SEATTLE CITY COUNCIL

Legislative Summary

CB 118515

Record No.: CB 118515 **Type:** Ordinance (Ord) **Status:** Passed

Version: 1 12 T881 **In Control:** City Clerk

File Created: 09/17/2015

Final Action: 10/16/2015

Title: AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to enter into a lease agreement with Boyer Children's Clinic to occupy and use a portion of Building 11 at Warren G. Magnuson Park for a children's clinic and related general office purposes.

		Date
Notes:	**Filed with City Clerk:**	10/16/2015
	Mayor's Signature:	10/9/2015
Sponsors: Godden	**Vetoed by Mayor:**	
	Veto Overridden:	
	Veto Sustained:	

Attachments: Att 1 - Magnuson Park Building 11 Lease with Boyer Children's Clinic

Drafter: susan.golub@seattle.gov

Filing Requirements/Dept Action:

History of Legislative File

Legal Notice Published: ☐ Yes ☐ No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	09/17/2015	Mayor's leg transmitted to Council	City Clerk			
	Action Text: The Council Bill (CB) was Mayor's leg transmitted to Council. to the City Clerk **Notes:**						
1	City Clerk	09/17/2015	sent for review	Council President's Office			
	Action Text: The Council Bill (CB) was sent for review. to the Council President's Office **Notes:**						
1	Council President's Office	09/18/2015	sent for review	Parks, Seattle Center, Libraries, and Gender Pay Equity Committee			
	Action Text: The Council Bill (CB) was sent for review. to the Parks, Seattle Center, Libraries, and Gender Pay Equity Committee **Notes:**						

1	Full Council	09/21/2015	referred	Parks, Seattle Center, Libraries, and Gender Pay Equity Committee	

Action Text: The Council Bill (CB) was referred. to the Parks, Seattle Center, Libraries, and Gender Pay Equity Committee

Notes:

1	Parks, Seattle Center, Libraries, and Gender Pay Equity Committee	09/25/2015	pass	Pass

Action Text: The Committee recommends that Full Council pass the Council Bill (CB).

Notes:

In Favor: 3 Chair Godden, Vice Chair Harrell, Member Rasmussen

Opposed: 0

1	Full Council	10/05/2015	passed	Pass

Action Text: The Council Bill (CB) was passed by the following vote and the President signed the Bill:

Notes:

In Favor: 9 Councilmember Bagshaw, Council President Burgess, Councilmember Godden, Councilmember Harrell, Councilmember Licata, Councilmember O'Brien, Councilmember Okamoto, Councilmember Rasmussen, Councilmember Sawant

Opposed: 0

1	City Clerk	10/06/2015	submitted for Mayor's signature	Mayor

Action Text: The Council Bill (CB) was submitted for Mayor's signature. to the Mayor

Notes:

1	Mayor	10/09/2015	Signed	

Action Text: The Council Bill (CB) was Signed.

Notes:

1	Mayor	10/16/2015	returned	City Clerk

Action Text: The Council Bill (CB) was returned. to the City Clerk

Notes:

1	City Clerk	10/16/2015	attested by City Clerk	

Action Text: The Ordinance (Ord) was attested by City Clerk.

Notes:

CITY OF SEATTLE

ORDINANCE 124881

COUNCIL BILL 118515

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to enter into a lease agreement with Boyer Children's Clinic to occupy and use a portion of Building 11 at Warren G. Magnuson Park for a children's clinic and related general office purposes.

WHEREAS, it will benefit the Seattle Department of Parks and Recreation (DPR) to lease space in Warren G. Magnuson Park Building 11 in order to generate revenue to support the debt service for building renovation expenses; and

WHEREAS, Boyer Children's Clinic, a Washington non-profit corporation, proposes to lease a portion of Building 11 in compliance with all land use codes, historic preservation covenants, and in a manner compatible with the building's location in an active Seattle park; and

WHEREAS, DPR seeks to encourage healthy lifestyles and support the well-being of youth in Seattle; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of Parks and Recreation ("Superintendent"), or the Superintendent's designee, is authorized to execute for and on behalf of the City a ten year lease agreement, plus two options to extend, with Boyer Children's Clinic providing for tenant improvements and use and occupancy of a portion of the second floor of Building 11 at Warren G. Magnuson Park. The lease agreement shall be substantially in the form of the Magnuson Park Building 11 Lease between The City of Seattle Department of Parks and Recreation and Boyer Children's Clinic, which is attached to this ordinance as Attachment 1 (the "Lease"). The

Superintendent is authorized to make such minor deletions and revisions to the Lease as the Superintendent deems to be in the best interest of the City, consistent with the purposes of this ordinance.

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 5th day of OCTOBER, 2015, and signed by me in open session in authentication of its passage this 5th day of OCTOBER, 2015.

President _____ of the City Council

Approved by me this 8th day of October, 2015.

Edward B. Murray, Mayor

Filed by me this 16th day of OCTOBER, 2015.

for Monica Martinez Simmons, City Clerk

(Seal)

Attachments:

Attachment 1 – Magnuson Park Building 11 Lease between The City of Seattle Department of Parks and Recreation and Boyer Children's Clinic

MAGNUSON PARK BUILDING 11 LEASE

THIS LEASE ("Lease") is entered into this ____ day of _____, 2015, by and between **THE CITY OF SEATTLE** ("City"), a city of the first class of the State of Washington, acting by and through its Department of Parks and Recreation ("DPR") and the Superintendent thereof ("Superintendent"), and **Boyer Children's Clinic** ("Lessee") a 501(c)(3) non-profit **corporation** organized under the laws of the State of Washington.

RECITALS

WHEREAS, Boyer Children's Clinic is interested in moving and expanding its administrative offices from the main clinic located in the Montlake neighborhood to a portion of the 2nd floor of Building 11 at Magnuson Park; and

WHEREAS, Boyer Children's Clinic's move to Building 11 will allow the clinic to expand and create additional intake services for children with a variety of developmental delays; and

WHEREAS, it will benefit Seattle Parks and Recreation (DPR) to lease space in Magnuson Park Building 11 to generate revenue to manage its debt service and building renovation expenses; and

WHEREAS, DPR seeks to encourage healthy lifestyles and support the well-being of youth in Seattle; and

WHEREAS, it is in the best interest of both DPR and Boyer Children's Clinic. to enter into a long-term agreement for Boyer Children's Clinic to lease space in Magnuson Park;

NOW, THEREFORE, in consideration of the mutual promises, terms, conditions and performances described herein, the parties hereby agree as follows:

AGREEMENT

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

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

1.1 Building. Building 11 at Warren G. Magnuson Park located at 7777 62nd Ave N, Seattle, King County, Washington 98115 situated on a portion of the real property legally described on Exhibit A

1.2 Premises. A space of approximately 6,213square feet located on the second floor of the Building and depicted on the floorplan attached as Exhibit B.

1.2.1 Expansion Space. A space of up to 2,661 square feet located on the second floor of Building 11 and depicted on the floor plan attached as Exhibit B and further described in Section 2.8.

1.3 Effective Date. The date this Lease is signed by an authorized representative of each party following an authorizing ordinance of Seattle City Council.

1.4 Commencement Date. The date that is ninety calendar days following the Effective Date.

1.5 Expiration Date. Ten (10) full calendar years after the Commencement Date, unless the Term of this Lease is extended pursuant to Section 3.

1.6 Rent and Additional Charges.

1.6.1 Rent: $26.50 per square foot per year, based on 6,213 square feet of Premises, as more particularly described in Section 3.4.

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

1.7 Security Deposit. $18,380.13 as more particularly described in Section 6.

1.8 Notice Addresses.

To City:	The City of Seattle Department of Parks and Recreation Regional Parks and Strategic Outreach Attention: Director 6310 NE 74th St. Suite 109E Seattle, WA 98115
To Lessee:	Boyer Children's Clinic Attention: Mike Stewart 1850 Boyer Ave. East Seattle, WA. 98112

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

Exhibit A - Legal Description
Exhibit B – Floorplan
Exhibit C – Capital Improvement Categories

2. **Premises**.

2.1 Grant. City hereby leases to Lessee and Lessee hereby leases from City those certain Premises described in Section 1.2.

