

Ordinance No. 122631

Council Bill No. 116127

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

CF No. _____

Date Introduced:	<u>1-28-08</u>	
Date 1st Referred:	<u>1-28-08</u>	
To: (committee)	<u>Parks and Seattle Center</u>	
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage:	<u>2-19-08</u>	
Full Council Vote:	<u>6-0</u>	
Date Presented to Mayor:	<u>2-20-08</u>	
Date Approved:	<u>2-25-08</u>	
Date Returned to City Clerk:	Date Published:	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
	<u>2</u>	
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: _____

[Signature]

Councilmember

Committee Action:

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

2-19-08 Passed ~~5-0~~ 5-0

(Excused: Clark, Gooden, McIver)
OUT: DRAGO

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

(initial/date)

Law Department

Law Dept. Review

OMP Review

City Clerk Review

Electronic Copy Loaded

Indexed



City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

January 15, 2008

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

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill that authorizes the Superintendent of Parks and Recreation to execute a five-year lease agreement with Seattle Junior Golf Foundation (First Tee) for the purpose of providing office space in a currently unused portion of the Department of Parks and Recreation's (DPR's) Jefferson Park Golf Course Clubhouse. First Tee will provide learning facilities and educational programs for youth through the game of golf at the City's municipal golf courses. The proposed agreement includes an option to extend the initial lease term for an additional seven years.

First Tee of Greater Seattle was formed in 2001 and began programming for youth at Jefferson Park Golf Course in 2003. In 2004, First Tee expanded its programs to DPR's Jackson Park Golf Course. In 2007, First Tee served a combined total of 700 youths at the two DPR golf facilities. First Tee's programming is open to all families, regardless of their ability to pay. In exchange for the right to operate programs and maintain offices at the Jefferson Park Golf Clubhouse, First Tee will conduct routine maintenance on the leased office space, carry insurance in accordance with the terms of the agreement, and provide the City a minimum of \$5,760 in cash and public benefits in the first year of the agreement. In the remaining years of the lease term, the rent will be subject to an increase based on the Consumer Price Index and to a public benefits offset.

Passage of this legislation will ensure that First Tee continues to provide worthwhile services and programs to youth. Thank you for your consideration of this legislation. Should you have questions, please contact Eric Friedli at 684-8369.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Nickels", written over a large, stylized flourish that extends across the page.

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 12th Floor, Seattle, WA 98104-1873

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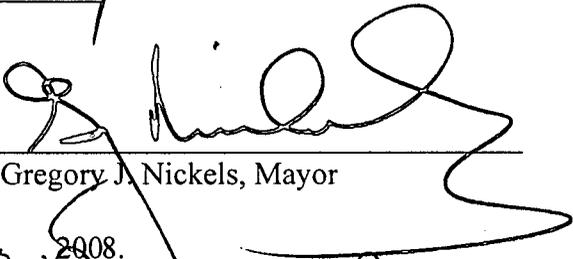
Section 2. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 19 day of FEB, 2008, and signed by me in open session in authentication of its passage this 19 day of FEB, 2008.



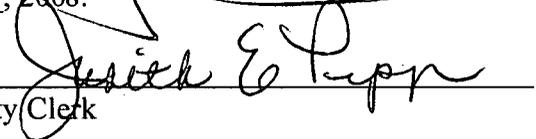
President _____ of the City Council

Approved by me this 25th day of February 2008.



Gregory J. Nickels, Mayor

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



City Clerk

(Seal)

Attachment 1: Lease between the City of Seattle and The Seattle Junior Golf Foundation



LEASE
Between
THE CITY OF SEATTLE
Department of Parks and Recreation
and
The Seattle Junior Golf Foundation
(dba The First Tee of Greater Seattle)

THIS LEASE ("Lease") is entered into this ____ day of _____, 20__, by and between **THE CITY OF SEATTLE** ("City"), a city of the first class of the State of Washington, acting by and through its Department of Parks and Recreation ("Parks") and the Superintendent thereof ("Superintendent"), and Seattle Junior Golf Foundation (dba The First Tee of Greater Seattle) ("Lessee") a Washington 501(c)(3) non-profit corporation organized under the laws of the State of Washington.

RECITALS

WHEREAS, the Seattle Department of Parks and Recreation has jurisdiction over and manages the City of Seattle public golf course known as Jefferson Park, located at the address identified in Section 1.1 below, including the buildings associated therewith; and

WHEREAS, the Lessee's mission is to affect the lives of young people in the greater Seattle area by providing learning facilities and educational programs that promote character development and life-enhancing values through the game of golf; and

WHEREAS, the parties agree that the public benefits from the Lessee's lease and improvement of certain identified Premises at the Jefferson Park Clubhouse; and

WHEREAS, the City, Lessee and Parks wish to enter into this Agreement for the purpose of setting forth the terms and conditions under which the Lessee will occupy and use portions of the Premises, as described below; and

NOW, THEREFORE, for and in consideration of the continuing services to be provided to the City, for payment of rent and other value, and in further consideration of and subject to the mutual promises, terms, conditions and performances described herein, the parties agree as follows:

AGREEMENT

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

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

1.1 **Building**. Collectively, the Jefferson Park Golf Course Clubhouse building, including the Premises, and their immediately surrounding areas. The Building



Attachment 1

is located at 4101 Beacon Avenue South, Seattle, King County Washington, 98108 and the real property upon which the Building is located is legally described as

162404 80 POR OF NW 1/4 STR 16-24-4 LY SLY OF S SPOKANE ST LESS POR FOR BEACON AVE S TGW POR OF SW 1/4 SD STR 16-24-4 LY N OF N LN OF GL 5 & GL 5 EXTENDED E TO W MGN OF BEACON AVE S & LY ELY OF BEACON AVE S LESS PORS FOR BEACON AVE S & FOR CHEASTY BLVD LESS POR LY WLY OF SD AVE & N OF PT 429.5 FT S OF SW1/4 COR&PLT S MGN SD ST PER ORD #65498 TGW POR OF SE 1/4 SD STR 16-24-4 DAF BAAP ON W LN OF SD SUBD SD PT BEING DIST 1972.02 FT S FR NW COR THOF TH S ALG SD W LN A DIST OF 170.45 FT TH NELY & NLY & NWLY ALG ARC OF CRV TO LFT HAVING A RAD OF 105.00 FT AN ARC DIST OF 198.87 FT TO POB PER ORDS #29997 & 29951.

