Ordinance No. 123791

Council Bill No. 117333

AN ORDINANCE relating to the Seattle Center; authorizing the Director of Seattle Center to execute a new ten-year lease agreement with The Children's Museum, Seattle for the use and occupancy of certain space in the Center House.

Related Legislation File:

Date Introduced and Referred: Nov. 7, 2011	To: (committee): Parks and Seattle Center
Date Re-referred: Dec 1, 2011	To: (committee): Seattle Parks & Center
Date Re-referred:	To: (committee):
Date of Final Action: 12.19.11	Date Presented to Mayor: 12.20.11
Date Signed by Mayor: 12.28.11	Date Returned to City Clerk: 12.29.11
Published by Title Only X Published in Full Text	Date Vetoed by Mayor:
Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by: SgBagshaw

Committee Action:

Date	Recommendation	Vote
12.1.11	Second briefing	
12.15.11	amend	2 aye SB, BG
12.15.11	adopt	2 aye

This file is complete and ready for presentation to Full Council.

Full Council Action:

Date	Decision	Vote
12.19.11	Passed	9.0

LAW DEPARTMENT

Tom Israel
CEN The Children's Museum ORD
December 15, 2011
Version #3

ORDINANCE 123791

AN ORDINANCE relating to the Seattle Center; authorizing the Director of Seattle Center to execute a new ten-year lease agreement with The Children's Museum, Seattle for the use and occupancy of certain space in the Center House.

WHEREAS, The Children's Museum, Seattle (TCM) and the City entered into a lease agreement in 1995, authorized by Ordinance 117879; and

WHEREAS, since October 1, 2010, TCM has been a month-to-month tenant in the Seattle Center House pursuant to a holdover clause in the original lease; and

WHEREAS, the City recognizes that TCM provides an important program to support young people with age appropriate developmental activities; and

WHEREAS, TCM is currently in arrears on its rental obligations, but is committed to repaying its outstanding debt to the extent it is able; and

WHEREAS, the new proposed lease terms recognize the value of the public benefits provided by TCM, while also addressing the back rent owed to the City and requiring TCM to satisfy such debt no later than December 31, 2021; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Seattle Center Director or his designee is authorized to execute, for and on behalf of the City of Seattle, a lease agreement with The Children's Museum, substantially in the form of the agreement attached hereto as Attachment 1 and identified as "Seattle Center Lease Between the City of Seattle and The Children's Museum, Seattle."

Section 2. Any act consistent with the authority in the ordinance taken after its passage and prior to its effective date is hereby ratified and confirmed.

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

COUNCIL CLERK

Passed by the City Council the 19th day of December, 2011, and signed by me in open session in authentication of its passage this 19th day of December, 2011.

President _____ of the City Council

Approved by me this 28 day of December, 2011.

Michael McGinn, Mayor

Filed by me this 29th day of December, 2011.

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Seattle Center Lease Between The City of Seattle and The Children's Museum, Seattle

Attachment 1

SEATTLE CENTER LEASE
BETWEEN
THE CITY OF SEATTLE
AND
THE CHILDREN'S MUSEUM, SEATTLE

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LEASE

THIS LEASE ("Lease") is entered into by and between THE CITY OF SEATTLE ("City"), a city of the first class of the State of Washington, acting by and through its Seattle Center Department and the Director thereof ("Director"), and the CHILDREN'S MUSEUM, SEATTLE ("Museum") a not-for-profit corporation organized under the laws of the State of Washington.

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

1. **Premises**.

1.1 Premises. The "Premises" are defined as certain portions of the First Floor of the building commonly known as the Seattle Center House, Seattle, King County, Washington 98109, located on the following property: Lots 1-12, Block 46, D.T. Denny's Third Addition to North Seattle, according to plat recorded in Vol. 1 of Plats, Page 145, Records of King County, Washington, which portions are identified by cross-hatching on the floor/site plans depicted on Exhibit 1. The approximate area of the Premises is 32,487 square feet.

1.2 Grant. The City hereby leases the Premises to the Museum, and the Museum hereby leases the Premises from the City, all subject to and in accordance with the terms and provisions of this Lease.

1.3 Condition. Museum is familiar with and has inspected the Premises and accepts the same from the City in their "AS IS" condition. The City disclaims all representations, statements, and warranties, expressed or implied, with respect to the condition of the Premises or the use and occupancy authorized other than those contained in this Lease.

1.4 Permitted Use. Museum shall use the Premises to house and operate its museum program, administrative offices and technical support facilities and other incidental purposes related thereto or to its principal business as a children's museum.

1.4.1 General Uses Allowed. The Premises shall be used for, and as the principal location of, the operations of the Seattle Children's Museum including but not limited to its Museum Store. Museum shall not increase the size of its retail merchandise sales and storage area on the Premises by reducing, without the prior written approval of the Director, the extent of the Premises used for Museum exhibits and programming to less than 22,000 square feet. Throughout the term of this Lease, Museum shall continue to provide quality exhibits and quality programming consistent with the Museum mission.

1.4.2 Use of Premises. Museum shall use the Premises only for the Permitted Use. As City's willingness to enter into this Lease with Museum was predicated, in part, on the nature of Museum's business, and the compatibility of such business with the use of the remainder of Seattle Center, Museum shall not use or permit the use of the Premises for any other business, or purpose, or under any other name, without the prior, written consent of the Director. Museum shall comply, at its sole cost and expense, with such reasonable rules and regulations relating to the use of the Premises and Seattle Center as the City, from time to time, may promulgate. Museum's use of the Premises is further limited by and subject to all of the provisions of this Lease, including but not limited to Section 6 (Restrictions on Use of Premises), Section 7 (Compliance with Laws), Section 8 (Compliance with Environmental Laws), and Section 12 (Care of Premises) herein.

2. **Lease Term; Prior Lease Terminated; Options to Extend**.

2.1 Initial Term. This Lease shall be for a term ("Initial Term") of ten (10) years, beginning on January 1, 2012 ("Commencement Date"), and ending on December 31, 2021, unless terminated earlier pursuant to the provisions hereof, or unless extended as provided in Section 2.3 below. As used in this Lease, "Lease Term" means the Initial Term and, if established by exercise of any option to extend hereunder, the Extended Term.

2.2 Prior Lease Terminated. The City and Museum entered into a lease for the same Premises on or about October 1, 1995 ("Prior Lease"). Notwithstanding the execution of this Lease, the Prior Lease shall remain in effect through December 31, 2011. Effective as of January 1, 2012, the Prior Lease shall automatically terminate and shall have no further effect, except provisions of the Prior Lease that expressly survive expiration or termination.

2.3 Option to Extend Lease. Museum shall have the option to extend ("Extension Option(s)") the Lease Term for up to two (2) periods of five (5) years each ("Extended Term(s)") on the same terms and conditions set forth herein, except for the provision of Utility Services as set forth in Section 9. In each instance, Museum shall be required to give City written notice of its election to exercise one of the Extension Options at least one hundred eighty (180) days prior to the commencement of the applicable Extension Option period. Notwithstanding anything in this Lease to the contrary, if Museum is in default of any obligation under this Lease and has not cured the same prior to the commencement of the Extension Option period, the City may in its sole discretion refuse to extend the Lease term, extend the term upon conditions or take such further action as it shall choose.

3. **Rent.**

3.1 Annual Rent. Museum shall pay to City a total Annual Rent of $190,000.00, (plus adjustments pursuant to Section 3.5, if applicable). Said Annual Rent shall be in a combination of (i) Monthly Cash Rent made pursuant to Section 3.2 of this Lease; and (ii) any Public Benefit Rent that may apply, pursuant to Section 3.3 of this Lease; and/or (iii) any additional cash payments required to total $190,000.00 (plus adjustments pursuant to Section 3.5, if applicable). Annual Rent shall be prorated on a daily basis for any partial Lease year within the Lease Term. Unless otherwise provided herein, Annual Rent is due and payable on or before January 1 of each and every year for the preceding year's occupancy of the Premises.

3.2 Monthly Cash Rent. Beginning on the Commencement Date and thereafter, in advance, on or before the first day of each month throughout the Lease Term, Museum shall pay to City at the address and to the account specified by City, without notice or demand or any setoff or deduction whatsoever, in lawful money of the United States, monthly payments of $7,500.00. If the Annual Rent amount increases pursuant to Section 3.5, the $7,500.00 monthly payments shall increase by the same percentage.

3.3 Public Benefit Rent. Museum may provide up to $100,000.00 annually in Public Benefit Rent, as long as Museum meets all of the requirements of this Section 3.3. If the Annual Rent amount increases pursuant to Section 3.5, the $100,000.00 annual limit of Public Benefit Rent shall increase by the same percentage. As used in this Lease, "Public Benefit Rent" means Museum's actual labor, materials, and other costs expended to provide public programming and benefits. Types of programming eligible for Public Benefit Rent include, but are not limited to: (i) sponsorship of programs and events on the Premises for public benefit; (ii) free or discounted memberships and museum admissions; and (iii) other programs providing a direct benefit to the public, as determined and approved by the Director pursuant to this Section 3.3. In no event, however, shall Public Benefit Rent reduce Museum's annual cash payments to less than $90,000.00 (plus adjustments pursuant to Section 3.5, if applicable), nor may Public Benefit Rent be used to reduce Museum's mandatory Monthly Cash Rent of $7,500.00 (plus adjustments pursuant to Section 3.5, if applicable).

3.3.1 Museum's Annual Public Benefit Rent Proposal. On or before January 31 of each calendar year during the Term, Museum shall provide to the City a written proposal that details the programs or services Museum proposes as eligible for Public Benefit Rent in the coming year, along with the estimated value of each program or service ("Annual Public Benefit Rent Proposal"). The total value of all programs and services should be at least $100,000.00, not including any Additional Public Benefits proposed in lieu of Museum's payment of Utility Services, pursuant to Section 9.2 herein.

3.3.2 City's Approval of Annual Public Benefit Rent Proposal. On or before February 28 of each calendar year during the Term, the Director shall review the Museum's Annual Public Benefit Rent Proposal, and either approve or disapprove of each proposed Public Benefit Rent program or service, plus any Additional Public Benefits proposed in lieu of Museum's payment of Utility Services, pursuant to Section 9.2 herein. In the event any program or service is not approved, Museum shall, within thirty (30) days of receiving such disapproval from the Director, submit for the Director's approval an alternative proposal. Within thirty (30) days of receipt of Museum's alternative proposal, the Director shall review it as provided in this Section, and this process may continue until the Director has approved all proposed programs and services. However, any program or service that has not been approved by the Director on or before June 1 of each year may not be used as Public Benefit Rent for that year. Rather, for that year, Museum shall be responsible for making additional cash payments required to total $190,000.00 (plus adjustments pursuant to Section 3.5, if applicable).

3.3.3 Museum's Annual Public Benefit Rent Statement. On or before December 1 of each calendar year during the Term, Museum shall provide to the City an Annual Public Benefit Rent Statement, which shall set forth in writing the value of the program(s) and service(s) actually provided in the calendar year to date, and the total amount of the Public Benefit Rent provided for that calendar year ("Annual Public Benefit Rent Statement"). The Annual Public Benefit Rent Statement shall be supported by an itemized statement from the Museum, an example of which is attached as Exhibit 2 hereto, and shall also include receipts and/or gate receipts, with corresponding dollar values, and any other relevant supporting documents to verify the calculation. Only programs and services that have been claimed in Museum's Annual Public Benefit Rent Proposal and approved by the Director may be included in the Annual Public Benefit Rent Statement. Museum shall keep accurate records and accounts of all matters upon the basis of which the accounting is calculated and such accounts and records shall be subject to inspection and copying by the City pursuant to Section 4.1 herein.