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

2.3 Parking. No reserved parking rights are associated with this Lease. Parking at Magnuson Park is available on a first come/first served, unreserved basis, and any areas designated by the Superintendent for parking shall be deemed Common Areas under this Lease, subject to Park rules as the Superintendent may amend them from time to time. The City will ensure that a minimum of thirty (30) unreserved parking spaces are within 500 feet of the Premises, and available to Lessee in common with other Building tenants and Park users at no cost, for the duration of the Term and any Extended Terms thereof.

2.4 Permitted Use. Lessee shall use the Premises for a children's clinic and related general office use, subject to all regulatory permit requirements and limitations. Lessee shall not use the Premises for any purpose whatsoever other than the uses specifically permitted herein (collectively, the "Permitted Use") without the prior written approval of the Superintendent, which approval may be granted, withheld or conditioned in the Superintendent's sole discretion.

2.5 Common Areas. During the Term, Lessee and its employees, contractors, licensees, and invitees shall have the non-exclusive right to use the lobbies, stairs, corridors, restrooms, elevators not located within the demised premises of any other tenant, and other public areas of the Building and Magnuson Park (the "Common Areas") in common with City, the general public, and other Building occupants and their respective licensees, invitees, customers and employees. Use of the Common Areas shall be governed by Park rules as the Superintendent may amend them from time to time, provided, however, that at no time shall Lessee's access to its Premises be limited and/or restricted in a permanent manner that materially and adversely impacts Lessee's use of the Premises for the Permitted Use. City shall at all times have exclusive control and management of the Common Areas and no diminution thereof shall be deemed a constructive or actual eviction or entitle Lessee to compensation or a reduction or abatement of rent.

2.6 Special Events. Lessee shall not utilize the Magnuson Park common areas for special events unless it has obtained a Special Events Permit therefor from DPR. In addition, recognizing that Magnuson Park has limited capacity to handle multiple events with large attendance, if Lessee promotes any event that it reasonably anticipates will draw more than 50 people beyond its normal use and occupancy at one time, Lessee shall provide DPR with no less

than thirty (30) days' advance written notice. If the City reasonably determines that the event would conflict with other high-capacity events that have already been scheduled to take place at Magnuson Park the same time, the City shall notify the Lessee within five (5) business days after receipt of the notice. Upon receipt of such notice the Lessee shall reschedule the event or limit the attendance at the event to less than 50 people at one time.

2.7 Alterations. City, in its discretion, may increase, decrease or change the number, locations and dimensions of any hallways, lobby areas, Common Areas and other improvements shown that are not within the Premises. Such increase, decrease, or change shall not materially interfere with Lessee's business as permitted in Subsection 2.4. Permitted Use. City reserves the right from time to time (i) to install, use, maintain, repair, relocate and replace pipes, ducts, conduits, wires and appurtenant meters and equipment for service to the Premises or to other parts of the Building in areas above the suspended ceiling surfaces, below the floor surfaces, within the walls and elsewhere in the Building; (ii) to alter or expand the Building; and (iii) to alter, relocate or substitute any of the Common Areas, provided that at no time shall Lessee's access to its Premises be limited and/or restricted in a permanent manner that materially and adversely impacts Lessee's use of the Premises for the Permitted Use.

2.8 Right of Refusal to Lease Expansion Space. During the Initial Term and subject to the provisions of this Section, Lessee shall have the option to expand the Premises to include the Expansion Space, on the same terms and conditions of this Lease, including the payment of Rent (the "Option"). Lessee acknowledges that another tenant in the Building holds a superior first right of refusal to lease the Expansion Space. If holder of the first right of refusal fails to exercise its option under its lease, the City shall notify Lessee in writing. Lessee shall then have the right to exercise its Option by providing Parks written notice in the manner required under Sections 27 and 38 no later than ten (10) business days following the date of Superintendent's notice that the Expansion Space is available. If Lessee validly exercises its Option in the time and manner provided under this Section, the City shall deliver the Expansion Space to Lessee in AS-IS condition no later than thirty (30) days after notification by Lessee of its exercise of its Option. From and after the date the City delivers possession of the Expansion Space to Lessee, all references in the Lease to the Premises shall mean and include the Expansion Space, and in addition to paying Rent for the original Premises, Lessee shall pay Rent on the Expansion Space at the per square foot rate then in effect for Lessee's original Premises, and Lessee shall receive a one-time Tenant Improvement Allowance as provided under Section 10.2. The Allowance will be in the form of an offset against the Rent in an amount equal to costs associated with Tenant's improvements which are pre-approved using the process in Section 10.5 and which are completed in compliance with Section 10. Lessee's option to lease the Expansion Space is expressly conditioned upon Lessee exercising the option in the time and manner required under this Section 2.8 and Lessee shall not have an uncured notice of Default at the time required for Lessee to exercise its Option. Additionally, if Lessee shall have two (2) or more Defaults in payment of Rent, whether cured or not cured, during the Initial Term, the Superintendent may, in his or her sole discretion, revoke the Option. If Lessee fails to validly exercise its option in the time and manner provided under this Subsection 2.8, the Option shall automatically expire and shall no longer be in effect during the Term.

2.9 Square Footage of Premises. The square footage of the Premises and Expansion Space provided in Section 1.2 and 1.21 are based on measurements taken prior to Lessee's completion of its tenant improvements and mutually agreed upon between the City and Lessee for purposes of calculating Rent. The Premises and Expansion Space measurements shall not be re-measured after the completion of the improvements, and Lessee shall pay Rent based upon the measurements provided in Section 1.2 (and 1.2.1 if Lessee exercises its Option to the Expansion Space) without future adjustment of the square footage measurements.

3. **Lease Term**.

3.1 Initial Term. This Lease shall be for a term ("Lease Term" or "Term") beginning on the Commencement Date specified in Subsection 1.4 and ending on the Expiration Date specified in Subsection 1.5, unless the Lease Term is terminated earlier in accordance with the provisions of this Lease or extended as provided in Subsection 3.2 below.

3.2 Extended Terms. Lessee shall have the option to extend this Lease for up to two (2) successive individual extended terms of five (5) years each (each an "Extended Term") on the same terms and conditions set forth herein, except for Rent, which shall be determined under Section 4.3. To exercise its option to any Extended Term, Lessee shall give City written notice of its intention to do so at least two hundred and seventy (270) days prior to the expiration date of the then-current Lease Term. As used in this Lease, the "Lease Term" means the original term commencing on the Commencement Date and ending on the Expiration Date specified in Subsection 1.5, and any and all Extended Terms established by Lessee hereunder.

3.3 Early Occupancy; Delay of Commencement Date. Lessee shall have possession, use and occupancy of the Premises from the Effective Date for purposes of completing tenant improvements and moving, subject to all terms and conditions of this Lease except for the payment of Rent. The Commencement Date shall occur as set forth in Subsection 1.5. However, the Superintendent, in that official's discretion, may extend the Commencement Date if there is a delay in substantial completion of tenant improvements necessary for Lessee to use the Premises, subject to the following conditions (i) any delay is beyond Lessee's reasonable control and (ii) Lessee has used best good faith efforts and due diligence to complete all phases of the tenant improvements (including, but not limited to the permitting process). The Superintendent shall not extend the Commencement Date for circumstances that are within Lessee's reasonable control, including but not limited Lessee's failure to timely provide any information or materials requiring the approval of the Superintendent or regulatory officials; Lessee-initiated changes to construction drawings after approval of the same by the Superintendent and regulatory officials; and any other act, omission, or delay reasonably within the control of Lessee and its employees, agents, and contractors.