1.2 Premises. The enclosed areas of the top floor of the Jefferson Park Golf Course Clubhouse (the "Building"), including the use of an emergency egress walkway, railing and drop ladder to be constructed by Lessee on the rooftop area outside the northern egress door, but excluding an area of approximately 250 square feet in the unfinished storage room on the top floor that will be set aside as storage for Parks or its designee.

1.3 Commencement Date. When signed by the Superintendent

1.4 Expiration Date. August 31, 2012, unless the Term of this Lease is extended pursuant to Section 3.

1.5 Rent and Additional Charges.

1.5.1 Rent: Four Hundred and Eighty Dollars (\$480) per month.

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

1.6 Permitted Use. "Permitted Use" shall mean those uses for which Lessee is authorized to use the Premises under sections 6.1.1 and 6.1.2.



1.7 Notice Addresses.

To City: The City of Seattle
Department of Parks and Recreation
Attention: Golf Program Manager
100 Dexter Ave N
Seattle, WA 98109

To Lessee: TFTGS
c/o Executive Director
2340 Broadmoor Dr. E.
Seattle, WA 98112

2. Premises.

2.1 Grant. City hereby leases to Lessee and its officers, directors, employees, agents and invitees, and Lessee hereby leases from City (on an exclusive basis) the Premises, as defined in Section 1.2. Incident to this Agreement, and in addition to the rights granted in Section 2.3 below, the City hereby grants the Lessee the nonexclusive right during the Term of this Agreement to use and enter the Building, as defined in Section 1.1, for purposes of access, inspection, maintenance and repairs affecting the Premises.

2.2 Condition. The Lessee has examined the Premises, has had a reasonable opportunity to obtain inspections and reports of professionals regarding the same, and has determined, after such examination, that the Premises are suitable for the use and occupancy desired by the Lessee hereunder. The City makes no warranties or representations of any kind, express or implied, with respect to the condition of the Premises or its suitability for the Lessees' purposes other than as specified in this Agreement. The Lessee agrees that the City shall have no liability or obligation as a result of any defect or condition of the Premises, including without limitation latent defects. The City shall have no obligation to undertake any repairs, maintenance or other work of any kind except as expressly set forth in this Agreement. The Lessee and the City acknowledge that this Section has been specifically bargained for and that the City would not be willing to permit the Lessee to use and occupy the Premises on the terms and conditions set forth herein without the Lessee's agreement to the terms of this Article.

2.3 Common Areas. During the Term, Lessee and its officers, directors, employees, agents and invitees shall have the non-exclusive right to use the ground level door and stairway to the second floor of the Building, lobbies, stairs, corridors, restrooms and other public areas of the Building (the "Common Areas") in common with City and other Building occupants and their respective licensees, invitees, customers and employees. City shall at all times have exclusive control and management of the Common Areas and no diminution thereof shall be deemed a constructive or actual eviction or entitle Lessee to compensation or a reduction or abatement of rent, so long as Lessee is provided with access to the Premises at all times.



2.4 Alterations. City, in its discretion, may increase, decrease or change the number, locations and dimensions of any hallways, lobby areas, Common Areas and other improvements within and adjacent to the Building. Such increase, decrease, or change shall not materially interfere with Lessee's lease of and access to the Premises and Lessee's Permitted Use described in Section 1.6 and Section 6. City reserves the right from time to time (i) to install, use, maintain, repair, relocate and replace pipes, ducts, conduits, wires and appurtenant meters and equipment for service to the Premises or to other parts of the Building in areas above the suspended ceiling surfaces, below the floor surfaces, within the walls and elsewhere in the Premises; (ii) to alter or expand the Building (excluding the Premises); and (iii) to alter, relocate or substitute any of the Common Areas.

2.5 Renovation or Rebuilding of the Premises. Notwithstanding the provisions of Section 2.4, City reserves to itself the right to undertake a major renovation or reconstruction of the Building during the Lease Term, even if such renovation or reconstruction results in destruction of or substantial change to the Premises. In the event that the City chooses to undertake such a renovation or reconstruction, City shall provide Lessee with an opportunity to engage in good faith discussions with the City regarding the terms and conditions under which Lessee could potentially continue to occupy and use space in a newly constructed or renovated Building.

3. Lease Term.

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

3.2 Extended Term. Lessee shall have the option to extend this Lease Term for one successive individual extended term of seven (7) years ("Extended Term") on the same terms and conditions set forth herein. Lessee may extend the original Lease Term to include any Extended Term by giving City written notice of its intention to do so at least ninety (90) days prior to the beginning of the Extended Term. For clarification, as used in this Lease, "Lease Term" or "Term" means the original term commencing on the Commencement Date and ending on the Expiration Date specified in Section 1.4, and any Extended Term established by Lessee hereunder.

4. Rent.

4.1 Rent. Commencing on the Commencement Date ("Rent Commencement Date") and thereafter, on or before the tenth day of each month throughout the Term, Lessee shall pay to City at the address and to the account specified by the City, without notice or demand in lawful money of the United States (a) in advance, the monthly amount of Rent specified in Section 1.55, (as may be adjusted as set forth in Section 4.2 and as may be offset as set forth in Sections 4.3 and 4.4 below); and (b) Additional Charges as and when specified elsewhere in this Lease, but if not specified, then within



ten (10) days after written demand. Rent and, if appropriate as reasonably determined by City, Additional Charges shall be prorated on a daily basis for any partial month within the Lease Term, and for any partial initial month in the Lease Term shall be paid on the first day of the Lease Term.

