**ORDINANCE _____**

AN ORDINANCE authorizing the Superintendent of Parks and Recreation to execute an Amended and Restated Lease between the City of Seattle and Building 11 Investors LLC for the renovation and use of Building 11 at Warren G. Magnuson Park.

WHEREAS, as authorized by Ordinance 122814, on or about February 24, 2009, the City and Building 11 LLC ("Lessee") entered into a Lease (the "Lease") that allows Building 11 Investors LLC to renovate, use, and occupy Building 11 at Magnuson Park for multiple uses and recreation opportunities; and

WHEREAS, with the consent of the Superintendent, Building 11 LLC assigned the Lease to Building 11 Investors LLC, and Building 11 Investors LLC assumed the rights and obligations of Lessee under the Lease; and

WHEREAS, Building 11 is located within the Sand Point Historic District, as defined in the City's deed from the United States; and

WHEREAS, the Sand Point Historic District has been designated as a National Register Historic District; and

WHEREAS, in the designation process, Building 11 was determined to be a contributing historic resource; and

WHEREAS, Building 11 Investors LLC, with the City's support, wishes to obtain Historic Rehabilitation Tax Credits for the renovation of Building 11, both to assist in financing the renovation and to ensure that the Secretary of the Interior's standards for historic preservation are met; and

WHEREAS, to qualify for an allocation of Historic Rehabilitation Tax Credits, the National Park Service and the Internal Revenue Service, which together make the final determination in allocating Historic Rehabilitation Tax Credits, require an agreement term of at least 39 years and the existing Agreement is for a term of 30 years; and the City will realize 75 percent of the benefit of the tax credit by a reduction of the Capital Improvement Offset Account; and

WHEREAS, some of Lessee's proposed long-term subtenants are requesting the Superintendent to execute non-disturbance agreements in the event that Building 11 Investors LLC defaults during the lease term between the subtenant and Lessee, and because of the Lessee's proposed significant investment in Building 11, the City desires to accommodate those subtenants; and



COUNCIL CLERK

WHEREAS, Lessee wishes to redefine the leased premises to include two outdoor play areas for a prospective child care center subtenant, and an outdoor restaurant seating area for a prospective restaurant subtenant, and both of these areas will be non-exclusive; and

WHEREAS, the lease amendment adds a requirement that at least 5,000 square feet of the building be for artist studio space, for the life of the term, and

WHEREAS, Lessee's lender has required as a condition of financing the improvements to Building 11 that certain terms be included in the Lease; NOW, THEREFORE,

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

Section 1. The Superintendent of Parks and Recreation is authorized to execute, for and on behalf of the City of Seattle, an Amended and Restated Lease with Building 11 Investors LLC for the use of Building 11 at Magnuson Park, in substantially the form attached hereto as Attachment 1, in order to comply with the terms and conditions of the deed to the property on which Building 11 is located.

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

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

_____

President _____ of the City Council

Approved by me this ____ day of _____, 2011.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2011.

_____

City Clerk

(Seal)

Attachment 1: Amended and Restated Lease with Building 11 Investors LLC



COUNCIL CLERK

Nathan Torgelson/Kieu-Anh King
DPR Bldg 11 Lease Amend ORD ATT 1
05 August 2011
Version #10c (SUBSTITUTION VERSION A)

# AMENDED AND RESTATED LEASE

THIS AMENDED AND RESTATED LEASE ("LEASE") is entered into this ____ day of _____, 2011, by and between **THE CITY OF SEATTLE** ("City"), a city of the first class of the State of Washington, acting by and through its Department of Parks and Recreation ("Parks") and the Superintendent thereof ("Superintendent"), and **Building 11 INVESTORS LLC** ("Lessee"), a limited liability company organized under the laws of the State of Washington.

