee may terminate this Lease in its sole discretion, effective any time on or after the date which is five (5) years following the Commencement Date, upon at least sixty (60) days prior written notice to City, in which case all improvements and alterations made to the Premises by Lessee shall become the property of City at no cost to the City and as set forth in Section 10.4.

4. Rent.

4.1 Rent Payment. Commencing on the Rent Commencement Date, and thereafter on or before the tenth (10th) day of each month during the Lease Term, Lessee shall pay to City at the address and to the account specified by City in writing, without notice or demand, in lawful money of the United States in advance, the monthly amount of Base Rent specified in Subsection 1.6.1 and Additional Rent specified in Subsection 1.6.2, subject to the Rent Offsets described in Section 5. Base Rent and Additional Rent are collectively referred to herein as "Rent." Rent shall be prorated on a daily basis for any partial month within the Lease Term.

4.2 Adjustments to Rent.

4.2.1 Annual Rental Adjustments. Except as set forth below, beginning on the first anniversary of the Rent Commencement Date and every year thereafter until the expiration or termination of this Lease (each, a "Rent Adjustment Date"), Base Rent shall be adjusted upward only to reflect increases in the total non-compounded 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. City shall notify Lessee in writing at least three (3) months prior to each Rent Adjustment Date of the new monthly Base Rent amount that will be due starting on such Rent Adjustment Date.

By way of example only, if the CPI on the Rent Commencement Date is 100 and the CPI most recently issued three (3) months prior to the first Rent Adjustment Date is



102 and the annual Base Rent due under this Lease is \$60,000, then the total CPI adjustment would be two (2%) and annual Base Rent under this Lease would increase to \$61,200 effective as of the Rent Adjustment Date.

In no event shall the Base Rent, as adjusted for any period, be less than Base 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, and the fees and costs incurred in connection with such arbitration shall be borne equally by City and Lessee.

4.2.2 Alternative Rental Adjustments. Beginning on the tenth (10th) anniversary of the Rent Commencement Date and every five (5) years thereafter, the City shall have the option to adjust the Base Rent by either (i) the CPI increase, as set forth above or (ii) the percentage increase in the gross revenue from the "Revenue Base Year" to the relevant "Revenue Adjustment Year," as defined and illustrated in the table below. As used in this Lease, "gross revenue" means all income Lessee receives from any person or entity for any use or occupancy of the Premises, excluding amounts collected by Lessee as reimbursement for Lessee's actual operating expenses related to the Premises, such as common area maintenance, insurance, utilities, and taxes. In the event the City elects to adjust rent based upon the percentage increase and not the CPI, the adjusted Rent will be in effect for the duration of the relevant Rental Adjustment Period specified on the table below.

Rental Adjustment Period	Revenue Base Year	Revenue Adjustment Year
Year 11 through Year 15	Third full year after the Commencement Date	Tenth full year after the Commencement Date
Year 16 through Year 20	Third full year after the Commencement Date	Fifteenth full year after the Commencement Date
Year 21 through Year 25	Third full year after the Commencement Date	Twentieth full year after the Commencement Date
Year 26 through Year 30	Third full year after the Commencement Date	Twenty-fifth full year after the Commencement Date
Year 31 through Year 35	Third full year after the Commencement Date	Thirtieth full year after the Commencement Date
Year 36 through Year 40	Third full year after the Commencement Date	Thirty-fifth full year after the Commencement Date
Year 41 through Year 45	Third full year after the	Fortieth full year after the



Notwithstanding the foregoing, in no event shall the Base Rent, as adjusted during any Rental Adjustment Period, be less than Base Rent payable during the immediately preceding period.

5. Rent Offsets

Throughout the Term and any Extended Term, Lessee may offset Rent due under this Lease subject to the procedures and limitations in this Section.

5.1 Capital Improvement Rent Offset. Subject to the procedures and limitations in this Section, Lessee shall be entitled to an offset against Rent during the entire Lease Term, including the Extended Term, in a total amount up to Lessee's actual and reasonable costs (including hard and soft costs such as, but not limited to, labor, materials, architect and engineering fees, permits, construction or project management, sales tax, and consultants' fees) for the approved initial renovation of the Premises ("Initial Capital Improvements") and any subsequent repair, improvement, or replacement approved by City under Section 11.1 that would be capitalized for federal income tax purposes ("Subsequent Improvements") (the Initial Capital Improvements and the Subsequent Improvements are collectively referred to herein as the "Capital Improvements"). Lessee's Capital Improvement Offset shall not exceed seventy-five percent (75%) of the total Rent due in any given month under the Lease Term or Extended Term.

5.2 Procedure for Capital Improvement Rent Offset.

5.2.1 Submittal of Costs.

(a) Prior to Completion of the Capital Improvements. Commencing upon the Commencement Date and terminating upon Lessee's substantial completion of construction of the Initial Capital Improvements, as evidenced by a certificate of occupancy (the "Construction Period"), and during the construction of any Subsequent Improvements, Lessee may, on a quarterly basis, submit an accounting of its costs incurred and actually expended in connection with the design and construction of such Capital Improvements, together with such supporting documentation as the Superintendent may reasonably request.

(b) After Completion of the Capital Improvements. Not later than sixty (60) days following the Construction Period of the Initial Capital Improvements or completion of any Subsequent Improvements, as applicable, Lessee shall provide the Superintendent with an accounting of its costs associated with the Capital Improvements completed to the Premises and not previously included in the Capital Improvement Rent Offset, together with such supporting documentation as the Superintendent may reasonably request.

5.2.3 Certification. The Superintendent acting in accordance with generally accepted accounting principles, and in his or her reasonable discretion, shall certify the total amount of those reasonable costs actually expended by Lessee on the Capital Improvements and this amount shall be added to Lessee's "Capital Improvement Rent Offset". For the Initial Capital Improvements, the Superintendent shall certify reasonable costs incurred in the categories itemized on The Initial Capital Improvement Rent Offset Categories on Exhibit D, which is attached and incorporated herein. The Superintendent shall provide written notice of such certification or a statement as to why an amount is not being certified as submitted within thirty (30) days of Lessee's request therefor. In the event the Superintendent fails to timely provide such certification or written notice, the Initial Costs or Subsequent Costs, as applicable, submitted to the Superintendent for certification shall be deemed certified and added to the Capital Improvement Rent Offset.

5.2.4 Application of Capital Improvement Rent Offset. Each month, Lessee shall report to the Park's Finance Director the amount of Capital Improvement Rent Offset it is applying to Rent that would otherwise be due and owing. If the Capital Improvement Rent Offset exceeds the total Rent due under this Lease during the Initial Term and Extended Terms, if any, the remaining value of Lessee's Capital Improvements shall be deemed to have been donated to City at the termination or expiration of this Lease, and the Capital Improvements shall be surrendered with the Premises as provided in Section 14, without the need for further action by Lessee or City.

5.3. Public Benefit Program Rent Offset. Lessee shall be entitled to an offset against Rent during the entire Lease Term and any Extended Terms, in an amount up to the equivalent dollar value of any free or discounted program or membership made available at or from the Premises to the general public or to specific groups such as children, seniors, or the handicapped (the "Public Benefit Program Rent Offset"), as described more fully in section 8.7. The monthly offset amount shall be one-twelfth (1/12) of the annual value of the program as certified by the Superintendent. During the first sixty (60) months of the Term, Lessee may apply a Public Benefit Program Rent Offset as a credit against the Rent due in an amount not to exceed twenty-three percent (23%) of the monthly Rent due. For the remainder of the Term, the Public Benefit Program Rent Offset may not exceed a total of fifteen percent (15%) of the Base Rent per year. Public Benefit Program Offsets shall be pre-approved by the Parks Superintendant pursuant to Section 8.7, and subject to confirmation at the end of each year. **6. Late Charge; Interest.**

If Lessee fails to pay City any sum within ten (10) days after written demand therefore, such amount shall bear interest at the rate of twelve percent (12%) per annum from the date due until the date paid.

7. Contingencies.

7.1 Preliminary Contingencies.

This Lease is contingent upon the satisfaction of all contingencies stated in this Section 6.1 in the time periods stated (the "Preliminary Contingencies").



7.1.1 Deed Restrictions. The City shall work with the National Park Service and appropriate government entities in order to permit Lessee to use the Premises for Permitted Commercial Uses notwithstanding covenants in the Quitclaim Deed recorded by the King County Recorder's Office under recording number 9905041194 whereby the United States of America granted Building 11 and other portions of Magnuson Park to the City (the "USA Deed"). The resolution of this issue is a necessary condition to Lessee's use of the Premises for Other Commercial Uses. Consequently, if the City has not resolved the issues relating to the USA Deed's restrictions regarding use of the Premises in a manner that allows for Other Commercial Uses by April 30, 2009, either party may terminate this lease by written notice to the other party no later than May 31, 2009.

7.1.2 Phase II Environmental Study. The City shall retain an environmental consultant to complete a Phase II Environmental Assessment on the Premises and the Outbuildings (the "Phase II"). Both the City and Lessee will work together with the consultant to develop the scope of the Phase II, which shall include without limitation, taking soil samples from locations identified by Lessee as potential locations for new building footings, soil samples from locations Lessee intends to perform underground work for the installation or improvement of utilities, soil samples from borings through the interior slab of the Building, soil samples from the area around the Outbuildings, and quantification of lead based paint, asbestos and asbestos containing materials within the Buildings. The City shall engage its environmental consultant to commence the Phase II no later than ten (10) days following the Effective Date and shall use commercially reasonable efforts to insure timely delivery of the same. The City will promptly provide a copy of all Phase II assessment results to Lessee and shall provide a copy of the Phase II final report for Lessee's review and approval no later than March 30, 2009. In the event that the Phase II is not complete or approved by Lessee and the City on or before April 30, 2009, either party may terminate this Lease by written notice to the other party delivered not later than May 31, 2009, in which case the parties shall have no further rights or obligations under this Lease. In the event that this Lease is not terminated by May 31, 2009, Lessee will reimburse the City for one hundred percent (100%) of the cost of the Phase II (as evidenced by an invoice and other documentation reasonably requested by Lessee) within ten (10) days following the Commencement Date, which cost shall be included in Lessee's Capital Improvement Rent Offset.

7.1.3 Land Use Code Amendments. Lessee and the Superintendent shall reasonably cooperate to develop and Superintendent shall propose to City Council, amendments to Seattle Municipal Code Chapter 23.72 (Sand Point Overlay District). If the Seattle Municipal Code Chapter 23.72 is not amended to the reasonable satisfaction of both parties by April 30, 2009, Lessee may terminate this Lease by providing written notice to City not later than May 31, 2009, and the parties shall have no further rights or obligations under this Lease.

7.1.4 Shoreline Use Restriction Resolution. Lessee and the Superintendent shall reasonably cooperate to address issues associated with the Seattle Shoreline Master



Program (SMC Chapter 23.60) in order to allow the Permitted Uses. If by April 30, 2009, the Shoreline Master Program (SMC Chapter 23.60) is not amended or other approval received permitting the Premises to be used for the Permitted Uses, including without limitation general office use, restaurant use, and general retail use, Lessee may terminate this Lease by providing written notice to City not later than May 31, 2009, and the parties shall have no further rights or obligations under this Lease.

7.1.5 Notice upon Satisfaction of Preliminary Contingencies. When Lessee is satisfied that all Preliminary Contingencies have been met, Lessee shall provide the City with written notice ("Lessee's Preliminary Notice"). If City disagrees as to whether any Preliminary Contingency has been satisfied, City shall notify Lessee in writing within thirty (30) days of receipt of the Lessee's Preliminary Notice. If the City does not receive Lessee's Preliminary Notice by May 31, 2009, either party may terminate this Lease by written notice and the parties will have no further rights or obligations under this Lease.

7.2 City Contingencies. This Lease is contingent upon the satisfaction by Lessee or waiver by City of the contingencies in this Section 7.2 within the times stated (the "City Contingencies").

7.2.1 Lessee Financing. No later than fourteen (14) days prior to applying for the building permits from City's Department of Planning and Development as set forth in Section 7.2.3 below, Lessee shall provide to the Parks Finance Director, for his/her review and approval (which approval shall not be unreasonably withheld, conditioned or delayed), reasonable evidence that it has funding committed to complete all Building alterations necessary to obtain a certificate of occupancy ("Funding"). If Lessee fails to provide reasonable evidence it has secured adequate Funding within nine (9) months after delivery of Lessee's Preliminary Notice, City may terminate this Lease upon thirty (30) days written notice to Lessee and the parties shall have no further rights or obligations under this Lease. Notwithstanding the foregoing, in the event that Lessee obtains such Funding within the thirty (30) day period, this Lease shall continue in full force and effect. City shall be deemed to have approved the Funding unless it rejects the Funding in writing within thirty (30) days of Lessee's request for approval.

7.2.2 Lessee Third Party User Commitments. No later than nine (9) months after delivery of Lessee's Preliminary Notice, Lessee shall provide City with reasonable evidence, such as letters of intent, that it has sublease commitments with third parties accounting for fifty percent (50%) of the rentable square feet within the Building. If Lessee fails to secure such subtenant commitments within nine (9) months of the delivery of Lessee's Preliminary Notice, City may terminate this Lease by providing written notice to Lessee and the parties shall have no further rights or obligations under this Lease.

7.2.3 Building Permits. No later than three (3) months after delivery of Lessee's Preliminary Notice, Lessee shall apply for the Master Use Permit necessary to undertake the Initial Capital Improvements. No later than six (6) months after approval of the Master Use Permit, Lessee shall apply for building permits necessary to complete



the Initial Capital Improvements. If Lessee fails to apply for a Master Use Permit or building permits within the times required in this section, the City may terminate this Lease by providing written notice to Lessee and the parties shall have no further rights or obligations under this Lease.

7.3 Lessee Contingencies. This Lease is contingent upon the satisfaction by the City or waiver by Lessee of the contingencies in this Section 7.3 within the times stated (the "Lessee's Contingencies").

7.3.1 Approval of Signage Plan for the Premises. No later than nine (9) months after delivery of Lessee's Preliminary Notice, Lessee shall submit a plan for signage to the Superintendent for review and approval, including without limitation standards for the placement of signs, notices, pictures, posters, or any other advertising matter within or about the Premises. The Superintendent shall approve or deny the plan with reference to the Magnuson Park Signage and Wayfinding Master Plan. The Superintendent shall be deemed to have approved the signage plan unless it rejects the plan in writing within sixty (60) days of receipt of same. Notwithstanding the foregoing, if the Superintendent does not approve the signage plan within sixty (60) days of receipt, Lessee may terminate this Lease by providing written notice not later than ninety (90) days after submitting the signage plan to the Superintendent and the parties shall have no further rights or obligations under this Lease.

7.3.2 Park Signage and Access Improvements. The parties shall use reasonable efforts to agree on a specific plan to improve signage and access, consistent with the Magnuson Park Signage and Wayfinding Master Plan on or before April 30, 2009. The plan shall include a funding plan that allocates funding responsibility proportionally to park tenants based on relative benefit to each tenant.

7.4 Lessee's Notice. Lessee shall provide written notice to the City within fifteen (15) days of the time when both of the following conditions have been met: (i) Lessee has received all permits necessary for construction of the Initial Capital Improvements, and (ii) Lessee's contingencies have been satisfied or waived ("Lessee's Notice"). In the event that Lessee does not provide Lessee's notice by January 31, 2010, the City may, in its discretion, (i) terminate this Lease, or (ii) extend the time period for receipt of Lessee's Notice. In any case, the City is not required to terminate any existing permits or leases at the Premises prior to receipt of Lessee's Notice.

7.5 Termination of Existing Leases; Delivery of Premises and Commencement of Term. No later than sixty (60) days after receiving Lessee's Notice, and provided that the City Contingencies have been satisfied or waived, City shall terminate the existing use permits and leases at the Premises and shall deliver the Premises free and clear of prior tenants and their personal property, excepting any tenants who will remain on the Premises under a sublease with Lessee. City has provided Lessee with copies of the existing leases and use permits with the current tenants in the Building ("Existing Leases"). Lessee shall have the right, commencing upon the Effective Date of



this Lease, to enter into negotiations with the tenants and permit holders under the Existing Leases for subleases for the Premises during the Lease Term. From and after the Effective Date of this Lease, City shall not enter into any new leases or use permits without the prior written consent of Lessee. The City shall notify Lessee in writing at least fourteen (14) days in advance of the date on which the City proposes to deliver possession of the Premises, and unless Lessee objects in writing and for good cause within ten (10) days after City's delivery of the notice, the Commencement Date shall be the date in the City's notice for delivery of possession. Notwithstanding the foregoing, in the event that the City fails to deliver possession on or before the date set forth in the City's notice, the Commencement Date shall be the date the City actually delivers possession of the Premises to Lessee. In the event that City fails to deliver possession of the Premises within sixty (60) days of receiving Lessee's Notice, Lessee may elect to (i) terminate this Lease upon twenty (20) days written notice to City, in which case the parties shall have no further rights or obligations under this Lease or (ii) delay the Commencement Date until such time as all of the Existing Leases have been terminated.