4.2 Consumer Price Index Adjustment to Rent. On each Rent Commencement Date anniversary during the Initial and any Extended Term, the Rent will be adjusted, upward only, by the percentage increase that occurred in the Consumer Price Index for all Urban Consumers (CPI-U / 1982-84 = 100), All Items, for the Seattle-Tacoma-Bremerton Metropolitan Area, as published by the Bureau of Labor Statistics, United States Department of Labor, or its successor ("the Index") during the preceding calendar year ("the CPI Increase"); provided, however, that the adjustment to the Rent shall not exceed 4% in any one year. Should any year's CPI percentage change be less than zero, the Rent shall not change from that of the prior year. If there is any change in the Index base (1984-82=100) or other modification of the Index, or if the CPI is discontinued, the Superintendent shall select a similar index of comparable statistics on the cost of living for King County as shall be computed by an agency of the United States or by a responsible financial periodical or other recognized authority.

4.3 Capital Improvement Rental Offset. The Lessee shall be entitled to an offset against Rent during the Term and any Extended Term of this Agreement in an amount equal to the Lessee's expenditures for the approved initial renovation of the Premises ("Capital Improvement Offset"). Lessee shall provide the Parks Finance Director with an accounting of its costs associated with the initial capital improvements completed to the Premises, together with such supporting documentation as the Finance Director may reasonably request. The Finance Director shall certify the total amount of those costs and this amount shall constitute the amount of the Lessee's Capital Improvement Rental Offset. The offset shall be credited against the Rent, in monthly installments. Each month, the Lessee shall report to the Parks Finance Director the amount of Capital Improvement Rental Offset it is applying to such Rent. If the approved amount of the Lessee's project expenditures exceeds the available offset, the remaining value of the Lessee's capital expenditures shall be deemed to have been donated to the City at the termination or expiration of this Agreement, and the improvements shall be surrendered with the Premises as provided in this Agreement, without the need for further action by the Lessee or the City.

4.4 Limitation on Offsets Notwithstanding anything in this Agreement to the contrary, in no event shall Lessee's monthly Rent payment be less than 25% of the Rent as specified in Section 1.5 and adjusted in Section 4.2.

4.5 Taxes. Lessee shall pay to PARKS monthly whatever leasehold excise tax is assessed by the City pursuant to Chapter 82.29A RCW and communicated to Lessee as a consequence of the Lessee's use and occupancy of the Premises under this Agreement. In addition, the Lessee shall pay before their delinquency, all other taxes that may be due and payable with respect to its activities in the Premises.



Attachment 1

4.6 Offset Inapplicable to Taxes and Additional Charges The reduction and offsetting of any Rent pursuant to Section 4, if any, shall have no effect on the amount of any leasehold excise tax due and payable to the City or any other tax obligation of the Lessee. Unless the Lessee is exempt from the payment of leasehold excise taxes, all such taxes shall be payable only in cash or cash equivalents.

4.7 Rent and Leasehold Excise Tax Payment Date and Address. Rent, leasehold excise tax, and Additional Charges due and payable under this Agreement, if any, shall be remitted on the tenth (10th) calendar day of each month during the term of this Agreement to the City at the address shown in Article 23 hereof, or to such other place as Parks may hereafter designate.

4.8 Late and Refused Payments. The Lessee acknowledges that late payment to the City of the Rent or any other sum due to the City hereunder may cause Parks to incur costs not contemplated by this Agreement including but not limited to processing and accounting charges and the cost of legal enforcement of this Agreement, the exact amount of which would be extremely difficult and impractical to ascertain. Therefore, if the Lessee fails to pay any sum after such amount is due to the City, the Lessee shall also pay to the City a rate of interest to be charged on delinquent accounts as established by Ordinance 117969, incorporated herein by reference. In addition, the Lessee shall pay the City a Twenty Dollar (\$20.00) charge for each check refused payment for insufficient funds or any other reason.

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

6. Lessee 's Operations.

6.1 Use of Premises. Lessee shall use the Premises for the following purposes only: Lessee's offices; as a training, learning and community center, including activities such as classes, exhibitions and sales; Lessee events; fundraising in support of Lessee's organization and mission; regular and special meetings of Lessee's Board of Trustees; Lessee's committee meetings and incidental purposes; and for activities supporting the overall mission of the Lessee as described in the recitals above; and in accordance with Sections 2.1 and 2.3. As City's willingness to enter into this Lease with Lessee was predicated, in part, on the nature of Lessee's business, and the compatibility of such business with the use of the remainder of the Premises, Lessee shall not use or permit the use of the Premises for any other business, or purpose, or under any other name, without City's prior written consent.. Lessee shall promptly comply, at its sole cost and expense, with such reasonable rules and regulations relating to the use of the Premises and Common Areas as City, from time to time, may promulgate. Any newly promulgated rules and regulations shall not materially interfere with Lessee's business for the Permitted Use. In the event of any conflict between the rules and regulations promulgated by City and the terms of this Lease, the terms of this Lease shall prevail. Lessee shall maintain the Premises in a clean, orderly and neat fashion and to a standard established for other similar Parks properties as determined by the Superintendent



(provided that Lessee shall not be responsible for maintaining those portions of the Premises that are City's responsibility to maintain under terms of this Lease), permitting no objectionable odors to be emitted from the Premises and shall neither commit waste nor permit any waste to be committed thereon. Lessee shall not permit any accumulation of trash on or about the Premises. Lessee shall not create or contribute to the creation of a nuisance in the Premises, and Lessee shall not engage in or permit any action that will disturb the quiet enjoyment of any other occupant in the Premises.

6.2 Compliance with Laws; Nondiscrimination.

6.2.1 General Obligation. Lessee shall not use or permit the Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, ordinance or regulation, or for any purpose offensive to the standards of the community of which the Premises is a part. Lessee shall promptly comply, at its sole cost and expense, with all laws, ordinances and regulations, including RCW 39.12 pertaining to prevailing wages, now in force or hereafter adopted relating to or affecting the condition, use or occupancy of the Premises (provided that Lessee shall not be responsible for maintaining in compliance with laws those portions of the Building (including the Premises) that are City's responsibility to maintain under terms of this Lease, or for making changes to the structure of the Premises or any utilities life-safety systems of the Premises, unless required due to Lessee's particular use of the Premises).