3.4 Zoning and Regulatory Approvals; Early Termination of Lease. Either party may terminate this Lease early without liability of any kind in the following circumstances: (i) if at any time following the Effective Date but prior to the Commencement Date, notice is delivered to Lessee by the Department of Planning and Development, or any other entity with regulatory authority, stating Lessee's Permitted Use of the Premises has been disapproved (and Lessee agrees to promptly provide the Superintendent with a copy of such notice), or (ii) if Lessee is

unable to obtain the approvals necessary to begin its tenant improvements in order to cause the Commencement Date to occur on or before May 1, 2016. The party terminating under this Section shall provide the other party written notice of termination no later than thirty (30) days prior to the effective termination date. The City shall refund Lessee's Security Deposit within thirty (30) days of the effective termination date. Lessee expressly acknowledges that the Superintendent's review of plans under Section 10 is for the benefit of Seattle Parks and Recreation and is not intended to fulfill any other regulatory requirement, and Lessee further acknowledges that a Seattle City Council ordinance authorizing the Superintendent to execute this Lease shall not amend or change any legal or regulatory requirements applicable to Lessee's alteration, improvements, or use and occupancy of the Premises.

4. **Rent**.

4.1 Rent. Lessee's obligation to pay Rent shall be abated for Ninety (90) days following the Commencement Date. Thereafter, beginning ninety days following the Commencement Date ("Rent Commencement Date"), and thereafter on or before the first day of each month during the Term, Lessee shall pay to City at the address and to the account specified by City, without notice or demand or any setoff or deduction whatsoever, in lawful money of the United States (a) one twelfth of the annual amount of Rent specified in Subsection 1.6.1 in advance; and (b) the monthly amount of Leasehold Excise Tax due under Section 9, and (c)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. If the Commencement Date occurs on a date that is not the first day of the month, Rent shall be pro-rated for the partial month following the 90 (90) days of abated Rent.

4.2 Adjustments to Rent. Except as set forth below, beginning on the first anniversary of the Commencement Date and annually thereafter until the expiration or termination of this Agreement (each, a "Fee Adjustment Date"), the Rent shall be adjusted upward by $1.00 per square foot annually.

4.3 Extended Term Rent. If Lessee exercises its option to any Extended Term, the Rent shall be adjusted to fair market rent effective on the first day of each applicable Extended Term. As used in this Lease "fair market rent" shall mean the rent per square foot that a willing Lessee would pay in an arms-length transaction for comparable space in the Building and in comparable buildings in comparable locations, for a similar term and on similar conditions. Within thirty (30) days after the Lessee provides notice to extend the Term under Section 3.2, the Superintendent shall provide Lessee written notice of the City's determination of fair market rent. If Lessee disagrees with City's determination of fair market rent, Lessee must provide written objection specifying Lessee's proposed fair market rent within ten (10) days of receiving notice; otherwise, the amount specified by the City shall be the rent for the Extended Term. If Lessee objects to City's determination of fair market rent, the parties shall have an additional ten (10) days to negotiate the amount of fair market rent. If the parties do not agree on the fair market rent within ten (10) days following Lessee's objection, the rent will be determined by

arbitration within the time prior to the expiration of the then current Term. No later than thirty (30) days prior to the expiration of the then-current Term, Lessee and City shall each select one arbitrator who is a real estate broker licensed in the State of Washington who has been regularly engaged in the business of commercial leasing in the Puget Sound region for at least ten (10) years immediately preceding the appointment and shall provide notice to the other party. If either party fails to appoint an arbitrator within the time required, that party shall be deemed to have waived the right to appoint an arbitrator and the fair market rent shall be determined by the appointed arbitrator. Otherwise, each arbitrator will independently make her or his determination of the fair market rent. If the two arbitrators' determinations are not the same, but the higher of such two values is not more than one hundred five percent (105%) of the lower amount, then the fair market rent will be deemed to be the average of the two values. If the higher of such two values is more than one hundred five percent (105%) of the lower of them, then the two arbitrators will jointly appoint a third arbitrator within ten (10) days after the second of the two determinations described above has been rendered. The third arbitrator will independently make her or his determination of the fair market rent as soon as reasonably possible after appointment. The highest and the lowest determinations of value among the three arbitrators will be disregarded and the remaining determination will be deemed to be the fair market rent. Once the fair market rent is established for any Extended Term, Rent shall be adjusted annually as provided under Section 4.2.

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. **Security Deposit**. Lessee shall pay a security deposit of $18,380.13 to the City. Security deposit is due to the City upon execution of this agreement and shall be returned to Lessee within thirty (30) days following the expiration of the Term or its sooner termination.

7. **Lessee 's Operations**.

7.1 Use of Premises. Lessee shall use the Premises only for the Permitted Use. As City's willingness to enter into this Lease with Lessee was predicated, in part, on the nature of Lessee's business, and the compatibility of such business with the use of the remainder of the Building, Lessee shall not use or permit the use of the Premises for any other business, or purpose, or under any other name, without City's prior written consent. Lessee shall promptly comply, at its sole cost and expense, with such reasonable rules and regulations relating to the use of the Premises, Building, and Common Areas as the 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 reasonably established by the Superintendent for the Building, permitting no objectionable odors to be emitted from the Premises. Lessee shall neither commit waste of the Premises nor permit any waste to be committed thereon. Lessee shall not permit any accumulation of trash on or about the Premises. Lessee shall not create or contribute to the creation of a nuisance in either the Premises or the Building, and Lessee shall not engage in or permit any action that will disturb the quiet enjoyment of any other occupant in the Building. The City shall provide Lessee access to a designated area located in the Building's Common Areas for disposal of Lessee's trash and recycling.

7.2 Compliance with Laws; Nondiscrimination.

7.2.1 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 Building is a part. Lessee shall promptly comply, at its sole cost and expense, with all laws, ordinances and regulations now in force or hereafter adopted relating to or affecting the condition, use or occupancy of the Premises (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).

7.2.2 Nondiscrimination. Without limiting the generality of Subsection 7.2.1, Lessee agrees to and shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and The City of Seattle, including but not limited to Chapters 14.04, 14.10 and 20.42 of the Seattle Municipal Code, as they may be amended from time to time, and rules, regulations, orders and directives of the associated administrative agencies and their officers.

7.3 Liens and Encumbrances. Lessee shall keep the Premises and Building 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 or Building, Lessee shall either cause the same to be fully discharged and released of record within ten (10) days after City's written demand therefor or, within such period, provide City with cash or other security acceptable to City in an amount equal to one and one-half (1½) times the amount of the claimed lien as security for its prompt removal. City shall have the right to disburse such security to cause the removal of the lien if City deems such necessary, in City's sole discretion.

7.4 Hazardous Substances. Lessee shall not, without City's prior written consent, keep on or about the Premises or Building any substance designated as, or containing any component now or hereafter designated as hazardous, dangerous, toxic or harmful and/or subject to regulation under any federal, state or local law, regulation or ordinance ("Hazardous Substances"), except customary office, kitchen, cleaning and other related supplies in normal quantities handled in compliance with applicable laws. With respect to any Hazardous Substances stored with City's consent, Lessee shall promptly, timely and completely comply with all governmental requirements for reporting and record keeping; submit to City true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities; within five (5) days after City's request therefor, provide evidence satisfactory to City of Lessee's compliance with all applicable governmental rules, regulations and requirements; and comply with all governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment and disposal of Hazardous Substances. Any and all costs incurred by City and associated with City's inspections of the Premises and City's monitoring of Lessee's compliance with this Subsection7.3, including City's attorneys' fees and costs, shall be Additional Charges and shall be due and payable to City within ten (10) days after City's demand therefor, if Lessee's violation of this Subsection 7.3 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 or Building. 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 or Building. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Lease.

8. **Utilities**.

8.1 General. So long as Lessee is not in default under this Agreement, the City shall furnish and pay for electric, water, sewer, and garbage collection services to the Premises. Lessee may, at Lessee's sole expense, elect to install natural gas service to the Premises. DPR shall cooperate with Lessee, at no cost to DPR, in applying for and obtaining all necessary permits and approvals associated with activation of such natural gas service; provided that Lessee shall remain responsible for obtaining all necessary permits. Additionally, DPR will cooperate in obtaining and recording any easements that may be required by the utility provider, subject to any required approvals from the National Park Service or Seattle City Council. Lessee

shall be responsible for the cost of any telecommunications utilities or any other services necessary for Lessee's Permitted Use of the Premises. Lessee shall obtain the Superintendent's prior written consent before installing lights or equipment in the Premises that exceed the Premises standard mechanical loads. The Superintendent may refuse to grant consent unless Lessee agrees to pay (1) the costs incurred by the City for installation of supplementary air conditioning capacity or electrical systems as necessitated by Lessee's equipment or lights and (2) in advance, on the first day of each month during the Term, the amount estimated by the Superintendent as the excess cost of furnishing electricity or utility service for the operation of equipment or lights above normal building levels.