7.6 Sole Remedy. Termination of the lease under the circumstances and in the manner provided for in this Section 7 is intended by the parties to be the sole remedy for the failure of any of the contingencies to be satisfied.

8. Lessee's Operations.

8.1 Lessee Building Alteration Requirements. Lessee shall make any and all approved Initial Capital Improvements to the Premises necessary to obtain a certificate of occupancy within twenty-four (24) months after the Commencement Date. City shall provide no funds for the Initial Capital Improvements and Building alterations, except that Lessee shall be entitled to the Capital Improvement Rent Offset as set forth herein. If Lessee fails to obtain a certificate of occupancy within twenty-four (24) months after the Commencement Date due to Lessee's negligent acts or omissions or failure to diligently pursue such Initial Capital Improvements to completion, City may terminate this Lease upon sixty (60) days written notice to Lessee and may pursue any and all remedies available to the City at law. Notwithstanding the foregoing, in the event that Lessee completes such alterations within the sixty (60) day period, this Lease shall continue in full force and effect.

8.2 Use of Premises. Lessee shall not use the Premises for any purpose other than the Permitted Uses without City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Lessee shall promptly comply, at its sole cost and expense, with such reasonable rules and regulations relating to the use of the Premises and the Park as City, from time to time, may promulgate. Any newly promulgated rules and regulations shall not materially interfere with Lessee's or any of its subtenant's use of the Premises for the Permitted Uses. 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 and City shall not permit objectionable odors to be emitted from the Premises or the Common Areas, as applicable, and shall not commit waste nor permit any waste to be committed thereon. Lessee shall not permit any



accumulation of trash on or about the Premises and City shall not permit the accumulation of trash on or about the Common Areas. Lessee shall not create or contribute to the creation of a nuisance in either the Premises or the Park, and Lessee shall not engage in or permit any action that will disturb the quiet enjoyment of the Park by the general public. Notwithstanding the foregoing, any use of the Premises that falls within the Permitted Uses shall not be deemed a nuisance or to be a disturbance of the quiet enjoyment of the Park.

8.3 Coordination of Large Events. Magnuson Park has limited capacity to handle multiple events with large numbers of attendees. Therefore, if Lessee or its subtenant reasonably anticipates that more than 150 people at one time will attend any event on the Premises, the Lessee or its subtenant shall provide the City with no less than thirty (30) days advance written notice. If the City reasonably determines that the event would conflict with other high capacity events that have already been scheduled to take place at the same time, the City shall notify the Lessee or its subtenant within five (5) business days after receipt of the Lessee's or subtenant's notice. Upon receipt of such notice, the Lessee or subtenant must either reschedule the event or limit the attendance at the event to less than 150 attendees at one time. Lessee shall include language in its subleases for the Premises specifying the terms of this section.

8.4 Management and Operations Plan. Lessee shall prepare and submit to the Superintendent, for his or her approval (which shall not be unreasonably withheld, conditioned, or delayed), an annual plan for the management and operation of the Premises. The first plan shall be due on or before the date that is thirty (30) days prior to the Commencement Date, and plans for subsequent calendar years shall be due on or before October 1st of each year thereafter. The Management and Operations Plan shall include such information as the Superintendent may reasonably specify from time to time for comparable Park's facilities, but at a minimum shall include a description of the operations for the upcoming year; anticipated user fees/rental rate for the upcoming year; Lessee's marketing and outreach efforts for the past year and plans for the upcoming year; and information supporting Lessee's requested Public Benefit Program Rent Offset (described in Section 8.7). City shall be deemed to have approved the plan (and all uses and events noted therein) unless it rejects the plan in writing within sixty (60) days of receipt thereof. Lessee may amend or modify the plan from time to time with the prior approval of the Superintendent, which approval shall not be unreasonably withheld, conditioned, or delayed. City shall be deemed to have approved the amended plan (and all uses and events noted therein) unless it rejects the amended plan in writing within forty-five (45) days of receipt thereof.

8.5 Alcohol sales. Lessee and its subtenants may sell beer and wine upon the Premises conditioned upon obtaining a valid permit from the Washington State Liquor Control Board and compliance with applicable laws, ordinances, rules and regulations. Lessee shall not permit any other variety of intoxicating beverages to be used, sold, consumed, or dispensed upon the Premises unless the Superintendent has approved such use, sale, consumption, or dispensing in advance, in writing, which approval shall not be unreasonably withheld, conditioned or delayed. Any such use sale, consumption or



dispensing shall comply with applicable laws, ordinances, rules, and regulations then in force.

8.6 Exclusive Uses.

8.6.1 Restaurant. Provided that Lessee or a subtenant of Lessee opens and continuously operates at the Premises a restaurant that exceeds one thousand (1,000) square feet and is open to the public with interior seating, the City shall not permit the operation of a restaurant or other food and beverage service within Magnuson Park but outside of the Premises area, that is open to the public, is greater than one thousand (1,000) square feet and has interior seating areas in excess of twenty (20) seats dedicated to food and beverage customers, unless the Lessee gives its approval in writing; however, Building 27, may have interior seating area(s) of up to fifty (50) seats set aside exclusively for food and beverage customers without the written approval of Lessee. The City agrees to limit the food and beverage service operations within Building 27 to an operation that is intended to primarily serve the members and guests of the Building 27 tenants, that has no exterior signage, and that has no exterior seating set aside exclusively for food and beverage customers. This limitation, except as it related to Building 27, shall expire ten (10) years after the Commencement Date of the Lease.

8.6.2 Daycare. Provided that Lessee or a subtenant of Lessee opens and continuously operates, according to the standard of continuous operation described in Section 2.8, a child daycare business on the Premises, City shall not permit the operation of a child daycare business north of the National Oceanic and Atmospheric Administration (NOAA) access roadway in Magnuson Park. As used in this section, a child daycare business means a business that offers childcare on a regular basis for parents who may or may not be using Park amenities. Child daycare business does not include childcare services provided on a short term basis for visitors and users of Magnuson Park Facilities.

8.6.3 Health Club. Lessee acknowledges that City has a pending agreement with Arena Sports, the concessionaire in Building 27, that will grant the exclusive right to operate a health and fitness club of over 5,000 square feet at Magnuson Park as follows (the "Building 27 Provision"):

So long as this Agreement is in effect and Concessionaire continuously operates a health and fitness facility that exceeds 10,000 square feet on the Premises, City shall not permit the operation of another health and fitness facility that exceeds 5,000 square feet or a self service health club, self service gym, or self service fitness center of any size within Magnuson Park without Concessionaire's written approval. As used in the preceding sentence, "continuously" means that the health and fitness facility maintains the hours that a typical facility of its kind maintains, subject to occasional closings for holidays, maintenance and repairs. This provision shall cease to apply if Concessionaire is in default



under this Agreement and such default has remained uncured beyond the applicable cure period.

During the Term of this Lease, Lessee shall abide by the Building 27 Provision, and shall defend, indemnify and hold the City harmless from any damage, claim or liability arising from Lessee's use of the Premises in a manner that violates the Building 27 Provision.

8.7 Public Benefit Programs. Given that the Premises are located within a public park with an ideal of universal access by the public to both facilities and programs, Lessee agrees to encourage all of its tenants to develop programs and services that provide free or discounted use of its facilities and services that are available to the general public regardless of income level (collectively, "Public Benefits"). To further this goal, Lessee may request a Public Benefit Program Rent Offset. In the annual Management and Operations Plan described in Section 8.4, Lessee may identify the amount of Public Program Rent Offset it is requesting for the subsequent calendar year and the justification for the request. The Superintendent will act reasonably in reviewing the request and provided the proposed Public Benefits meet the goals stated in this Section, will approve such Public Benefits and will respond within 30 days stating the amount of the Public Program Rental Offset allowed for the upcoming calendar year. Any Public Program Rental Offset shall be credited against the Base Rent due, in monthly installments, in amounts not to exceed twenty-three percent (23%) of Base Rent per year for the first five (5) years of the Term and fifteen percent (15%) of Base Rent per year for the balance of the Term or any Extended Term. With each monthly payment, Lessee shall report to the DPR Finance Director the amount of Public Program Rental Offset being applied to Base Rent.

8.8 Compliance with Laws; Nondiscrimination.

8.8.1 General Obligation. City warrants that as of the time of City's execution of this Lease, it has not received a notice of violation of any statute, ordinance, regulation or law at the Premises. 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. 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 renovation or improvement of the Premises or use or occupancy of the Premises.

8.8.2 Nondiscrimination. Without limiting the generality of Subsection 8.8.1, Lessee shall comply with any 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.



8.9 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 City in writing of any lien filed against the Premises within ten (10) days of the filing date of the lien. Notwithstanding the foregoing, the City acknowledges that Lessee intends to seek financing for the construction of the Capital Improvements (“Construction Financing”). If any lien is filed against the Premises due to Lessee’s use and occupancy of the Premises during the Lease Term (except to the extent of liens filed as a result of leasehold mortgages or leasehold deeds of trust evidencing the Construction Financing), Lessee shall either cause the same to be fully discharged and released of record within ten (10) days after City's written demand therefor or, within such period, provide City with cash or other security acceptable to City in an amount equal to one and one-half (1½) times the amount of the claimed lien as security for its prompt removal. City shall have the right to disburse such security to cause the removal of the lien if City deems such disbursement necessary, in City’s sole discretion. The indemnification and defense obligation of this subsection shall survive the expiration or earlier termination of this Lease.

8.10 Hazardous Substances. As used in this Lease, “Hazardous Substances” means any substance or material 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.

8.10.1 Lead Paint and Asbestos. Lessee is hereby informed and does acknowledge that the Premises contain lead-based paints and asbestos and asbestos-containing materials. Lessee acknowledges that it has received the opportunity to participate in developing the scope of the Phase II assessment described in Section 6.1.2 and has had the opportunity to perform its own inspection for purposes of assessing the existence and quantity of lead paint and asbestos in the Premises. In the event the Lessee does not terminate the Lease under Section 7.1.2 after receiving the results of the Phase II, Lessee covenants and agrees (i) to be responsible for any remediation of lead-based paint or lead-based paint hazards and asbestos or asbestos containing materials on the Premises as required by federal, state, or local laws or regulations in connection with the construction of any improvements to the Premises by Lessee; and (ii) that in its use and occupancy of the Premises, Lessee will comply, at its sole cost and expense, with all federal, state and local laws and regulations relating to lead-based paint, asbestos, and asbestos containing materials. Lessee may include in its Capital Improvement Rental Offset the cost of remediation or removal of lead-based paint and asbestos or asbestos containing materials existing on the Premises prior to the Commencement Date. Lessee further acknowledges and agrees that the City assumes no liability for damages for personal injury, illness, disability or death, to Lessee or to any other person, including members of the general public, to the extent caused by the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos or lead-based paint on the Premises after the date on



which Lessee takes control and possession of the Premises, whether Lessee has properly warned or failed properly to warn the individual(s) injured.

8.10.2 Existing Hazardous Substances. Subject to the restrictions herein, as between the Lessee and the City, the City shall be responsible for the removal, disposal, or other remediation of any Hazardous Substances, excluding lead-based paint, asbestos or asbestos hazards, that exist on the Premises prior to the Commencement Date as required by federal, state, or local laws or regulations.

8.10.3 Hazardous Substances Covenants. Lessee acknowledges that it has received and reviewed the Quitclaim Deed recorded by the King County Recorder's Office under recording number 9905041194 whereby the United States of America granted Building 11 and other portions of Magnuson Park to the City (the "USA Deed"), including Section 8 – Hazardous Materials Covenants. Lessee shall ensure that at all times during the Lease Term, Lessee's use of the Premises and any use of the adjacent Park property will not violate the USA Deed's provisions regarding Hazardous Materials. Additionally, Lessee covenants that it will not undertake, without first obtaining the written approval of the Superintendent, any utility work, maintenance, construction, or work of any type that: (i) penetrates Building 11's foundation or interior slab, (ii) penetrates any type of pavement covering the ground in areas adjoining the Building or in the vicinity of the Building, or (iii) requires excavation of soil at depths in excess of 12 inches at any location. The Superintendent's approval of said work may be conditioned or restricted, in which case Lessee agrees to comply with the restrictions or conditions. Lessee shall include provisions in its subleases requiring its subtenants and licensees to comply with this Section.

8.10.4 Lessee Warrants. Lessee shall not, without City's prior written consent, keep on or about the Premises any substance designated as, or containing any Hazardous Substance except that Lessee and its subtenants may keep customary office, kitchen, cleaning and other supplies reasonably related to the Permitted Uses 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 therefore, 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 reasonable costs incurred by City and associated with City's inspections of the Premises and City's monitoring of Lessee's compliance with this Subsection, including City's attorneys' fees and costs, shall be due and payable to City within ten (10) days after City's demand therefore, if Lessee's material violation of this Section 8.10 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.

8.10.5 Indemnification. Lessee shall indemnify, defend and hold City harmless from any and all of the costs, fees, penalties, claims, liabilities, damages, charges and expenses assessed against, or imposed, upon City (as well as City's reasonable attorneys' fees and costs) as a result of (i) the failure of Lessee or its subtenants to comply with any of Lessee's obligations in this Section 8.10, and (ii) Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances on or about the Premises. City shall indemnify, defend and hold Lessee harmless from any and all of the costs, fees, penalties, claims, liabilities, damages, charges and expenses assessed against, or imposed, upon Lessee (as well as Lessee's reasonable attorneys' fees and costs) as a result of (i) any Hazardous Substances existing on or about the Premises prior to the Commencement Date, other than lead-based paint and asbestos or asbestos containing materials, and (ii) City's use, disposal, transportation, generation and/or sale of Hazardous Substances on or about the Premises during the Lease Term. The indemnification and defense obligations of this subsection shall survive the expiration or earlier termination of this Lease.

9. Utilities.

9.1 General. Starting on the Commencement Date, Lessee shall pay when due to the appropriate providers, all charges for utilities for the Premises, including but not limited to, electricity, water and sewer services and data and telecommunications services.

9.2 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 Parks' 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.

9.3 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, 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. 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. Notwithstanding the foregoing, (i) City shall use reasonable efforts to restore the services and (ii) in the event of an interruption of such services for more than twenty-four (24) hours due to Parks' negligent acts or omissions, Rent shall abate from the first day of the interruption until the interrupted utilities or services are fully restored.



10. Licenses and Taxes.

10.1 Lessee Responsibility. 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 Lessee's business conducted on the Premises and all personal property taxes and other impositions levied with respect to Lessee's 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).

10.2 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.

11. Alterations by Lessee.

11.1 Approval of Alterations. Lessee shall not make any alterations, additions or improvements in or to the Premises, including without limitation, the Initial Capital Improvements, without first submitting to City professionally-prepared plans for such work and obtaining Superintendent's prior written approval thereof, which approval shall not be unreasonably withheld, conditioned or delayed. City shall be deemed to have approved the plans unless it rejects the plans in writing within thirty (30) days. Notwithstanding the foregoing, Lessee may make improvements not to exceed Twenty-Five Thousand Dollars (\$25,000) in any twelve (12) month period without City's prior consent. 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 Washington State licensed contractor and in a manner that (a) is built in accordance with City-approved plans and any reasonable conditions imposed by City in connection therewith; (b) is in conformity with other similar Parks facilities; (c) includes reasonably acceptable insurance coverage for City's benefit; (d) does not negatively affect the structural integrity of the Premises 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. In addition, Lessee shall meet with City's Green Building Team and shall use commercially reasonable efforts to incorporate green building practices and sustainable design into its design for the Building alterations.

11.2 Permits and Additional Construction Requirements. Lessee shall secure all governmental permits and approvals required for the Initial Capital Improvements and any and all Subsequent Improvements permitted under this Lease and shall comply and cause its contractors to comply with all other applicable governmental requirements and restrictions, and shall reimburse City for any and all expenses incurred in connection



therewith. For any contract for the Initial Capital Improvements, Lessee shall require its contractors to pay a wage commensurate with prevailing wages as described in RCW 39.12. Except as provided in Section 15 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 11.

11.3 Historic Site Preservation. If Lessee wishes to undertake any installation, alteration, modification, repair, renovation or any other work on or to the exterior of the Premises, the Lessee shall comply with all applicable laws, regulations and ordinances concerning historic preservation, including the Sand Point Historic Properties Reuse and Protection Plan and City agrees to reasonably cooperate, at no cost to City, in Lessee's efforts to obtain the necessary approvals therefor.

11.4 Alterations as Property. 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 and Lessee's subtenant's moveable trade fixtures and appliances and equipment not permanently 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, in substantially the same form attached as Exhibit E, 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 the Initial Capital Improvements 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 as part of the Initial Capital Improvements. Additionally, upon City's request, Lessee shall deliver a full set of "as-built" plans of the Premises following completion of any additional major renovations, repairs or improvements made to the Premises during the term of the Lease.