6.2.2 Nondiscrimination. Without limiting the generality of Section 6.2.1, and with respect to the Premises, Lessee agrees to and shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and The City of Seattle, including but not limited to Chapters 14.04, 14.10 and 20.42 of the Seattle Municipal Code, if and as applicable as they may be amended from time to time, and rules, regulations, orders and directives of the associated administrative agencies and their officers.

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

6.4 Hazardous Substances. Lessee shall not, without City's prior written consent, keep on or about the Premises any substance designated as, or containing any component now or hereafter designated as hazardous, dangerous, toxic or harmful and/or subject to regulation under any federal, state or local law, regulation or ordinance ("Hazardous Substances"), except customary office, kitchen, cleaning and other related



supplies in normal quantities handled in compliance with applicable laws. With respect to any Hazardous Substances stored with City's consent, Lessee shall promptly, timely and completely comply with all governmental requirements for reporting and record keeping; submit to City true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities; within five (5) days after City's request therefore, provide evidence satisfactory to City of Lessee's compliance with all applicable governmental rules, regulations and requirements; and comply with all governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment and disposal of Hazardous Substances. Any and all costs incurred by City and associated with City's inspections of the Premises and City's monitoring of Lessee's compliance with this Section 6.4, including City's attorneys' fees and costs, shall be Additional Charges and shall be due and payable to City within ten (10) days after City's demand therefore, if Lessee's violation of this Section 6.4 is discovered as a result of such inspection or monitoring. Lessee shall be fully and completely liable to City for any and all cleanup costs and expenses and any and all other charges, expenses, fees, fines, penalties (both, civil and criminal) and costs imposed with respect to Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances in or about the Premises. Lessee shall indemnify, defend and hold City harmless from any and all of the costs, fees, penalties, charges and expenses assessed against, or imposed, upon City (as well as City's attorneys' fees and costs) as a result of Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances on or about the Premises. The indemnification obligation of this Section shall survive the expiration or earlier termination of this Lease.

7. **Utilities.**

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



8. **Licenses and Taxes.** Without any deduction or offset whatsoever, Lessee shall be liable for, and shall pay prior to delinquency, all taxes, license and excise fees and occupation taxes covering the business conducted on the Premises and all personal property taxes and other impositions levied with respect to all personal property located at the Premises; Lessee shall be responsible for, and shall pay prior to delinquency, all fees, charges, or costs, for any governmental inspections or examinations relating to Lessee's use and occupancy of the Premises, and pay all taxes on the leasehold interest created by this Lease (*e.g.*, leasehold excise taxes) as set forth in Section 4.

8.1 **Contests.** Lessee shall have the right to contest the amount and validity of any taxes by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving Lessee of its covenant to pay any such taxes. City shall not be subjected to any liability or for the payment of any costs or expenses in connection with any such proceeding brought by Lessee, and Lessee hereby covenants that it will not, during the Term or thereafter, seek reimbursement or any payment from City for any such costs or expenses.

9. **Alterations by Lessee.** Lessee shall not make any alterations, additions or improvements in or to the Premises without first submitting to City plans and specifications for such work and obtaining City's prior written approval thereof, which approval will not be unreasonably delayed or denied. Lessee covenants that it will cause all alterations, additions and improvements to the Premises to be completed at Lessee's sole cost and expense by a contractor approved by City and in a manner that (a) is consistent with the City-approved plans and specifications and any conditions imposed by City in connection therewith; (b) is in conformity with first-class, commercial standards; (c) includes acceptable insurance coverage for City's benefit; (d) does not affect the structural integrity of the Premises or any of the Premises' systems; (e) does not disrupt the business or operations of any other occupant of the Premises; and (f) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Premises. Lessee shall secure all governmental permits and approvals required for the work; shall comply with all other applicable governmental requirements and restrictions; and reimburse City for any and all expenses incurred in connection therewith. Except as provided in Section 12 with regard to concurrent negligence, Lessee shall indemnify, defend and hold City harmless from and against all losses, liabilities, damages, liens, costs, penalties and expenses (including attorneys' fees, but without waiver of the duty to hold harmless) arising from or out of Lessee's performance of such alterations, additions and improvements, including, but not limited to, all which arise from or out of Lessee's breach of its obligations under terms of this Section 9. All alterations, additions and improvements (expressly including all light fixtures; heating and ventilation units; floor, window and wall coverings; and electrical wiring), except Lessee's moveable trade fixtures and appliances and equipment not affixed to the Premises (which may include, without limitation furniture, computers, point of sale systems, registers, and any fixtures provided as a "gift" to Lessee due to its relationship with the National First Tee organization) shall become the property of City at the expiration or termination of this Lease without any obligation on its part to pay for any of the same. At City's request, Lessee shall execute a deed or bill of sale in favor of City with respect to such alterations and/or improvements. Notwithstanding the foregoing,



Attachment 1

Lessee shall remove all or any portion of such alterations and/or improvements on the expiration or termination of this Lease if City specifically so directs, in writing, at the time of City's issuance of its approval thereof. Within ninety (90) days after the completion of any alteration, addition or improvement to the Premises, Lessee shall deliver to City a full set of "as-built" plans of the Premises showing the details of all alterations, additions and improvements made to the Premises by Lessee.

10. Care of Premises.

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

10.2 Custodial Service for Premises. Lessee shall at its own expense, at all times, keep the Premises and areas immediately adjacent thereto in a neat, clean, safe, and sanitary condition; and keep the glass of all windows and doors serving the Premises clean and presentable. Lessee shall furnish all cleaning supplies and materials needed to operate such areas in the manner prescribed in this Lease; Lessee shall provide any necessary janitorial service to adequately maintain the inside of such areas using a company reasonably approved by City. Lessee shall be responsible for keeping the areas immediately adjacent to the Premises free of litter and clean of spills resulting from Lessee's operations. If, after City provides written notice to Lessee of Lessee's failure to comply with this Section, Lessee fails to take good care of the Premises, City, at its option, may do so, and in such event, upon receipt of written statements from City, Lessee shall promptly pay the entire actual and reasonable cost thereof as an Additional Charge. City shall have the right to enter the Premises for such purposes. City shall not be liable for interference with light, air or view. All normal repairs necessary to maintain the Premises (including the structural aspects and exterior of the Premises), the Common Areas, and the heating, ventilation, utility, electric and plumbing and other systems and equipment serving the Premises (including the Premises) in a reasonably good operating condition, as determined by City, shall be performed by City at its expense. The foregoing sentence does not extend to maintenance occasioned by an act or omission of Lessee or its officers, agents, employees, or contractors. Except in the event of City's gross negligence or intentional misconduct, there shall be no abatement or reduction of rent arising by reason of City's making of repairs, alterations or improvements.