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

8.3 Interruption. City shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption or failure of services due to any cause whatsoever, including, but not limited to, electrical surges, or from failure to make any repairs or perform any maintenance. The City shall perform periodic preventative maintenance on all Building electrical, plumbing, fire suppression, elevator in service on the south end of the Building, mechanical and enclosure systems, and maintain them in good operating condition. 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, so long as the City takes steps reasonable under the circumstances to cure such interruption or failure of such services. 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 the Premises unfit for Lessee's Permitted Use for a period of more than 48 hours, 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.

9. Licenses and Taxes.

9.1 Licenses, Taxes, and Leasehold Excise Tax. 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 if applicable to Lessee, including but not limited to the tax under RCW Ch. 82.29A (Leasehold Excise Tax or "LET") (e.g., leasehold excise taxes). As of the Commencement Date, the applicable LET rate is 12.84%, which amount is subject to change.

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

10. Improvements by Lessee, Tenant Improvement Allowance.

10.1 Improvements. Lessee shall not make any alterations, additions or improvements in or to the Premises that change the structural or mechanical systems of the Building or adjacent areas, or that impact the historic features of the Building, or that exceed $25,000 in cost without first submitting to City professionally-prepared plans and specifications for such work and obtaining City's prior written approval thereof. Lessee covenants that it will cause all alterations, additions and improvements to the Premises to be completed at Lessee's sole cost and expense by a contractor approved by City, which shall not be unreasonably withheld, conditioned or delayed, 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 high quality commercial standards; (c) includes acceptable insurance coverage for City's benefit; (d) does not affect the structural integrity of the Premises or the Building or any of the Premises' or Building's systems;(e) does not disrupt the business or operations of any other occupant of the Building; and (f) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Premises or the Building. 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 by the City in connection therewith. Lessee shall complete design and construction of all improvements and alterations within the Premises in compliance with all permitting and legal requirements, including but not limited to compliance with applicable building codes and with the Americans with Disabilities Act (ADA). Lessee expressly acknowledges that the provisions of the ADA may exceed requirements contained in building codes and other regulations and that such instances, the ADA requirements shall control. Except as provided in Section 14 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 10. All alterations, additions and improvements (expressly including all light fixtures; heating and ventilation units; floor, window and wall coverings; and electrical wiring), except Lessee's moveable trade fixtures and

appliances and equipment not affixed to the Premises (including without limitation furniture, computers, point of sale systems and registers) shall become the property of City at the expiration or termination of this Lease without any obligation on its part to pay for any of the same. At City's request, Lessee shall execute a deed or bill of sale in favor of City with respect to such alterations and/or improvements. Notwithstanding the foregoing, Lessee shall remove all its moveable trade fixtures, appliances and equipment, data services wires and equipment, and any other improvements identified for removal by the Superintendent at the time of approval under this Section, and leave the Premises in a broom clean condition on the expiration or termination of this Lease. Within ninety (90) days after the completion of any alteration, addition or improvement to the Premises for which the Superintendent's approval is required under this Section, 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.

10.2 Required Tenant Improvement; Heating, Ventilation and Air Conditioning (HVAC) system. Building 11 currently lacks an HVAC system serving Lessee's Premises. Lessee, therefore, will be responsible for installing an HVAC system for the Premises. Prior to installation the Lessee must submit design and operation specifications for the intended HVAC system for approval by the Superintendent, whose approval may be granted, conditioned, or withheld in the Superintendent's discretion. Once installed according to the approved plans, and subject to inspection and acceptance by DPR, the HVAC system shall become the property of the City and Lessee shall assign all warranties to the City. Thereafter, the City shall assume responsibility for maintenance, operation and routine repairs of the system.

10.3 Additional Improvements. The City disclaims any representation or warranty that the Building, the services to the Building, the common areas or any other areas in or around the Premises are suitable for Lessee's intended improvements and use of the Premises. Subject to the Allowance in Section 10.4, Lessee shall be solely responsible for any costs necessary to make improvements to areas outside the Premises as may be required for a permit and in order to complete Lessee's improvements or in order for Lessee to use the Premises for the Permitted Use. Any changes or improvements to the Building exterior must be submitted for historic review and approved by Landmarks Board.

10.4 Tenant Improvement Allowance (TIA). The City will allow Lessee a one-time Tenant Improvement Allowance equal to $80.00 per square foot of the Premises ($497,040.00) for improvements actually made to Lessee's Premises (the "Allowance"). If Lessee validly exercises its option to the Expansion Space, Lessee shall also receive a one-time Allowance equal to $80.00 per square foot of the Expansion Space. Lessee may use up to $20.00 per square foot of the Allowance, or such other portion of the Allowance as the Superintendent approves in writing, for improvements made within or around Building 11 or the common areas in order to make Lessee's Premises suitable for Lessee's use. The Allowance will be in the form of an offset against the Rent in an amount equal to costs associated with Tenant's improvements which are pre-approved using the process in Section 10.5 and which are completed in compliance with Section 10.1. The Allowance shall only be available for improvements actually

made under the terms and conditions in this Section 10, and Lessee shall not be entitled to any refund or Rent offset for unused portions of the Allowance.

Lessee may apply approved Allowance by stating in its monthly Rent payment the amount of monthly Rent being offset by the Allowance. Lessee may use the allowance to offset up to 80% of the Rent due in any single month. For example, if the Rent due is $3,000 then the maximum offset amount is $2,400. Only "hard costs" such as construction fees, labor, equipment and material for the categories of costs described in Exhibit C are eligible to be applied by Lessee towards its Allowance.

10.5 Superintendent's Approval of TIA. In order to qualify for an offset against Rent, Lessee shall identify which improvements it intends to submit for its Allowance at the time Lessee seeks approval for improvements to the Premises under Section 10.1, and Lessee shall also include its proposed budget. The Superintendent shall indicate the total amount of budgeted construction costs that are potentially eligible for credit against Rent under the Allowance. Not later than six (6) months after Lessee completes its improvements which the Superintendent approved for the Allowance, Lessee shall provide the Superintendent with an accounting of its actual costs associated with the capital improvements together with such supporting documentation as the Superintendent may reasonably request. The Superintendent shall certify the final amount of costs expended by Lessee in connection with such improvements and this amount shall constitute the amount of the eligible Rent offset. Lessee shall remain solely responsible for all costs that exceed the Allowance and for all costs that are not approved by the Superintendent. Once the Superintendent certifies the final amount of the Allowance, Lessee may apply the approved offset by stating in its monthly Rent payment the amount of Rent being offset.

10.6 Prevailing Wage. As a condition of any costs for construction, alterations, or improvements to the Premises or surrounding areas being eligible for the Allowance as an offset against Rent, Lessee shall require its contractor to pay prevailing wages in accordance with Washington's Prevailing Wage Statute, RCW 39.12.

11. **Care of Premises**.

11.1 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, reasonable wear and tear excepted.

11.2 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 interior windows and doors serving the Premises clean and presentable. Lessee shall furnish all cleaning supplies and materials needed to operate the Premises in the manner prescribed in this Lease; Lessee shall provide all necessary janitorial service to adequately maintain the inside of the Premises using a company reasonably approved by City. Lessee shall be responsible for keeping the areas immediately adjacent to the perimeter of 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 such areas, City, at its option, may do so, and in such event, upon receipt of written statements from City, Lessee shall promptly pay the entire actual and reasonable cost thereof as an Additional Charge. City shall have the right to enter the Premises for such purposes. City shall not be liable for interference with light, air or view.

All industry standard repairs and regular preventative maintenance necessary to maintain the Building (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 Building (including the Premises) in a reasonably good operating condition, as reasonably determined by City, shall be performed by City at its expense, including washing of all exterior windows and regular maintenance and janitorial service for the second (2nd) floor common area restrooms near the Premises on a schedule established by DPR for the Building. 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.