3.3.4 City's Approval of Annual Public Benefit Rent Statement. Within thirty (30) days of receipt of the Museum's Annual Public Benefit Rent Statement, the Director shall review it, and may request more information, approve the entire amount, or provide Museum with a written statement indicating which amounts have not been approved. In the event any amount claimed by Museum is not approved, Museum shall pay the City the amount of the disapproved program or service as Annual Rent, no later than January 1 of the following year, pursuant to Section 3.1. If the Director approves the accounting of Public Benefit Rent provided by Museum, up to $100,000.00 will be applied as an offset against the total Annual Rent due in the same calendar year that the approved public benefits were provided. Museum acknowledges that the maximum amount of Annual Rent payable through public benefits under this section is $100,000.00 annually, even if the actual value of

Museum's programs and services exceeds that amount. Museum shall not be entitled to carry forward any excess public benefits provided in any calendar year, nor shall Museum be entitled to any refund. Additionally, if Museum fails to provide at least $100,000.00 in Public Benefit Rent in any calendar year, Museum will pay the balance due in cash by January 1 of the immediately succeeding calendar year.

3.4 Public Benefit Rent for the years 2010 and 2011. Museum has the option of submitting for the Director's approval, on or before January 31, 2012, two (2) additional Public Benefit Rent Proposals, for the years 2010 and 2011. All conditions, terms, time limits and processes described in Sections 3.3.1 and 3.3.2 herein shall apply. Upon approval by the Director of Museum's Public Benefit Rent Proposals for 2010 and 2011, but no later than June 1, 2012, Museum may submit for the Director's approval, two (2) Annual Accounting Statements for 2010 and 2011. Upon approval by the Director of Museum's Annual Accounting Statements for 2010 and 2011, pursuant to Section 3.3.3 and 3.3.4 herein, City may credit the Museum's Back Rent Account by an amount not to exceed $100,000.00 for each year 2010 and 2011.

3.5 Adjustments to Annual Rent. Beginning January 1, 2017, and every five (5) years thereafter, Annual Rent due by Museum shall be adjusted, upward only, by the amount of the total percentage change that occurred in the Consumer Price Index for all urban Consumers in the Seattle-Everett Standard Metropolitan Statistical Area ("CPI") between the commencement and the expiration of the immediately preceding five-year term. The CPI increase in Annual Rent shall not exceed ten percent. By way of illustration, if the CPI is 100.0 on the Commencement Date and is 102.2 on December 31, 2016, the Annual Rent shall be increased by 2.2% ($4,180) to $194,180 beginning January 1, 2017, through the end of the Initial Term. If the CPI on the Commencement Date is 100.0 and is 112.0 on December 31, 2016, the Annual Rent shall be increased by 10% ($19,000) to $209,000 beginning January 1, 2017, through the end of the Initial Term. If the Lease Term is extended, then rent shall be increased on January 1, 2022 (and, if applicable, on January 1, 2027), pursuant to this Section. If during the Lease Term there is a change in the index base or other modification to the CPI index, the parties shall apply whatever conversion factor establishes the true percentage change in the CPI during the relevant time period.

3.5.1 Notice of CPI Increase. Until such time as Museum receives notice from the Director of the amount of the latest CPI-adjusted rental rate to be used for the calculation of rent payable by Museum beginning in that calendar year, Museum shall remit to the City, as partial payment of rent payable in that calendar year, rent calculated at the rate in effect during the immediately preceding calendar year. After Museum's receipt of the Director's latest notice of the adjusted monthly rental rate to be used for the calculation of rent payable to the City, Museum shall remit the full amount of rent due to the City, which shall be calculated using the adjusted rental rate specified in the latest such Director's notice, and within forty-five

(45) days after the receipt of such notice, Museum shall remit the difference between the aggregate amount of Museum's partial payments of rent for the year in which such rate adjustment notice is given and the aggregate amount of rent due to the City calculated using the rental rate specific in the latest such notice.

3.6 Pro-Rating of Annual Rent. In the event this Lease expires or is terminated on a day other than the last day of a month, the Monthly Cash Rent for the month in which such expiration or termination occurs shall be prorated by dividing the applicable rent by thirty (30) and multiplying the resulting quotient by the number of days in such month that preceded and included the expiration date.

3.7 Back Rent. Museum currently owes City approximately $600,000.00 in back rent ("Back Rent Account"). Within thirty (30) days of execution of this Lease, City will provide Museum with an account statement documenting the exact dollar amount still owed in the Back Rent Account. Within thirty (30) days of receipt of such statement, Museum will stipulate in writing to the amount owed in the statement. Unless otherwise agreed between City and Museum, Museum shall pay the City not less than $20,000.00 per year ("Annual Back Rent Payments") until Museum's Back Rent Account is satisfied, which satisfaction date shall be no later than December 31, 2021. Such Annual Back Rent Payments shall be made by Museum to City at the address and to the account specified by City, without notice or demand or any setoff or deduction whatsoever, in lawful money of the United States, no later than November 1 of each year, beginning November 1, 2012. In consideration of the terms of this Lease, the City will, upon receipt of Museum's Annual Back Rent Payment, write off an additional $20,000.00 from the Museum's Back Rent Account.

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

3.9 Tenants' Association Dues. Museum shall pay $750.00 per year as Tenants' Association Dues, which shall be due and payable to the City, without setoff or deduction of any kind or nature, on or before January 1, 2012, and on or before January 1 of each subsequent year of the Lease Term; provided, that the City shall invoice Museum for such dues annually.

4. Records and Reports.

4.1 Museum's Records. Museum shall keep true, full, and accurate books of account setting forth Museum's gross receipts. City shall be allowed after ten (10) calendar days' prior written notice to Museum, to inspect Museum's books of account at Museum'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

Museum's books of account are incomplete or improperly reflect the information necessary, or if the audit shall show that the reports submitted by Museum understated Museum's Receipts by more than the greater of (i) $25,000.00 or (ii) three percent (3%) thereof, for any year covered by the audit, the costs and fees for such audit shall be paid by Museum to City. If an audit discloses any willful or intentional effort to understate Museum's gross receipts, then, at City's option, Museum may be required to pay City a penalty of the greater of $1,000.00 or two (2) times the amount of the understatement. Museum shall retain all yearly books of accounting and any other information which will affect the determination of Annual Rent for a period of six (6) years from the end of each Lease year. Museum's obligations under this paragraph shall survive expiration or termination of this Lease.

5. **Late Charge; Interest**.

If Museum fails to pay Annual Rent, any Monthly Cash Rent payments, or any additional sums due under this Lease within ten (10) days after the due date, a service charge of Fifty Dollars ($50.00), or such larger sum as may be established by ordinance, shall be assessed for each month or portion of a month that the delinquency continues. Such assessment(s) shall be immediately due and payable. In addition, interest on such delinquent amount(s) shall accrue at the rate of one and one-half percent (11/2 %) per month from the date due until paid. In the event any check for payment is returned for insufficient funds, Museum shall pay an administrative charge of $20.00. If Museum defaults in making any payment of Annual Rent, Monthly Cash Rent, or any additional sums due, City shall have the right to require that subsequent Annual Rent, Monthly Cash Rent payment, or other payments be made by cashiers or certified check.

6. **Restrictions on Use of Premises**.

6.1 No Nuisance or Objectionable Activity. The Museum shall not permit any excessive or objectionable noise, odor, dust, vibration or similar substance or condition to remain on or be emitted from the Premises; shall not interfere with access from the Seattle Center or any part thereof, including the Premises, or with the traffic thereon; shall not create or contribute to the creation of any nuisance in either the Premises or on the Seattle Center grounds; shall neither commit waste nor permit any waste to be committed or any trash to be accumulated on or around the Premises; shall not engage in or permit any action that will disturb the quiet enjoyment of any other Seattle Center tenant or occupant; and shall not do anything on the Seattle Center that will create a danger to life or limb.

6.2 Restricted Merchandise. Notwithstanding any other provision of this Lease, the Museum shall not offer for sale or rent, or allow to be offered for sale or rent, from the Premises, any item of merchandise or service that is unsafe; that portrays the City or Seattle Center or any aspect thereof in an incorrect, misleading,

or unfavorable manner; that is inappropriate for or is inconsistent with the image of a first-class, family-oriented recreation, retail, and entertainment facility such as Seattle Center; or that may create a substantial litter or other maintenance problem at Seattle Center, all of which shall be determined by the Director in the exercise of such official's sole discretion.

6.3 Restricted Food And Beverage Sales And Service And Dishwashing Activity. Notwithstanding any other provision hereof, the Premises may be used as the location for catered birthday parties and other types of receptions as well as for special fund-raising events, and for such purpose the Museum may use whatever caterer it desires so long as such caterer (i) has a then-current, valid food service establishment permit or such other, comparable authorization as may be required by the City; and (ii) delivers to the Director evidence of Commercial General Liability insurance with minimum limits of liability of $1,000,000 combined single limit each occurrence bodily injury and property damage with the "City of Seattle" as an additional insured for primary and non-contributory limits of liability. Notwithstanding any other provision of this Lease, no food shall be cooked on the Premises, and no food or beverage shall be offered for sale to a member of the general public or any person who has merely paid an admission charge for entrance to the Premises (except as incidental to receptions or fund-raising events, the total number of which shall not exceed four (4) in any calendar year). No dishwashing shall occur on the Premises as a consequence of any "Birthday Club" reception, or other catered event activity. Only such nominal dishwashing as results from Museum staff dining shall be undertaken on the Premises and such dishwashing activity shall occur only in the staff employees' lunch room.

6.4 Business Hours. The Museum shall not leave the Premises unoccupied or vacant, but shall be open and maintain its operation therein ready for the transaction of business with the public between 10:00 am and 5:00 pm or such other minimum operating hours as may be approved by the Director, from time to time, with the exception of temporary closures for such period(s) as may be necessary for repairs, redecorating, or circumstances beyond the Museum's control, all on not less than six (6) days per week.

6.5 Personnel. The Museum shall employ courteous, competent, and efficient help in such numbers, skills, and experience as to properly conduct its activities on the Premises. The Museum shall have on the Premises, at all times it is open for business, a qualified representative authorized to represent the Museum in dealings with the City, and shall keep the Director informed of the identity of such person.

6.6 Deliveries. All deliveries shall be made to a delivery location or entrance designated by the Director and shall be completed prior to 11:00 am or the

Director's specified deadline when special arrangements have been made with the Director.

6.7 No Use of Common Areas. Neither the Museum nor any of its officers, employees, agents or contractors shall use any part of the common area of Seattle Center for any particular Museum purpose without the express, written approval of the Director.

6.8 Illumination on Premises. The Premises and all fixtures, furnishings, and trade equipment thereon shall be effectively illuminated during all hours the Museum is open for business.

6.9 Fire Extinguisher within Premises. During the Term of this Lease, the Museum shall secure, maintain and install in the Premises, in a prominent location, the type(s) and number(s) of fire extinguisher(s) or alternative fire suppression device(s) as are approved by the City Fire Marshall, and the Museum shall instruct all of its staff regarding its appropriate use. Every such fire extinguisher shall be recharged not less than once a year and immediately following any use.

6.10 No Use of Prohibited Food-Serving Material. The Museum shall not serve or permit any other person or entity to serve on the Premises any food or beverage in any plastic or polystyrene foam food or beverage container or in any other type of food or beverage container that is legally prohibited.