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



Attachment 1

10.4 Lessee's Indemnification of City Against Liability under Visual Artists Rights Act of 1990. Lessee shall protect, defend, and hold City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of (a) the installation or integration of any work of visual art on or into the Premises; or (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any breach of Section 10.3 of this Lease; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by Lessee or any of its officers, employees or agents. This indemnification obligation shall exist regardless of whether City or any other person employed by City has knowledge of such installation, integration, or removal or has consented to any such action or is not required to give prior consent to any such action. The indemnification obligation of this Section shall survive the expiration or earlier termination of this Lease.

11. Signs and Advertising.

11.1 Signs, Generally. Except as set forth in Section 11.2 below, Lessee shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster, or any advertising matter whatsoever anywhere in or about the Premises, without the Superintendent's prior written consent. Lessee shall remove all signage at the expiration or earlier termination of this Lease and repair any damage or injury to the Premises.

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

11.3 Recognition. Lessee shall include a statement and the Parks logo in printed materials related to its use of the Premises stating, in effect, that: "We would like to thank Seattle Parks and Recreation for providing a location for First Tee of Greater Seattle."

12. Surrender of Premises. At the expiration or sooner termination of the Lease Term, Lessee shall return the Premises to City in the same condition in which received on the Commencement Date (or, if altered, then the Premises shall be returned in such altered condition unless otherwise directed by City pursuant to Section 9), reasonable wear and tear, casualty and condemnation damages not resulting from or contributed to by negligence of Lessee, excepted. Prior to such return, Lessee shall remove its moveable trade fixtures and appliances and equipment that have not been attached to the Premises, and shall repair any damage resulting from their removal. In no event shall Lessee remove floor coverings; heating or ventilating equipment; lighting equipment or fixtures; or floor, window or wall coverings unless otherwise specifically directed by City in writing at the time when City's approval of their installation is issued. Lessee's obligations under this Section 12 shall survive the expiration or termination of this Lease.



13. **Waiver; Indemnification.**

13.1 **Lessee's Indemnification.** Except as otherwise provided in this section, Lessee shall indemnify, defend (using legal counsel reasonably acceptable to City) and save City, City's officers, agents, employees and contractors, and other occupants of the Premises harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable personnel and overhead costs and attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to, any property arising out of or in connection with (i) the occupation, use or improvement of the Premises by Lessee or any of its employees, agents or contractors, (ii) Lessee's breach of its obligations hereunder, or (iii) any negligent act or omission of Lessee or any sublessee, licensee, assignee or concessionaire of Lessee, or of any officer, agent, employee, guest or invitee of any of the same in or about the Premises. Lessee agrees that the foregoing indemnity specifically covers actions brought by its own employees. This indemnity with respect to acts or omissions during the Lease Term shall survive termination or expiration of this Lease. The foregoing indemnity is specifically and expressly intended to, constitute a waiver of Lessee's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the extent necessary to provide City with a full and complete indemnity from claims made by Lessee and its employees, to the extent of their negligence. Lessee shall promptly notify City of casualties or accidents occurring in or about the Premises. **CITY AND LESSEE ACKNOWLEDGE THAT THEY SPECIFICALLY NEGOTIATED AND AGREED UPON THE INDEMNIFICATION PROVISIONS OF THIS SECTION 12.**

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

13.3 **Limitation of Lessee's Indemnification.** In compliance with RCW 4.24.115 as in effect on the date of this Lease, all provisions of this Lease pursuant to which Lessee (the "Indemnitor") agrees to indemnify the other (the "Indemnitee") against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any Premises, road, or other structure, project, development, or improvement attached to real estate, including the Premises, (i) shall not apply to damages caused by or resulting from the sole negligence of the Indemnitee, its agents or employees, and (ii) to the extent caused by or resulting from the concurrent negligence of (a) the Indemnitee or the Indemnitee's agents or employees, and (b) the Indemnitor or the Indemnitor's agents or employees, shall apply only to the extent of the Indemnitor's



negligence; PROVIDED, HOWEVER, the limitations on indemnity set forth in this section shall automatically and without further act by either City or Lessee be deemed amended so as to remove any of the restrictions contained in this section no longer required by then applicable law.

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

14. Insurance.

14.1 Minimum Insurance to be Secured and Maintained. Prior to the Commencement Date, Lessee shall secure and shall thereafter maintain (or cause its SubLessee(s) to secure and maintain) in full force and effect, at no expense to City, and throughout the entire Lease Term, insurance as specified below:

14.1.1 Commercial General Liability Insurance including:

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

14.1.1.2 Such policy(ies) must be endorsed as provided in Section 14.3.1.2 hereof and provide the following minimum limits:

14.1.1.3 \$2,000,000 each Occurrence Combined Single Limit
Bodily Injury and Property Damage

14.1.1.4 \$2,000,000 each Offense Personal and Advertising injury

14.1.1.5 \$ 100,000 each Occurrence Fire Legal Liability

14.1.1.6 \$1,000,000 each Accident/ Disease - Each Employee stop Gap

14.1.2 Business Automobile Liability including coverage for owned, non-owned, leased or hired vehicles with a minimum limit of \$2,000,000 each Occurrence Combined Single Limit Bodily Injury and Property Damage

14.1.3 Workers' Compensation securing Lessee's liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington; provided, that if Lessee is qualified as a self-insurer in accordance with Chapter 51.14 of the Revised Code of Washington, Lessee shall certify that qualification



by a letter that is signed by a corporate officer of Lessee and delivered to City that sets forth the limits of any policy of excess insurance covering its employees; and

14.1.4 Property Insurance under which the Lessee's furniture, fixtures, equipment and inventory and all alterations, additions and improvements that Lessee makes to the Premises are insured throughout the Lease Term in an amount equal to the replacement cost thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss, not less broad than provided by the insurance industry standard "Causes of Loss - Special Form (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises. City shall be named as a loss payee as respects property insurance covering alterations, additions and improvements under such policy.