11.3 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

11.4 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 Subsection 11.3 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 subsection shall survive the expiration or earlier termination of this Lease.

12. **Signs and Advertising**.

12.1 Signs, Generally. Lessee shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster, or any advertising matter whatsoever anywhere in or about the

exterior of the Premises, without the Superintendent's prior written consent, which shall be consistent with DPR's signage policy for Magnuson Park and historic feature controls. Lessee shall remove all signage at the expiration or earlier termination of this Lease and repair any damage or injury to the Premises.

12.2 City Provided Signage. The City, at City's sole expense, shall provide Lessee with building directory and Suite entry signage identifying Lessee.

12.3 On-Premises Signs. Lessee may install permanent exterior signage, subject to approval by Superintendent, and review and approval by The City of Seattle Department of Planning and Development and the Landmarks Preservation Board. Exterior signage shall include the Premises' name, Lessee's name and the DPR logo and shall be constructed in a style and size consistent with the DPR sign policy. As per sign code no roof signage is permitted in Warren G. Magnuson Park.

13. **Surrender of Premises**.

13.1 General Matters. At the expiration or sooner termination of the Lease Term, Lessee shall return the Premises to City in the same condition in which received on the Commencement Date (or, if altered, then the Premises shall be returned in such altered condition provided for under Section 10), 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 13 shall survive the expiration or termination of this Lease. Lessee shall indemnify City for all damages and losses suffered as a result of Lessee's failure to remove voice and data cables, wiring and communication lines and moveable trade fixtures and appliances and to redeliver the Premises on a timely basis.

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

14. **Indemnification; Release**.

14.1 Lessee's Indemnification. Except as limited by law or otherwise provided in this section, Lessee shall indemnify, defend (using legal counsel reasonably acceptable to City) and save City, City's officers, agents, employees and contractors harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable personnel and overhead costs and attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to, any property arising out of or in connection with (i) Lessee's occupation, use or improvement of the Premises, or that of any of its employees, agents, subtenants, or contractors, (ii) Lessee's breach of its obligations hereunder, or (iii) any act or omission of Lessee or any employee, officer, agent, subtenant, licensee, invitee, assignee or concessionaire of Lessee, or invitee of any of the same in or about the Premises or Building. Lessee's obligation to indemnify the City shall not apply to any claim or liability resulting from the sole negligence of the City or any of its employees, contractors, tenants, or agents, and in the event of joint negligence, Lessee's obligation shall apply to the extent of Lessee's negligence or that of any of Lessee's employees, officers, agents, subtenants, licensees, invitees, assignees, or concessionaires. Lessee agrees that the foregoing indemnity specifically covers actions brought by its own employees. As a result, the foregoing indemnity is specifically and expressly intended to constitute a waiver of Lessee's immunity under Washington's Industrial Insurance Act, RCW Title 51, but only as to the City and to the extent necessary to provide City with a full and complete indemnity as provided under this Section. Lessee shall promptly notify City of casualties or accidents occurring in or about the Premises. Lessee's obligation to defend and indemnify the City under this Section shall survive the expiration or termination of this Lease with respect to any claim or liability arising from acts, omissions, occurrences, or events occurring during the term. **CITY AND LESSEE ACKNOWLEDGE THAT THEY SPECIFICALLY NEGOTIATED AND AGREED UPON THE INDEMNIFICATION PROVISIONS OF THIS SECTION 14.**

14.2 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 Building equipment; any failure to make repairs; any defect, failure, surge in, or interruption of Building facilities or services; any defect in or failure of Common Areas; broken glass; water leakage; the collapse of any Building component; or any act, omission or negligence of co-tenants, licensees or any other persons or occupants of the Building.

14.3 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.

15. **Insurance**.

15.1 Lessee's Insurance Coverages and Limits. Lessee shall, at its sole cost and expense, maintain, and cause its Subtenant(s), if any, to maintain in full force and effect the

following minimum limits of insurance, and adhere to all terms and conditions set forth below, throughout the entire Lease Term:

15.1.1 **Commercial General Liability (CGL)** written on an occurrence form at least as broad as ISO CG 00 01, with Minimum Limits of Liability:

$1,000,000 per Occurrence
$2,000,000 General Aggregate
$2,000,000 Products/Completed Operations Aggregate
$1,000,000 Personal/Advertising Injury Liability
$ 1,000,000 Damage to Premises Rented to You

Employers Liability / Washington Stop
$1,000,000 Each Accident / Each Disease / Policy Limit

Alternatively, may be evidenced as Employer's Liability insurance under Part B of a Workers Compensation insurance policy.

Coverage shall include: Premises and Operations; Broad Form Property Damage (Including Completed Operations); Liability assumed under an Insured Contract (including tort liability of another assumed in a business contract); Personal Injury and Advertising Liability; Independent Contractors; Severability of Interest Clause; Waiver of Subrogation endorsement in favor of Owner as required by contract; General Aggregate Limits of Insurance shall apply separately; "Claims Made" and "Modified Occurrence" policy forms are not acceptable.

The limits of liability described above are minimum limits of liability only. Regardless of provisions to the contrary under the terms of any insurance policy maintained by Lessee, the specification of any such minimum limits shall neither be (1) intended to establish a maximum limit of liability to be maintained by Lessee regarding this Agreement, nor (2) construed as limiting the liability of any of Lessee's insurers, which must continue to be governed by the stated limits of liability of the relevant insurance policies.

15.1.2 **Automobile Liability insurance** at least as broad as ISO CA 00 01 including coverage for owned, non-owned, leased or hired vehicles as applicable, with a minimum limit of $1,000,000 each accident for bodily injury and property damage.

15.1.3 **Workers' Compensation** insurance securing Lessee's liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington.

15.1.4 **Umbrella or Excess Liability** insurance if and as necessary to maintain total CGL and Automobile Liability insurance limits of $5,000,000 Each Occurrence and be no less broad than coverages described above.

15.1.5 **Property Insurance** under which the Lessee's furniture, trade fixtures, equipment and inventory ("Business Personal Property") and all alterations, additions and improvements that Lessee makes to the Premises are insured throughout the Lease Term in an amount not less than the replacement cost new thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss (earthquake optional), 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, or above-ground oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises; (iv) loss from business interruption or extra expense, with sufficient coverage to provide for the payment of Rent and Additional Charge and other fixed costs during any interruption of Lessee's business. Coverage shall contain a waiver of coinsurance or agreed amount endorsement(s). City shall be named as a loss payee, as its interest may appear, as respects property insurance covering the alterations, additions and improvements under such policy.

15.1.6 In the event that the City deems insurance to be inadequate to protect Lessee and the City, Lessee shall increase coverages and/or liability limits as the City shall deem reasonably adequate within sixty (60) days after the date of written notice.

15.2 Terms and Conditions for Lessee's Insurance.

15.2.1 <u>The City of Seattle as Additional Insured</u>: The CGL insurance and, in addition, Excess and/or Umbrella liability insurance, if any, shall include "The City of Seattle, its officers, officials, employees, agents and volunteers" as additional insureds. Lessee's insurance shall be primary and non-contributory to any insurance maintained by or available to the City. The term "insurance" in this paragraph shall include insurance, self-insurance (whether funded or unfunded), alternative risk transfer techniques, capital market solutions or any other form of risk financing.

15.2.2 <u>Required Separation of Insured Provision; Cross-Liability Exclusion and other Endorsements Prohibited</u>: Lessee's insurance policy shall include a "separation of insureds" or "severability" clause that applies coverage separately to each insured and additional insured, except with respect to the limits of the insurer's liability. Lessee's insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City of Seattle from coverage or asserting a claim under the Lessee's insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. Lessee's CGL policy shall NOT include any of the following Endorsements (or their equivalent endorsement or exclusions): (a) Contractual Liability Limitation, (CGL Form 21 39 or equivalent), b) Amendment Of Insured Contract Definition, (CGL Form 24 26 or equivalent), (c) Limitation of Coverage to Designated Premises or Project, (CGL Form 21 44 or equivalent), (d) any endorsement modifying or deleting the exception to the Employer's Liability exclusion, (e) any "Insured vs. Insured" or "cross-liability" exclusion, and (f) any type of punitive, exemplary or multiplied damages exclusion. Lessee's failure to

comply with any of the requisite insurance provisions shall be a material breach of, and grounds for, the immediate termination of the Agreement with the City of Seattle; or if applicable, and at the discretion of the City of Seattle, shall serve as grounds for the City to procure or renew insurance coverage with any related costs of premiums to be repaid by Lessee or reduced and/or offset against the Agreement.