12. Care and Maintenance of Premises.

12.1 Lessee's Maintenance Obligation. Lessee shall maintain the Premises in a clean, orderly, and neat fashion, and to a standard found at other Parks properties similar in age, level of public use, and public visibility. Except as provided otherwise in this Section 12, Lessee shall be responsible for all minor and major maintenance of the Premises during the Term of this Lease including but not limited to repairs of cracking and breaking glass, regular exterior painting and masonry maintenance, roof repairs and replacement, and HVAC repair and replacement. If any portion of the Premises or any system or equipment in the Premises that Lessee is obligated to repair cannot be fully



repaired or restored, Lessee shall promptly replace such portion of the Premises or system or equipment in the Premises (“Replacement”) at Lessee’s sole cost and expense. Notwithstanding the foregoing, if the total amount of the Capital Improvement Rent Offset related to any such Replacement would exceed the total amount of Rent due during the remainder of the Lease Term, Lessee and City shall use good faith efforts to agree to a plan for completing and paying for such Replacement (the “Replacement Plan”). In the event that Lessee and City can not agree to a Replacement Plan within thirty (30) days of their initial meeting to discuss the same, Lessee may terminate this Lease upon thirty (30) days prior written notice.

12.2 Prior Approval. Prior to making any expenditure in excess of twenty-five thousand dollars (\$25,000) necessary to comply with the terms and provisions of this Section, Lessee shall submit to City professionally-prepared preliminary plans for such work and obtain City's prior written approval thereof, which approval shall not be unreasonably withheld, conditioned or delayed. City shall be deemed to have approved the plans and specifications unless it rejects the plans and specifications in writing within thirty (30) days.

12.3 City’s Maintenance Obligation. City shall maintain and repair the Common Areas in good order, condition and repair, at no cost to Lessee and to a standard found at other Parks properties similar in age, level of public use, and public visibility. City’s work under this Section shall be accomplished with the least possible amount of interference to the conduct of Lessee’s and Lessee’s subtenants’ businesses and, to the extent practicable, shall be done after normal business hours.

12.4 Joint Annual Inspection of Premises; Remedial Action Obligation. Lessee shall participate in an annual inspection of the Premises with City and shall take any and all action that is consistent with the terms of this Lease that City may reasonably specify as necessary to maintain and operate the Premises in a clean and safe manner.

12.5 City Remedy Upon Lessee’s Failure to Maintain Premises. If Lessee fails to maintain the Premises in good order, condition, and repair, City shall give Lessee notice to undertake such work as is reasonably required to so maintain the Premises. If Lessee fails to commence such work within thirty (30) calendar days after the effective date of City’s notice and to diligently prosecute it to completion, then City shall have the right, at its option and in addition to all other remedies, to undertake such work and to invoice Lessee for the costs reasonably incurred by City in connection therewith. City shall have no liability to Lessee for any damage, inconvenience, or interference with Lessee’s use of the Premises as a result of City’s performing any such work, except to the extent of its or its agents or contractor’s negligence or intentional misconduct.

12.6 Custodial Service for Premises. In addition, Lessee shall at its own expense, at all times, keep the entrance to the Premises and areas within ten (10) feet of the exterior Premises’ walls in a neat, clean, safe, and sanitary condition comparable to other Parks’ properties similar in age, level or public use and public visibility; and keep the glass of all windows and doors serving the Premises clean and presentable. Lessee



shall require all subtenants to provide all necessary janitorial service to adequately maintain the inside of the Premises to a standard comparable to similar privately-owned commercial facilities. If, after City provides written notice to Lessee of Lessee's failure to comply with this Section, and Lessee fails to so comply within thirty (30) days after receipt of such notice, City, at its option, may, upon reasonable advance written notice, enter the Premises for the purpose of cleaning glass within, or providing janitorial service to, the Premises, 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.

12.7 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 lease 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.

13. Signs and Advertising.

13.1 On-Premises Signs. Lessee may install permanent exterior signage in accordance with the Signage Plan as set forth Section 7.3.1 and as otherwise approved by Superintendent.

13.2 Signs, Generally. Lessee may also inscribe, post, place, or display any sign, notice, picture, poster, or any other advertising matter anywhere within the interior of 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.

13.3 Recognition. In accordance with the approved exterior signage plan, Lessee, shall install one or more signs (to be provided by City) on or about the exterior of the Premises with a statement and the Parks logo recognizing Seattle Parks and Recreation's ownership of the Building and memorializing the history of the Building as part of the Sand Point Naval Air Station.

14. Surrender of Premises.

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 at the time of City's approval of such alterations pursuant to Section 11), reasonable wear and tear and casualty excepted. Notwithstanding the foregoing, in no event shall Lessee be required to remove any of the Initial Capital



Improvements unless the City so directs as and when specified in Section 11.4. 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 14 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 the specified alterations, moveable trade fixtures and appliances and to redeliver the Premises on a timely basis.

15. **Indemnification.**

15.1 **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, 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 negligent act or omission of Lessee or any subtenant, licensee, or assignee of Lessee, or of any officer, agent, employee, guest or invitee of any of the same in or about the Premises, except to the extent caused by the City's negligent acts, intentional misconduct or breach of this Lease. City agrees that the foregoing indemnity specifically excludes injury of any person or loss or damage to property resulting from conditions on property adjacent to the Premises. As used herein, "adjacent to the Premises" means areas outside the area where Lessee provides custodial service, as further described in Subsection 12.6. The indemnification and defense obligation of this subsection shall survive termination or expiration of this Lease. Lessee agrees that the foregoing indemnity specifically covers actions brought by its own employees; as a result, the foregoing indemnity is specifically and expressly intended to constitute a waiver of Lessee's immunity under Washington's Industrial Insurance Act, RCW Title 51, but only as to City and 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 15.

15.3 **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 building facilities or services; broken glass; water leakage; the collapse of any building component, except to the extent caused by the City's negligent acts or omissions, intentional misconduct or breach of this Lease.

15.4 Limitation of 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.

15.5 City's Indemnification. Except as otherwise provided in this section, City shall indemnify, defend (using legal counsel reasonably acceptable to Lessee) and save Lessee, Lessee's officers, agents, employees and contractors, harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including Lessee'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) City's breach of its obligations hereunder, or (ii) any negligent act or omission of City or of any officer, agent, employee, guest or invitee of City in or about the Park, except to the extent caused by the Lessee's negligent acts, intentional misconduct or breach of this Lease. The indemnification and defense obligation of this subsection shall survive termination or expiration of this Lease. City agrees that the foregoing indemnity specifically covers actions brought by its own employees; as a result, 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, but only as to Lessee and to the extent necessary to provide Lessee with a full and complete indemnity from claims made by City and its employees, to the extent of their negligence. **CITY AND LESSEE ACKNOWLEDGE THAT THEY SPECIFICALLY NEGOTIATED AND AGREED UPON THE INDEMNIFICATION PROVISIONS OF THIS SECTION 0.**

15.5 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.



16. **Insurance.**

16.1 Minimum Insurance Coverages and Limits of Liability. Beginning on the Commencement Date, and thereafter throughout the entire Lease Term, Lessee shall maintain in full force and effect, at no expense to City, insurance coverages and limits of liability of not less than those specified below:

16.1.1 COMMERCIAL GENERAL LIABILITY (“CGL”) insurance including:

- Premises/Operations
- Products/Completed Operations
- Personal/Advertising Injury
- Contractual Liability
- Stop Gap/Employers Liability
- Independent Contractors Liability
- Host Liquor Liability

Such insurance must provide minimum limits of liability of \$2,000,000 each occurrence combined single limit bodily injury and property damage (“CSL”) except:

- \$1,000,000 each offense Personal/Advertising Injury

- \$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);

16.1.2 Automobile Liability insurance, including coverage for owned, non-owned, leased or hired vehicles, as appropriate, with a minimum limit of liability of \$2,000,000 CSL;

16.1.3 Workers Compensation securing Lessee’s liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington; provided, that if Lessee is qualified as a self-insurer in accordance with chapter 51.14 of the Revised Code of Washington, Lessee shall certify that qualification by a letter that is signed by a corporate officer of Lessee and delivered to the City that sets forth Lessee’s self-insured retention and the limits of liability any excess workers compensation policy covering its employees; and,

16.1.4 Property Insurance under which (i) the Premises, (ii) Lessee’s furniture, fixtures, equipment and inventory (“Business Contents”) and (iii) all alterations, additions and improvements that Lessee makes to the Premises (“Tenant Improvements”) are



insured throughout the Lease Term in an amount equal to the current replacement cost thereof and not subject to any coinsurance clause against all risks of direct physical loss or damage, including earthquake and flood. Such insurance shall also include coverage for loss from business interruption and extra expense, with sufficient coverage and limits of liability to provide for the payment of rent and other fixed costs during any interruption of Lessee's business due to casualty covered by Property Insurance. The Premises shall be insured at the inception of coverage on the Commencement Date for a value of not less than \$12,433,260. Prior to commencing any Capital Improvements, Lessee's insurance broker of record shall survey the Premises and, incorporating the proposed Capital Improvements, perform a Marshall & Swift analysis to calculate the full current replacement cost of the Premises after the completion of the Capital Improvements (the "Completed Value"). The Completed Value shall be subject to the City Risk Manager's review and approval prior to the commencement of the Capital Improvements and shall be used (1) during the period of construction as the amount of builder's risk property insurance and (2) thereafter as the replacement cost amount of property insurance on the Premises, subject however to annual adjustment to current replacement valuation as agreed by the City upon each insurance policy anniversary. The deductible for said property insurance shall not exceed \$10,000 without the City's written approval, which approval shall not be unreasonably withheld, conditioned or delayed; however, the deductible for earthquake insurance only may be an amount up to ten percent (10%) of the replacement cost of the Building.

16.2 Subtenant's Minimum Insurance Coverages and Limits of Liability. Beginning on the Commencement Date, and thereafter throughout the entire Lease Term, prior to any subtenant's beneficial occupancy of the Premises, Lessee shall cause such subtenant to maintain in full force and effect, at no expense to City, CGL and Automobile liability insurance coverages as specified in Subsections 16.1.1, 16.1.2, and 16.3, provided that subtenant(s) may have CGL and Automobile limits of liability of not less than \$1,000,000 CSL that complies with the General Requirements of Subsection 16.4.

16.3 Lessee's Contractors Minimum Insurance Coverages and Limits of Liability. Prior to Lessee permitting any of its contractors to mobilize on City property or the Premises for the purpose of any structural renovation, new construction or Capital Improvements, Lessee shall require in writing that the contractor (i) indemnify and hold the City of Seattle harmless to the same extent to which Lessee is required to do so under Section 15 (Indemnification), and (ii) maintain in full force and effect, at no expense to City, CGL and Automobile liability insurance coverages as specified in Subsections 16.1.1, 16.1.2, and 16.1.3, provided that contractor may have limits of liability of not less than \$1,000,000 CSL that complies with the General Requirements of Subsection 16.4.

16.4 General Requirements Regarding Lessee's, Lessee's Subtenants, and Lessee's Contractor's Insurance (Not Applicable to Workers Compensation):

16.4.1 The liability insurance required by Subsections 16.1.1 (CGL insurance) and 15.1.2 (Automobile Liability insurance) shall include the City of Seattle as an additional insured for primary and non-contributory limits of liability.



16.4.2 The limits of liability specified in Subsection 16.1.1 and 16.1.2 for CGL and Automobile insurance are minimum limits of liability only and, aside from the limits of liability of each policy, shall not be construed to limit the liability of Lessee or any of its insurers. The City shall be an additional insured for the full available limits of liability under each policy Lessee's insurance program, whether such limits are primary, excess, contingent or otherwise. For the purpose of this Subsection 16.4.2, the term "insurance" shall include self-insurance, including but not limited to any form of risk financing.

16.4.3 The property insurance required by Subsection 16.1.4 as respects the Premises only (excluding Business Contents and Tenant Improvements) shall include the City of Seattle either as an additional insured or additional named insured and shall also provide a waiver of subrogation in favor of the City. Separately, Lessee shall waive all rights of recovery in favor of the City.

16.4.4 All insurance required hereunder shall be subject to reasonable approval by the City as to insurer, form and coverage. All insurance policies shall be issued by a company rated A-VII or higher in the then-current A. M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as surplus lines under the provisions of chapter 48.15 RCW.

16.4.5 No insurance policy may 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 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) (e), for both liability and property insurance the City is deemed to be a "mortgagee, pledgee, or other person shown by the policy to have an interest in any loss which may occur thereunder." Written notice shall be mailed to the City of Seattle (Attention: Risk Management), P. O. Box 94669, Seattle, WA 98124-4669 or delivered electronically by fax to number (206) 470-1270 or by email to riskmanagement@seattle.gov.

16.4.6 Any deductible or self-insured retention ("S.I.R.") in excess of \$10,000 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.

16.4.7 The City shall have the right to periodically review the appropriateness of insurance coverages and limits of liability stated herein in view of inflation and/or changing industry conditions and to require a reasonable increase in such coverage or limits upon ninety (90) day prior written notice.



16.5 Evidence of Insurance (Does not Apply to Workers Compensation). As evidence of insurance coverage, on or before the Commencement Date, and thereafter, not later than five (5) days prior to the expiration or renewal date of each such policy, the following certification must be delivered to the City at its address as specified in Subsection 1.7 hereof with a copy delivered electronically by fax to fax number (206) 470-1270 or by email to riskmanagement@seattle.gov:

16.5.1 A copy of the CGL additional insured policy provision(s), whether blanket or designated additional insured language, shall be provided that documents that the City of Seattle is (i) an additional insured, and (ii) that such additional insured status is primary and non-contributory with any insurance or self-insurance that the City maintains. If this documentation is not available because policies have not been issued, received and/or reviewed, a binder of insurance that evidences additional insured status for primary and non-contributory limits may be substituted.

16.5.2. Documentation shall be provided that coverage will not be cancelled without at least thirty (30) day written notice of such cancellation, except at least 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).

16.6 Waiver of Subrogation. City and Lessee release and relieve the other, and waive their entire right of recovery for loss or damage to property located within or constituting a part or all of the Premises to the extent that the loss or damage is covered by (a) the injured party's insurance, or (b) the insurance the injured party is required to carry under this Section 16, whichever is greater. This waiver applies whether or not the loss is due to the negligent acts or omissions of City or Lessee, or their respective officers, directors, employees, agents, contractors, or invitees. Each of City and Lessee shall have their respective property insurers endorse the applicable insurance policies to reflect the foregoing waiver of claims, provided however, that the endorsement shall not be required if the applicable policy of insurance permits the named insured to waive rights of subrogation on a blanket basis, in which case the blanket waiver shall be acceptable.

16.7 Assumption of Risk. The placement and storage of its contents and other personal property in or about the Premises shall be the responsibility, and at the sole risk, of Lessee.

17. Assignment or Sublease.

17.1 City Consent Required. Except as provided in the following sections, 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, which consent shall not be unreasonably withheld, conditioned or delayed. 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.

17.2 Exceptions to City Consent. Notwithstanding the foregoing, after the tenth (10th) year of the Lease Term, Lessee, upon the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed, may assign this Lease to a third party ("Assignee") and shall be released from liability hereunder, provided that City shall not withhold its consent to such assignment and release if the Assignee can demonstrate the financial strength, operating experience and leasing capabilities reasonably necessary for the successful operation of the Premises. City acknowledges and agrees that Lessee intends to sublease all of the Premises to a number of subtenants throughout the Lease Term. City's consent shall not be required for subleases of all or any portion of the Premises for a Permitted Use and a term of less than seven (7) years; provided however, that such subleases shall be in writing, shall conform to the requirements of this Lease, including insurance requirements, and shall in no event relieve Lessee of any of its obligations to City under this Lease, unless otherwise approved by City, which approval shall not be unreasonably withheld, conditioned or delayed.

18. Assignment by City.

If City sells or otherwise transfers the Premises, such purchaser or transferee 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, provided that such successor accepts the Premises subject to the terms, conditions and covenants of this Lease, assumes and agrees to perform all of City's obligations under this Lease and recognizes Tenant's right to the use and possession of the Premises pursuant to the terms of this Lease as long as Tenant is not in default hereunder beyond any applicable notice and cure period.

19. Destruction.

If the Premises are rendered partially or totally untenable by fire or other casualty, and if the damage is repairable within twenty-four (24) months from the date of the occurrence, then if insurance proceeds or self-insurance coverages are available to pay the full cost of the repairs (except for the deductible amounts), Lessee shall repair the Premises with due diligence. If the damage to the Premises cannot be repaired within twenty-four (24) months from the date of the occurrence, either party may terminate this Lease upon sixty (60) days' written notice. If thirty percent (30%) or more of the Premises is destroyed or damaged, Lessee may elect to terminate this Lease upon written notice to City no later than thirty (30) days after the occurrence. In the event of damage

by casualty, Lessee shall, at its sole cost and expense, repair all damage to its own personal property. In the event this Lease is terminated as a result of casualty to the Premises, (i) the City shall retain the insurance proceeds covering the loss of the Premises except to the extent of the Capital Improvement Rental Offset not previously offset against Rent at the time of the casualty, which shall be paid to Lessee upon the condition that Lessee has maintained the insurance coverage required under Section 15.1.4 of this Lease, and (ii) Lessee shall retain the insurance proceeds payable under coverage of Lessee's personal property and fixtures and any coverage for business interruption obtained by Lessee pursuant to this Lease or in addition to the coverage required herein. Except in the event of City's 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 Premises.