14.1.4.1 City shall insure the Premises and City's furniture, fixtures, equipment and inventory (exclusive of Lessee's furniture, fixtures, equipment and inventory and all alterations, additions and improvements that Lessee makes to the Premises) in an amount equal to the replacement cost thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss, not less broad than provided by the insurance industry standard "Causes of Loss - Special Form (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; and (iii) loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises.

14.2 General Requirements Regarding Lessee's Insurance.

14.2.1 The insurance required by Sections 14.1.1 and 14.1.2 shall be endorsed to include the City of Seattle and its officers, elected officials, employees, agents and volunteers as additional insureds. The insurance required by Sections 14.1.1 and 14.1.2 shall be primary as respects City; shall provide that any other insurance maintained by City shall be excess and not contributing insurance with Lessee's insurance; and shall provide that such coverage shall not be reduced or canceled without forty-five (45) days' prior written notice to City, except ten (10) days prior written notice to City with respect to non-payment of premium, at its address as specified in Section 1.7 hereof.

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

14.2.3 Any deductible or self-insured retention in excess of \$10,000 must be disclosed to, and shall be subject to reasonable approval by, City's Risk Manager. The



Attachment 1

cost of any claim payments falling within the deductible shall be the responsibility of Lessee.

14.2.4 Coverage and/or limits may be reasonably altered or increased as necessary to reflect type of or exposure to risk. City shall have the right to periodically review the appropriateness of such coverage and limits in view of inflation and/or changing industry conditions and to require an increase in such coverage or limits upon ninety (90) days' prior written notice.

14.3 Evidence of Insurance. The following documents must be delivered to City at its address as specified in or pursuant to Section 1.7 hereof, as evidence of the insurance coverage secured and maintained by Lessee:

14.3.1 On or before the Commencement Date, and thereafter, not later than five (5) days prior to the expiration or renewal date of each such policy:

14.3.1.1 A copy of the policy's declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements specifying all endorsements listed on the policy including any company-specific or manuscript endorsements;

14.3.1.2 A copy of the endorsement naming the City of Seattle and its officers, elected officials, employees, agents and volunteers as additional insureds (whether on ISO Form CG 20 26 or an equivalent additional insured or blanket additional insured policy wording), showing the policy number, and the original signature and printed name of the representative of the insurance company authorized to sign such endorsement;

14.3.1.3 A copy of an endorsement stating that the coverages provided by such policy to City or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to City, except ten (10) days prior written notice to City with respect to non-payment of premium, at its address as specified in or provided pursuant to Section 1.7 hereof; and

14.3.1.4 For the Commercial General liability and Business Automobile insurance to be secured and maintained pursuant to Section 14.1.1 and 14.1.2 hereof, a copy of the "Separation of Insureds" or "Severability of Interests" clause in such policy.

14.3.2 Pending receipt of the documentation specified in this Section 14, Lessee may provide a copy of a current complete binder. An ACORD certificate of insurance will not be accepted in lieu thereof.

14.4 Reconstruction Following Loss. Lessee shall proceed with reasonable diligence as soon as sufficient funds are available therefore, to prepare plans and specifications for, and thereafter to carry out, all work necessary to repair and restore the alterations, additions and improvements that Lessee made to the Premises that is at least



equivalent to, or more suitable than, the alterations, additions and improvements that were damaged or destroyed.

14.5 Waiver of Subrogation. City and City's insurer(s) shall waive subrogation for damage to or destruction of the Premises and City's furniture, fixtures, equipment and inventory in favor of Lessee except with respect to losses of City's aforesaid property of up to \$100,000 that are attributable to Lessee's negligence and to which Lessee's Fire Legal Liability insurance responds; however, in the event of a loss to City's aforesaid property attributable to Lessee's negligence, Lessee agrees to reimburse City for the amount of its property insurance deductible up to Lessee. Lessee and Lessee's insurer(s) shall waive subrogation for damage to or destruction of Lessee's alterations, additions and improvements, furniture, fixtures, equipment and inventory in favor of City; however, in the event of a loss to Lessee's aforesaid property attributable to City's negligence, City agrees to reimburse Lessee for the amount of its property insurance deductible up to \$100,000.

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

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

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

17. Destruction. If the Premises are damaged by fire or other casualty, the City shall make all insurance proceeds payable as a result of such casualty available to repair the damage to the Premises and the Building. The City and the insurer shall adjust the loss and, in accordance with approved construction documents, promptly commence such repairs as will restore the Premises (including the improvements therein) and the Building



to their condition immediately preceding the casualty as nearly as reasonably possible; provided, however, that the City shall not be required to spend more than the available insurance proceeds plus any deductible amount. Notwithstanding the foregoing, if (i) more than fifty percent (50%) of the Building is damaged as a result of casualty; or (ii) repair and restoration cannot reasonably be completed within eighteen (18) months from the date of the casualty; or (iii) the casualty occurs during the final two (2) years of the initial Term or any Extended Term, then either party may terminate this Lease upon 30 days' written notice to the other party, specifying the effective date of such termination. In such event, the City shall retain all insurance proceeds. From the date of the casualty through completion of repairs, Rent shall be abated in the proportion that the untenable portion of the Premises bears to the whole thereof, as reasonably determined by the City, unless the casualty results from or is contributed to by the negligence of Lessee or any of its officers, contractors, agents, invitees, guests, or employees, or Lessee's breach of this Lease, in which event there shall be no abatement. In the event of damage by casualty, Lessee shall, to the extent it deems necessary or desirable, at its sole cost and expense, repair all damage to its own personal property. The City shall not be liable to Lessee for damages, compensation, or other sums for inconvenience, loss of business, or disruption arising from any repairs to or restoration of any portion of the Premises.