6.11 Parking. The City does not provide any parking that is specifically for or associated with the Premises (including but not limited to that required by or for Museum's staff, suppliers or customers), and whatever general, non-reserved parking the City makes available for Seattle Center tenants and their respective staffs, suppliers, and customers shall be shared on a first-come, first-served basis.

7. **Compliance with Laws**.

7.1 General Requirements. Museum shall not use or permit the Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, ordinance or regulation applicable to the Premises, or for any purpose offensive to the standards of the community of which the Premises are a part. Museum, at no cost to the City, shall perform and comply with all applicable, current and future laws of the United States and the State of Washington; the Charter and Municipal Code of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof now in force or hereafter adopted relating to or affecting the condition, use or occupancy of the Premises. Museum shall use its best efforts to ensure that every person it admits to the Premises similarly performs and complies with the same. Whenever Museum or

its authorized representative is informed of any violation of any such law, ordinance, rule, regulation, license, permit, or authorization committee by it or any person admitted to the Premises, Museum shall immediately desist from and/or prevent or correct such violation.

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

7.3 Firearms. Museum agrees that it shall not permit any person to enter or remain within the Premises while in possession of a firearm, including a concealed firearm, whether or not the person carrying said firearm is licensed or permitted to carry a firearm or concealed firearm. Firearms are defined for purposes of this Lease as any object or device which is designed to explosively discharge any object or force including any electrical charge, which has the capacity of causing injury or inflicting pain and specifically includes, guns, pistols, rifles (whether any of the same are powered by gunpowder, compressed air or gas), tasers, bow and arrow and cross-bow. Museum shall, upon discovery that such a person is within the premises, ask that person to leave, and shall promptly summon law enforcement if the person does not comply with that request.

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

8. **Compliance with Environmental Laws.**

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

A. "Environmental Law" means, as amended from time to time, the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq., Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., Federal Hazardous Materials Transportation Control Act of 1980, 42 U.S.C. Section 1801 et seq., Federal Clean Air Act, 42 U.S.C. Section 7401 et seq., Federal Water Pollution Control Act, Federal Water Act of 1977, 93 U.S.C. Section 1251 et seq., Federal Insecticide, Fungicide and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. Section 136 et seq., Federal Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., Federal Safe Drinking Water Act, 42 U.S.C. Section 300f et seq., Washington Water Pollution Control Act, RCW Chapter 90.48, Washington Clean Air Act, RCW Chapter 70.94, Washington Solid Waste Management Recovery and Recycling Act, RCW Chapter 70.95, Washington Hazardous Waste Management Act, RCW Chapter 70.105, Washington Hazardous Waste Fees Act, RCW Chapter 70.95E, Washington Model Toxics Control Act, RCW Chapter 70.105D, Washington Nuclear Energy and Radiation Act, RCW Chapter 70.98, Washington Radioactive Waste Storage and Transportation Act, RCW Chapter 70.99, Washington Underground Petroleum Storage Tanks Act, RCW Chapter 70.148, and any regulations promulgated thereunder from time to time.

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

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

8.3 Indemnification; Remedial Work. Museum shall not cause or permit any Hazardous Substances to be brought upon, kept or used in or about the Premises by Museum, its agents, employees, contractors, or invitees, except in compliance with

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

8.4 Breach as Material Default. Museum hereby specifically acknowledges and agrees that (a) each of Museum's covenants, obligations, agreements, representations and warranties set forth in this Section 8 is a material inducement to City to enter into this Lease, and (b) breach by Museum of any of Museum's covenants, obligations, agreements, representations and warranties set forth in this Section 8 shall constitute a material breach of this Lease by Museum entitling City to all of the rights and remedies provided to City under this Lease or under applicable law.

8.5 Survival. Each of the covenants, agreements, obligations, representations and warranties of Museum set forth in this Section 8 shall survive the expiration or earlier termination of this Lease.

9. **Utility Services**.

9.1 City Will Provide Certain Utility Services for Initial Term. Beginning on the Commencement Date, and ending on December 31, 2021, the City shall provide

water, sewer, storm water drainage, garbage, recycling, and electricity services for the Premises. For this Initial Term of the Lease, the City shall also provide for heating, ventilation and air conditioning ("HVAC") services to the Premises to the extent reasonably necessary for the operation of the Premises for the Permitted Use. The City will, at its cost, install separate meters for the measurement of such service.

9.2 Museum Responsible for Payment of Utility Services. The Parties have calculated and agree that monthly costs for all utility services set forth in Section 9.1 ("Utility Services") will approximate three thousand dollars ($3,000.00). Until the end of the Initial Term of the Lease, or until Museum satisfies its Back Rent Account, whichever occurs first, Museum shall offer Additional Public Benefits in an amount equal to three thousand dollars ($3,000.00) per month, and equal to thirty-six thousand dollars ($36,000.00) total per year, in lieu of payment for Utility Services. Museum shall propose programs and services for eligibility for such Additional Public Benefits pursuant to the terms and conditions set forth in Section 3.3.1. In order to be eligible in lieu of payment for Utility Services, all such programs and services shall require the City's approval pursuant to Section 3.3.2. If any program or service is not so proposed or approved prior to the month for which the Utility Services are provided, Museum shall pay the City three thousand dollars ($3,000.00) for each such month, as an Additional Charge. If Museum satisfies its Back Rent Account prior to December 31, 2021, Museum shall make monthly payments to the City of three thousand dollars ($3,000.00), on the first day of each month beginning on the first month after such Back Rent Account is satisfied.

9.3 Other Services and Facilities Subject to Director's Approval and at Museum's Expense. Museum, directly or through a third party, may install, secure, maintain and repair, at no expense to the City, any other utility service related to Museum's operations and its use of the Premises; however, any utility or waste disposal facility, item of equipment, or service beyond that provided to the Premises by the City, must be installed only in accordance with plans and specifications approved by the Director and other appropriate City officials, in writing, in advance of such installation. Museum shall not install on the Premises any fixture, furnishing, or trade equipment that exceeds the capacity of any utility or waste facility for such location. Museum shall pay, before delinquency, all fees and charges for the installation, change, and relocation of any point or means of service by any utility or waste line or system. Museum shall make arrangements with the utility service provider for the separate metering, where possible, of such service and the direct billing to the Museum for the delivery of such service.

9.4 Museum Responsible for Provision and Payment of All Utility Services after Initial Term. In the event the Term of this Lease is extended pursuant to Section 2.3, then beginning January 1, 2022, and throughout the remainder of the Lease Term, Museum shall arrange for, and pay all charges for, all utility services which shall be used in or charged against the Premises. Museum shall pay when due,

directly to the appropriate company or to City based on metered readings and prevailing rates, all bills for such services.

9.5 Interruption. Throughout the entire Lease Term, City shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption or failure of services due to any cause whatsoever, including, but not limited to, electrical surges, or from failure to make any repairs or perform any maintenance. No temporary interruption or failure of such services incident to the making of repairs, alterations or improvements or due to accident, strike or conditions or events beyond City's reasonable control shall be deemed an eviction of Museum or to relieve Museum from any of Museum's obligations hereunder or to give Museum a right of action against City for damages. Museum acknowledges that there may be planned utility outages affecting the Premises and that such outages may interfere, from time to time, with Museum's use of the Premises. City has no obligation to provide emergency or backup power to Museum. 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 Museum.

9.6 Recycling of Waste Materials. Throughout the entire Lease Term, Museum, at no cost to the City, shall collect, sort and separate into such categories as may be required by Seattle Center sorting and recycling standards, all solid waste products on the Premises. Each separately sorted category of waste products shall be placed in separate receptacles reasonably approved by the City, which receptacles shall be dumped or removed from the Seattle Center at such minimum frequency as is specified by the Director. The City reserves the right to refuse to collect or accept from Museum any waste product that is not sorted and separated as required by law, ordinance, rule or regulation, and to require Lessee to arrange for the collection of the same at Museum's sale cost and expense using a contractor satisfactory to the City. Museum shall pay all costs, fines, penalties, and damages that may be imposed on City or Museum as a consequence of Museum's failure to comply with the provisions of this subsection.

10. Licenses and Taxes.

10.1 Licenses and Payment of Fees and Taxes. Museum, at no cost to the City, shall secure and maintain in full force and effect during the Lease Term, all required licenses, permits, and similar legal authorizations, and shall comply with all requirements thereof. Without any deduction or offset whatsoever, Museum shall be liable for, and shall pay prior to delinquency, all taxes, license and excise fees and occupation taxes applicable to the business conducted on the Premises and

Museum's leasehold interest in the Premises, and all personal property taxes and other impositions levied with respect to all personal property located at the Premises.

10.2 Contests. Museum 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 Museum 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 Museum, and Museum hereby covenants to indemnify and hold City harmless from any such costs or expenses. In the event the State of Washington makes any demand upon the City for payment of leasehold excise taxes resulting from Museum's occupancy of the Premises or withholds funds due to the City to enforce collections of leasehold excise taxes, Museum shall remit the taxes demanded together with any interest and penalties associated therewith or, at no expense to the City, contest such collection action and indemnify the City for all sums expensed by, or withheld by the State of Washington from the City in connection with such taxation. The indemnification obligations of this Section shall survive the expiration or earlier termination of this Lease.

11. **Alterations by Museum.**

11.1 Alterations at Museum's Expense and with City Approval. Museum shall not make any alterations, additions, or improvements in or to the Premises without first submitting to City professionally-prepared plans and specifications for such work and obtaining City's prior written approval thereof. Museum covenants that it will cause all alterations, additions and improvements to the Premises to be completed at Museum's sole cost and expense by a contractor approved by City and in a manner that (a) is consistent with City-approved plans and specifications, and any conditions reasonably imposed by City in connection therewith; (b) is in conformity with first-class, commercial standards; (c) includes acceptable insurance coverage for City's benefit; (d) does not affect the structural integrity of the Premises 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. Museum shall secure all governmental permits and approvals required for any such alterations, additions, or improvements, and comply with all other applicable governmental requirements and restrictions. Except as limited by law, Museum 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 such alterations, additions and improvements, including, but not limited to, all which arise from or out of Museum's breach of its obligations under the terms of this Section 11. Upon the expiration or termination of this Lease, all alterations, additions and improvements (expressly including all light fixtures; heating and ventilation units; floor, window and wall coverings; and electrical wiring), except Museum's moveable trade fixtures and appliances and equipment not affixed to the Premises (including without limitation

furniture, computers, point of sale systems and registers) and cabling and wiring for computers, telephones and other electronic equipment, shall become the property of City without any obligation on its part to pay for any of the same. Within ninety (90) days after the completion of any alteration, addition, or improvement to the Premises, Museum 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 Museum. In the construction and alteration of the Premises, Lessee shall comply with all applicable laws and regulations including but not limited to the Americans with Disabilities Act (ADA) and its design standards under both Titles II and III thereof.

11.2 Minor Alterations. Notwithstanding the foregoing, however, in the case of Minor Alterations, City hereby waives the right to approve Museum's contractor. In addition, for Minor Alterations, Museum will not be required to deliver a full set of "as-built" plans to the City. Rather, Museum shall provide City with a conceptual plan and sketch, along with a proposed budget, of such Minor Alterations, prior to construction. "Minor Alterations" means alterations, additions or improvements to the Premises which are not reasonably likely to result in total construction cost expenditures of more than twenty thousand dollars ($20,000.00) in any calendar year and do not involve any shared systems or shared access with the City or any of its buildings in Seattle Center or any building elements for which the City has major maintenance responsibility such as the roof and exterior walls or any building component or system for which City has major maintenance responsibilities under this Lease, such as the roof and exterior walls. Museum shall not intentionally divide improvement projects into discrete units of work, nor schedule them in such a manner, as to artificially bring them within the definition of Minor Alterations.