## AGREEMENT

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

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

1.1 Premises. The Premises consist of an approximately 58,780 square foot existing building (the "Building") commonly referred to as Building 11 and certain exterior areas adjacent to the Building, all at Warren G. Magnuson Park located at 7777 Sand Point Way NE, Seattle, King County, Washington 98115 and situated on a portion of the real property legally described on Exhibit A. The adjacent areas include two (2) outbuildings adjacent to the Building (the "Outbuildings"); two outdoor play areas, one of approximately 10,000 square feet on the west side of the Building, and one of approximately 1,000 square feet on the east side of the Building (collectively, the "Play Areas"); and an outdoor restaurant seating area of approximately 2,000 square feet (the "Deck Area"). The Building, Outbuildings, Play Areas and Deck Area are depicted on Exhibit B. Collectively, the Play Areas, the Outbuildings, and the Deck Area may be referred to hereinafter as the "Adjacent Areas."

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

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

1.4 Expiration Date. The Lease Term (defined below) shall expire on the date that is forty (40) years after the Commencement Date, unless the Term of this Lease is terminated earlier as provided in this Lease or extended pursuant to Section 3.2.

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

1.6 Rent.

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

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

1.7 Notice Addresses.

| | |
|---|---|
| To City: | The City of Seattle<br>Department of Parks and Recreation<br>Attention: Manager<br>Contracts and Business Resources<br>6310 NE 74th Street<br>Seattle, WA 98105 |
| To Lessee: | Building 11 Investors LLC<br>c/o Darrell M. Vange<br>Building 11, Mailbox B-8<br>7727 63rd Ave NE<br>Seattle, WA 98115 |
| With a Copy to: | Jameson Babbitt Stites & Lombard, P.L.L.C.<br>c/o Sean Durbin<br>999 Third Ave, Suite 1900<br>Seattle, WA 98104 |

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

Exhibit A – Legal Description
Exhibit B – Site Plan Showing Premises, dated March 14, 2011
Exhibit C – Parking Area
Exhibit D – Initial Capital Improvement Offset categories
Exhibit E – Form of Bill of Sale
Exhibit F – Master Plan
Exhibit G – Public Benefits
Exhibit H – Letter of Intent between Lessee and Sail Sand Point
Exhibit I – Driveway Design
Exhibit J – Form of Non-disturbance Agreement
Exhibit K – Form of Non-disturbance Agreement

1.9 Magnuson Park. As used in this Lease, "Magnuson Park" means those portions of the park that are under the jurisdiction of Parks under Seattle City Ordinance 119406.

**2. Premises.**

2.1. Grant. City hereby grants to Lessee and Lessee hereby accepts from City the right to exclusive use, possession, and occupancy of the Building and Outbuildings comprising a portion of the Premises referenced in Section 1.1, together with a license to use and occupy the Play Areas and Deck Area that comprise the remainder of the Premises, as more particularly set forth in Subsections 2.9.2 and 2.9.3 below. The Premises are located on a portion of the real property described on Exhibit A and are depicted on Exhibit B.

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

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

2.4 Parking. At the request of Lessee, City will install signs at up to twenty-five (25) parking stalls within the area depicted on Exhibit C as "Short Term Parking" limiting parking in those stalls to two (2) hours for general public use unless the Tri-Party

Parking Agreement described below provides otherwise. Additionally, throughout the Term, the City shall maintain a minimum of 300 parking stalls for general public use within the area depicted on Exhibit C as "Parking Area." City and Lessee acknowledge that they intend to enter into a "Tri-Party Parking Agreement" with the tenant of Building 27 to specify the rights and obligations of the parties with regard to the Parking Area. If the Tri-Party Parking Agreement is not signed by May 23, 2011, then the Superintendent will reasonably allocate the parking rights for all parties involved on or before June 30, 2011. In the event that the parking rights provided to the Lessee are not reasonably satisfactory to Lessee, Lessee may terminate this Lease upon thirty (30) days prior written notice delivered on or before August 15, 2011. Lessee acknowledges and agrees that the Tri-Party Parking Agreement will not guarantee any exclusive parking rights to any party, nor will the Superintendent allocate exclusive parking rights to Lessee or any tenant at Magnuson Park.