20. Eminent Domain.

20.1 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 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 Lessee, 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 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, Lessee, at its expense, shall proceed with all reasonable dispatch to restore, to the extent of available proceeds paid to Lessee 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 therefore. The Rent payable 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.

20.2 Award. 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, except to the extent of the Capital Improvement Rental Offset not previously offset against Rent at the time of the award. 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. Notwithstanding the foregoing, Lessee, shall have the right to claim from the condemning authority all compensation that may be recoverable by Lessee on account of any loss of income stream, diminished value of business or losses 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.

21. Default by Lessee.

21.1 Definition. The occurrence of any of the following shall constitute a default ("Default") by Lessee: (a) a failure to pay Rent or other charge within five (5) days after written notice thereof from City; (b) the abandonment or vacation of the Premises or the failure of Lessee or its permitted subtenants to occupy and operate the Premises) in accordance with this Lease and failure to reoccupy them within thirty (30) days after City (i) delivers a written notice to Lessee's notice address set forth in Section 1.7 above demanding such re-occupancy, and (ii) mails by certified or registered mail a copy of the notice to any forwarding address given by Lessee to City in writing; (c) a violation, breach, or failure to keep or perform any other term, provision, covenant, or any obligation of this Lease for a period in excess of thirty (30) days after written notice thereof from City (provided that if the nature of Lessee's obligation 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 performance to completion); or (d) 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.

21.2 City Remedies. If Lessee has defaulted and such Default continues or has not been remedied to the reasonable satisfaction of the Superintendent within the notice and cure periods set forth above, then City shall have the following nonexclusive rights and remedies at its option: (1) 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; or (2) to terminate this Lease.

21.3 Reentry by City Upon Termination. Upon the termination of this Lease, City may reenter the Premises, take possession thereof, and remove all persons there from, 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 there from 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.

21.4 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 there from, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any reasonable costs incurred in authorizing others the use and occupancy of the Premises, and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington. The provisions of this Subsection 0 shall survive the expiration or earlier termination of this Lease.

22. 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, Lease, 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.

23. Default by City.

23.1 Definition. 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.

23.2 Lessee's Remedies. Lessee's Remedies. Upon City's default, Lessee may, without waiving any claim for damages for breach of Lease or any other rights or remedies at law or in equity that may be permitted from time to time by the laws of the State of Washington, terminate this Lease if Lessee's use and occupancy of the Premises or a material portion thereof are materially interfered with, prevented or made dangerous and pursue any other remedy that may be permitted by law or equity.



24. Attorneys' Fees.

If legal proceedings are initiated to enforce any term of this Lease, to recover any Rent due under this Lease, for the breach of any covenant or condition of this Lease, or for the restitution of the Premises to City and/or eviction of Lessee, each party shall bear its own attorneys' fees.

25. Access by City.

City and its agents shall have the right to enter the Premises (1) at any reasonable time to examine the same, and to show them to prospective purchasers or lenders, and (2) upon forty-eight (48) hours notice to make such repairs, alterations, improvements, additions or improvements to the Premises as City may deem necessary or desirable or to show the Premises to prospective tenants during the last year of the Lease Term or the Extended Term, if applicable. 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 therefore, 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. Lessee shall change the locks to the Premises only through City and upon paying City for all actual and reasonable costs related thereto. Notwithstanding the foregoing, City shall not unreasonably interfere with the use and occupancy of the Premises by Lessee or any of its subtenants.

26. 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; provided that City may, by written notice to Lessee delivered not less than thirty (30) days prior to the next due rental payment, increase such rental rate to one hundred fifty percent (150%) of the Rent for the last month of Lease Term. 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 section shall survive expiration or termination of this Lease.

27. Notices.

Any notice, demand or request required hereunder shall be given in writing to the party's address set forth in Subsection 1.7 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.

28. Successors or Assigns. All of the terms, conditions, covenants of this Lease shall extend to and be binding upon City, Lessee and, subject to the terms of Sections 16 and 17, 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.

29. 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 Leases under this Lease.

30. 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.

31. 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.

32. Counterparts. The parties may execute this Lease in counterparts, which, taken together, constitute the entire Lease.

33. 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.

34. **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.

35. **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 the Effective Date, as defined in Section 1.2.

36. **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."

37. **Standards.** Lessee recognizes that, although it is operating its facilities as an independent operator, City is organized and exists in part 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, 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. In the event that City determines that Lessee is not complying with the terms of this Section 36, City shall provide written notice thereof to Lessee and the parties shall reasonably cooperate to meet and resolve the same.

38. **City's Control of Premises and Vicinity.** City acknowledges that convenient access to the Premises from public highways and the visibility of the Premises from Sand Point Way NE are vital to Lessee's use of the Building. All common and other facilities provided by City in or about the Premises are subject to City's exclusive control and management by City except as otherwise stated herein. Accordingly, provided City does not unreasonably or adversely interfere with Lessee's use, access to, and occupancy of the Premises, City may do any and all of the following (among other activities in support of City's or other municipal objectives), all without incurring any liability whatsoever to Lessee:

38.1 **Change of Vicinity.** City may increase, reduce, or change in any manner whatsoever the number, dimensions, and locations of the walks, buildings, landscaping, exhibit, and service area in the vicinity of, but not including, the Premises;

38.2 **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; provided that the City may not reduce the number of parking spaces or move the location of the parking area as shown on the attached Exhibit C ("Parking Area").

38.3 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.

38.4 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.

38.5 Promotion of Water-Oriented Activities and Implementation of Master Plan. Lessee's interest in entering into this Lease is based, in part, on City's continued emphasis on water-oriented uses for the Northshore Recreation Area in Magnuson Park. City hereby agrees not to substantially modify its Master Plan for the vicinity adjacent to the Premises, as depicted on Exhibit F, without the first consulting with Lessee and including Lessee and Lessee's subtenants in City's planning process for such modifications.

38.6 Change of Businesses. Except as provided in Sections 7.6 and 37.5 above, 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.

39. Lessee's Records. Lessee shall keep true, full, and accurate books of account setting forth Lessee's receipts, together with any other information that will affect the determination of Rent, Additional Rent, and additional charges. City shall be allowed after five (5) days' prior written notice to Lessee to inspect Lessee's books of account at Lessee's office and to procure audits thereof by an auditor at City's sole cost and expense (except as provided below). If in the reasonable judgment of such auditor Lessee's books of account are incomplete or improperly reflect the information necessary for an accurate determination of the Rent, Additional Rent, or additional charges, or if the audit shall show that the reports submitted by Lessee understated Lessee's receipts by more than three percent (3%) thereof for any year covered by the audit, the reasonable costs and fees for such audit shall be paid by Lessee to City. If an audit discloses any willful or intentional effort to understate Lessee's receipts, then, at City's option, Lessee may be required to surrender possession of the Premises under the provisions of Section 21 of this Lease. Lessee shall retain all books of accounting and any other information that will affect the determination of Rent, Additional Rent, and additional charges for a period of six full calendar (6) years after following the completion of each calendar year during the Term, and Lessee shall make them available for inspection at Lessee's office within ten (10) days of City's prior written demand therefore. Lessee's obligations under this section shall survive expiration or termination of this Lease.

40. **Miscellaneous.**

40.1 Entire Lease; Applicable Law. This Lease and the Exhibits attached hereto, and by this reference incorporated herein, set forth the entire Lease of City and Lessee concerning the Premises, and there are no other Leases 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.

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

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

CITY:

LESSEE:

THE CITY OF SEATTLE

BUILDING 11, LLC

By: _____
Print Name/Title: _____
Department of Parks and Recreation

By: _____



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 **BUILDING 11, LLC**, 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.

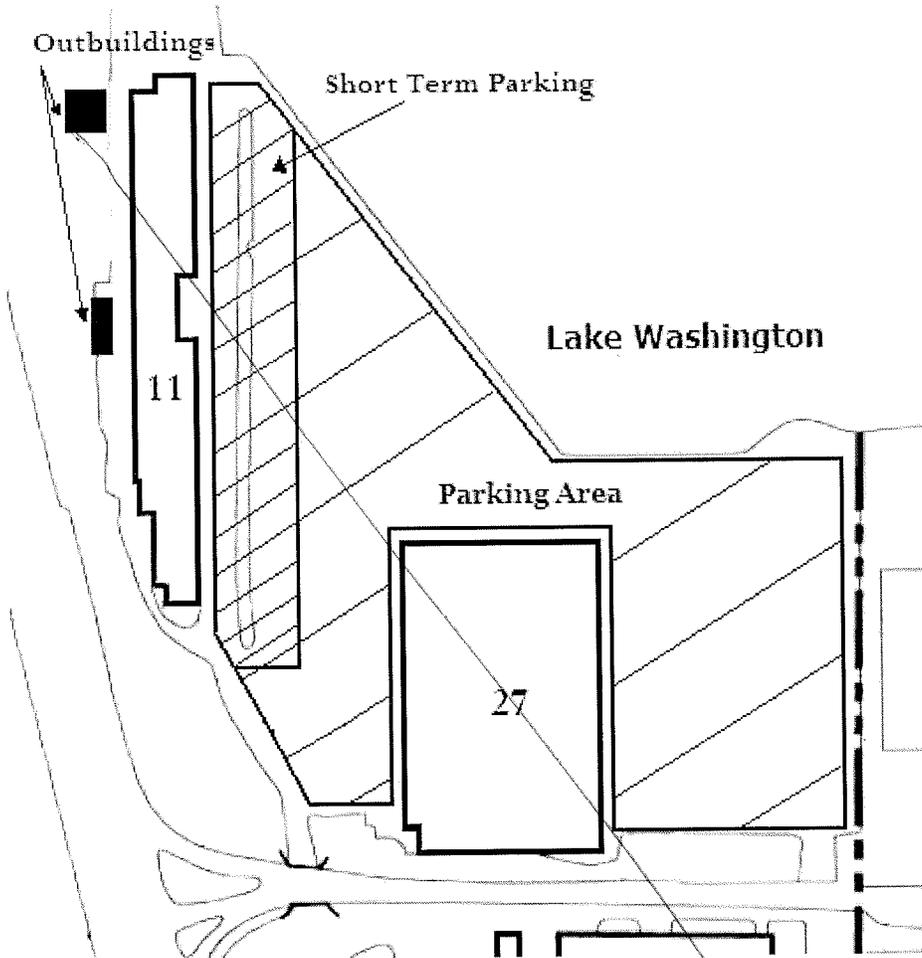
[Signature] [Printed Name]

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

My commission expires _____.



PARKING AREA



LEASE

THIS LEASE ("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 Department of Parks and Recreation ("Parks") and the Superintendent thereof ("Superintendent"), and **Building 11 LLC** ("Lessee"), a limited liability company 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 consists of an approximately 58,780 square foot existing building (the "Building") commonly referred to as Building 11 at Warren G. Magnuson Park located at 7777 Sand Point Way NE, Seattle, King County, Washington 98115 situated on a portion of the real property legally described on Exhibit A and depicted on Exhibit B. Lessee shall notify City on or before the Commencement Date, as defined in Section 1.3, whether it elects to lease the two (2) outbuildings adjacent to the Building and depicted on Exhibit B (the "Outbuildings"), in which case the Outbuildings will be included in the Premises at no additional cost and subject to the terms and conditions herein. Alternatively, Lessee may elect not to lease the Outbuildings and may demolish the Outbuildings at Lessee's own cost and expense, and in compliance with all applicable laws and regulations. The cost of demolishing the Outbuildings will be considered part of Lessee's Initial Capital Improvements, as defined in Section 5.1, and Lessee shall be entitled to include such costs in its Capital Improvement Rental Offset as set forth in Section 5 below.

1.2 **Effective Date.** This Lease shall be effective starting on the date when authorized by Seattle City Council and signed by the Superintendent and Lessee. Beginning on the "Effective Date", Lessee and its employees, agents and contractors shall have the right to enter the Premises during business hours and after reasonable advance written notice to City for purposes of inspecting the Building and the Premises.

1.3 **Commencement Date; Possession.** The Lease Term shall commence when all contingencies in Section 7 have been satisfied or waived and the Lessee and City have specified the "Commencement Date" in writing, as further described in Section 7.5.



1.4 Expiration Date. The Lease Term (defined below) shall expire on the date that is thirty (30) years after the Commencement Date, unless the Term of this Lease is terminated earlier as provided in this Lease or extended pursuant to Section 3.2.

1.5 Rent Commencement Date. The Rent Commencement Date shall be the same date as the Commencement Date.

1.6 Rent.

1.6.1 Base Rent: \$235,120 annually (\$19,593.33 monthly), and adjusted as described in Section 5.

1.6.2 Additional Rent: Additional Rent is equal to 10% of Subtenant Rent. For purposes of calculating Additional Rent, "Subtenant Rent" means and includes all base rent, percentage rent and fees of any kind collected by Lessee from third parties, including licensees and subtenants, for use and occupancy of the Premises for Permitted Commercial Uses (as defined in Section 2.5.3). If Lessee receives any non-monetary compensation for use and occupancy of the Premises by subtenants or licensees, the Superintendent shall calculate the reasonable cash value of such compensation for purposes of calculating Subtenant Rent; provided, however, that tenant improvements made for subtenant's benefit and at subtenant's cost will not be considered non-monetary compensation for purposes of calculating Subtenant Rent. Subtenant Rent does not include amounts paid to Lessee as reimbursement for Lessee's subtenant and licensee related expenditures, such as common area maintenance, taxes, including leasehold excise tax charged to subtenants, insurance, and utilities, nor does it include amounts paid to Lessee by subtenants and licensees for use and occupation of the Premises for Primary Park and Recreation Uses and Other Park and Recreation Uses (as defined in Sections 2.5.1 and 2.5.2).

1.7 Notice Addresses.

To City: The City of Seattle
Department of Parks and Recreation
Attention: Manager
Contracts and Business Resources
6310 NE 74th Street
Seattle, WA 98105

To Lessee: Building 11 LLC
c/o TRF Pacific, LLC
Attn: Darrell M. Vange, Development Manager
2620 Second Avenue
Seattle, WA 98121



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

- Exhibit A - Legal Description
- Exhibit B - Site Plan Showing Premises
- Exhibit C - Parking Area
- Exhibit D - Initial Capital Improvement Offset categories
- Exhibit E- Bill of Sale
- Exhibit F - Master Plan
- Exhibit G – Public Benefits
- Exhibit H - Letter of Intent between Lessee and Sail Sand Point

2. Premises.

2.1 Grant. City hereby grants to Lessee and Lessee hereby accepts from City the right to exclusive use, possession, and occupancy of those certain Premises referenced in Section 1.1 (the “Premises”), which are located on a portion of the real property described on Exhibit A and depicted on Exhibit B.

2.2. License to Use Common Areas. Throughout the Term, Lessee and Lessee’s subtenants and their employees, contractors, agents and invitees may use the Magnuson Park common areas as from time to time constituted, including without limitation, roads providing access from public highways, parks, walkways, fields, parking lots, and restrooms (the “Common Areas”), in common with all other users and visitors of the Park and subject to such general rules and regulations as the Superintendent may promulgate (the “License”). Notwithstanding the foregoing, Lessee and Lessee’s subtenants may use Common Areas during hours when Magnuson Park is not open to the general public, but only the parking lot and those Common Areas of the park reasonably necessary for access to the Premises, and for the purpose of access to the Premises only.

2.3 Condition. City grants the Premises and Lessee accepts the Premises in its "as is" condition, except as otherwise set forth herein.

2.4 Parking. At the request of Lessee, City will install signs at up to twenty-five (25) parking stalls within the area depicted on Exhibit C as “Short Term Parking” limiting parking in those stalls to two (2) hours for general public use. Additionally, throughout the Term, the City shall maintain a minimum of 300 parking stalls for general public use within the area depicted on Exhibit C as “Parking Area”. City and Lessee acknowledge that they intend to enter into a “Tri-Party Parking Agreement” with the tenant of Building 27 to specify the rights and obligations of the parties with regard to the Parking Area. If the Tri-Party Parking Agreement is not signed by March 31, 2009, then the Superintendent will reasonably allocate the parking rights for all parties involved on or before April 30, 2009. In the event that the parking rights provided to the Lessee are not reasonably satisfactory to Lessee, Lessee may terminate this Lease upon thirty (30) days prior written notice delivered on or before May 31, 2009. Lessee acknowledges and agrees that the Tri-Party Parking Agreement will not guarantee any exclusive parking



rights to any party, nor will the Superintendent allocate exclusive parking rights to Lessee or any tenant at Magnuson Park.