12. **Care of Premises**.

12.1 City's Maintenance and Repairs. The City shall perform all maintenance and repairs necessary to maintain the Seattle Center common utility systems serving the Premises and the hardscape and landscape areas immediately adjacent to the Premises, and the adjacent walls, in a reasonably good operating condition, except for maintenance and repairs occasioned by an act or omission of Museum or its officers, agents, employees, or contractors. With respect to the wastewater and sewer lines serving the Premises, City shall only be responsible for those services up to the point of entry to the building. Notwithstanding the foregoing, Museum shall reimburse City for all damage done to the exterior of the Premises that results from any act or omission of Museum or any of Museum's officers, contractors, agents, invitees, licensees or employees, including, but not limited to, the cracking or breaking of glass.

12.2 Museum's Maintenance and Repairs. Museum shall at its own expense, at all times, keep the Premises and all real property improvements,

alterations, and additions thereto (including but not limited to the exterior surface areas of structural elements and all window areas of the Premises) in a neat, clean, safe, and sanitary condition. Museum shall therefore at its own cost and expense perform all maintenance and repairs not required to be made by City, including routine maintenance of the Premises, and shall make such necessary and prudent investments in the Premises as may be required to preserve the building asset and to maintain it to a standard comparable to a Class B office/theatre facility. Without limiting the generality of the foregoing, in carrying out such responsibilities, the Museum, among other things, shall: (a) Keep the glass of all windows and doors serving the Premises clean and presentable; (b) Replace any glass in a window, door, display case, or equipment immediately after it has become cracked or broken; (c) Periodically repaint all painted surfaces that have become chipped, spotted, faded, or otherwise unattractive; (d) Keep all drainage pipes free and open; (e) Repair all damage resulting from any plumbing fixtures and any equipment connected to any plumbing or any pipe installed in the Premises by or on behalf of the Museum or as part of any Museum improvements, and any damage caused by the Museum's failure to keep any plumbing fixture or pipe installed within and intended to serve the Premises in good operating condition; (f) Maintain and periodically clean all exhaust system duct work on the Premises and its connection with the City's common duct system, to eliminate the risk of fire; (g) Replace every lamp and light bulb immediately after the same becomes inoperative; (h) Remove, periodically, in a timely and careful manner, to all areas designated by the Director, all debris generated by or peculiar to the Museum's operations on the Premises; (i) Prevent the presence of vermin, insects, and other pests on the Premises by contracting for the providing of professional pest control services to the Premises at least six (6) times per year and by delivering to the Director a copy of each invoice for such services within thirty (30) days after providing of the same; (j) Maintain the Premises' exterior doors and locks; (k) Maintain the electric, plumbing and other systems and equipment independently serving the Premises to keep them in good working order; and (l) Furnish all cleaning supplies, materials and janitorial services needed to maintain and operate the Premises in the manner prescribed in this Lease.

12.2.1 City has the right, but not the duty, to correct. If Museum fails to satisfy any of the obligations specified in this Section 12.2 in a timely manner after receipt of notice from the Director of the need for such work, the City reserves the right (but shall have no obligation) to undertake such work. City shall have the right to enter the Premises for such purposes. In the event City undertakes such work, Museum shall promptly pay the City, upon receipt of a written statement, the actual expenses incurred by the City in undertaking such work (including but not limited to Seattle Center labor and project management) plus an administrative charge of $250.00.

13. **Installation of Artwork.**

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

13.2 Museum's Indemnification of City against Liability under Visual Artists Rights Act of 1990. Museum shall protect, defend, and hold City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of (a) the installation or integration of any work of visual art on or into the Premises; or (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any breach of Section 13.1 of this Lease; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by Museum or any of its officers, employees or agents. This indemnification obligation shall exist regardless of whether City or any other person employed by City has knowledge of such installation, integration, or removal or has consented to any such action or is not required to give prior consent to any such action. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Lease.

14. Continuous Operation.

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

15. Surrender of Premises.

15.1 General Matters. At the expiration or sooner termination of the Lease Term, Museum shall deliver the Premises to City in good repair and in a clean and neat condition. Prior to such delivery, Museum 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. Museum shall indemnify

City for all damages and losses suffered as a result of Museum's failure to remove voice and data cables, wiring and communication lines and moveable trade fixtures and appliances and to redeliver the Premises on a timely basis. Museum's obligations under this Section 15 shall survive the expiration or termination of this Lease.

15.2 Cable and Wiring. Notwithstanding any provision to the contrary in this Lease and if City, acting reasonably, so directs, within fifteen (15) days after the expiration or earlier termination date of this Lease, Museum shall remove all voice and data communication and transmission cables and wiring installed by or for Museum to serve any telephone, computer or other equipment, which wiring and cabling shall include all of the same located within the interior and exterior walls and through or above the ceiling or through or below the floor of the Premises to be vacated and surrendered to City as of such date. Museum shall leave the mud rings, faceplates and floor boxes in place.

16. **Waiver; Indemnification**.

16.1 Museum's Indemnification. To the full extent allowed by law, Museum shall indemnify, defend (using legal counsel reasonably acceptable to City) and save City, City's officers, agents, employees and contractors harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable personnel and overhead costs and attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to, any property arising out of or in connection with (a) Museum's occupation, use or improvement of the Premises, or that of any of its employees, agents or contractors, (b) Museum's breach of its obligations hereunder, or (c) any act or omission of Museum or any Subtenant, assignee or concessionaire of Museum, or of any officer, agent, employee, guest or invitee of any of the same in or about the Premises. Museum agrees that the foregoing indemnity specifically covers actions brought by its own employees. This indemnity with respect to acts or omissions during the Lease Term shall survive termination or expiration of this Lease. The foregoing indemnity is specifically and expressly intended to constitute a waiver of Museum's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the extent necessary to provide City with a full and complete indemnity from claims made by Museum and its employees, to the extent of their negligence. Museum shall promptly notify City of casualties or accidents occurring in or about the Premises. **CITY AND MUSEUM ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS LEASE WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.**

16.2 Museum's Release of Claims. Museum hereby fully and completely waives and releases all claims against City for any losses or other damages

sustained by Museum or any person claiming through Museum resulting from any accident or occurrence in or upon the Premises, including but not limited to any defect in or failure of building equipment; any failure to make repairs; any defect, failure, surge in, or interruption of building facilities or services; broken glass; water leakage; the collapse of any building component; or any act, omission or negligence of subtenants or any other persons or occupants of the building.

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

17. Insurance.

17.1 Generally. Throughout the Lease Term, Museum and Museum's contractors, employees, licensees and subtenants, as applicable, shall maintain such insurance coverages as are specified in Exhibit 3, and otherwise comply with the terms and conditions for insurance contained therein. Unless City otherwise directs from time to time by not less than sixty (60) days' notice to Museum, City shall procure and maintain in force and effect property insurance for the Premises as described in the attached Exhibit 4.

17.2 Mutual Waiver of Property Insurance Subrogation. Museum and the City hereby waive their respective rights of subrogation in favor of the other with respect to perils covered by insurance required under this Lease. Museum and the City also waive their respective rights of recovery in favor of the other for claims falling within their respective Property Insurance policy deductible amounts, except to the extent to which the party against whom recovery is sought caused or contributed to the loss.

18. Subleases, Assignments, and Other Interest Transfers.

18.1 Except as provided in this Section 18 of this Lease, Museum shall not voluntarily, involuntarily or by operation of law, assign, license, mortgage, hypothecate, sublet or in any manner transfer this Lease, any interest herein or any title or interest in all or a portion of Museum's interest in the Premises, nor shall Museum authorize, allow or permit any person (the employees of Museum excepted), to occupy or use the Premises or any portion thereof, without first obtaining the written consent and approval of the Director. The Director may withhold, delay or condition said consent and approval as he or she may determine in the exercise of that official's sole discretion. Any assignment, license, mortgage, sublease, hypothecation, transfer, occupancy or use of the Premises in violation of this paragraph shall be null and void and of no force and effect and shall further constitute

a breach of this Lease by Museum. The giving by the Director of such consent and approval shall not be deemed to be a consent or approval to any subsequent assignment, license, mortgage, sublease, hypothecation, transfer, occupancy or use by any other person nor shall it release Museum of any of Museum's obligations to pay the rent and perform all other continuing obligations to be performed by Museum hereunder. Any dissolution, merger, consolidation or other reorganization of Museum shall constitute and be deemed an assignment for purposes of this Section.

19. **Assignment by City**.

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

20. **Damage or Destruction**.

20.1 Report of Damage or Destruction. Museum shall submit a written report to the Director regarding the circumstances of any damage to the Premises or any of Museum's improvements thereto, within twenty-four (24) hours after its discovery.

20.2 Rent Obligations in Event of Damage or Destruction. If the Premises are destroyed or damaged by fire or other casualty not occasioned by an act or omission of Museum or any of its officers, employees, contractors, agents, invitees, or guests, and such destruction or damage is so extensive as to render such Premises unusable (either because of the need to rebuild or to clean and refurbish the same) and the Museum has given timely notice of such destruction or damage as provided by this section, Museum's obligation to pay rent shall be abated until the date that such Premises are made usable or should have been made usable had the Museum diligently prosecuted such repair, rebuilding, and restoration work, as reasonably determined by the Director and confirmed by one or more notices to Museum. If only a portion of the Premises is damaged or destroyed by fire or other casualty not occasioned by an act or omission of Museum or any of its officers, employees, contractors, agents, invitees, or guests, but the remainder of such Premises remains usable, as reasonably determined by the Director, and Museum has given timely notice of such destruction or damage as provided by this section, Museum shall pay a reduced amount of rent that is proportionate to the extent of the Premises that remains usable for the purposes identified in Section 1.4 hereof, which reduced rent amount shall be reasonably determined by the Director and identified by notice to

Museum, and paid by Museum through the date reasonably specified by the Director in such notice or the later date specified in any subsequent notice.

20.3 Rebuilding, Repair and Restoration. If the Premises are damaged or destroyed by casualty, and if neither party terminates under Section 20.4, the City will diligently rebuild, repair and restore the Premises so long as sufficient insurance proceeds are available. Museum shall replace or repair in a timely manner and at no cost or expense to the City, all damaged or destroyed personal property that, prior to such damage or destruction, had been located on the Premises, and all tenant improvements that Museum made to the Premises, unless otherwise permitted by the Director. Upon the rebuilding, repair and reconstruction of the Premises, Museum shall immediately re-occupy the whole of the Premises. The City shall not be liable to Museum for damages, compensation or any other sum for inconvenience, loss of business, or disruption arising from any repair to or restoration of any portion of the Premises or the Building in which the Premises are located.

20.4 Termination Rights in Event of Damage or Destruction.

20.4.1 By Museum. Notwithstanding any other provision in this Lease to the contrary, if fifty percent (50%) or more of the Premises is damaged or destroyed by fire or other casualty not occasioned by an act or omission of Museum, its officers, employees, contractors, agents, invitees, or guests, Museum may terminate this Lease by providing notice thereof to the Director. In such case all insurance proceeds shall be retained by or disbursed to the City.

20.4.2 By City. Notwithstanding any other provision in this Lease to the contrary, if fifty percent (50%) of the Premises is destroyed or is so damaged by fire or other casualty as to be untenantable or unusable, or if sufficient insurance proceeds are not readily available, or if the City desires to discontinue Museum's operations because of substantial destruction of the Building or other part of Seattle Center, regardless of whether the Premises are destroyed, damaged, or otherwise, the City may terminate this Lease by providing prior written notice thereof to Lessee.