15.2.3 Cancellation Notice: Coverage shall not be cancelled without forty-five (45) day written notice of such cancellation, except ten (10) day written notice as respects cancellation for non-payment of premium, to the City at its notice address except as may otherwise be specified in Revised Code of Washington (RCW) 48.18.290 (Cancellation by insurer.). The City and the Lessee mutually agree that for the purpose of RCW 48.18.290 (1) (b), for both liability and property insurance the City is deemed to be a "mortgagee, pledge, or other person shown by (the required insurance policies) to have an interest in any loss which may occur thereunder."

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

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

15.3 City's Property Insurance Coverage and Limits.

15.3.1 City will maintain at its expense Property Insurance or self-insurance under which the Premises, excluding Lessee's Business Personal Property and Tenant Improvements, are insured throughout the Lease Term in an amount not less than the replacement cost new thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss (including earthquake), 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, or above-ground oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises. City's Property Insurance currently is subject to a $250,000

deductible for most claims for which Lessee shall be responsible only to the proportional extent to which the loss or damage is attributable to Lessee's negligent acts that are, or should be, covered by Tenant's Fire/Tenant Legal Liability insurance.

15.3.2 During such time as Lessee is engaged in the performance of the Improvements or other renovation of the Premises, the Lessee shall maintain in full force and effect "All Risks" Builder's Risk Property insurance or equivalent for the portion of the Premises under renovation, including fire and flood, on a replacement cost new basis subject to a deductible of no more than $50,000 each loss. In the event of a claim under the builder's risk policy, Lessee or its contractor(s) shall be responsible for paying any deductible under the policy if Lessee or any of its agents, employees, or contractors is responsible for the loss or damage. It shall be Lessee's responsibility to properly coordinate with the City's Risk Management Division the placement of Builder's Risk Property insurance prior to any new construction on, or structural alteration of, the Premises.

15.3.3 The City may change the terms of its insurance in Sections 15.2.1 and 15.2.2 at any time based on market conditions, with no compensation due to the Lessee.

15.4 Waiver of Subrogation. Unless such waiver would void the property insurance coverage to be provided pursuant to this section, the City and Lessee waive all subrogation rights each may have against the other, or any subtenant, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Premises, except such rights as they have to proceeds of such insurance held by the City or the Lessee or both as fiduciary. This waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, whether or not the person or entity paid the insurance premium directly or indirectly, and whether or not the person or entity has an insurable interest in the property damaged

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

15.5.1 Certification of insurance documenting compliance with the coverage, minimum limits and general requirements specified herein; and

15.5.2 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;

15.5.3 A copy of the CGL insurance policy provision(s) and endorsements expressly including 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;

15.5.4 Pending receipt of the documentation specified in this Section 15.5.4, Lessee may provide a copy of a current complete binder. An ACORD certificate of insurance will not be accepted in lieu thereof.

Evidence of Insurance as set forth above, shall be issued to:

The City of Seattle
Attention: Manager,
Warren G. Magnuson Park
6310 NE 74th St. #109E
Seattle, WA 98115

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

15.7 Adjustments of Claims: The Lessee shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of the Lessee under this Agreement.

15.8 Lessee's Responsibility: The procuring of the policies of insurance required by this Agreement shall not be construed to limit the Lessee's liability hereunder. Notwithstanding said insurance, the Lessee shall be obligated for the full and total amount of any damage, injury or loss caused by negligence of the Lessee, or any of its agents, officers and employees or through use or occupancy of the Premises.

16. **Assignment or Sublease**. Lessee shall not transfer, assign, or sublease any right or obligation under this Lease, nor shall this Lease or any interest hereunder 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 Superintendent, which may be granted, conditioned, or withheld in the Superintendent's reasonable discretion. Notwithstanding the foregoing, if Lessee proposes to assign or sublet 50% or more of the Premises, the City shall have the right to recapture the portion of the Premises Lessee proposes to sublet or assign. The City shall exercise the right by written notice to Lessee within fifteen (15) business days of receipt of Lessee's notice of intent to sublease or assign, and Lessee and the City shall amend the Lease as necessary to remove the recaptured space from the Premises and adjust the Rent accordingly. 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 Superintendent's prior written consent, at the Superintendent's option, shall be void. No assignment or sublease shall release Lessee from primary liability hereunder unless the City expressly agrees otherwise in writing at the time of approval of the transfer. Each assignment and sublease shall be by an instrument in writing in form satisfactory to the Superintendent. 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 requiring the Superintendent's consent for the purposes of this Lease.

17. **Assignment by City**. If City sells or otherwise transfers the Building, or if City assigns or sells 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.

18. **Destruction**. If the Premises or the Building are rendered partially or totally untenantable by fire or other casualty, the City shall proceed with reasonable diligence as soon as sufficient insurance, self-insurance and/or other funds are available therefor (in any event, within six months from the date of the occurrence of a fire or other casualty), to prepare plans and specifications for, and thereafter to carry out, all work necessary to repair or replace the Building, the Premises or any portions thereof that were damaged or destroyed by a fire or other casualty. However, the City retains the sole option to not repair or replace the Building or Premises for any reason, in which case the City may terminate this Lease by giving Lessee written notice at least thirty (30) days prior to the effective termination date. In this eventuality, the City shall retain the insurance proceeds for the Building, the Premises or any portions thereof that were damaged or destroyed by a fire or other casualty. Rent and Additional Charges shall be abated in the proportion that the untenantable portion of the Premises bears to the whole thereof, as the City determines, for the period from the date of the casualty to the completion of the repairs. If the damage to the Premises is uninsured or cannot be repaired within six months (6) from the date of the occurrence, or if thirty percent (30%) or more of the Building is destroyed or damaged regardless of whether the Premises are damaged or not, Lessee or the City may elect to terminate this Lease upon written notice to the other party within sixty (60) days after the occurrence. In the event of damage by casualty, Lessee shall, at its sole cost and expense, repair all damage to its own personal property. Except in the event of City's gross negligence, intentional misconduct or breach of this Lease, City shall not be liable to Lessee for damages, compensation or other sums for inconvenience, loss of business or disruption arising from any repairs to or restoration of any portion of the Building or Premises.

19. **Eminent Domain**.

19.1 Taking. If all of the Premises are taken by Eminent Domain, this Lease shall terminate as of the date Lessee is required to vacate the Premises and all Rent and Additional Charges shall be paid to that date. The term "Eminent Domain" shall include the taking or damaging of property by, through or under any governmental or statutory authority, and any purchase or acquisition in lieu thereof, whether the damaging or taking is by government or any other person. If a taking of any part of the Premises by Eminent Domain renders the remainder thereof unusable for the business of Lessee, in the reasonable judgment of City, the Lease may, at the option of either party, be terminated by written notice given to the other party not more than thirty (30) days after City gives Lessee written notice of the taking, and such termination shall be effective as of the date when Lessee is required to vacate the portion of the Premises so

taken. If this Lease is so terminated, all Rent and Additional Charges shall be paid to the date of termination. Whenever any portion of the Premises is taken by Eminent Domain and this Lease is not terminated, City, at its expense, shall proceed with all reasonable dispatch to restore, to the extent of available proceeds and to the extent it is reasonably prudent to do so, the remainder of the Premises to the condition they were in immediately prior to such taking, and Lessee, at its expense, shall proceed with all reasonable dispatch to restore its personal property and all improvements made by it to the Premises to the same condition they were in immediately prior to such taking, to the extent award is available therefor. The Rent and Additional Charges payable 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.

19.2 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 relocated Lessee's business and moving Lessee's merchandise, furniture, trade fixtures and equipment and the cost or restoring its personal property and improvements made by it to the Premises.

20. **Default by Lessee**.

20.1 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").