2.5 Permitted Uses. City acknowledges and agrees that Lessee intends to sublease all of the Premises to multiple subtenants, and Lessee acknowledges and agrees that the City's willingness to enter this Lease is premised, in part, upon Lessee's proposed use of the Premises. As a result, Lessee and/or its subtenants shall use the Premises only for the purposes set forth in this Section 2.5 (collectively, the "Permitted Uses").

2.5.1 Primary Park and Recreation Uses. Lessee shall use a minimum of 16,890 square feet of the Premises for Primary Park and Recreation Uses, with a focus on providing water-related recreation such as sailing, kayaking, canoeing and other non-motorized boating activities. "Primary Park and Recreation Uses" also includes land-based recreation activities such as cycling, hiking, running, exercise, and sports, Recreation Oriented Retail Sales and Services, health and fitness sales and services, and environmental stewardship as envisioned in the Sand Point Physical Development Plan. As used in this Lease, "Recreation Oriented Retail Sales and Services" are defined as retail sales that are consistent with and complimentary to recreation activities or directly support the general public's use and enjoyment of the park and its amenities. Recreation Oriented Retail Sales and Services shall not exceed twenty-five percent (25%) of the total occupiable square footage of the groundfloor of the Building, except to the extent such Recreation Oriented Retail Sales and Services qualify as Water Related Uses under Section 2.5.4.

2.5.2 Other Park and Recreation Uses. Lessee may also use a portion of the Premises not to exceed 16,890 square feet for the support and enjoyment of Other Park Uses. As used herein, "Other Park and Recreation Uses" means only the following uses: (i) childcare, (ii) artist studios and workshops, and (iii) food and beverage services for the benefit of visitors and users of the park. Individual food and beverage services subtenants are further limited to a portion of the Premises not to exceed 2,500 square feet.

2.5.3 Permitted Commercial Uses. Lessee may use a portion of the Premises not to exceed 25,000 square feet for any use that complies with all applicable laws, statutes, ordinances, rules and regulations, as the same may be amended or adopted during the Lease Term, and that does not violate any other provision of this Lease, such as meeting space, general office use, and storage ("Permitted Commercial Uses"). Permitted Commercial Uses are further limited to the second floor of the Premises, the West side of the ground floor, and no more than 10 percent of the building frontage and depth on the East Side of the ground floor. This frontage is primarily to provide an entrance and associated common areas.

2.5.4. Water Related Uses. Consistent with the Sand Point Physical Development Plan's vision for a small watercraft center in the Northshore area, at all times during the Lease Term and any Extended Terms, Lessee shall reserve a minimum of eight thousand (8,000) square feet of the ground floor space for water-related uses, such as recreational sailing, rowing, kayaking, sailboard and surfing programs, dry



storage of boats, sales and rentals of small boats, boating equipment and supplies, and for-profit or non-profit organizations dedicated to the preservation, education, safety or enhancement of the marine environment (“Water Related Uses”). Additionally, at all times during the Term, Lessee shall ensure that some portion of the space reserved for Water Related Uses is used for the purpose of providing non-motorized boat rentals on a walk-in basis to the general public, affordable at levels comparable to sailing programs at the Center for Wooden Boats. In order to further the goals in the Sand Point Physical Development Plan, the space reserved for Water Related Uses shall be made available at an average lease rate not to exceed eighty percent (80%) of the average of all rents in the building (“Market Rent”). Lessee will retain the current tenant, Sail Sand Point, and all of its operations as a sub-lessee of Building 11 as the focal point of the Water-Related Uses; provided that Sail Sand Point executes a lease consistent with the letter of intent between Lessee and Sail Sand Point dated August 11, 2008 (Attached as Exhibit H). If Lessee is unable to maintain a subtenant in compliance with this Section and some portion of the space remains vacant for more than a three month period, then Lessee will notify the Superintendent and the City shall have the right to propose subtenant(s) that will continue the Water Related Uses in the space reserved by this Section. Provided the proposed subtenant agrees to a standard lease at rental rates of no less than 80% of the Market Rent for the building at the time, Lessee shall be obligated to lease the space to the City’s proposed subtenant(s). If the City has not found any subtenant that will fulfill the requirements in this Section within three months after the City has the right to propose subtenant(s), then Lessee may use the space reserved for Water Related Uses for Park and Recreation Uses or Other Park and Recreation Uses. Lessee may not renew any such leases without first demonstrating to City that it has used all reasonable efforts to fill the space with new Water-Related Uses.

2.6 Premises Encumbrances. City represents and warrants that it has disclosed all covenants, conditions and restrictions, encumbrances, or other agreements that City has actual knowledge of at the time of executing this Lease and that in any way prohibit or materially limit the Permitted Uses or Lessee’s rights hereunder. This representation and warranty is not intended to be in lieu of Lessee’s own due diligence with respect to ascertaining whether the Premises are suitable for its intended use and purposes.

2.7 Quiet Enjoyment. City warrants that Lessee, on payment of the Rent and performance of the covenants herein contained, shall peaceably and quietly have, hold and enjoy the Premises during the Lease Term.

2.8 Continuous Operation. One of the City’s primary purposes in entering into this Lease is to ensure that there is continuous programming and occupancy in the Building. As a result, Lessee shall include language in each of its subleases for the Premises requiring the subtenant under the sublease to keep its subleased premises open for business during the usual business hours of each and every business day as is customary for businesses of like character, except for reasonable closures for remodeling, repair or renovation, and Lessee shall use reasonable efforts to enforce the same. In the event that a subtenant fails to comply with the foregoing sublease requirement, Lessee



shall diligently pursue its remedies under the sublease, which remedies shall include termination of the sublease if subtenant does not comply, subject to reasonable notice and opportunity to cure provisions.

3. Lease Term.

3.1 Initial Term. This Lease shall be for a thirty (30) year term (“Lease Term” or “Term”) beginning on the Commencement Date specified in Subsection 1.3 and ending on the Expiration Date specified in Subsection 1.4, unless the Lease Term is terminated earlier in accordance with the provisions of this Lease or extended as provided in Subsection 3.2 below.

3.2 Extended Term. Lessee shall have the option to extend this Lease for three (3) additional extended terms of five (5) years (“Extended Term”) each on the same terms and conditions set forth herein; however, Lessee’s right to exercise any option to extend is conditioned upon Lessee’s not being in default under this Lease beyond applicable notice and cure period and Lessee’s achievement, in aggregate, of the maximum Public Benefit Program Rent Offset (as defined below) during the preceding Term or Extended Term. Lessee may extend the Lease Term to include the Extended Terms by giving the Superintendent written notice of its intention to do so no more than two-hundred-seventy (270) days and no less than one-hundred-eighty (180) days prior to the Expiration Date of the then current Term.

3.3 Early Termination. Lessee may terminate this Lease in its sole discretion, effective any time on or after the date which is five (5) years following the Commencement Date, upon at least sixty (60) days prior written notice to City, in which case all improvements and alterations made to the Premises by Lessee shall become the property of City at no cost to the City and as set forth in Section 10.4.

4. Rent.

4.1 Rent Payment. Commencing on the Rent Commencement Date, and thereafter on or before the tenth (10th) day of each month during the Lease Term, Lessee shall pay to City at the address and to the account specified by City in writing, without notice or demand, in lawful money of the United States in advance, the monthly amount of Base Rent specified in Subsection 1.6.1 and Additional Rent specified in Subsection 1.6.2, subject to the Rent Offsets described in Section 5. Base Rent and Additional Rent are collectively referred to herein as “Rent.” Rent shall be prorated on a daily basis for any partial month within the Lease Term.

4.2 Adjustments to Rent.

4.2.1 Annual Rental Adjustments. Except as set forth below, beginning on the first anniversary of the Rent Commencement Date and every year thereafter until the expiration or termination of this Lease (each, a “Rent Adjustment Date”), Base Rent shall be adjusted upward only to reflect increases in the total non-compounded



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

By way of example only, if the CPI on the Rent Commencement Date is 100 and the CPI most recently issued three (3) months prior to the first Rent Adjustment Date is 102 and the annual Base Rent due under this Lease is \$60,000, then the total CPI adjustment would be two (2%) and annual Base Rent under this Lease would increase to \$61,200 effective as of the Rent Adjustment Date.

In no event shall the Base Rent, as adjusted for any period, be less than Base 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, and the fees and costs incurred in connection with such arbitration shall be borne equally by City and Lessee.

4.2.2 Alternative Rental Adjustments. Beginning on the tenth (10th) anniversary of the Rent Commencement Date and every five (5) years thereafter, the City shall have the option to adjust the Base Rent by either (i) the CPI increase, as set forth above or (ii) the percentage increase in the gross revenue from the "Revenue Base Year" to the relevant "Revenue Adjustment Year," as defined and illustrated in the table below. As used in this Lease, "gross revenue" means all income Lessee receives from any person or entity for any use or occupancy of the Premises, excluding amounts collected by Lessee as reimbursement for Lessee's actual operating expenses related to the Premises, such as common area maintenance, insurance, utilities, and taxes. In the event the City elects to adjust rent based upon the percentage increase and not the CPI, the adjusted Rent will be in effect for the duration of the relevant Rental Adjustment Period specified on the table below.

Rental Adjustment Period	Revenue Base Year	Revenue Adjustment Year
Year 11 through Year 15	Third full year after the Commencement Date	Tenth full year after the Commencement Date
Year 16 through Year 20	Third full year after the Commencement Date	Fifteenth full year after the Commencement Date
Year 21 through Year 25	Third full year after the Commencement Date	Twentieth full year after the Commencement Date
Year 26 through Year 30	Third full year after the	Twenty-fifth full year after the



	Commencement Date	Commencement Date
Year 31 through Year 35	Third full year after the Commencement Date	Thirtieth full year after the Commencement Date
Year 36 through Year 40	Third full year after the Commencement Date	Thirty-fifth full year after the Commencement Date
Year 41 through Year 45	Third full year after the Commencement Date	Fortieth full year after the Commencement Date

Notwithstanding the foregoing, in no event shall the Base Rent, as adjusted during any Rental Adjustment Period, be less than Base Rent payable during the immediately preceding period.

5. Rent Offsets

Throughout the Term and any Extended Term, Lessee may offset Rent due under this Lease subject to the procedures and limitations in this Section.

5.1 Capital Improvement Rent Offset. Subject to the procedures and limitations in this Section, Lessee shall be entitled to an offset against total Rent during the entire Lease Term, including the Extended Term, in a total amount up to Lessee’s actual and reasonable costs (including hard and soft costs such as, but not limited to, labor, materials, architect and engineering fees, permits, construction or project management, sales tax, and consultants’ fees) for the approved initial renovation of the Premises (“Initial Capital Improvements”) and any subsequent repair, improvement, or replacement approved by City under Section 11.1 that would be capitalized for federal income tax purposes (“Subsequent Improvements”) (the Initial Capital Improvements and the Subsequent Improvements are collectively referred to herein as the “Capital Improvements”). During the initial sixty (60) months of the Term, Lessee’s Capital Improvement Offset shall not exceed seventy-five percent (75%) of the total Rent due in any given month. For the balance of the term, Lessee’s Capital Improvement Offset shall not exceed sixty-seven percent (67%) of the Rent due in any given month.

5.2 Procedure for Capital Improvement Rent Offset.

5.2.1 Submittal of Costs.

(a) Prior to Completion of the Capital Improvements. Commencing upon the Commencement Date and terminating upon Lessee’s substantial completion of construction of the Initial Capital Improvements, as evidenced by a certificate of occupancy (the “Construction Period”), and during the construction of any Subsequent Improvements, Lessee may, on a quarterly basis, submit an accounting of its costs incurred and actually expended in connection with the design and construction of such



Capital Improvements, together with such supporting documentation as the Superintendent may reasonably request.

(b) After Completion of the Capital Improvements. Not later than sixty (60) days following the Construction Period of the Initial Capital Improvements or completion of any Subsequent Improvements, as applicable, Lessee shall provide the Superintendent with an accounting of its costs associated with the Capital Improvements completed to the Premises and not previously included in the Capital Improvement Rent Offset, together with such supporting documentation as the Superintendent may reasonably request.

5.2.3 Certification. The Superintendent acting in accordance with generally accepted accounting principles, and in his or her reasonable discretion, shall certify the total amount of those reasonable costs actually expended by Lessee on the Capital Improvements and this amount shall be added to Lessee's "Capital Improvement Rent Offset". For the Initial Capital Improvements, the Superintendent shall certify reasonable costs incurred in the categories itemized on The Initial Capital Improvement Rent Offset Categories on Exhibit D, which is attached and incorporated herein. The Superintendent shall provide written notice of such certification or a statement as to why an amount is not being certified as submitted within thirty (30) days of Lessee's request therefor. In the event the Superintendent fails to timely provide such certification or written notice, the Initial Costs or Subsequent Costs, as applicable, submitted to the Superintendent for certification shall be deemed certified and added to the Capital Improvement Rent Offset.

5.2.4 Application of Capital Improvement Rent Offset. Each month, Lessee shall report to the Park's Finance Director the amount of Capital Improvement Rent Offset it is applying to Rent that would otherwise be due and owing. If the Capital Improvement Rent Offset exceeds the total Rent due under this Lease during the Initial Term and Extended Terms, if any, the remaining value of Lessee's Capital Improvements shall be deemed to have been donated to City at the termination or expiration of this Lease, and the Capital Improvements shall be surrendered with the Premises as provided in Section 14, without the need for further action by Lessee or City.

5.3. Public Benefit Program Rent Offset. Lessee shall be entitled to an offset against Rent during the entire Lease Term and any Extended Terms, in an amount up to the equivalent dollar value of any free or discounted program or membership made available at or from the Premises to the general public or to specific groups such as children, seniors, or the handicapped (the "Public Benefit Program Rent Offset"), as described more fully in section 8.7. In cases where public benefits are provided at a discount relative to market rates, the public benefit shall be calculated based on the difference between the market and discounted rates. The monthly offset amount shall be one-twelfth (1/12) of the annual value of the program as certified by the Superintendent. The Public Benefit Program Rent Offset may not exceed a total of twenty-three percent (23%) of the Rent due in any given month. Public Benefit Program Offsets shall be pre-approved by the Parks Superintendent pursuant to Section 8.7, and subject to confirmation at the end of each year.



6. **Late Charge; Interest.**

If Lessee fails to pay City any sum within ten (10) days after written demand therefore, such amount shall bear interest at the rate of twelve percent (12%) per annum from the date due until the date paid.

7. **Contingencies.**

7.1 **Preliminary Contingencies.**

This Lease is contingent upon the satisfaction of all contingencies stated in this Section 7.1 in the time periods stated (the "Preliminary Contingencies").

7.1.1 **Deed Restrictions.** The City shall work with the National Park Service and appropriate government entities in order to permit Lessee to use no more than 25,000 square feet of the Premises for Permitted Commercial Uses notwithstanding covenants in the Quitclaim Deed recorded by the King County Recorder's Office under recording number 9905041194 whereby the United States of America granted Building 11 and other portions of Magnuson Park to the City (the "USA Deed"). The resolution of this issue is a necessary condition to Lessee's use of the Premises for Other Commercial Uses. Consequently, if the City has not resolved the issues relating to the USA Deed's restrictions regarding use of the Premises in a manner that allows for Other Commercial Uses by April 30, 2009, either party may terminate this lease by written notice to the other party no later than May 31, 2009.

7.1.2 **Phase II Environmental Study.** The City shall retain an environmental consultant to complete a Phase II Environmental Assessment on the Premises and the Outbuildings (the "Phase II"). Both the City and Lessee will work together with the consultant to develop the scope of the Phase II, which shall include without limitation, taking soil samples from locations identified by Lessee as potential locations for new building footings, soil samples from locations Lessee intends to perform underground work for the installation or improvement of utilities, soil samples from borings through the interior slab of the Building, soil samples from the area around the Outbuildings, and quantification of lead based paint, asbestos and asbestos containing materials within the Buildings. The City shall engage its environmental consultant to commence the Phase II no later than ten (10) days following the Effective Date and shall use commercially reasonable efforts to insure timely delivery of the same. The City will promptly provide a copy of all Phase II assessment results to Lessee and shall provide a copy of the Phase II final report for Lessee's review and approval no later than March 30, 2009. In the event that the Phase II is not complete or approved by Lessee and the City on or before April 30, 2009, either party may terminate this Lease by written notice to the other party delivered not later than May 31, 2009, in which case the parties shall have no further rights or obligations under this Lease. In the event that this Lease is not terminated by May 31, 2009, Lessee will reimburse the City for one hundred percent (100%) of the cost of the Phase II (as evidenced by an invoice and other documentation reasonably requested by Lessee) within ten (10) days following the Commencement Date, which cost shall be included in Lessee's Capital Improvement Rent Offset.



7.1.3 Land Use Code Amendments. Lessee and the Superintendent shall reasonably cooperate to develop and Superintendent shall propose to City Council, amendments to Seattle Municipal Code Chapter 23.72 (Sand Point Overlay District). If the Seattle Municipal Code Chapter 23.72 is not amended to the reasonable satisfaction of both parties by April 30, 2009, Lessee may terminate this Lease by providing written notice to City not later than May 31, 2009, and the parties shall have no further rights or obligations under this Lease.