20.4.3 Notice of Termination. Any notice of termination pursuant to this section shall be provided within sixty (60) days after the occurrence of the damage or destruction and shall specify the effective date of such termination.

21. Eminent Domain

21.1 Definitions.

A. "Eminent domain" is the right of the people or government to take private property for public use. As used in this Section 21, the words "condemned" and "condemnation" are coextensive with such right, and a voluntary conveyance by the City to the condemnor under threat of a

taking under the power of eminent domain in lieu or after commencement of formal proceedings shall be deemed a taking within the meaning of this Section 21.

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

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

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

21.3 Effect of Partial Condemnation. In the event that there shall be a partial taking of the Premises during the term of this Lease, or any renewal or extension thereof, under the power of eminent domain as defined in this Section, this Lease shall terminate as to the portion of the Premises so taken on the date title is taken by the condemnor or at the time the condemnor is authorized to take possession of said real property as stated in the order for possession, whichever is earlier. This Lease shall also terminate on such date as to the balance of the Premises once more than ten percent (10%) of the floor area of the Premises have been taken and Museum gives written notice of termination to the City within thirty (30) calendar days after the City shall have given Museum written notice of said taking, or in the absence of said notice, within ten (10) calendar days after the condemnor is authorized to take possession as stated in the order for possession. If less than such percentage of floor area is taken or Museum fails to timely elect to terminate, this Lease shall continue in full force and effect as to the remainder of the Premises not so taken, but the Annual Rent to be paid by Museum shall thereafter be reduced in proportion to the amount of the condemned Premises. If the parties cannot agree upon a just proportion of rent to be abated, the amount shall be determined in accordance with the procedures set forth in Section 31.

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

A. City shall receive the present value of any lost future rents resulting from the eminent domain action which would otherwise be payable to the City by Museum under this Lease together with the present value of the reversion upon expiration of this Lease of that portion of the Premises taken in the eminent domain action, both as of the time of taking; the remainder of the award shall be payable to Museum. The values of City's and Museum's respective interests in the Premises shall be established by the same court of law or other trier of fact that establishes the amount of the condemnation award, but if there is no court of law available or willing to determine City's and Museum's respective interests, those interests shall be determined in accordance with the procedures set forth in Section 31. The foregoing shall not limit Museum's right to separately pursue compensation or damages for lost revenues, business interruption and moving expenses, and Museum shall be solely entitled to any such compensation or damages free and clear of any claim by the City.

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

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

22. **Default by Museum**.

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

(a) Failure by Museum to make any payment required as and when due, where such failure continues after 10-days written notice from City;

(b) Failure by Museum to observe or perform any of the covenants, conditions, or provisions of this Lease, other than the making of any payment, where such failure shall continue after 30 days' written notice from City; provided, however, that if the nature of Museum's obligation is such that more than 30 days are required for Museum, Museum shall not be in default if Museum commences to cure the failure within 30 days after City's notice and thereafter completes such cure diligently and within a reasonable time; or

(c) Museum files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for Museum's assets or if Museum makes an assignment for the benefit of creditors, or if Museum is adjudicated insolvent, or becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or liquidated, voluntarily or otherwise.

22.2 City Remedies. If Museum has defaulted and such default continues or has not been remedied to the reasonable satisfaction of the Director within thirty (30) days after written notice thereof has been provided to Museum, then City shall have the following nonexclusive rights and remedies at its option: (a) to cure such default on Museum's behalf and at Museum's sole expense and to charge Museum for all actual and reasonable costs and expenses incurred by City in effecting such cure as an Additional Charge, or (b) if but only if the default is failure to pay Monthly Cash Rent or Annual Rent, to terminate this Lease; provided, however, that if the nature of Museum's obligation (other than monetary obligations and other than vacation or abandonment of the Premises) is such that more than thirty (30) days is required for Museum, then Museum shall not be in default if it commences to cure within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In the event of any inconsistency between the foregoing clause (b) and any other provision of this Section 22, the provisions of this clause (b) shall apply and control.

22.3 Reentry by City upon Termination. Upon the termination of this Lease, City may reenter the Premises, using such means as permitted by law, take possession thereof, and remove all persons therefrom, for which actions Museum shall have no claim thereon or hereunder. Museum shall be liable and shall

reimburse City upon demand for all actual and reasonable costs and expenses of every kind and nature incurred in retaking possession of the Premises. If City retakes the Premises, City shall have the right, but not the obligation, to remove therefrom all or any part of the personal property located therein and may place the same in storage at any place selected by City, including a public warehouse, at the expense and risk of Museum. City shall have the right to sell such stored property, after reasonable prior notice to Museum 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 Museum to City; the balance, if any, shall be paid to Museum.

22.4 City's Non-exclusive Remedies upon Termination due to Default of Museum. Notwithstanding any reentry by City and anything to the contrary in this Lease, in the event of the termination of this Lease due to Museum's Default, Museum's liability for all sums due under this Lease provided herein shall not be extinguished for the balance of the Lease Term. Museum 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 Museum's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any costs incurred in authorizing others the use and occupancy of the Premises and in preparing the Premises for such use and occupancy, and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington. If a petition is filed by or against Museum under any provision of the Bankruptcy Code or successor act, City reserves the right to require Museum to post a cash bond with City equal to six (6) months' Monthly Cash Rent and additional sums to provide City with adequate security for Museum's performance of its obligations under this Lease. The provisions of this Section 22.4 shall survive the expiration or earlier termination of this Lease.

22.5 City's Remedies Cumulative; No 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 Museum shall not be deemed a waiver of, or alter, affect or prejudice any other right or remedy that City may have under this Lease or by law or in equity. Neither the acceptance of rent nor any other act or omission of City at any time or times after the happening of any event authorizing the cancellation or forfeiture of this Lease shall operate as a waiver of any past or future violation, breach or failure to keep or perform any covenant, agreement, term or condition hereof or to deprive City of its right to cancel or forfeit this Lease, upon the written notice provided for herein, at any time that cause for cancellation or forfeiture may exist, or be construed so as to estop City at any future time from promptly

exercising any other option, right or remedy that it may have under any term or provision of this Lease.

23. **Default by City.**

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

24. **Attorneys' Fees.**

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

25. **Access by City.**

25.1 Access to Premises. City and its agents, including but not limited to its contractors and consultants, their subcontractors, subconsultants and agents, shall have the right to enter the Premises at any reasonable time to examine the same, and to show them to prospective purchasers, lenders or tenants, and to make such repairs, alterations, additions or improvements to the Premises as City may deem necessary or desirable. Except in the case of an emergency, such entry will be made during normal business hours and after reasonable notice to Museum. If Museum is not personally present to permit entry and an entry is necessary in an emergency, City may enter the same by master key or may forcibly enter the same, without rendering City liable therefor, except in the event of City's negligence or intentional misconduct. Nothing contained herein shall be construed to impose upon City any duty of repair or other obligation not specifically stated in this Lease. Any entry to the Premises obtained by the City by any of said means, or otherwise, shall not be construed or deemed to be an eviction of the Museum or a forcible or unlawful entry into, or a detainer of, the Premises or any portion thereof. Unless the parties agree otherwise or in case of an emergency, Museum shall change the locks to the Premises only through City and upon paying City for all actual and reasonable costs related thereto.

25.2 Permitted Interference with Museum's Operations. In inspecting, and in making repairs, alternations, additions and improvements, the City may erect

barricades and scaffolding in and outside of the Premises, and may otherwise interfere with the conduct of the Museum's business and operations where such action is reasonably required by the nature of the City's work; and such interference shall not be deemed to be a breach or default under this Lease. Where reasonably possible, blockage of access to the Premises shall be scheduled to occur at times that will not unreasonably interfere with the Museum's business.

25.3 Suspension of Museum's Operations. In the event any City inspection, alteration, addition, or improvement work necessitates the temporary suspension of the Museum's business or operations in, on, or from the Premises, the Director shall notify the Museum of such necessity and the anticipated beginning and ending dates of such suspension as soon as reasonably possible after such information is made known to the Director. During the period of any such temporary suspension, payment of the Annual Rent and Utility Charges pursuant to Section 9 shall be abated.

26. Holding Over.

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

27. Quiet Enjoyment and City's Right to Redevelop.

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

27.2 Notwithstanding the foregoing, City retains the right to relocate Museum on either a temporary or permanent basis to other space within or without the Seattle Center House during any portion of the term of this Lease and any Extension Term, in support of City's redevelopment or remodeling of the Seattle Center House.

27.2.1 City shall give Museum not less than twelve (12) months written notice of the need to relocate.

27.2.2 Museum shall cooperate with City in coordinating the move and shall meet all dates and deadlines established by City for vacating the space.

27.2.3 City may relocate Museum not more than one (1) time during the Lease Term, and in such event, shall give Museum twelve (12) months written notice of the need to relocate.

27.2.4 In the event that City relocates Museum to other space within the Seattle Center House, on either a temporary or permanent basis, that space shall become the "Premises" for purposes of this Lease.

27.2.5 In the event of any relocation, City shall pay all costs occasioned by the relocation, including actual moving costs and business re-establishment including signage.

27.2.6 Museum retains the right to terminate this Lease upon receipt of any relocation notice (i) provided it does so within one hundred twenty (120) days of receipt; and (ii) it thereafter vacates and surrenders possession of the Premises as provided in this Lease for termination at the end of the Lease Term.

28. **Notices**.

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

City:

Office of the Director
Seattle Center
305 Harrison Street
Seattle, WA 98109

Museum:

Office of the Executive Director
305 Harrison Street
Seattle, WA 98109

29. **Successors or Assigns**.

All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon City, Museum and, subject to the terms of Section 18, 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.

30. **Museum Authority and Liability**.

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

31. **Dispute Resolution**.

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

31.2 If an issue cannot be resolved by negotiations between subordinate staff of Museum and Seattle Center, the matter shall be referred to the Director and the Museum Executive Director.

31.3 If those officials are unable to resolve the dispute within a period of fifteen (15) days after the matter has been formally referred to them for resolution, they shall meet during the immediately succeeding seven (7) days to select a mediator to assist in the resolution of such dispute. If the Director and the Museum's Executive Director cannot agree upon a mediator within such seven (7) day period, either party may apply to the American Arbitration Association for the appointment of a mediator according to the process that is established by such entity for such action.

31.4 Museum and City shall share equally the cost charged for the mediation of any dispute.

31.5 In the event that the Parties cannot resolve the dispute through negotiation or mediation, and decide to file a legal action to resolve the matter, that action shall be filed in Seattle, King County, Washington.

32. **Recording**.

The parties agree that a memorandum of this Lease substantially in the form of Exhibit 4, attached, shall be recorded in the office of the King County Recorder with reasonable promptness after the Commencement Date.

33. **Force Majeure**.

Neither City nor Museum shall be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to any cause beyond its reasonable control ("*force majeure*"), including, but not limited to an unforeseeable act of nature, act of civil or military authority, fire, flood, windstorm, earthquake, strike or labor disturbance, civil commotion, delay in transportation, Federal or State regulation or control, terrorist act or war; provided, however, that the foregoing shall not excuse Museum from the timely payment of Rent and Additional Charges due hereunder, when due. In such event, performance of the affected obligation shall be suspended (excluding, however, any monetary obligations), but only for the duration of such condition.

34. **Execution by City and Museum**.