20.2 City Remedies following Notice and Opportunity to Cure. If Lessee has Defaulted and such Default continues or has not been remedied to the reasonable satisfaction of the Superintendent within fifteen (15) days after any Default in payment of Rent, or within thirty (30) days after written notice of any other Default has been provided to Lessee, then City shall have the following nonexclusive rights and remedies at its option: (1) to cure such default on Lessee's behalf and at Lessee's sole expense and to charge Lessee for all actual and reasonable costs and expenses incurred by City in effecting such cure as an Additional Charge; (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. Lessee's failure to pay any Rent obligation or Lessee's abandonment or

vacation of the Premises shall not be subject to any extension of the thirty (30) day cure period without the express written permission of the Superintendent.

20.3 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.

20.4 Vacation or Abandonment. If Lessee vacates or abandons the Premises in their entirety and fails to reoccupy them within thirty (30) days after City (1) delivers a notice to Lessee's notice address set forth in Section 1.8 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.

20.5 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 Subsection 20.5 shall survive the expiration or earlier termination of this Lease.

21. **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.

22. **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.

23. **Termination for Convenience**. Notwithstanding anything else in this Lease to the contrary, the City may, at any time following the third (3rd) year of Lease Term and without liability of any kind to Lessee except as provided in this Section 23, terminate this Lease for any or no reason for City's convenience, including use for another public or private purpose, upon 270 days prior written notice to Lessee. If the City terminates for convenience under this Section 23, in the Superintendent's discretion the City may allow Lessee to accelerate the rate of its Tenant Improvement Allowance Rent offset between the date of notice and the effective termination date up to the full amount of the offset. Additionally, within thirty (30) days following the effective termination date, the City will pay to Lessee a termination fee equal to: (i) the remaining balance of Lessee's Allowance which will not be offset against Rent, if any, plus (ii) the depreciated value of all Superintendent-approved improvements Lessee invested in the Premises which were not included in the Tenant Improvement Allowance Rent offset, plus (iii) Lessee's actual and reasonable direct moving costs.

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**. City and its agents shall have the right to enter the Premises at any reasonable time to examine the same, and to show them to prospective purchasers, lenders or tenants, and to make such repairs, alterations, improvements, additions or improvements to the Premises or Building as City may deem necessary or desirable. If Lessee is not personally present to permit entry and an entry is necessary in an emergency, City may enter the same by master key or may forcibly enter the same, without rendering City liable therefor, except in the event of City's gross negligence or intentional misconduct. Nothing contained herein shall be construed to impose upon City any duty of repair or other obligation not specifically stated in this Lease. Lessee shall change the locks to the Premises only through City and upon paying City for all actual and reasonable costs related thereto.

26. **Holding Over**. Unless otherwise agreed in writing by the parties hereto, any holding over by Lessee after the expiration of the Lease Term, whether or not consented to by City, shall be construed as a tenancy from month-to-month on the terms and conditions set forth herein, except that the monthly Rent shall increase to 150% of the then current Rent. Either party may terminate any holdover tenancy by written notice delivered to the other party not later than twenty (20) days prior to first day of the final month. If Lessee fails to surrender the Premises

upon the expiration or termination of this Lease without City's written consent, Lessee shall indemnify, defend and hold harmless City from all losses, damages, liabilities and expenses resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant arising out of such failure. Lessee's obligations under this paragraph shall survive expiration or termination of this Lease.

27. **Notices**. Any notice, demand or request required hereunder shall be given in writing to the party's address set forth in Subsection 1.8 hereof by any of the following means: (a) personal service; (b) commercial or legal courier; or (c) registered or certified, first class mail, postage prepaid, return receipt requested. Such addresses may be changed by notice to the other parties given in the same manner as above provided. Notices shall be deemed to have been given upon the earlier of actual receipt, as evidenced by the deliverer's affidavit, the recipient's acknowledgment of receipt, or the courier's receipt, except in the event of attempted delivery during the recipient's normal business hours at the proper address by an agent of a party or by commercial or legal courier or the U.S. Postal Service but refused acceptance, in which case notice shall be deemed to have been given upon the earlier of the day of attempted delivery, as evidenced by the messenger's affidavit of inability to deliver stating the time, date, place and manner in which such delivery was attempted and the manner in which such delivery was refused, or on the day immediately following deposit with such courier or, if sent pursuant to subsection (c), forty-eight (48) hours following deposit in the U.S. mail.

28. **Successors or Assigns**. All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon City, Lessee and, subject to the terms of Sections 16 and 17, their respective heirs, administrators, executors, successors and permitted assigns, and upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

29. **No Partnership.** The City shall in no event be construed to be a partner, associate, or joint venturer of the Lessee or any party associated with the Lessee. The Lessee shall not create any obligation or responsibility on behalf of the City or bind the City in any manner.

30. **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.

31. **Brokers' Commission**. Lessee is exclusively represented in this transaction by Kidder Mathews ("Lessee's Broker"). The City is exclusively represented by CBRE ("City's Broker"). The City agrees to pay Lessee's Broker a brokerage fee equal to 5% of the Lease Value for years 1-5 and 2.5% of the Lease Value for years 6-10 of the Term, payable in full no later than 30 days after the Lessee signs the Lease following Seattle City Council legislation authorizing the Lease. As used in this Section 31, "Lease Value" means Rent due to the City exclusive of Tenant's $80/sf rent reduction for the Tenant Improvement Allowance. The City shall pay CBRE a

brokerage fee of 2.5% of the Lease value for years 1-5 and 1.25% of the Lease value for years 6-10. Lessee shall defend and indemnify the City from and against any claims by any other party claiming a right to a commission or broker's fee as a result of Lessee's interest under this Lease, subject only to the City's obligation to pay Lessee's and City's Broker fees as provided for under this Section 31.

32. **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.

33. **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.

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

35. **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.

36. **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.

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

38. **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."

39. **Continuous Operation.** N/A

40. **Standards**. 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.

41. **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, so long as the following shall not permanently and materially interfere or adversely impact Lessee's use of the Premises for the Permitted Use:

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

41.2 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.

41.3 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.

41.4 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.

41.5 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.

42. **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 five (5) days' prior written notice to Lessee to inspect Lessee's books of account at Lessee's office and to procure audits thereof by an auditor at City's sole cost and expense (except as provided below). If in the reasonable judgment of such auditor Lessee's books of account are incomplete or improperly reflect the information necessary for an accurate determination of the Rent, or if the audit shall show that the reports submitted by Lessee understated Lessee's receipts by more than three percent (3%) thereof for any year covered by the audit, the costs and fees for such audit shall be paid by Lessee to City. If an audit discloses any willful or intentional effort to understate Lessee's receipts, then, at City's option, Lessee may be required to surrender possession of the Premises under the provisions of Section 20 of this Lease. Lessee shall retain all books of accounting and any other information that will affect the determination of Rent and Additional Charges for a

period of six (6) years after the expiration or termination of this Lease, and Lessee shall make them available for inspection at Lessee's office within ten (10) days of City's prior written demand therefor. Lessee's obligations under this paragraph shall survive expiration or termination of this Lease.

43. **Miscellaneous**.