7.1.4 Shoreline Use Restriction Resolution. Lessee and the Superintendent shall reasonably cooperate to gain all necessary approvals from the City Department of Planning and Development, Seattle City Council, and the State Department of Ecology for an Amendment to the Seattle Shoreline Master Program (SMC Chapter 23.60) to allow the uses described in Section 2.5, as long as such approvals do not limit public access to the shoreline relative to existing conditions. If by April 30, 2009, the Shoreline Master Program (SMC Chapter 23.60) is not amended or other approval received permitting the Premises to be used for the Permitted Uses, including without limitation general office use, restaurant use, and general retail use, Lessee may terminate this Lease by providing written notice to City not later than May 31, 2009, and the parties shall have no further rights or obligations under this Lease.

7.1.5 Notice upon Satisfaction of Preliminary Contingencies. When Lessee is satisfied that all Preliminary Contingencies have been met, Lessee shall provide the City with written notice ("Lessee's Preliminary Notice"). If City disagrees as to whether any Preliminary Contingency has been satisfied, City shall notify Lessee in writing within thirty (30) days of receipt of the Lessee's Preliminary Notice. If the City does not receive Lessee's Preliminary Notice by May 31, 2009, either party may terminate this Lease by written notice and the parties will have no further rights or obligations under this Lease.

7.2 City Contingencies. This Lease is contingent upon the satisfaction by Lessee or waiver by City of the contingencies in this Section 7.2 within the times stated (the "City Contingencies").

7.2.1 Lessee Financing. No later than fourteen (14) days prior to applying for the building permits from City's Department of Planning and Development as set forth in Section 7.2.3 below, Lessee shall provide to the Parks Finance Director, for his/her review and approval (which approval shall not be unreasonably withheld, conditioned or delayed), reasonable evidence that it has funding committed to complete all Building alterations necessary to obtain a certificate of occupancy ("Funding"). If Lessee fails to provide reasonable evidence it has secured adequate Funding within nine (9) months after delivery of Lessee's Preliminary Notice, City may terminate this Lease upon thirty (30) days written notice to Lessee and the parties shall have no further rights or obligations under this Lease. Notwithstanding the foregoing, in the event that Lessee obtains such Funding within the thirty (30) day period, this Lease shall continue in full force and effect. City shall be deemed to have approved the Funding unless it rejects the Funding in writing within thirty (30) days of Lessee's request for approval.

7.2.2 Lessee Third Party User Commitments. No later than nine (9) months after delivery of Lessee's Preliminary Notice, Lessee shall provide City with reasonable evidence, such as letters of intent, that it has sublease commitments with third parties accounting for fifty percent (50%) of the rentable square feet within the Building. If Lessee fails to secure such subtenant commitments within nine (9) months of the delivery of Lessee's Preliminary Notice, City may terminate this Lease by providing written notice to Lessee and the parties shall have no further rights or obligations under this Lease.

7.2.3 Building Permits. No later than three (3) months after delivery of Lessee's Preliminary Notice, Lessee shall apply for the Master Use Permit necessary to undertake the Initial Capital Improvements. No later than six (6) months after approval of the Master Use Permit, Lessee shall apply for building permits necessary to complete the Initial Capital Improvements. If Lessee fails to apply for a Master Use Permit or building permits within the times required in this section, the City may terminate this Lease by providing written notice to Lessee and the parties shall have no further rights or obligations under this Lease.

7.3 Lessee Contingencies. This Lease is contingent upon the satisfaction by the City or waiver by Lessee of the contingencies in this Section 7.3 within the times stated (the "Lessee's Contingencies").

7.3.1 Approval of Signage Plan for the Premises. No later than nine (9) months after delivery of Lessee's Preliminary Notice, Lessee shall submit a plan for signage to the Superintendent for review and approval, including without limitation standards for the placement of signs, notices, pictures, posters, or any other advertising matter within or about the Premises. The Superintendent shall approve or deny the plan with reference to the Magnuson Park Signage and Wayfinding Master Plan. The Superintendent shall be deemed to have approved the signage plan unless it rejects the plan in writing within sixty (60) days of receipt of same. Notwithstanding the foregoing, if the Superintendent does not approve the signage plan within sixty (60) days of receipt, Lessee may terminate this Lease by providing written notice not later than ninety (90) days after submitting the signage plan to the Superintendent and the parties shall have no further rights or obligations under this Lease.

7.3.2 Park Signage and Access Improvements. The parties shall use reasonable efforts to agree on a specific plan to improve signage and access, consistent with the Magnuson Park Signage and Wayfinding Master Plan on or before April 30, 2009. The plan shall include a funding plan that allocates funding responsibility proportionally to park tenants based on relative benefit to each tenant.

7.4 Lessee's Notice. Lessee shall provide written notice to the City within fifteen (15) days of the time when both of the following conditions have been met: (i) Lessee has received all permits necessary for construction of the Initial Capital Improvements, and (ii) Lessee's contingencies have been satisfied or waived ("Lessee's Notice"). In the event that Lessee does not provide Lessee's notice by January 31, 2010,



the City may, in its discretion, (i) terminate this Lease, or (ii) extend the time period for receipt of Lessee's Notice. In any case, the City is not required to terminate any existing permits or leases at the Premises prior to receipt of Lessee's Notice.

7.5 Termination of Existing Leases; Delivery of Premises and Commencement of Term. No later than sixty (60) days after receiving Lessee's Notice, and provided that the City Contingencies have been satisfied or waived, City shall terminate the existing use permits and leases at the Premises and shall deliver the Premises free and clear of prior tenants and their personal property, excepting any tenants who will remain on the Premises under a sublease with Lessee. City has provided Lessee with copies of the existing leases and use permits with the current tenants in the Building ("Existing Leases"). Lessee shall have the right, commencing upon the Effective Date of this Lease, to enter into negotiations with the tenants and permit holders under the Existing Leases for subleases for the Premises during the Lease Term. From and after the Effective Date of this Lease, City shall not enter into any new leases or use permits without the prior written consent of Lessee. The City shall notify Lessee in writing at least fourteen (14) days in advance of the date on which the City proposes to deliver possession of the Premises, and unless Lessee objects in writing and for good cause within ten (10) days after City's delivery of the notice, the Commencement Date shall be the date in the City's notice for delivery of possession. Notwithstanding the foregoing, in the event that the City fails to deliver possession on or before the date set forth in the City's notice, the Commencement Date shall be the date the City actually delivers possession of the Premises to Lessee. In the event that City fails to deliver possession of the Premises within sixty (60) days of receiving Lessee's Notice, Lessee may elect to (i) terminate this Lease upon twenty (20) days written notice to City, in which case the parties shall have no further rights or obligations under this Lease or (ii) delay the Commencement Date until such time as all of the Existing Leases have been terminated.

7.6 Sole Remedy. Termination of the lease under the circumstances and in the manner provided for in this Section 7 is intended by the parties to be the sole remedy for the failure of any of the contingencies to be satisfied.

8. Lessee's Operations.

8.1 Lessee Building Alteration Requirements. Lessee shall make any and all approved Initial Capital Improvements to the Premises necessary to obtain a certificate of occupancy within twenty-four (24) months after the Commencement Date. City shall provide no funds for the Initial Capital Improvements and Building alterations, except that Lessee shall be entitled to the Capital Improvement Rent Offset as set forth herein. If Lessee fails to obtain a certificate of occupancy within twenty-four (24) months after the Commencement Date due to Lessee's negligent acts or omissions or failure to diligently pursue such Initial Capital Improvements to completion, City may terminate this Lease upon sixty (60) days written notice to Lessee and may pursue any and all remedies available to the City at law. Notwithstanding the foregoing, in the event that



Lessee completes such alterations within the sixty (60) day period, this Lease shall continue in full force and effect.

8.2 Use of Premises. Lessee shall not use the Premises for any purpose other than the Permitted Uses. Lessee shall promptly comply, at its sole cost and expense, with such reasonable rules and regulations relating to the use of the Premises and the Park as City, from time to time, may promulgate. Any newly promulgated rules and regulations shall not materially interfere with Lessee's or any of its subtenant's use of the Premises for the Permitted Uses. 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 and City shall not permit objectionable odors to be emitted from the Premises or the Common Areas, as applicable, and shall not commit waste nor permit any waste to be committed thereon. Lessee shall not permit any accumulation of trash on or about the Premises and City shall not permit the accumulation of trash on or about the Common Areas. Lessee shall not create or contribute to the creation of a nuisance in either the Premises or the Park, and Lessee shall not engage in or permit any action that will disturb the quiet enjoyment of the Park by the general public. Notwithstanding the foregoing, any use of the Premises that falls within the Permitted Uses shall not be deemed a nuisance or to be a disturbance of the quiet enjoyment of the Park.

8.3 Coordination of Large Events. Magnuson Park has limited capacity to handle multiple events with large numbers of attendees. Therefore, if Lessee or its subtenant reasonably anticipates that more than 150 people at one time will attend any event on the Premises, the Lessee or its subtenant shall provide the City with no less than thirty (30) days advance written notice. If the City reasonably determines that the event would conflict with other high capacity events that have already been scheduled to take place at the same time, the City shall notify the Lessee or its subtenant within five (5) business days after receipt of the Lessee's or subtenant's notice. Upon receipt of such notice, the Lessee or subtenant must either reschedule the event or limit the attendance at the event to less than 150 attendees at one time. Lessee shall include language in its subleases for the Premises specifying the terms of this section.

8.4 Management and Operations Plan. Lessee shall prepare and submit to the Superintendent, for his or her approval (which shall not be unreasonably withheld, conditioned, or delayed), an annual plan for the management and operation of the Premises. The first plan shall be due on or before the date that is thirty (30) days prior to the Commencement Date, and plans for subsequent calendar years shall be due on or before October 1st of each year thereafter. The Management and Operations Plan shall include such information as the Superintendent may reasonably specify from time to time for comparable Park's facilities, but at a minimum shall include a description of the operations for the upcoming year; anticipated user fees/rental rate for the upcoming year; Lessee's marketing and outreach efforts for the past year and plans for the upcoming year; and information supporting Lessee's requested Public Benefit Program Rent Offset (described in Section 8.7). City shall be deemed to have approved the plan (and all uses and events noted therein) unless it rejects the plan in writing within sixty (60) days of receipt thereof. Lessee may amend or modify the plan from time to time with the prior



approval of the Superintendent, which approval shall not be unreasonably withheld, conditioned, or delayed. City shall be deemed to have approved the amended plan (and all uses and events noted therein) unless it rejects the amended plan in writing within forty-five (45) days of receipt thereof.

8.5 Alcohol sales. Lessee and its subtenants may sell beer and wine upon the Premises conditioned upon obtaining a valid permit from the Washington State Liquor Control Board and compliance with applicable laws, ordinances, rules and regulations. Lessee shall not permit any other variety of intoxicating beverages to be used, sold, consumed, or dispensed upon the Premises unless the Superintendent has approved such use, sale, consumption, or dispensing in advance, in writing, which approval shall not be unreasonably withheld, conditioned or delayed. Any such use sale, consumption or dispensing shall comply with applicable laws, ordinances, rules, and regulations then in force.

8.6 Exclusive Uses.

8.6.1 Restaurant. Provided that Lessee or a subtenant of Lessee opens and continuously operates at the Premises a restaurant that exceeds one thousand (1,000) square feet and is open to the public with interior seating, the City shall not permit the operation of a restaurant or other food and beverage service within Magnuson Park but outside of the Premises area, that is open to the public, is greater than one thousand (1,000) square feet and has interior seating areas in excess of twenty (20) seats dedicated to food and beverage customers, unless the Lessee gives its approval in writing; however, Building 27, may have interior seating area(s) of up to fifty (50) seats set aside exclusively for food and beverage customers without the written approval of Lessee. The City agrees to limit the food and beverage service operations within Building 27 to an operation that is intended to primarily serve the members and guests of the Building 27 tenants, that has no exterior signage, and that has no exterior seating set aside exclusively for food and beverage customers. This limitation, except as it related to Building 27, shall expire ten (10) years after the Commencement Date of the Lease.

8.6.2 Daycare. Provided that Lessee or a subtenant of Lessee opens and continuously operates, according to the standard of continuous operation described in Section 2.8, a child daycare business on the Premises, City shall not permit the operation of a child daycare business north of the National Oceanic and Atmospheric Administration (NOAA) access roadway in Magnuson Park. As used in this section, a child daycare business means a business that offers childcare on a regular basis for parents who may or may not be using Park amenities. Child daycare business does not include childcare services provided on a short term basis for visitors and users of Magnuson Park Facilities, nor does it include daycamps.

8.6.3 Health Club. Lessee acknowledges that City has a pending agreement with Arena Sports, the concessionaire in Building 27, that will grant the exclusive right to operate a health and fitness club of over 5,000 square feet at Magnuson Park as follows (the "Building 27 Provision"):



So long as this Agreement is in effect and Concessionaire continuously operates a health and fitness facility that exceeds 10,000 square feet on the Premises, City shall not permit the operation of another health and fitness facility that exceeds 5,000 square feet or a self service health club, self service gym, or self service fitness center of any size within Magnuson Park without Concessionaire's written approval. As used in the preceding sentence, "continuously" means that the health and fitness facility maintains the hours that a typical facility of its kind maintains, subject to occasional closings for holidays, maintenance and repairs. This provision shall cease to apply if Concessionaire is in default under this Agreement and such default has remained uncured beyond the applicable cure period.

During the Term of this Lease, Lessee shall abide by the Building 27 Provision, and shall defend, indemnify and hold the City harmless from any damage, claim or liability arising from Lessee's use of the Premises in a manner that violates the Building 27 Provision.

8.7 Public Benefit Programs. Given that the Premises are located within a public park with an ideal of universal access by the public to both facilities and programs, Lessee agrees to encourage all of its tenants to develop programs and services that provide free or discounted use of its facilities and services that are available to the general public regardless of income level (collectively, "Public Benefits"). To further this goal, Lessee may request a Public Benefit Program Rent Offset. In the annual Management and Operations Plan described in Section 8.4, Lessee may identify the amount of Public Program Rent Offset it is requesting for the subsequent calendar year and the justification for the request. The Superintendent will review the request with reference to the recognized Public Benefits described on Exhibit G, and will act reasonably in reviewing the request. Provided the proposed Public Benefits are consistent with the Public Benefits in Exhibit G and meet the goals stated in this Section, the Superintendent will approve such Public Benefits and will respond within 30 days stating the amount of the Public Program Rental Offset allowed for the upcoming calendar year. Any Public Program Rental Offset shall be credited against the Rent due, in monthly installments, in amounts not to exceed twenty-three percent (23%) of the Rent due in any given month. With each monthly payment, Lessee shall report to the DPR Finance Director the amount of Public Program Rental Offset being applied to Rent. At the end of each calendar year, the Lessee shall submit to the Superintendent a report detailing Lessee's actual performance in providing the public benefits proposed for that year (the "Public Benefits Report"). Following the Superintendent's review of the Public Benefits Report, the Parks Department shall submit it to the City Clerk's Office for filing with the Agreement.

8.8 Compliance with Laws; Nondiscrimination.

8.8.1 General Obligation. City warrants that as of the time of City's execution of this Lease, it has not received a notice of violation of any statute, ordinance, regulation or law at the Premises. 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. 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 renovation or improvement of the Premises or use or occupancy of the Premises.

8.8.2 Nondiscrimination. Without limiting the generality of Subsection 8.8.1, Lessee shall comply with any 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.

8.9 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 City in writing of any lien filed against the Premises within ten (10) days of the filing date of the lien. Notwithstanding the foregoing, the City acknowledges that Lessee intends to seek financing for the construction of the Capital Improvements (“Construction Financing”). If any lien is filed against the Premises due to Lessee’s use and occupancy of the Premises during the Lease Term (except to the extent of liens filed as a result of leasehold mortgages or leasehold deeds of trust evidencing the Construction Financing), Lessee shall either cause the same to be fully discharged and released of record within ten (10) days after City’s written demand therefor or, within such period, provide City with cash or other security acceptable to City in an amount equal to one and one-half (1½) times the amount of the claimed lien as security for its prompt removal. City shall have the right to disburse such security to cause the removal of the lien if City deems such disbursement necessary, in City’s sole discretion. The indemnification and defense obligation of this subsection shall survive the expiration or earlier termination of this Lease.

8.10 Hazardous Substances. As used in this Lease, “Hazardous Substances” means any substance or material 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.