Neither City nor Museum 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 Museum until this Lease has been approved by appropriate legislative authority and executed by the parties hereto. City shall have no liability to Museum and shall have the right to terminate this Lease upon written notice to Museum if this Lease is legislatively disapproved.

35. **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."

36. **Public Benefits**.

City's willingness to enter into this Lease with Museum is predicated, in part, on the nature of Museum's business and the compatibility of such business with the use of the remainder of Seattle Center and the benefits accruing to the public through Museum's use of the Premises. The parties agree that anticipated benefits include (i) education programs for students, reported by the number and age groups of students served; (ii) education events, activities and outreach efforts provided to the public by Museum, reported by the number and type and of event; (iii) Museum employment, reported by number of Museum employees, both full and part-time; (iv) if and to the extent and for such periods as Museum has no need for the space itself, collaboration with other groups to make office and rehearsal space available to activate and invigorate the Mercer corridor; and (v) when relevant, other collaborative efforts of benefit to the public and Seattle Center.

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

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

37.1 Improvements to or Redevelopment of Center House. City may make any improvement, alteration, and addition to the Center House Building. City will make every reasonable effort to minimize impacts to Museum and the Museum operations, to the extent it is reasonably economical for the City to do so. City shall give notice to Museum at least thirty (30) days in advance of any such activities that could result in interference with the normal business operations of Museum. . In the event any City improvements or redevelopment work necessitates the temporary suspension of the Museum's business or operations in, on, or from the Premises, the Director shall notify the Museum of such necessity and the anticipated beginning and ending dates of such suspension as soon as reasonably possible after such information is made known to the Director. During the period of any such temporary suspension, payment of the Annual Rent and Utility Charges pursuant to Section 9 shall be abated.

37.2 Change of Vicinity. City may increase, reduce, or change in any manner whatsoever the number, dimensions, and locations of the walks, buildings, landscaping, utility lines and poles, service areas, roads, sidewalks and parking areas in the vicinity of the Premises. Notwithstanding the foregoing, if City's Seattle Center Department controls or determines any construction or reconstruction of Mercer Street and/or Memorial Stadium that adversely affects Museum's truck access to the Premises and to the Center House from the south side of the Premises, City agrees to provide equivalent alternative access both during and after any such construction.

In addition, City shall use its best efforts to ensure that any such construction or reconstruction does not unreasonably disrupt Museum's normal business operations at the Premises.

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

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

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

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

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

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

37.9 Identity of Other Tenants. City may determine what other business operations will be tenants in the Center house Building and what those businesses may offer for sale to the public.

37.10 Interference. City may interfere with light, air or view, or Museum's operations or use and occupancy of the Premises, either in connection with or as a result of operations by or for the City in the construction of any public work or its subsequent use and occupancy, or the repair and maintenance of any City facility or improvement. The City will make a good faith effort, however, to minimize such interference to the extent it is reasonably economical for the City to do so.

38. **Naming Rights.**

City reserves all naming rights to the Center House and to all property owned by City. Museum has the right to name, or change the name, of its business. However, Museum shall not change the name by which it carries on its business without the written consent of the Director, which consent shall not be unreasonably withheld.

39. **Signs, Advertising, and Sponsorship**.

39.1 Signs. Except as otherwise stated in this Lease, Museum will not display, post or distribute any material (including posters) on any part of the Seattle Center, excluding the interior of the Premises that are not visible from the exterior, except after receiving the Director's written approval therefor, which approval may be given, conditioned or withheld in the Director's reasonable discretion.

39.2 Advertising. Museum may install permanent signage on the exterior of the Premises and may display temporary signs or banners on or about the Premises to advertise its operations only with the prior written consent of the City. All aspects of the signs are subject to the Director's prior written approval, whose approval shall be given or withheld in his or her reasonable discretion within seven (7) business days of a written request; provided that the Director's failure to respond in writing shall not constitute approval of the request. Except as provided in this Section 39.2, Museum shall not install or display nor permit others to install or display any commercial advertising on the exterior of the Premises.

39.3 Sponsorship. Seattle Center has an aggressive business strategy to secure corporate sponsors. In some cases, a corporate sponsor may require and/or receive exclusive product sales and marketing opportunities at Seattle Center. Currently, exclusive sponsors may occur in the following categories: coffee, financial services, carbonated beverages, water, energy drink, automotive, insurance, and technology. In the event Museum elects to pursue sponsorship or advertising opportunities for Museum programs, any sponsorship or advertising arrangement must be reviewed and approved by the Director and must comply with the terms of existing Seattle Center sponsorship and advertising agreements. As part of any sponsorship deal, all sponsors will be required to adhere to competitive product pricing guidelines.

39.4 Removal of Postings. On or before the expiration of termination date of this Lease, whichever is earlier, Museum shall remove, at no expense to the City, all signs, symbols, advertising and printed material; and correct any unsightly condition, and repair any damage or injury to City property caused by such signs, symbols, advertising and printed material, and the removal thereof. Unauthorized signs and advertising may be removed from City property by the City.

39.5 Use of Photos and Similar Materials. Each party hereto may make photographs, video tapes, and motion pictures of the Premises and the activity,

people, displays and exhibits thereon; however, if any visual material of the Premises is to be used for commercial advertising purposes, prior to making the same, the Museum shall obtain the written approval of the Director for such use, which approval may be conditioned upon, among other things, the payment by the Museum to the City of additional consideration; and prior to the use of any such photography, video tape, or motion picture, a written release shall be obtained from every individual identifiable in the same.

40. **Governing Law and Venue**.

This Lease shall be governed by, and construed in accordance with the laws of the State of Washington. The venue for any action under this Lease shall be in the Superior Court of Washington for King County.

41. **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.

42. **Counterparts**.

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

43. **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.

44. **Context**.

Whenever appropriate from the context, the use of any gender shall include any other or all genders, and the singular shall include the plural, and the plural shall include the singular. Words such as "herein," "hereunder" and the like refer to this Lease in its entirety and not to a particular section or subsection hereof.

45. **Incorporation of Exhibits; Entire Agreement; Amendments**.

45.1 The following exhibits are made a part of this Lease:

Exhibit 1 – Depiction of Premises;

Exhibit 2 – Annual Public Benefit Rent Statement example;
Exhibit 3 – Museum-Furnished Liability and Property Insurance;
Exhibit 4 – City-Furnished Property Insurance; and
Exhibit 5 – Memorandum of Lease.

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

45.3 Any subsequent modification or amendment of this Lease shall be binding upon City and Museum only if reduced to writing and signed by the Director and an authorized officer of Museum.

46. **Negotiated Lease**.

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

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

CITY OF SEATTLE

By: _____
Robert Nellams, Director
Seattle Center Department

CHILDREN'S MUSEUM, SEATTLE

By: _____
Donna Marie Bertrand
Executive Director

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

On this _____ day of _____, 200_, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared _____, known to me to be the _____ of the Seattle Center Department of **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 Children's Museum)
COUNTY OF KING)

On this _____ day of _____, 20_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of **The Children's Museum**, the entity that executed the foregoing instrument as the Executive Director of the Children's Museum, Seattle 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 _____

Tom Israel
CEN The Children's Museum ORD ATT 1
August 16, 2011
Version #1

EXHIBIT 1

Depiction of Premises

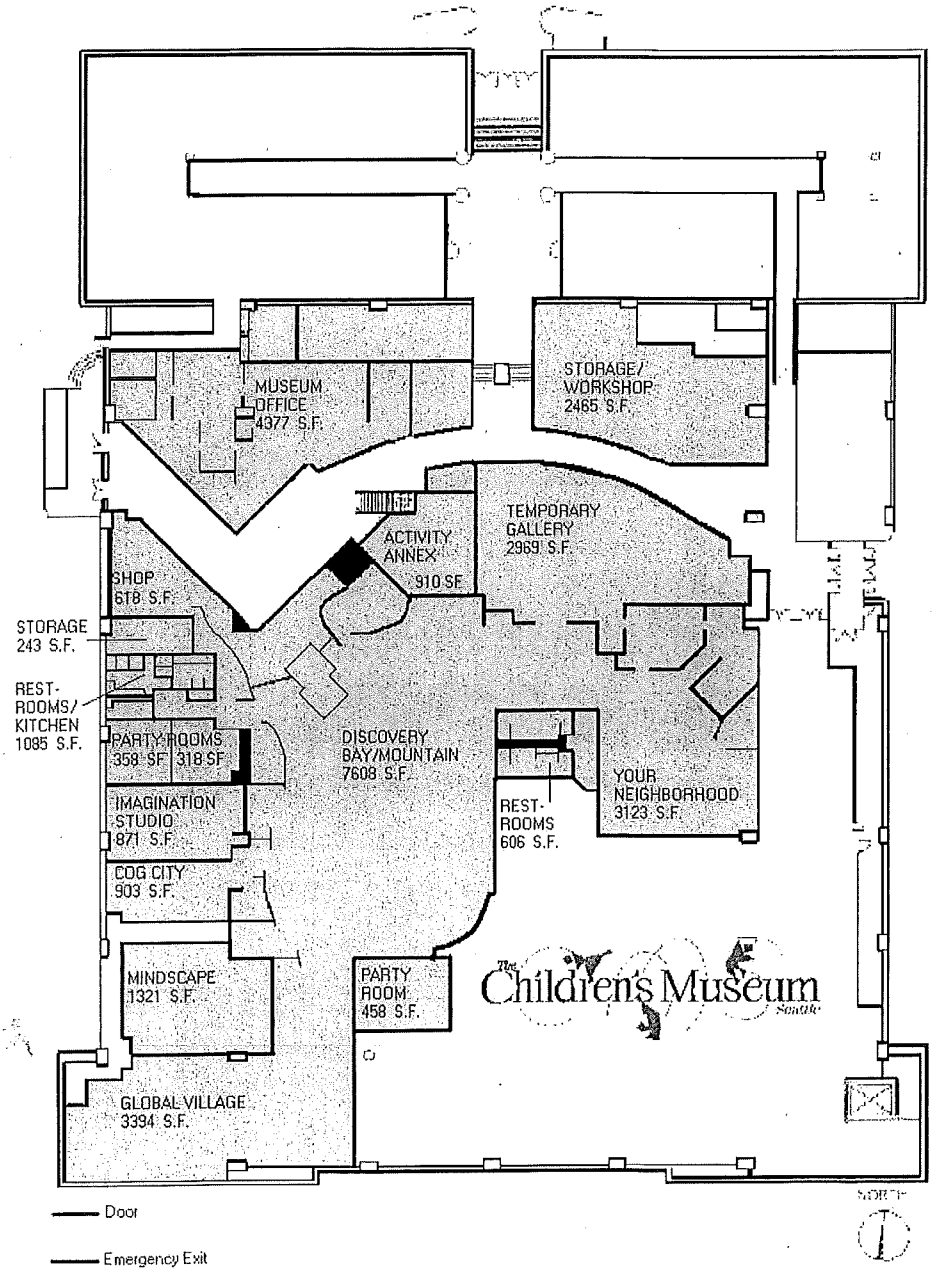

EXHIBIT 2

THE CHILDREN'S MUSEUM

ANNUAL PUBLIC BENEFIT RENT STATEMENT
FOR THE YEAR ENDING _____

Type of Benefit	Benefits Offered	Benefits Used	Total Value
Passport to Play Admissions			
Passport to Play Open House			
Quest Card Program			
Sponsored Admissions:			
25% Discounts			
50% Discounts			
75% Discounts			
Last Hour Admissions			
Donations for a Cause			
Hours Reserved for Children with Physical Handicaps			
Hours Reserved for Children with Emotional/ Behavioral Challenges			
Summer Camp Scholarships			
Total			

Submitted by: _____

Date: _____

Supporting Documentation is Attached

EXHIBIT 3

Museum-Furnished Liability and Property Insurance

1. General. Museum shall obtain and thereafter maintain continuously throughout the term of this Agreement, at no expense to the City, insurance that complies with this Exhibit 3. For all required coverages, the minimum limits of liability may be satisfied by a primary policy or a combination of primary and excess/umbrella policies. In addition, all insurance policies and coverages shall be subject to commercially reasonable deductibles.