2.5 Permitted Uses. City acknowledges and agrees that Lessee intends to sublease or sublicense all of the Premises to multiple subtenants, and Lessee acknowledges and agrees that the City's willingness to enter this Lease is premised, in part, upon Lessee's proposed use of the Premises. As a result, Lessee and/or its subtenants shall use the Premises only for the purposes set forth in this Section 2.5 (collectively, the "Permitted Uses"), subject to applicable land use regulations including Seattle Municipal Code Chapter 23.60 (Shoreline Management Act) and 23.72 (Sand Point Overlay District) and as they may be amended in the future.

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

2.5.2 Other Park and Recreation Uses. Subject to the provisions of Section 2.5.5, Lessee may also use a portion of the Premises not to exceed 18,890 square feet for the support and enjoyment of Other Park and Recreation Uses. As used herein, "Other Park and Recreation Uses" means childcare, studio and workshop space for artists ("Studio Space"), and food and beverage services for the benefit of visitors and users of the park. Food and beverage services are

limited to 10,000 square feet in total, and individual food and beverage services subtenants are further limited to a portion of the Premises not to exceed 2,500 square feet.

2.5.3 Permitted Commercial Uses. Lessee may use a portion of the Premises not to exceed 23,000 square feet for any use that complies with all applicable laws, statutes, ordinances, rules and regulations, as the same may be amended or adopted during the Lease Term, and that does not violate any other provision of this Lease, including meeting space, general office use, and storage ("Permitted Commercial Uses"). Permitted Commercial Uses are further limited to the second floor of the Premises, the West side of the ground floor, and no more than 10 percent of the building frontage and depth on the East Side of the ground floor. This frontage is primarily to provide an entrance and associated common areas.

2.5.4 Water Related Uses. Consistent with the Sand Point Physical Development Plan's vision for a small watercraft center in the Northshore area, at all times during the Lease Term, including the Extended Term, if exercised, Lessee shall reserve a minimum of eight thousand (8,000) square feet of the ground floor space for water-related recreational uses, limited to recreational sailing, rowing, kayaking, canoeing, sailboard and surfing programs, sales and rentals of small non-motorized boats and any other water-related recreational uses deemed appropriate and approved in writing by the Parks Superintendent ("Water Related Uses"). Water-Related Uses may include up to 3,000 square feet of retail space directly related to any item in this Subsection 2.5.4, subject to the restrictions in Subsection 2.5.1. Additionally, at all times during the Term, Lessee shall ensure that some portion of the space reserved for Water Related Uses is used for the purpose of providing hand-launched non-motorized boat rentals on a walk-in basis to the general public. In order to further the goals in the Sand Point Physical Development Plan, the spaces reserved for Water Related Uses shall be made available at the lesser of (a) an average lease rate of not more than seventy-five (75%) of the average of all non-Water Related and non Studio Space rents in the building (said average being referred to herein as the ("Market Rent"), or (b) an average rate of $13.50 per square foot per year, adjusted annually by the inflation measure used in Section 4.2.1, inclusive of all utilities and building charges, except phone and data service. Lessee will retain the current tenant, Sail Sand Point, and all of its operations as a sub-lessee of Building 11 as the focal point of the Water-Related Uses; provided that Sail Sand Point executes a lease consistent with the letter of intent between Lessee and Sail Sand Point dated August 11, 2008, (Attached as Exhibit H) by June 17, 2011. If Lessee is unable to maintain a subtenant in compliance with this Section and some portion of the space remains vacant for more than a three month period after a temporary certificate of occupancy is issued for the Building 11 shell and core improvements, then Lessee will notify the Superintendent and the City shall have the right to propose subtenant(s) that will continue the Water Related Uses in the

space reserved by this Section. Provided the proposed subtenant agrees to a standard lease at rental rates in compliance with Section 2.5.4, Lessee shall be obligated to lease the space to the City's proposed subtenant(s). If the City has not found any subtenant that will fulfill the requirements in this Section within three months after the City has the right to propose subtenant(s), then Lessee may use up to three thousand (3,000) square feet of the space reserved for Water Related Uses for Primary Park and Recreation Uses. Lessee may not renew any such leases without first demonstrating to City that it has used all reasonable efforts to fill the space with new Water-Related Uses.