8.10.1 Lead Paint and Asbestos. Lessee is hereby informed and does acknowledge that the Premises contain lead-based paints and asbestos and asbestos-containing materials. Lessee acknowledges that it has received the opportunity to participate in developing the scope of the Phase II assessment described in Section 6.1.2 and has had the opportunity to perform its own inspection for purposes of assessing the existence and quantity of lead paint and asbestos in the Premises. In the event the Lessee does not terminate the Lease under Section 7.1.2 after receiving the results of the Phase II, Lessee covenants and agrees (i) to be responsible for any remediation of lead-based paint or lead-based paint hazards and asbestos or asbestos containing materials on the Premises as required by federal, state, or local laws or regulations in connection with the



construction of any improvements to the Premises by Lessee; and (ii) that in its use and occupancy of the Premises, Lessee will comply, at its sole cost and expense, with all federal, state and local laws and regulations relating to lead-based paint, asbestos, and asbestos containing materials. Lessee may include in its Capital Improvement Rental Offset the cost of remediation or removal of lead-based paint and asbestos or asbestos containing materials existing on the Premises prior to the Commencement Date. Lessee further acknowledges and agrees that the City assumes no liability for damages for personal injury, illness, disability or death, to Lessee or to any other person, including members of the general public, to the extent caused by the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos or lead-based paint on the Premises after the date on which Lessee takes control and possession of the Premises, whether Lessee has properly warned or failed properly to warn the individual(s) injured.

8.10.2 Existing Hazardous Substances. Subject to the restrictions herein, as between the Lessee and the City, the City shall be responsible for the removal, disposal, or other remediation of any Hazardous Substances, excluding lead-based paint, asbestos or asbestos hazards, that exist on the Premises prior to the Commencement Date as required by federal, state, or local laws or regulations.

8.10.3 Hazardous Substances Covenants. Lessee acknowledges that it has received and reviewed the Quitclaim Deed recorded by the King County Recorder's Office under recording number 9905041194 whereby the United States of America granted Building 11 and other portions of Magnuson Park to the City (the "USA Deed"), including Section 8 – Hazardous Materials Covenants. Lessee shall ensure that at all times during the Lease Term, Lessee's use of the Premises and any use of the adjacent Park property will not violate the USA Deed's provisions regarding Hazardous Materials. Additionally, Lessee covenants that it will not undertake, without first obtaining the written approval of the Superintendent, any utility work, maintenance, construction, or work of any type that: (i) penetrates Building 11's foundation or interior slab, (ii) penetrates any type of pavement covering the ground in areas adjoining the Building or in the vicinity of the Building, or (iii) requires excavation of soil at depths in excess of 12 inches at any location. The Superintendent's approval of said work may be conditioned or restricted, in which case Lessee agrees to comply with the restrictions or conditions. Lessee shall include provisions in its subleases requiring its subtenants and licensees to comply with this Section.

8.10.4 Lessee Warrants. Lessee shall not, without City's prior written consent, keep on or about the Premises any substance designated as, or containing any Hazardous Substance except that Lessee and its subtenants may keep customary office, kitchen, cleaning and other supplies reasonably related to the Permitted Uses 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 therefore, 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 reasonable costs incurred by City and associated with City's inspections of the Premises and City's monitoring of Lessee's compliance with this Subsection, including City's attorneys' fees and costs, shall be due and payable to City within ten (10) days after City's demand therefore, if Lessee's material violation of this Section 8.10 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.

8.10.5 Indemnification. Lessee shall indemnify, defend and hold City harmless from any and all of the costs, fees, penalties, claims, liabilities, damages, charges and expenses assessed against, or imposed, upon City (as well as City's reasonable attorneys' fees and costs) as a result of (i) the failure of Lessee or its subtenants to comply with any of Lessee's obligations in this Section 8.10, and (ii) Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances on or about the Premises. City shall indemnify, defend and hold Lessee harmless from any and all of the costs, fees, penalties, claims, liabilities, damages, charges and expenses assessed against, or imposed, upon Lessee (as well as Lessee's reasonable attorneys' fees and costs) as a result of (i) any Hazardous Substances existing on or about the Premises prior to the Commencement Date, other than lead-based paint and asbestos or asbestos containing materials, and (ii) City's use, disposal, transportation, generation and/or sale of Hazardous Substances on or about the Premises during the Lease Term. The indemnification and defense obligations of this subsection shall survive the expiration or earlier termination of this Lease.

9. Utilities.

9.1 General. Starting on the Commencement Date, Lessee shall pay when due to the appropriate providers, all charges for utilities for the Premises, including but not limited to, electricity, water and sewer services and data and telecommunications services.

9.2 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 Parks' 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.

9.3 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, 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. 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. Notwithstanding the foregoing, (i) City shall use reasonable efforts to restore the services and (ii) in the event of an interruption of such services for more than twenty-four (24) hours due to Parks' negligent acts or omissions, Rent shall abate from the first day of the interruption until the interrupted utilities or services are fully restored.

10. Licenses and Taxes.

10.1 Lessee Responsibility. 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 Lessee's business conducted on the Premises and all personal property taxes and other impositions levied with respect to Lessee's 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).

10.2 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.

11. Alterations by Lessee.

11.1 Approval of Alterations. Lessee shall not make any alterations, additions or improvements in or to the Premises, including without limitation, the Initial Capital Improvements, without first submitting to City professionally-prepared plans for such work and obtaining Superintendent's prior written approval thereof, which approval shall not be unreasonably withheld, conditioned or delayed. Upon receipt of the plans, the City shall submit them to the State Historic Preservation Officer for his or her concurrent review and comment to the Superintendent prior to the Superintendent approving the plans. The City shall be deemed to have approved the plans unless it rejects the plans in writing within ninety (90) days. Notwithstanding the foregoing, Lessee may make improvements not to exceed Twenty-Five Thousand Dollars (\$25,000) in any twelve (12) month period without City's prior consent. 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 Washington State licensed contractor and in a manner that (a) is built in accordance with City-approved plans and any reasonable conditions imposed by



City in connection therewith; (b) is in conformity with other similar Parks facilities; (c) includes reasonably acceptable insurance coverage for City's benefit; (d) does not negatively affect the structural integrity of the Premises 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. In addition, Lessee shall meet with City's Green Building Team and shall use commercially reasonable efforts to incorporate green building practices and sustainable design into its design for the Building alterations.

11.2 Permits and Additional Construction Requirements. Lessee shall secure all governmental permits and approvals required for the Initial Capital Improvements and any and all Subsequent Improvements permitted under this Lease and shall comply and cause its contractors to comply with all other applicable governmental requirements and restrictions, and shall reimburse City for any and all expenses incurred in connection therewith. For any contract for the Initial Capital Improvements, Lessee shall require its contractors to pay a wage commensurate with prevailing wages as described in RCW 39.12. Except as provided in Section 15 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 11.

11.3 Historic Site Preservation. If Lessee wishes to undertake any installation, alteration, modification, repair, renovation or any other work on or to the exterior of the Premises, the Lessee shall comply with all applicable laws, regulations and ordinances concerning historic preservation, including the Sand Point Historic Properties Reuse and Protection Plan and City agrees to reasonably cooperate, at no cost to City, in Lessee's efforts to obtain the necessary approvals therefor.

11.4 Alterations as Property. 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 and Lessee's subtenant's moveable trade fixtures and appliances and equipment not permanently 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, in substantially the same form attached as Exhibit E, 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 the Initial Capital Improvements 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 as part of the Initial Capital Improvements. Additionally, upon City's request, Lessee shall deliver a full set of "as-built" plans of the Premises following completion of any additional major



renovations, repairs or improvements made to the Premises during the term of the Lease.

12. Care and Maintenance of Premises.

12.1 Lessee's Maintenance Obligation. Lessee shall maintain the Premises in a clean, orderly, and neat fashion, and to a standard found at other Parks properties similar in age, level of public use, and public visibility. Except as provided otherwise in this Section 12, Lessee shall be responsible for all minor and major maintenance of the Premises during the Term of this Lease including but not limited to repairs of cracking and breaking glass, regular exterior painting and masonry maintenance, roof repairs and replacement, and HVAC repair and replacement. If any portion of the Premises or any system or equipment in the Premises that Lessee is obligated to repair cannot be fully repaired or restored, Lessee shall promptly replace such portion of the Premises or system or equipment in the Premises ("Replacement") at Lessee's sole cost and expense. Notwithstanding the foregoing, if the total amount of the Capital Improvement Rent Offset related to any such Replacement would exceed the total amount of Rent due during the remainder of the Lease Term, Lessee and City shall use good faith efforts to agree to a plan for completing and paying for such Replacement (the "Replacement Plan"). In the event that Lessee and City can not agree to a Replacement Plan within thirty (30) days of their initial meeting to discuss the same, Lessee may terminate this Lease upon thirty (30) days prior written notice.

12.2 Prior Approval. Prior to making any expenditure in excess of twenty-five thousand dollars (\$25,000) necessary to comply with the terms and provisions of this Section, Lessee shall submit to City professionally-prepared preliminary plans for such work and obtain City's prior written approval thereof, which approval shall not be unreasonably withheld, conditioned or delayed. City shall be deemed to have approved the plans and specifications unless it rejects the plans and specifications in writing within thirty (30) days.

12.3 City's Maintenance Obligation. City shall maintain and repair the Common Areas in good order, condition and repair, at no cost to Lessee and to a standard found at other Parks properties similar in age, level of public use, and public visibility. City's work under this Section shall be accomplished with the least possible amount of interference to the conduct of Lessee's and Lessee's subtenants' businesses and, to the extent practicable, shall be done after normal business hours.

12.4 Joint Annual Inspection of Premises; Remedial Action Obligation. Lessee shall participate in an annual inspection of the Premises with City and shall take any and all action that is consistent with the terms of this Lease that City may reasonably specify as necessary to maintain and operate the Premises in a clean and safe manner.

12.5 City Remedy Upon Lessee's Failure to Maintain Premises. If Lessee fails to maintain the Premises in good order, condition, and repair, City shall give Lessee notice to undertake such work as is reasonably required to so maintain the Premises. If



Lessee fails to commence such work within thirty (30) calendar days after the effective date of City's notice and to diligently prosecute it to completion, then City shall have the right, at its option and in addition to all other remedies, to undertake such work and to invoice Lessee for the costs reasonably incurred by City in connection therewith. City shall have no liability to Lessee for any damage, inconvenience, or interference with Lessee's use of the Premises as a result of City's performing any such work, except to the extent of its or its agents or contractor's negligence or intentional misconduct.

12.6 Custodial Service for Premises. In addition, Lessee shall at its own expense, at all times, keep the entrance to the Premises and areas within ten (10) feet of the exterior Premises' walls in a neat, clean, safe, and sanitary condition comparable to other Parks' properties similar in age, level or public use and public visibility; and keep the glass of all windows and doors serving the Premises clean and presentable. Lessee shall require all subtenants to provide all necessary janitorial service to adequately maintain the inside of the Premises to a standard comparable to similar privately-owned commercial facilities. If, after City provides written notice to Lessee of Lessee's failure to comply with this Section, and Lessee fails to so comply within thirty (30) days after receipt of such notice, City, at its option, may, upon reasonable advance written notice, enter the Premises for the purpose of cleaning glass within, or providing janitorial service to, the Premises, 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.

12.7 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 lease 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.

13. Signs and Advertising.

13.1 On-Premises Signs. Lessee may install permanent exterior signage in accordance with the Signage Plan as set forth Section 7.3.1 and as otherwise approved by Superintendent.

13.2 Signs, Generally. Lessee may also inscribe, post, place, or display any sign, notice, picture, poster, or any other advertising matter anywhere within the interior of 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.



13.3 Recognition. In accordance with the approved exterior signage plan, Lessee, shall install one or more signs (to be provided by City) on or about the exterior of the Premises with a statement and the Parks logo recognizing Seattle Parks and Recreation's ownership of the Building and memorializing the history of the Building as part of the Sand Point Naval Air Station.

14. Surrender of Premises.

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 at the time of City's approval of such alterations pursuant to Section 11), reasonable wear and tear and casualty excepted. Notwithstanding the foregoing, in no event shall Lessee be required to remove any of the Initial Capital Improvements unless the City so directs as and when specified in Section 11.4. 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 14 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 the specified alterations, moveable trade fixtures and appliances and to redeliver the Premises on a timely basis.

15. Indemnification.

15.1 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, 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 negligent act or omission of Lessee or any subtenant, licensee, or assignee of Lessee, or of any officer, agent, employee, guest or invitee of any of the same in or about the Premises, except to the extent caused by the City's negligent acts, intentional misconduct or breach of this Lease. City agrees that the foregoing indemnity specifically excludes injury of any person or loss or damage to property resulting from conditions on property adjacent to the Premises. As used herein, "adjacent to the Premises" means areas outside the area where Lessee provides custodial service, as further described in Subsection 12.6. The indemnification and defense obligation of this subsection shall survive termination or expiration of this Lease. Lessee agrees that the foregoing



indemnity specifically covers actions brought by its own employees; as a result, the foregoing indemnity is specifically and expressly intended to constitute a waiver of Lessee's immunity under Washington's Industrial Insurance Act, RCW Title 51, but only as to City and 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 15.

15.3 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 building facilities or services; broken glass; water leakage; the collapse of any building component, except to the extent caused by the City's negligent acts or omissions, intentional misconduct or breach of this Lease.

15.4 Limitation of 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.

15.5 City's Indemnification. Except as otherwise provided in this section, City shall indemnify, defend (using legal counsel reasonably acceptable to Lessee) and save Lessee, Lessee's officers, agents, employees and contractors, harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including Lessee'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) City's breach of its obligations hereunder, or (ii) any negligent act or omission of City or of any officer, agent, employee, guest or invitee of City in or about the Park, except to the extent caused by the Lessee's negligent acts, intentional misconduct or breach of this Lease.



The indemnification and defense obligation of this subsection shall survive termination or expiration of this Lease. City agrees that the foregoing indemnity specifically covers actions brought by its own employees; as a result, 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, but only as to Lessee and to the extent necessary to provide Lessee with a full and complete indemnity from claims made by City and its employees, to the extent of their negligence. **CITY AND LESSEE ACKNOWLEDGE THAT THEY SPECIFICALLY NEGOTIATED AND AGREED UPON THE INDEMNIFICATION PROVISIONS OF THIS SECTION 0.**

15.5 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.

16. **Insurance**.

16.1 Minimum Insurance Coverages and Limits of Liability. Beginning on the Commencement Date, and thereafter throughout the entire Lease Term, Lessee shall maintain in full force and effect, at no expense to City, insurance coverages and limits of liability of not less than those specified below:

16.1.1 COMMERCIAL GENERAL LIABILITY ("CGL") insurance including:

- Premises/Operations
- Products/Completed Operations
- Personal/Advertising Injury
- Contractual Liability
- Stop Gap/Employers Liability
- Independent Contractors Liability
- Host Liquor Liability

Such insurance must provide minimum limits of liability of \$2,000,000 each occurrence combined single limit bodily injury and property damage ("CSL") except:

- \$1,000,000 each offense Personal/Advertising Injury
- \$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);



16.1.2 Automobile Liability insurance, including coverage for owned, non-owned, leased or hired vehicles, as appropriate, with a minimum limit of liability of \$2,000,000 CSL;

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

16.1.4 Property Insurance under which (i) the Premises, (ii) Lessee's furniture, fixtures, equipment and inventory ("Business Contents") and (iii) all alterations, additions and improvements that Lessee makes to the Premises ("Tenant Improvements") are insured throughout the Lease Term in an amount equal to the current replacement cost thereof and not subject to any coinsurance clause against all risks of direct physical loss or damage, including earthquake and flood. Such insurance shall also include coverage for loss from business interruption and extra expense, with sufficient coverage and limits of liability to provide for the payment of rent and other fixed costs during any interruption of Lessee's business due to casualty covered by Property Insurance. The Premises shall be insured at the inception of coverage on the Commencement Date for a value of not less than \$12,433,260. Prior to commencing any Capital Improvements, Lessee's insurance broker of record shall survey the Premises and, incorporating the proposed Capital Improvements, perform a Marshall & Swift analysis to calculate the full current replacement cost of the Premises after the completion of the Capital Improvements (the "Completed Value"). The Completed Value shall be subject to the City Risk Manager's review and approval prior to the commencement of the Capital Improvements and shall be used (1) during the period of construction as the amount of builder's risk property insurance and (2) thereafter as the replacement cost amount of property insurance on the Premises, subject however to annual adjustment to current replacement valuation as agreed by the City upon each insurance policy anniversary. The deductible for said property insurance shall not exceed \$10,000 without the City's written approval, which approval shall not be unreasonably withheld, conditioned or delayed; however, the deductible for earthquake insurance only may be an amount up to ten percent (10%) of the replacement cost of the Building.

16.2 Subtenant's Minimum Insurance Coverages and Limits of Liability. Beginning on the Commencement Date, and thereafter throughout the entire Lease Term, prior to any subtenant's beneficial occupancy of the Premises, Lessee shall cause such subtenant to maintain in full force and effect, at no expense to City, CGL and Automobile liability insurance coverages as specified in Subsections 16.1.1, 16.1.2, and 16.3, provided that subtenant(s) may have CGL and Automobile limits of liability of not less than \$1,000,000 CSL that complies with the General Requirements of Subsection 16.4.