2. Coverages and Minimum Limits of Liability.

2.1 **Commercial General Liability (CGL) Insurance**:

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

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

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

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

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

3. General Conditions.

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

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

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

3.4 Museum is responsible for payment of any claim within any deductible or self-insured retention.

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

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

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

4. Evidence of Insurance.

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

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

(Electronic copy only)
City of Seattle
Risk Management Division

Fax: (206) 470-1279
Email: riskmanagement@seattle.gov

City of Seattle
Office of the Director
Seattle Center
305 Harrison Street
Seattle, WA 98109
Fax: (206) 233-3950
Email:Juanita.Woelfle@seattle.gov

EXHIBIT 4

City-Furnished Property Insurance

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

2. Limitations on City Property Insurance Coverage. City-furnished property insurance shall exclude Museum's or any Subtenant's trade fixtures or business personal property.

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

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

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

    5.1 City shall proceed with reasonable diligence as soon as sufficient insurance, self-insurance and/or other funds are available therefor, to prepare plans and specifications for, and thereafter to carry out, all work necessary to repair or replace the Premises or Building or any portions thereof that were damaged or destroyed by a fire or other casualty. However, City retains the

sole option to not repair or replace the Building or Premises for any reason, in which case City shall advise Museum of City's election to terminate this Lease by giving at least thirty (30) days' notice to Museum.

5.2 If City elects to repair or replace the Building or Premises, Museum shall proceed with reasonable diligence as soon as sufficient insurance, self-insurance and/or other proceeds and other funds are available therefor (in any event, within six (6) months from the date of the occurrence of a fire or other casualty), to repair or replace trade fixtures and business personal property that has been damaged or destroyed.

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

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

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

EXHIBIT 5

Form of Memorandum of Lease

RECORDED AT THE REQUEST OF AND
AFTER RECORDING RETURN TO:

Dawn S. Spratley
Lane Powell Attorneys and Counselors
1420 Fifth Avenue, Suite 4100
Seattle, WA 98101-2338

MEMORANDUM OF LEASE
(City of Seattle/Seattle **********)

Grantor/Lessor:	THE CITY OF SEATTLE, a Washington municipal corporation
Grantee:	THE CHILDREN'S MUSEUM, a Washington non-profit corporation
Abbreviated Legal Description:	Portion of Block 53, D.T. Denny's Home Addition to City of Seattle
Complete Legal Description is set forth in Exhibit A (to be attached hereto)	
Assessor's Tax Parcel ID #:	198820-0700
Reference # (if applicable):	N/A

THIS MEMORANDUM OF LEASE is dated as of _____, 20__, by and between THE CITY OF SEATTLE, a municipal corporation of the State of Washington ("Lessor") and THE CHILDREN'S MUSEUM, a Washington non-profit corporation ("Lessee").

1. Premises. Lessor has leased to Lessee, upon the terms and conditions of that certain lease between the parties dated as of _____, (the "lease"), which terms are incorporated by this reference, that certain real

property situated in the City Seattle, King, County Washington, more particularly described on Exhibit A attached hereto.

2. Term. The Lease is for a term of ten (10) years commencing on _____ and ending on _____, unless extended. Lessee has the right to extend the term of the Lease for two (2) additional terms of five (5) years, which extension right, if exercised, would result in the term of the Lease first expiring on _____.

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

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

DATED as of the day and year first above written.

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

By:_____
Its:_____

LESSEE: THE CHILDREN'S MUSEUM, a Washington

By:_____
Its:_____

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 Seattle Center Department of **CITY OF SEATTLE**, the party that executed the foregoing instrument as City, and acknowledged said instrument to be the free and voluntary act and deed of said party, for the

purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

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

_____ _____

[Signature] *[Printed Name]*

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

My commission expires _____.

STATE OF WASHINGTON)
) ss. (Acknowledgement for The Children's
COUNTY OF KING) Museum)

On this _____ day of _____, 201_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of **The Children's Museum**, 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 _____.

Form revised: July 12, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Center	Tom Israel, 684-7298	Greg Shiring, 386-4085

Legislation Title:
AN ORDINANCE relating to the Seattle Center; authorizing the Director of Seattle Center to execute a new ten-year lease agreement with The Children's Museum, Seattle for the use and occupancy of certain space in the Center House.

Summary of the Legislation:
This legislation authorizes a ten-year lease agreement between The Children's Museum, Seattle (TCM) and the City of Seattle, with the option of extending the lease for up to two periods of five years each. TCM will pay an annual rent of $190,000, comprised of a combination of cash rent and public benefits. The agreement also provides for resolution of approximately $600,000 of outstanding rent owed to the City, through a combination of annual payments by TCM over the next ten years, corresponding debt reductions by the City, and recognition by the City of public benefits provided by TCM in 2010 and 2011. This agreement replaces and terminates the previous lease agreement.

Background:

TCM was founded as a nonprofit organization in 1979 by a group of Seattle parents and educators. In early 1981, TCM opened its first exhibit at the Wing Luke Museum, and in June of that year the organization moved into its own facility in a Pioneer Square storefront. After consultation with the City, TCM moved into its current location on the first floor of Center House at Seattle Center in 1985. An expansion in 1989 added a museum retail shop. As part of an overall remodel of the Center House in 1995, the Children's Museum facility grew from 12,000 square feet to 32,000 square feet, adding office space, workshop space, and increased gallery space.

Overall, TCM serves approximately 240,000 visitors annually. The organization's programs are targeted for children ages birth to ten years. Patrons pay a daily admission fee of $7.50/adult or child or buy an annual family membership for $85. The museum features a variety of educational exhibits, hands-on activities, informal learning programs and parent mentoring. The facility provides for early learning opportunities which have been shown to build skill development in young children and foster successful performance in the formative early school years. These early learning opportunities are key to building the foundation which lead to high school graduation

and support the creation of strong families. TCM is an accredited member of the Association of Children's Museums and employs a year round staff of 12 full-time and 18 part-time employees. The Museum also engages a number of work-study students each year to help further the experience of potential future educators.

The existing lease agreement, authorized by Ordinance 117879 in 1995, covered the period from October 1, 1995 through September 30, 2010. Since October 1, 2010 TCM has operated under a "hold over" clause which allows for month to month operations until a new contract is in place.

The 1995 lease included a tiered rent schedule which gradually increased payments. The intent was to enable TCM to establish a consistent revenue base within the initial years of the lease term. Due to limited community awareness of its location, as well as many expanded program costs intended to draw visitors to the expanded facility, the museum initially struggled financially. To address the financial issues it faced, TCM made the strategic decision to offer content and services outside of the museum proper - in locations throughout the Seattle region. TCM also provided traveling exhibits intending to draw visitors and heighten the community awareness of its location and offerings. These strategies, while well intentioned, were not successful enough to resolve TCM's financial issues. Over time it became clear that the existing lease rates were unsustainable for TCM.

Recognizing that the existing lease rates were challenging, and the value TCM provides to Seattle's children, the City provided financial assistance to the museum on several occasions. While the combined efforts of TCM and the City efforts helped, the museum remained in arrears to the City at the end of 2007. The economic downturn that began in 2008 compounded the existing situation, an experience shared by many cultural organizations in the Seattle area. In late 2009, TCM's new administration began making weekly payments, at a sustainable amount, to demonstrate its commitment to its lease obligation. Despite its ongoing efforts, by the end of 2011 when the existing lease agreement will terminate, TCM will owe the City an estimated $600,000.

TCM wants to stay at Seattle Center and believes it is possible to succeed long term if its rental terms recognize its non-profit status and the public benefit it provides to the community. TCM is also committed to repaying its outstanding debt. As the financial history demonstrates, the lease rates included in the original TCM lease were not sustainable. Accordingly, Seattle Center is now proposing financial terms which recognize that TCM has limited cash resources but nevertheless provides significant value to the community. The proposed agreement resets the lease terms to recognize the value of the public benefits provided by TCM. These terms affirm that TCM's success is important to Seattle Center and to the Seattle community while providing for reasonable cash flow to the department and a plan for addressing back amounts owed.

The proposed lease term is ten years, beginning January 1, 2012 and ending December 31, 2021. The lease also provides TCM the option of extending the lease for up to two periods of five years each. Rent will be adjusted for CPI increases every five years,

including the extension periods if the lease is extended, with a cap of 10%.

Under the agreement, TCM's annual rent is $190,000 or $6 per square foot of space leased. A minimum of $90,000 annually will be paid in cash and the remaining $100,000 will be paid as Public Benefit Rent. Public Benefit Rent is based on an annual proposal submitted at the beginning of each year by TCM, subject to approval by the Seattle Center Director, and supported by a year-end report which documents the actual public benefits provided. Types of benefits anticipated to be provided include the continuation of existing programs which provide free admission to at risk families.
The agreement also creates a framework to address the accumulated balances owed to the City. Through a combined approach of partial debt forgiveness and an extended timeframe to pay remaining balances, both the City and TCM share in helping to restore the museum to a sustainable financial footing. Under the agreement, TCM will pay a minimum of $20,000 per year towards its debt until the debt is paid off, with a mandatory completion date of December 31, 2021. The City will match TCM's payments with a commensurate write off of an additional $20,000 per year from the amount owed. In addition, subject to the Seattle Center Director's certification of proof of services rendered, TCM will be allowed a onetime credit for the public benefits provided during 2010 and 2011 up to a value of $100,000 each year toward outstanding amounts due.

Please check one of the following:

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

__X__ **This legislation has financial implications.**

Appropriations:

Fund Name and Number	Department	Budget Control Level*	2011 Appropriation	2012 Anticipated Appropriation
TOTAL				

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

Appropriations Notes:

None.

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2011 Revenue	2012 Revenue
TOTAL				

Revenue/Reimbursement Notes:

See Attachment 1. The attached table summarizes the revenue resulting from the lease including projected lease payments and the dispensation of the back rent owed.

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2011 Positions	2011 FTE	2012 Positions*	2012 FTE*
TOTAL							

** 2012 positions and FTE are total 2012 position changes resulting from this legislation, not incremental changes. Therefore, under 2012, please be sure to include any continuing positions from 2011.*

Position Notes:

None.

Do positions sunset in the future?

N/A.

Spending/Cash Flow:

Fund Name & #	Department	Budget Control Level*	2011 Expenditures	2012 Anticipated Expenditures
TOTAL				

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

Spending/Cash Flow Notes:

None.

Other Implications:

a) Does the legislation have indirect financial implications, or long-term implications?

The Agreement authorized by this legislation is designed to assist the financial recovery of a valuable institution in the Seattle community, and discharge in an equitable manner its outstanding amounts payable to the City.

b) What is the financial cost of not implementing the legislation?

Without additional time to meet its financial obligations, as provided for in this legislation, an important cultural institution and valuable resource for children would be unable to continue at Seattle Center. TCM's lease at Seattle Center would not be renewed and TCM's outstanding debt would not be resolved. Seattle Center would need to find an alternative tenant for the large, highly customized museum/theatre space. At a time when many nonprofit arts organizations are struggling financially, the chances of replacing TCM as a tenant are limited.

c) Does this legislation affect any departments besides the originating department?