18. **Eminent Domain.**

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

18.2 **Award.** Except as otherwise provided below, City reserves all right to the entire damage award or payment for any taking by Eminent Domain, and Lessee waives



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

19. **Default by Lessee.**

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

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

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



Attachment 1

19.4 Vacation or Abandonment. If Lessee vacates or abandons the Premises in its entirety and fails to reoccupy it within thirty (30) days after City (1) delivers a notice to Lessee's notice address set forth in Section 1.7 above demanding such reoccupancy and (2) mails by certified or registered mail a copy of the notice to any forwarding address given by Lessee to City in writing, Lessee shall be in default under this Lease.

19.5 City's Non-exclusive Remedies upon Termination due to Default of Lessee. Notwithstanding any reentry by City and anything to the contrary in this Lease, in the event of the termination of this Lease due to the Default of Lessee, the liability of Lessee for all sums due under this Lease provided herein shall not be extinguished for the balance of the Term of this Lease. Lessee shall also be liable to City for any other amount (excluding consequential or specific damages) necessary to compensate City for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any costs incurred in authorizing others the use and occupancy of the Premises and in preparing the Premises for such use and occupancy, and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington. The provisions of this Section 19.5 shall survive the expiration or earlier termination of this Lease.

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

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

22. Termination for Convenience. Notwithstanding anything else in this Lease to the contrary, the City may, at any time and without liability of any kind to Lessee, terminate this Lease upon one hundred and eighty (180) days' written notice to Lessee if the City reasonably determines that the Premises are required for a different public purpose. If City terminates under this Section within three (3) years from the



Attachment 1

Commencement Date, then the City shall pay to Lessee the total of Lessee's unrealized Capital Improvement Rental Offset, as defined in Section 4.2, based on a straight-line seven-year depreciation.

23. **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.

24. **Access by City.** City and its agents shall have the right to enter the Premises at any reasonable time during normal business hours, after reasonable advance notice to Lessee, to examine the same, and to show them to prospective purchasers, lenders or Lessees, and to make such repairs, alterations, improvements, additions or improvements to the Building or Premises as City may deem necessary or desirable. If Lessee is not personally present to permit entry and an entry is necessary in an emergency, City may enter the same by master key that will be provided to City, without rendering City liable therefore, except in the event of City's gross negligence or intentional misconduct.

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

26. **Notices.** Any notice, demand or request required hereunder shall be given in writing to the party's address set forth in Section 1.7 hereof by any of the following means: (a) personal service; (b) commercial or legal courier; or (c) registered or certified, first class mail, postage prepaid, return receipt requested. Such addresses may be changed by notice to the other parties given in the same manner as above provided. Notices shall be deemed to have been given upon the earlier of actual receipt, as evidenced by the deliverer's affidavit, the recipient's acknowledgment of receipt, or the courier's receipt, except in the event of attempted delivery during the recipient's normal business hours at the proper address by an agent of a party or by commercial or legal courier or the U.S. Postal Service but refused acceptance, in which case notice shall be deemed to have been given upon the earlier of the day of attempted delivery, as evidenced by the messenger's affidavit of inability to deliver stating the time, date, place and manner in which such delivery was attempted and the manner in which such delivery was refused, or on the day immediately following deposit with such courier or, if sent pursuant to Section (c), forty-eight (48) hours following deposit in the U.S. mail.

27. **Successors or Assigns.** All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon City, Lessee and, subject to the terms of



Sections 15 and 16, their respective heirs, administrators, executors, successors and permitted assigns, and upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

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

29. **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.

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

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

32. **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.

33. **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.

34. **Execution by City and Lessee; Effective Date.** Neither City nor Lessee shall be deemed to have made an offer to the other party by furnishing the other party with a copy of this Lease with particulars inserted. No contractual or other rights shall exist or be created between City and Lessee until all parties hereto have executed this Lease and the appropriate legislative authority approves it. This Lease shall become effective as of the Commencement Date (i) upon both parties signature hereto, and (ii) after being formally approved by the Seattle City Council. City shall have no liability to Lessee and shall have the right to terminate this Lease upon written notice to Lessee if this Lease is legislatively disapproved.

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. **Standards.** Lessee recognizes that, although it is operating its facilities as an independent operator, Seattle Parks and Recreation is organized and exists for the purpose of maintaining park and recreation facilities for the use and enjoyment of the general public. Lessee, its agents and employees, will devote their efforts toward rendering courteous service to the public as though they were employees of the City, with a view of adding to the enjoyment of the patrons of this recreational facility. Lessee shall operate and conduct the facilities on the Premises in a businesslike manner, and will not permit any conduct on the part of Lessee’s employees, which would be detrimental to City’s operations.

37. **City’s Control of Premises and Vicinity.** All common and other facilities provided by City in or about the Premises are subject to the City’s exclusive control and management by City. Accordingly, City may do any and all of the following (among other activities in support of Parks or other municipal objectives), all without incurring any liability whatsoever to Lessee:

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

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

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

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

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

38. **Lessee’s Records.** Lessee shall keep true, full, and accurate books of account setting forth Lessee’s receipts, together with any other information that will affect the determination of Rent and Additional Charges. City shall be allowed after ten (10) days’ prior written notice to Lessee to inspect Lessee’s books of account at Lessee’s office and to procure audits thereof by an auditor at City’s sole cost and expense (except as provided below).



39. **Miscellaneous.**

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

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

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

CITY:

LESSEE:

THE CITY OF SEATTLE

By: _____

By: _____

Print Name/Title: _____

Department of Parks and Recreation



Attachment 1

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

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

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

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

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

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

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

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



FISCAL NOTE FOR NON-CAPITAL PROJECTS

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

Legislation Title:

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

• **Summary of the Legislation:**

The proposed legislation authorizes the Superintendent of Parks and Recreation (Superintendent) to enter into a five-year lease agreement with the Seattle Junior Golf Foundation (First Tee) for the purpose of providing golf education and services to youth at the Department of Parks and Recreation's (DPR) golf courses. The agreement provides office and programming space for First Tee at DPR's Jefferson Park Golf Clubhouse (Clubhouse). The proposed agreement includes an option for First Tee to extend the agreement for an additional seven years.