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

43.2 **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	**BOYER CHILDREN'S CLINIC**
By: _____	By: _____
Jesús Aguirre, Superintendent Department of Parks and Recreation	Mike Stewart, Executive Director Boyer Children's Clinic

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

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

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

_____ _____
[Signature] *[Printed Name]*

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

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

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

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

_____ _____
[Signature] *[Printed Name]*

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

EXHIBIT A

Legal Description

Bldg 11
W ½ Section 2, TWP 25N, RNG 04E, W.M.
PARCEL. 1 Lot A

Those portions of the southwest quarter (SW ¼) of the northwest quarter (NW ¼) of Section 2, TWP 25N, RNG 04E and Govt. Lots 1 and 2 in said Section, together with the 1st Class Shore Lands adjacent, abutting and attached thereto, as acquired by the U. S. Navy on behalf of the United States of America described as follows:

Commencing at the northwest corner of said Section 2, thence S89° 43' 27"E on the north line of said Section a distance of 528.79 feet to the east margin of Sand Point Way NE (formerly referred to as the James Kiefer County Rd. No. 1283), and the True Point of Beginning; thence S 30° 28' 08" E on said east margin a distance of 360.75 feet to a point of curvature in said east margin of which the radial center bears S 59° 31' 52" W at a distance of 2336.20 feet, thence continuing on said east margin on a curve concave to the south and west through a central angle of 16°31'03" an arc distance of 673.49 feet, thence S 13° 57' 05" on said east margin a distance of 225.43 feet, thence leaving said east margin S 30° 43' 19" E a distance of 199.50 feet, thence S 85° 28' 44" E a distance of 87.12 feet, thence S 71° 12' 22" E a distance of 46.87 feet, thence S 76° 54' 27" E a distance of 20.06 feet, thence S 62° 39' 42" E a distance of 33.69 feet, thence N 00° 01' 44" W a distance of 485.07 feet, thence N 89° 59' 11" E a distance of 252.00 feet, thence N 25° 28' 42" E a distance of 277.22 feet to the Inner Harbor Line of the Lake Washington Shore Lands as established by the State of Washington Commissioner of Public Lands and according to the Maps thereof on file in Olympia, Washington, thence N 50° 40' 00" W on said Inner Harbor Line a distance of 989.04 feet to the intersection with the north line of said Section 2, thence N 89° 43' 27" W on said north line a distance of 380.23 feet to the True Point of Beginning.

EXHIBIT B
LEASE SPACE

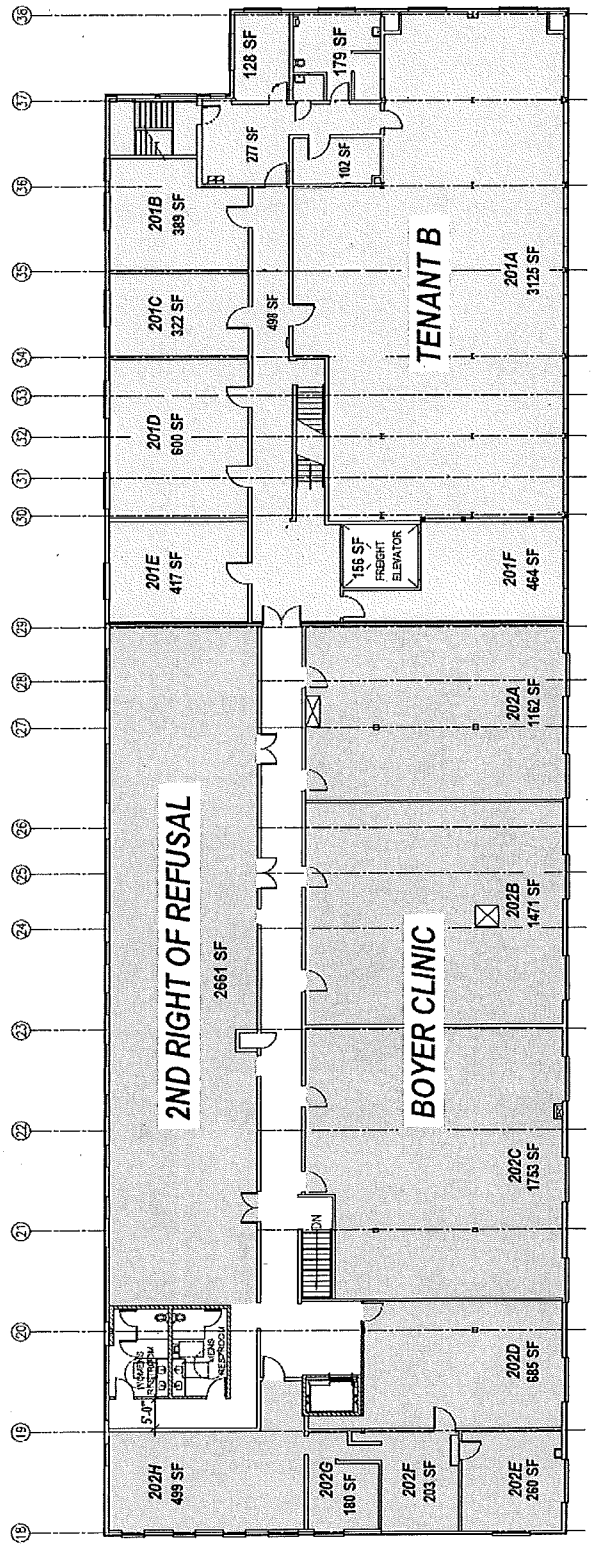

EXHIBIT C
Initial Capital Improvements Categories

SITEWORK:

Demolition

Parking lot improvements, pavement and repair

Site Lighting

Pedestrian Amenities

ADA Compliance & Repairs

Site Permits & Fees

Project Signage

Tenant Signage

Landscape Improvements

BUILDING CONSTRUCTION:

Environmental Remediation

Interior Repair

Electrical

ADA Compliance

Windows, Storefront, Canopies

Restroom

Interior Walls

Paint

Building Permits and Fees

Historic Preservation Review Fees

Mechanical System Upgrades

DESIGN FEES:

Architecture

Structural Engineering

Civil Engineering

Landscape Architecture

Graphic Design

Environmental Review

Specific Design and Engineering (including MEP design, which shall be "design-build" by MEP subcontractors)

DEVELOPMENT COSTS:

Project Management Costs

TENANT IMPROVEMENTS:

Tenant Building Improvements

(Not cash allowances or payments)

STATE OF WASHINGTON -- KING COUNTY

--ss.

329863

No. 124879,880.881,882,883

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;TITLE ONLY ORDINANCES

was published on

10/27/15

The amount of the fee charged for the foregoing publication is the sum of $116.25 which amount has been paid in full.

JENNIFER A. BARNES
COMMISSION EXPIRES
NOTARY
10-24-18
STATE OF WASHINGTON

Subscribed and sworn to before me on

10/27/2015

Notary public for the State of Washington,
residing in Seattle

Affidavit of Publication

State of Washington, King County

City of Seattle

Title Only Ordinances

The full text of the following legislation, passed by the City Council on October 5, 2015, 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 124879

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

Ordinance 124880

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent of the Department of Parks and Recreation to acquire by negotiation certain land and other necessary property rights, commonly known as the northwest corner of 14th Avenue NE and NE 65th Street, for open space, park, and recreation purposes, and to execute, accept, and record the deed and instruments deemed by the Superintendent to be necessary; authorizing the Seattle City Attorney to commence condemnation proceedings; placing the acquired real property under the jurisdiction of the Department of Parks and Recreation and designating the property for open spaces, parks, and recreational purposes; and ratifying and confirming certain prior acts; all by a 3/4 vote of the City Council.

Ordinance 124881

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to enter into a lease agreement with Boyer Children's Clinic to occupy and use a portion of Building 11 at Warren G. Magnuson Park for a children's clinic and related general office purposes.

Ordinance 124882

AN ORDINANCE relating to the provision of tenant relocation assistance to displaced tenants; establishing requirements for residential tenancies; establishing regulations about penalties and the issuance of building permits for violators of the Tenant Relocation Assistance Ordinance; amending Sections 7.24.030, 7.24.050, 10.09.085, 22.210.030, 22.210.140, 22.210.150, and 22.210.180 of the Seattle Municipal Code and adding a new Section 22.210.136; amending Section 106.6.3 of the 2012 Seattle Building Code; and amending Section R105.6.3 of the 2012 Seattle Residential Code.

Ordinance 124883

AN ORDINANCE, relating to land use and zoning, amending the Official Land Use Map at pages 72, 73, 87, 101, 102, 133, 145 to designate new zone names, repealing and replacing Chapter 23.48, amending Sections 22.210.030, 22.900G.015, 23.30.010, 23.34.009, 23.34.128, 23.41.012, 23.42.124, 23.42.126, 23.42.128, 23.47A.012, 23.49.011, 23.66.140, 23.84A.004, 23.84A.038, 23.84A.048, 23.86.007, 25.05.800, and 25.08.100 to reorganize, make corrections, and update standards for the Seattle Mixed Zones; and making technical corrections.

Date of publication in the Seattle Daily Journal of Commerce, October 27, 2015.

10/27(329863)