No.

d) What are the possible alternatives to the legislation that could achieve the same or similar objectives?

Any renewal of the lease agreement, or replacement of the existing tenant, would require legislation.

e) Is a public hearing required for this legislation?

No.

f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No.

g) Does this legislation affect a piece of property?

No.

h) Other Issues:

None.

List attachments to the fiscal note below:

Attachment 1: Table showing annual TCM payments and obligations under the new lease agreement.

CEN The Children's Museum FISC Att 1

revised 8.2.11

Lease Payments - Initial Term	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Cash Lease Payment	90,000	90,000	90,000	90,000	90,000	90,000	94,500	94,500	94,500	94,500
Cash Lease CPI Adjustment (estimate)	0	0	0	0	0	4,500	0	0	0	0
Public Benefit Lease	100,000	100,000	100,000	100,000	100,000	100,000	105,000	105,000	105,000	105,000
Public Benefit Lease CPI Adjustment (estimate)	0	0	0	0	0	5,000	0	0	0	0
Total Value of TCM Lease Payments	**190,000**	**190,000**	**190,000**	**190,000**	**190,000**	**199,500**	**199,500**	**199,500**	**199,500**	**199,500**

Payment of Amounts Owed	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	TOTAL
Cash from TCM	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	200,000
Seattle Center write-off (expense)	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	20,000	200,000
Total Over Term of Lease Agreement	**40,000**	**40,000**	**40,000**	**40,000**	**40,000**	**40,000**	**40,000**	**40,000**	**40,000**	**40,000**	**400,000**
Optional Public Benefit for 2010	100,000	0	0	0	0	0	0	0	0	0	100,000
Optional Public Benefit for 2011	100,000	0	0	0	0	0	0	0	0	0	100,000
Public Benefit Credit	**200,000**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**200,000**
Total Payment of Amounts Owed	**240,000**	**40,000**	**40,000**	**40,000**	**40,000**	**40,000**	**40,000**	**40,000**	**40,000**	**40,000**	**600,000**

	First Option for Five-Year Extension					Second Option for Five-Year Extension				
Options for Five-Year Extension	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
Cash Lease Payment	94,500	99,200	99,200	99,200	99,200	99,200	104,200	104,200	104,200	104,200
Cash Lease CPI Adjustment (estimate)	4,700	0	0	0	0	5,000	0	0	0	0
Public Benefit Lease	105,000	110,300	110,300	110,300	110,300	110,300	115,800	115,800	115,800	115,800
Public Benefit Lease CPI Adjustment (estimate)	5,300	0	0	0	0	5,500	0	0	0	0
Total Value of TCM Lease Payments	**209,500**	**209,500**	**209,500**	**209,500**	**209,500**	**220,000**	**220,000**	**220,000**	**220,000**	**220,000**

City of Seattle
Office of the Mayor

August 23, 2011

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 lease with The Children's Museum, Seattle (TCM) for use and occupancy of space on the first floor of the Center House at Seattle Center. This is a ten-year agreement which outlines the terms and conditions under which TCM may operate the museum. The lease agreement establishes a new rent structure and addresses an arrearage which has accumulated over a number of years. We believe that this new agreement creates a sustainable business model which will support TCM and provide suitable benefit to the City.

TCM was founded as a nonprofit organization in 1979 by a group of Seattle parents and educators. In 1985, the organization moved into its current location on the first floor of the Center House at Seattle Center. As part of an overall remodel of the Center House in 1995, the Children's Museum facility grew from 12,000 square feet to 32,000 square feet, adding office space, workshop space, and increased gallery space. The existing lease agreement, authorized by Ordinance 117879 in 1995, covered the period from October 1, 1995 through September 30, 2010. Since October 1, 2010 TCM has operated under a "hold over" clause which allows for month to month operations until a new contract is in place.

The new lease with TCM was negotiated with three basic goals: (1) reset the TCM rent to a sustainable level which the organization could realistically afford, (2) obtain appropriate value for the use of public space and (3) address the accumulated back rent amounts without adversely impacting the City's General Fund or Seattle Center's budget.

The Children's Museum, Seattle is an important member of Seattle Center's campus. Its programs support young children and parents in developmentally appropriate ways that create a foundation for strong families later in life. In addition, the museum brings thousands of young visitors to the Center's campus and is an important "entry point" to help build new audiences for the Center's resident organizations. The proposed lease is designed to assist the financial stabilization of an anchor cultural institution in this region. Thank you for your consideration of this legislation. Should you have questions, please contact Thomas Israel at 684-7298 or Robert Nellams at 684-7334.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
Fax (206) 684-5360
TDD (206) 615-0476
mike.mcginn@seattle.gov

ORDINANCE _____

AN ORDINANCE relating to the Seattle Center; authorizing the Director of Seattle Center to execute a new ten-year lease agreement with The Children's Museum, Seattle for the use and occupancy of certain space in the Center House.

WHEREAS, The Children's Museum, Seattle (TCM) and the City entered into a lease agreement in 1995, authorized by Ordinance 117879; and

WHEREAS, since October 1, 2010, TCM has been a month-to-month tenant in the Seattle Center House pursuant to a holdover clause in the original lease; and

WHEREAS, the City recognizes that TCM provides an important program to support young people with age appropriate developmental activities; and

WHEREAS, TCM is currently in arrears on its rental obligations, but is committed to repaying its outstanding debt to the extent it is able; and

WHEREAS, the new proposed lease terms recognize the value of the public benefits provided by TCM, while also addressing the back rent owed to the City and requiring TCM to satisfy such debt no later than December 31, 2021; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Seattle Center Director or his designee is authorized to execute, for and on behalf of the City of Seattle, a lease agreement with The Children's Museum, substantially in the form of the agreement attached hereto as Attachment 1 and identified as "Seattle Center Lease Between the City of Seattle and The Children's Museum, Seattle."

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

Passed by the City Council the ____ day of _____, 2011, and signed by me in open session in authentication of its passage this _____ day of _____, 2011.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2011.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2011.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Seattle Center Lease Between The City of Seattle and The Children's Museum, Seattle

STATE OF WASHINGTON – KING COUNTY

--ss.

279736 No. TITLE ONLY

CITY OF SEATTLE,CLERKS OFFICE

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:123774,790-123805

was published on

01/06/12

The amount of the fee charged for the foregoing publication is the sum of $ 237.15, which amount has been paid in full.

Subscribed and sworn to before me on

01/06/12

Notary public for the State of Washington,
residing in Seattle

JENNIFER A. BORRERO
NOTARY
PUBLIC
COMMISSION EXPIRES
10-24-15
STATE OF WASHINGTON

State of Washington, King County

City of Seattle

The full text of the following legislation passed by the City Council on December 19, 2011, and published below by title only, will be mailed upon request, or can be accessed at http://clerk.seattle.gov. For information on upcoming meetings of the Seattle City Council, please visit http://www.seattle.gov/council/calendar. Contact: Office of the City Clerk at (206) 684-8344.

ORDINANCE NO. 123774

AN ORDINANCE relating to land use and zoning; amending Chapter 23.32 of the Seattle Municipal Code at page 102 of the Official Land Use Map to rezone property located at 500 Fairview Avenue North from Industrial Commercial with a 65 foot height limit to Seattle Mixed with an 85 foot height limit; and accepting a Property Use and Development Agreement in connection therewith. (Petition by BMR-500 Fairview Avenue LLC, C.F. 311061, DPD Project 3011479)

ORDINANCE NO. 123790

AN ORDINANCE relating to land use and zoning, amending Seattle Municipal Code Section 23.47A.013, enacting new Section 23.47A.009, modifying development standards, and amending the Official Land Use Map Chapter 23.32, at pages 137 and 150 to rezone areas within the West Seattle Junction Hub Urban Village.

ORDINANCE NO. 123791

AN ORDINANCE relating to the Seattle Center; authorizing the Director of Seattle Center to execute a new ten-year lease agreement with The Children's Museum, Seattle for the use and occupancy of certain space in the Center House.

ORDINANCE NO. 123792

AN ORDINANCE authorizing the Interlocal Agreement between the City of Seattle and the Port of Seattle promoting music and musicians primarily associated with Seattle and the Puget Sound region.

ORDINANCE NO. 123793

AN ORDINANCE granting the Board of Regents of the University of Washington permission to maintain and operate an underground pedestrian concourse tunnel under and across 6th Avenue north of University Street, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; providing for acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123794

AN ORDINANCE granting 2020 Fifth Avenue, LLC permission to construct, maintain, and operate a pedestrian skybridge in the mid-block portion of the alley between 5th Avenue and 6th Avenue, south of Lenora Street, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.

ORDINANCE NO. 123795

AN ORDINANCE granting Cornish College of the Arts permission to maintain and operate a vehicular tunnel under and across the alley between 8th Avenue and 9th Avenue, north of Lenora Street, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123796

AN ORDINANCE relating to affordable housing; authorizing the Director of the Office of Housing to enter into and administer an Interlocal Cooperation Agreement with King County for a Regional Affordable Housing Program using revenues from a surcharge on document recording fees authorized by State law; and ratifying and confirming prior acts.

ORDINANCE NO. 123797

AN ORDINANCE authorizing the Superintendent of the Department of Parks and Recreation to amend the Ground Lease between the City of Seattle and the Center for Wooden Boats for development, operation and maintenance of an Education Center in Lake Union Park.

ORDINANCE NO. 123798

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to accept an extension and modification to certain lease and interlocal agreements with the City of Renton, Washington, and ratifying and confirming certain prior acts.

ORDINANCE NO. 123799

AN ORDINANCE relating to Seattle Public Utilities, authorizing the Director of Seattle Public Utilities to enter into an agreement with the City of Renton for the sale of water in an emergency from the City of Renton to the City of Seattle; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123800

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to execute, for and on behalf of The City of Seattle, an easement agreement granting a non-exclusive easement for ingress, egress, and public utilities under, over, and across The City of Seattle's fee-owned [municipal water pipeline property] for the benefit of abutting property owned by 112 Skyway Associates LLC located in the Skyway area of unincorporated King County just south of Seattle in the NW 1/4 of the NE 1/4 of Section 11, Township 23 North, Range 4 East, W. M.

ORDINANCE NO. 123801

AN ORDINANCE, relating to a vehicular and pedestrian ramp over North Northlake Way beneath the George Washington Memorial (Aurora Avenue) Bridge, amending Ordinance 118908, as amended by Ordinance 121855, updating the insurance and bond requirements, and amending the annual fee; renewing the term of the permit to the Quadrant Corporation; providing for acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123802

AN ORDINANCE relating to the use of Seattle Center Department property; amending Section 17.16.030 of the Seattle Municipal Code to authorize the Seattle Center Director to enter into leases with terms of up to ten years for food and beverage services in the Seattle Center House; establishing an oversight committee to review such leases; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123803

AN ORDINANCE related to the Board of Park Commissioners; authorizing a Get Engaged young adult position to the Board of Park Commissioners; changing the membership composition and terms of Park Commissioners; and amending Section 3.26.010 of the Seattle Municipal Code.

ORDINANCE NO. 123804

AN ORDINANCE relating to Conservation Futures Levy proceeds; authorizing the Mayor to amend the Interlocal Cooperation Agreement between the City of Seattle and King County as authorized by City of Seattle Ordinance 114978; and authorizing the deposit of 2011 allocations from King County Conservation Futures Levy proceeds into the City of Seattle's 2008 Parks Levy Fund.

ORDINANCE NO. 123805

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

Publication ordered by the City Clerk

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