2.5.5 Artist Studio and Workshop Space. The City is considering rehabilitating all or a portion of Building 30, located elsewhere in Magnuson Park, to provide space for Artist Studio and Workshop Space, and other public and private uses. The City anticipates that, if Building 30 is rehabilitated, Artists leasing space at Building 11 will relocate to Building 30, and the space formerly occupied by Artists at Building 11 will revert to another Primary Parks and Recreation Use. Lessee shall reserve a minimum of five thousand (5,000) square feet of the ground floor space for artist studio and workshop space, to be located in any portion of the Premises allowed under applicable land use regulations, for the lesser of (a) ten years from the Commencement Date, or (b) until such time as Building 30 has been rehabilitated and receives a Certificate of Occupancy from the City's Department of Planning and Development.

2.5.6 Artist Studio and Workshop Space – Affordability. The spaces reserved for Studio Space shall be made available at the lesser of (a) an average lease rate not more than seventy-five (75%) of the Market Rent, or (b) an average rate of $13.00 per square foot per year, adjusted annually by the inflation measure used in Section 4.2.1, inclusive of all utilities and building charges, except phone and data service. The affordability clause contained in this subsection shall be in effect for the lesser of (a) ten years from the Commencement Date, or (b) until such time as Building 30 has been rehabilitated and receives a Certificate of Occupancy from the City's Department of Planning and Development.

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

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

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

2.9 Limitations Regarding the Deck Area and Play Area.

2.9.1 Deck Area. Except as set forth below, Lessee's right to use the Deck Area shall be non-exclusive, and Lessee shall make the area available for use by the general public in common with Lessee's invitees, subtenants and restaurant patrons. Notwithstanding the foregoing sentence, Lessee or its restaurant subtenant may cordon off up to 700 square feet of the Deck Area to provide patrons of the restaurant subtenant located in a portion of the Premises with an outdoor area where beer and wine may be served pursuant to Section 8.5 of the Lease.

2.9.2 Play Areas. Subject to the provisions of Section 2.9.2.1, during the actual operating hours of any childcare center located in a portion of the Premises, Lessee or Lessee's authorized subtenant shall have exclusive use of the Play Areas, including the right to restrict the use of the Play Areas to staff, patrons, and invitees of the childcare center. At all other times during normal Magnuson Park hours, the Play Areas shall be open and accessible for use by the general public. Lessee's maintenance obligations under Section 12 of the Lease shall apply to the Play Areas; however, the City shall be responsible for the repair of any damage to the Play Areas that occurs during the hours when the Play Areas are available for public use, excepting ordinary wear and tear or damage attributable to actions of Lessee or Lessees' subtenants, employees, agents, licensees or invitees. Lessee and its childcare center operator, if any, shall not have responsibility or liability for any claims arising out of occurrences that are in any way related to the condition of the Play Areas or the public's use of the Play Areas during the hours when the Play Areas are open and available for public use unless and to the extent liability arises from the acts or omissions or breach of this Lease by Lessee, its employees, agents or business invitees or its childcare center subtenant or such subtenant's employees agents or business invitees.

2.9.2.1 Play Areas – Public Hours. On all evenings, weekends and holidays, except at times when Magnuson Park is closed to the public, Play Areas shall be open and accessible for use by the general public. For the purposes of

this Section only, evenings shall be defined as weekdays, beginning at 7:00 PM and ending at 6:00 AM; weekends shall be defined as beginning at 7:00 PM Friday and ending at 6:00 AM Monday. Lessee shall, as part of its annual Management and Operations Plan, as described in Section 8.4, propose recognized holidays, for the purposes of this Subsection only. The Parks Superintendent, at his or her sole discretion, shall approve and/or deny said holidays. If conflicts regarding Play Area open hours exist between this Section and Section 2.9.2, this terms of this Section shall control. Lessee shall post signs in conspicuous locations within the Play Areas clearly stating the days and hours when the playgrounds are open to the public.