• **Background:**

First Tee of Greater Seattle was formed in 2001 from a collaborative effort involving the Broadmoor Golf Club Foundation, The First Tee, the board of Municipal Golf of Seattle and the City of Seattle (City). It became the 106th chapter of The First Tee on December 20, 2002. Its legal name is the Seattle Junior Golf Foundation, and it conducts business as The First Tee of Greater Seattle.

First Tee began programming for kids in 2003 at Jefferson Park Golf Course in Seattle and served 224 children that year. In 2004, First Tee expanded to Jackson Park Golf Course and served a combined total of 505 children. In 2005, it expanded to Crossroads Par 3 Golf Course in Bellevue and served a combined total of 676 children. In 2006, First Tee served a combined total of 1,047 children, ages 6 - 18, at the 3 golf facilities. The majority of the children served are located at Jefferson Park, their flagship location, with over half of all kids served at that location alone. In 2007, First Tee served 700 kids at Jefferson and Jackson Park Golf Courses. First Tee's programming is open to all families, regardless of their ability to pay. One third of the kids served at the golf courses are unable to pay and are on "scholarship" - meaning they do not pay anything to participate. The other two-thirds pay a one-time annual registration fee of \$55. This includes 10 weeks of summer golf and life skills classes (3 hours per class), 4-5 weekend classes in the fall and spring, tournament fees, golf fees, range fees, equipment, golf shirt, field trips, and golf clinics.

DPR and First Tee agreed it would be of mutual benefit to enter into a long-term agreement. This proposed agreement will facilitate continued programming by First Tee to serve youth



through the game of golf at Jefferson Park and other City-owned golf courses. The annual fee and offsets are subject to the Consumer Price Index (CPI) Adjustment. (see Sections 4.1 and 4.2 of the proposed lease)

First Tee is prepared to make improvements and will occupy the second floor of the Clubhouse. The area needs painting, electrical and plumbing improvements, and telecommunications upgrades which will be funded by First Tee. DPR will be responsible for the exterior of the building which requires no improvements at this time. The cost of major repairs or alterations that would prolong the life of the interior of the building would be offset against the monthly rent (see Article 9 of the proposed lease).

For the first year, the annual rent is set at \$5,760 and for each additional year of the agreement the rent will be increased by an annual adjustment calculated using the CPI. First Tee will be allowed to offset a portion of the rent provided that the net annual rent does not fall below \$1,440. Offsets can include costs related to initial renovations of the premises (see Section 4.3 of the proposed lease). Under the terms of this agreement, First Tee will continue to be responsible for routine maintenance and repairs to the second floor area of the Clubhouse. Costs for major repairs or alterations that would prolong the life of the building could be considered as an offset to First Tee's monthly rent. DPR continues to be responsible for the major maintenance to the exterior and first floor of the building. Please see Attachment A to the fiscal note for a summary of the contract.

- *Please check one of the following:*

This legislation does not have any financial implications.

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

Appropriations: N/A

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

Notes: N/A



Anticipated Revenue/Reimbursement: Resulting From This Legislation:

Fund Name and Number	Department	Revenue Source	2007 Revenue	2008 Revenue
Parks and Recreation Fund (10200)	Parks and Recreation	Income from Concession Fee Payments	\$0	\$5,760
TOTAL			\$0	\$5,760

Notes: None

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

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

Notes: No positions are created as a result of this legislation.

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

Spending/Cash Flow: N/A

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

Notes: N/A.

- **What is the financial cost of not implementing the legislation?** The proposed five-year agreement would guarantee DPR at least \$5,760 per year (in cash, major maintenance to the building or public benefits) or \$28,800 over the term of the five year lease. If the lease with First Tee is not approved, DPR might forego at least \$5,760 per year and possible major maintenance improvements to the building.



- **What are the possible alternative to the legislation that could achieve the same or similar objectives?** None
- **Is the legislation subject to public hearing requirements:** No
- **Other Issues:** None.

Please list attachments to the fiscal note below:

Attachment A: Contract Summary

Attachment A

Seattle Department of Parks and Recreation

CONTRACT SUMMARY

Contracting Party/ Lessee/ Concessionaire/Other: The Seattle Junior Golf Foundation
(dba The First Tee of Greater Seattle)

Contract Title and Contract Type: Lease

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

New: X or **Renewal (or extension of existing Lease)** _____

Premises: Jefferson Park Golf Clubhouse – 2nd Floor

Term of Lease: 5 years and a 7 year renewal option

Purpose of Lease (description of license): First Tee will lease space for educational programs for youth and offices.

Rent: \$480 per month, adjusted yearly by the Consumer Price Index (CPI)

Adjustments to Rent (if any): Rent is \$480 per month – up to 75% may be offset based on value of capital improvements as pre-approved by the Department of Parks and Recreation (DPR).

Public Benefit (e.g., description of permitted use): Venue is used for First Tee offices public programming and occasional fundraising activities.

Maintenance: DPR is responsible for major maintenance including exterior walls and roof and surrounding park and parking lots. First Tee is responsible for routine interior maintenance and janitorial work.

Other Pertinent Information:



STATE OF WASHINGTON – KING COUNTY

--SS.

221086
CITY OF SEATTLE, CLERKS OFFICE

No. TITLE ONLY

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

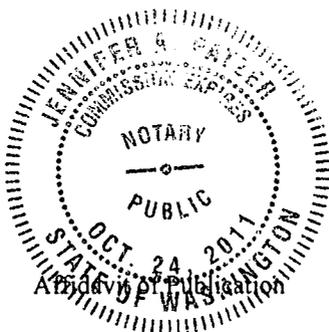
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:122629-122632

was published on

02/28/08

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



[Handwritten signature]

Subscribed and sworn to before me on

02/28/08

[Handwritten signature]

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

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

ORDINANCE NO. 122632

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

ORDINANCE NO. 122631

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

ORDINANCE NO. 122630

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

ORDINANCE NO. 122629

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

Publication ordered by JUDITH PIPPIN,
City Clerk.

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