16.3 Lessee's Contractors Minimum Insurance Coverages and Limits of Liability. Prior to Lessee permitting any of its contractors to mobilize on City property or the Premises for the purpose of any structural renovation, new construction or Capital Improvements, Lessee shall require in writing that the contractor (i) indemnify and hold the City of Seattle harmless to the same extent to which Lessee is required to do so under Section 15 (Indemnification), and (ii) maintain in full force and effect, at no expense to City, CGL and Automobile liability insurance coverages as specified in Subsections 16.1.1, 16.1.2, and 16.1.3, provided that contractor may have limits of liability of not less than \$1,000,000 CSL that complies with the General Requirements of Subsection 16.4.

16.4 General Requirements Regarding Lessee's, Lessee's Subtenants, and Lessee's Contractor's Insurance (Not Applicable to Workers Compensation):

16.4.1 The liability insurance required by Subsections 16.1.1 (CGL insurance) and 15.1.2 (Automobile Liability insurance) shall include the City of Seattle as an additional insured for primary and non-contributory limits of liability.

16.4.2 The limits of liability specified in Subsection 16.1.1 and 16.1.2 for CGL and Automobile insurance are minimum limits of liability only and, aside from the limits of liability of each policy, shall not be construed to limit the liability of Lessee or any of its insurers. The City shall be an additional insured for the full available limits of liability under each policy Lessee's insurance program, whether such limits are primary, excess, contingent or otherwise. For the purpose of this Subsection 16.4.2, the term "insurance" shall include self-insurance, including but not limited to any form of risk financing.

16.4.3 The property insurance required by Subsection 16.1.4 as respects the Premises only (excluding Business Contents and Tenant Improvements) shall include the City of Seattle either as an additional insured or additional named insured and shall also provide a waiver of subrogation in favor of the City. Separately, Lessee shall waive all rights of recovery in favor of the City.

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

16.4.5 No insurance policy may 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 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) (e), for both liability and property insurance the City is deemed to be a "mortgagee, pledgee, or other person shown by the policy to have an interest in any loss which may occur thereunder." Written notice shall be mailed to the City of Seattle (Attention: Risk Management), P. O.



Box 94669, Seattle, WA 98124-4669 or delivered electronically by fax to number (206) 470-1270 or by email to riskmanagement@seattle.gov.

16.4.6 Any deductible or self-insured retention (“S.I.R.”) in excess of \$10,000 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.

16.4.7 The City shall have the right to periodically review the appropriateness of insurance coverages and limits of liability stated herein in view of inflation and/or changing industry conditions and to require a reasonable increase in such coverage or limits upon ninety (90) day prior written notice.

16.5 Evidence of Insurance (Does not Apply to Workers Compensation). As evidence of insurance coverage, on or before the Commencement Date, and thereafter, not later than five (5) days prior to the expiration or renewal date of each such policy, the following certification must be delivered to the City at its address as specified in Subsection 1.7 hereof with a copy delivered electronically by fax to fax number (206) 470-1270 or by email to riskmanagement@seattle.gov:

16.5.1 A copy of the CGL additional insured policy provision(s), whether blanket or designated additional insured language, shall be provided that documents that the City of Seattle is (i) an additional insured, and (ii) that such additional insured status is primary and non-contributory with any insurance or self-insurance that the City maintains. If this documentation is not available because policies have not been issued, received and/or reviewed, a binder of insurance that evidences additional insured status for primary and non-contributory limits may be substituted.

16.5.2. Documentation shall be provided that coverage will not be cancelled without at least thirty (30) day written notice of such cancellation, except at least 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).

16.6 Waiver of Subrogation. City and Lessee release and relieve the other, and waive their entire right of recovery for loss or damage to property located within or constituting a part or all of the Premises to the extent that the loss or damage is covered by (a) the injured party's insurance, or (b) the insurance the injured party is required to carry under this Section 16, whichever is greater. This waiver applies whether or not the loss is due to the negligent acts or omissions of City or Lessee, or their respective officers, directors, employees, agents, contractors, or invitees. Each of City and Lessee



shall have their respective property insurers endorse the applicable insurance policies to reflect the foregoing waiver of claims, provided however, that the endorsement shall not be required if the applicable policy of insurance permits the named insured to waive rights of subrogation on a blanket basis, in which case the blanket waiver shall be acceptable.

16.7 Assumption of Risk. The placement and storage of its contents and other personal property in or about the Premises shall be the responsibility, and at the sole risk, of Lessee.

17. Assignment or Sublease.

17.1 City Consent Required. Except as provided in the following sections, 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, which consent shall not be unreasonably withheld, conditioned or delayed. 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.

17.2 Exceptions to City Consent. Notwithstanding the foregoing, after the tenth (10th) year of the Lease Term, Lessee, upon the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed, may assign this Lease to a third party ("Assignee") and shall be released from liability hereunder, provided that City shall not withhold its consent to such assignment and release if the Assignee can demonstrate the financial strength, operating experience and leasing capabilities reasonably necessary for the successful operation of the Premises. City acknowledges and agrees that Lessee intends to sublease all of the Premises to a number of subtenants throughout the Lease Term. City's consent shall not be required for subleases of all or any portion of the Premises for a Permitted Use and a term of less than seven (7) years; provided however, that such subleases shall be in writing, shall conform to the requirements of this Lease, including insurance requirements, and shall in no event relieve Lessee of any of its obligations to City under this Lease, unless otherwise approved by City, which approval shall not be unreasonably withheld, conditioned or delayed.

18. Assignment by City.

If City sells or otherwise transfers the Premises, such purchaser or transferee 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, provided that such successor accepts the Premises subject to the terms, conditions and covenants of this Lease, assumes and agrees to perform all of City's obligations under this Lease and recognizes Tenant's right to the use and possession of the Premises pursuant to the terms of this Lease as long as Tenant is not in default hereunder beyond any applicable notice and cure period.

19. Destruction.

If the Premises are rendered partially or totally untenable by fire or other casualty, and if the damage is repairable within twenty-four (24) months from the date of the occurrence, then if insurance proceeds or self-insurance coverages are available to pay the full cost of the repairs (except for the deductible amounts), Lessee shall repair the Premises with due diligence. If the damage to the Premises cannot be repaired within twenty-four (24) months from the date of the occurrence, either party may terminate this Lease upon sixty (60) days' written notice. If thirty percent (30%) or more of the Premises is destroyed or damaged, Lessee may elect to terminate this Lease upon written notice to City no later than thirty (30) days after the occurrence. In the event of damage by casualty, Lessee shall, at its sole cost and expense, repair all damage to its own personal property. In the event this Lease is terminated as a result of casualty to the Premises, (i) the City shall retain the insurance proceeds covering the loss of the Premises except to the extent of the Capital Improvement Rental Offset not previously offset against Rent at the time of the casualty, which shall be paid to Lessee upon the condition that Lessee has maintained the insurance coverage required under Section 15.1.4 of this Lease, and (ii) Lessee shall retain the insurance proceeds payable under coverage of Lessee's personal property and fixtures and any coverage for business interruption obtained by Lessee pursuant to this Lease or in addition to the coverage required herein. Except in the event of City's 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 Premises.

20. Eminent Domain.

20.1 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 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 Lessee, 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



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, Lessee, at its expense, shall proceed with all reasonable dispatch to restore, to the extent of available proceeds paid to Lessee 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 therefore. The Rent payable 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.

20.2 Award. 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, except to the extent of the Capital Improvement Rental Offset not previously offset against Rent at the time of the award. 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. Notwithstanding the foregoing, Lessee, shall have the right to claim from the condemning authority all compensation that may be recoverable by Lessee on account of any loss of income stream, diminished value of business or losses 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.

21. Default by Lessee.

21.1 Definition. The occurrence of any of the following shall constitute a default ("Default") by Lessee: (a) a failure to pay Rent or other charge within five (5) days after written notice thereof from City; (b) the abandonment or vacation of the Premises or the failure of Lessee or its permitted subtenants to occupy and operate the Premises) in accordance with this Lease and failure to reoccupy them within thirty (30) days after City (i) delivers a written notice to Lessee's notice address set forth in Section 1.7 above demanding such re-occupancy, and (ii) mails by certified or registered mail a copy of the notice to any forwarding address given by Lessee to City in writing; (c) a violation, breach, or failure to keep or perform any other term, provision, covenant, or any obligation of this Lease for a period in excess of thirty (30) days after written notice thereof from City (provided that if the nature of Lessee's obligation 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); or (d) 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.



21.2 City Remedies. If Lessee has defaulted and such Default continues or has not been remedied to the reasonable satisfaction of the Superintendent within the notice and cure periods set forth above, then City shall have the following nonexclusive rights and remedies at its option: (1) 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; or (2) to terminate this Lease.

21.3 Reentry by City Upon Termination. Upon the termination of this Lease, City may reenter the Premises, take possession thereof, and remove all persons there from, 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 there from 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.

21.4 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 there from, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any reasonable costs incurred in authorizing others the use and occupancy of the Premises, and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington. The provisions of this Subsection shall survive the expiration or earlier termination of this Lease.

22. 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, Lease, 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.

23. Default by City.

23.1 Definition. 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.

23.2 Lessee's Remedies. Lessee's Remedies. Upon City's default, Lessee may, without waiving any claim for damages for breach of Lease or any other rights or remedies at law or in equity that may be permitted from time to time by the laws of the State of Washington, terminate this Lease if Lessee's use and occupancy of the Premises or a material portion thereof are materially interfered with, prevented or made dangerous and pursue any other remedy that may be permitted by law or equity.

24. Attorneys' Fees.

If legal proceedings are initiated to enforce any term of this Lease, to recover any Rent due under this Lease, for the breach of any covenant or condition of this Lease, or for the restitution of the Premises to City and/or eviction of Lessee, each party shall bear its own attorneys' fees.

25. Access by City.

City and its agents shall have the right to enter the Premises (1) at any reasonable time to examine the same, and to show them to prospective purchasers or lenders, and (2) upon forty-eight (48) hours notice to make such repairs, alterations, improvements, additions or improvements to the Premises as City may deem necessary or desirable or to show the Premises to prospective tenants during the last year of the Lease Term or the Extended Term, if applicable. 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 therefore, 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. Lessee shall change the locks to the Premises only through City and upon paying City for all actual and reasonable costs related thereto. Notwithstanding the foregoing, City shall not unreasonably interfere with the use and occupancy of the Premises by Lessee or any of its subtenants.

26. 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; provided that City may, by written notice to Lessee delivered not less than thirty (30) days prior to the next due rental payment, increase such rental rate to one hundred fifty percent (150%) of the Rent for the last month of Lease Term. 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 section shall survive expiration or termination of this Lease.

27. Notices.

Any notice, demand or request required hereunder shall be given in writing to the party's address set forth in Subsection 1.7 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.

28. Successors or Assigns. All of the terms, conditions, covenants of this Lease shall extend to and be binding upon City, Lessee and, subject to the terms of Sections 16 and 17, 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.

29. 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 Leases under this Lease.



30. **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.

31. **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.

32. **Counterparts.** The parties may execute this Lease in counterparts, which, taken together, constitute the entire Lease.

33. **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.

34. **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.

35. **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 the Effective Date, as defined in Section 1.2.

36. **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."

37. **Standards.** Lessee recognizes that, although it is operating its facilities as an independent operator, City is organized and exists in part 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, 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. In the event that City determines that Lessee is not complying with the terms of this Section 36, City shall provide written notice thereof to Lessee and the parties shall reasonably cooperate to meet and resolve the same.



38. City's Control of Premises and Vicinity. City acknowledges that convenient access to the Premises from public highways and the visibility of the Premises from Sand Point Way NE are vital to Lessee's use of the Building. All common and other facilities provided by City in or about the Premises are subject to City's exclusive control and management by City except as otherwise stated herein. Accordingly, provided City does not unreasonably or adversely interfere with Lessee's use, access to, and occupancy of the Premises, City may do any and all of the following (among other activities in support of City's or other municipal objectives), all without incurring any liability whatsoever to Lessee:

38.1 Change of Vicinity. City may increase, reduce, or change in any manner whatsoever the number, dimensions, and locations of the walks, buildings, landscaping, exhibit, and service area in the vicinity of, but not including, the Premises;

38.2 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; provided that the City may not reduce the number of parking spaces or move the location of the parking area as shown on the attached Exhibit C ("Parking Area").

38.3 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.

38.4 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.

38.5 Promotion of Water-Oriented Activities and Implementation of Master Plan. Lessee's interest in entering into this Lease is based, in part, on City's continued emphasis on water-oriented uses for the Northshore Recreation Area in Magnuson Park. City hereby agrees not to substantially modify its Master Plan for the vicinity adjacent to the Premises, as depicted on Exhibit F, without the first consulting with Lessee and including Lessee and Lessee's subtenants in City's planning process for such modifications.

38.6 Change of Businesses. Except as provided in Sections 7.6 and 37.5 above, 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.

39. Lessee's Records. Lessee shall keep true, full, and accurate books of account setting forth Lessee's receipts, together with any other information that will affect the determination of Rent, Additional Rent, and additional charges. City shall be allowed after five (5) days' prior written notice to Lessee to inspect Lessee's books of account at Lessee's office and to procure audits thereof by an auditor at City's sole cost and expense (except as provided below). If in the reasonable judgment of such auditor Lessee's books of account



are incomplete or improperly reflect the information necessary for an accurate determination of the Rent, Additional Rent, or additional charges, or if the audit shall show that the reports submitted by Lessee understated Lessee's receipts by more than three percent (3%) thereof for any year covered by the audit, the reasonable costs and fees for such audit shall be paid by Lessee to City. If an audit discloses any willful or intentional effort to understate Lessee's receipts, then, at City's option, Lessee may be required to surrender possession of the Premises under the provisions of Section 21 of this Lease. Lessee shall retain all books of accounting and any other information that will affect the determination of Rent, Additional Rent, and additional charges for a period of six full calendar (6) years after following the completion of each calendar year during the Term, and Lessee shall make them available for inspection at Lessee's office within ten (10) days of City's prior written demand therefore. Lessee's obligations under this section shall survive expiration or termination of this Lease.

40. Miscellaneous.

40.1 Entire Lease; Applicable Law. This Lease and the Exhibits attached hereto, and by this reference incorporated herein, set forth the entire Lease of City and Lessee concerning the Premises, and there are no other Leases 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.

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

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

CITY:

LESSEE:

THE CITY OF SEATTLE

BUILDING 11, LLC

By: _____
Print Name/Title: _____
Department of Parks and Recreation

By: _____



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 **BUILDING 11, LLC**, 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 _____.



STATE OF WASHINGTON – KING COUNTY

--SS.

230158
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.

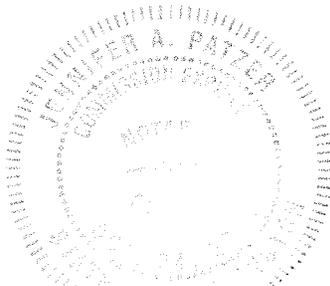
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:122813-15,17,19-20,22

was published on

10/14/08

The amount of the fee charged for the foregoing publication is the sum of \$ 98.35, which amount has been paid in full.



Affidavit of Publication

M. J. [Signature]

Subscribed and sworn to before me on
10/14/08 *[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 September 29, 2008, and published here by title only, will be mailed, at no cost, on request for two months after this publication. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 122822

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

ORDINANCE NO. 122820

AN ORDINANCE relating to the Seattle Center Department; authorizing the Seattle Center Director to execute a lease agreement with Mahuja International, LLC d/b/a Bainbridge Island Coffee Roasters for space in the 5th Avenue North Garage at Seattle Center, and ratifying and confirming certain acts.

ORDINANCE NO. 122819

AN ORDINANCE relating to City employment; authorizing the Mayor to sign and/or execute a collective bargaining agreement by and between the International Brotherhood of Teamsters, Local 117 Admissions unit to be effective through December 31, 2010; and providing payment therefor.

ORDINANCE NO. 122817

AN ORDINANCE relating to the Surplus Allen School/Phinney Neighborhood Center; authorizing the Mayor to enter into a contract with the Phinney Neighborhood Association; and removing a budget proviso that restricted an appropriation in the 2008 Adopted Budget contingent upon execution of such contract.

ORDINANCE NO. 122815

AN ORDINANCE relating to the High Point Neighborhood Center; lifting a budget proviso and authorizing the Seattle Department of Parks and Recreation to purchase and accept a Restrictive Covenant and Public Access Rights to programs, services and community space at the Neighborhood House's future High Point Neighborhood Center.

ORDINANCE NO. 122814

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent to enter into a Lease Agreement with Building 11 LLC for the purpose of renovating Building 11 and offering multiple uses and recreational opportunities in Building 11 at Magnuson Park; and exempting the use of a portion of the Building from the provisions and requirements of Ordinance 118477.

ORDINANCE NO. 122813

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent to enter into a Concession Agreement with Arena Sports Magnuson Park LLC to renovate and provide indoor participant sports programs in Building 27 at Warren G. Magnuson Park.

Publication ordered by JUDITH PIPPIN,
City Clerk

Date of publication in the Seattle Daily
Journal of Commerce, October 14, 2008.

10/14(230158)