2.9.3 Adjacent Areas. The Adjacent Areas are located on land that the City obtained from the United States of America ("USA") as surplus property, which was deeded to the City by that certain quitclaim deed recorded on March 17, 1999, in the records of King County, Washington at Recording Number 9905041194 ("USA Deed"). Condition No. 3 of the USA Deed provides that the property "shall not be sold, leased, assigned or otherwise disposed of except to another eligible governmental agency."

Lessee's license to use the Adjacent Areas is subject to the terms and conditions set forth in the USA Deed. Nothing in this document shall be construed as a grant of any leasehold or permanent interest in the Adjacent Areas, but shall merely be considered a revocable license for the use of the Adjacent Areas, anything herein contained to the contrary notwithstanding. Lessee shall use the Adjacent Areas in strict accordance with all terms and conditions imposed by the USA as set forth in the USA Deed. In the event of any conflict between the terms and conditions of the USA Deed and any provision of this Lease, the terms of the USA Deed shall control. Violations of the terms and conditions of the USA Deed may be grounds for reversion to the USA of the Adjacent Areas, in the sole discretion of the USA and with no compensation to either the Lessee or the City from the USA. Lessee expressly acknowledges the revocable nature of the license to use the Adjacent Areas and that the USA shall not be liable for any costs, expenses, damages, claims or the like caused by or arising out of the USA's exercise of its rights under the USA Deed. In the event the USA exercises its rights under the USA Deed, Lessee shall surrender and vacate the Adjacent Areas, remove all of Lessee's property therefrom (including without limitation any playground or other equipment affixed to the land), repair any damage resulting from such removal, and return the Adjacent Areas to as good order and condition as that existing upon the effective date of this Lease.

## 3. Lease Term.

3.1 Initial Term. This Lease shall be for a forty- (40) year term ("Lease Term" or "Term") beginning on the Commencement Date specified in Subsection 1.3 and ending on the Expiration Date specified in Subsection 1.4, unless the Lease Term is

terminated earlier in accordance with the provisions of this Lease or extended as provided in Subsection 3.2 and 3.2.1 below.

3.1.1 Initial Term – Tax Credit Option. If Lessee is not successful in applying for and receiving, by the fourth anniversary of the Lease Commencement Date, Federal Historic Rehabilitation Tax Credits, as described in Section 4.3, then the lease shall revert to a thirty-(30) year Initial Term, subject to the same conditions provided in Section 3.1. Lessee's successful receipt of Federal Historic Rehabilitation Tax Credits shall be evidenced by payment to City of City's share of Tax Credits, as provided in Section 4.3.

3.2 Extended Term. Lessee shall have the option to extend this Lease for one (1) additional extended term of five (5) years ("Extended Term") on the same terms and conditions set forth herein; however, Lessee's right to exercise such option to extend is conditioned upon Lessee's not being in default under this Lease beyond applicable notice and cure period and Lessee's achievement, in providing Public Benefit Programs, in aggregate, worth at least 23% of the Rent Due during the preceding Term. Lessee may extend the Lease Term to include the Extended Term by giving the Superintendent written notice of its intention to do so no more than two-hundred-seventy (270) days and no less than one-hundred-eighty (180) days prior to the Expiration Date of the Initial Term.

3.2.1 Extended Terms – Tax Credit Option. If Lessee is not successful in applying for and receiving, by the fourth anniversary of Lease Commencement Date, Federal Historic Rehabilitation Tax Credits, as described in Section 4.3, then Lessee shall have the option to extend this Lease for three (3) additional extended terms of five (5) years ("Extended Terms") on the same terms and conditions set forth herein, and subject to the same conditions provided in Section 3.2 above.

3.3 Early Termination. **[DELETED].**

4. Rent.

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

4.2 Adjustments to Rent.

4.2.1 Annual Rental Adjustments. Except as set forth below, beginning on the first anniversary of the Rent Commencement Date and every

year thereafter until the expiration or termination of this Lease (each, a "Rent Adjustment Date"), Base Rent shall be adjusted upward only to reflect increases in the total non-compounded percentage change in the Consumer Price Index for All Urban Consumers (All Items) in the Seattle-Tacoma-Bremerton region (1982-84 = 100) ("CPI"), published by the Bureau of Labor Statistics, United States Department of Labor between the first and last years being adjusted. City shall notify Lessee in writing at least three (3) months prior to each Rent Adjustment Date of the new monthly Base Rent amount that will be due starting on such Rent Adjustment Date.

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

In no event shall the Base Rent, as adjusted for any period, be less than Base Rent payable during the immediately preceding period. In the event the CPI is discontinued, the parties shall agree upon another similar index to be used to calculate the contemplated adjustment and, in the event of an inability to agree, the parties shall request the American Arbitration Association or its successor to appoint a qualified arbitrator to establish an appropriate adjustment standard to measure inflation, and the fees and costs incurred in connection with such arbitration shall be borne equally by City and Lessee.

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

| **Rental Adjustment Period** | **Revenue Base Year** | **Revenue Adjustment Year** |
|---|---|---|
| Year 11 through Year 15 | Third full year after the Commencement Date | Tenth full year after the Commencement Date |

| | | |
|---|---|---|
| Year 16 through Year 20 | Third full year after the Commencement Date | Fifteenth full year after the Commencement Date |
| Year 21 through Year 25 | Third full year after the Commencement Date | Twentieth full year after the Commencement Date |
| Year 26 through Year 30 | Third full year after the Commencement Date | Twenty-fifth full year after the Commencement Date |
| Year 31 through Year 35 | Third full year after the Commencement Date | Thirtieth full year after the Commencement Date |
| Year 36 through Year 40 | Third full year after the Commencement Date | Thirty-fifth full year after the Commencement Date |
| Year 41 through Year 45 | Third full year after the Commencement Date | Fortieth full year after the Commencement Date |

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

4.3 Historic Rehabilitation Tax Credits. Lessee is applying for federal historic rehabilitation tax credits under Internal Revenue Code Section 47 as part of its financing for the Initial Capital Improvements. If Lessee receives any historic rehabilitation tax credit in connection with the Premises, then Lessee must remit to City fifty percent (50%) of the Rehabilitation Tax Credit Value, within six months of receiving the tax credit. This amount shall not be in lieu of any Rent due to the City, and shall have no effect on any other financial considerations in this Agreement. As used in this section "Rehabilitation Tax Credit Value" means the actual tax credit amount minus the cost of securing the tax credit. An example of how to calculate the Tax Credit Value under this subsection follows:

| | |
|---|---|
| Total cost of Initial Capital Improvements: | $10,000,000 |
| Total cost of obtaining historic rehabilitation tax credits: | ($100,000) |
| Total fees and returns paid to HTC Investor: | ($300,000) |
| Actual tax credit amount: | $2,000,000 |

Calculation of Rehabilitation Tax Credit Value:
$2,000,000 (actual tax credit)

($100,000) (cost of obtaining)

($300,000) (payments to HTC investor)

$1,600,000 (Rehabilitation Tax Credit Value)

**5. Rent Offset.**

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

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

5.2 Procedure for Capital Improvement Rent Offset.

5.2.1 Submittal of Costs.

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

(b) After Completion of the Capital Improvements. Not later than sixty (60) days following the Construction Period of the Initial Capital Improvements or completion of any Subsequent Improvements, as applicable, Lessee shall provide the Superintendent with an accounting of

its costs associated with the Capital Improvements completed to the Premises and not previously included in the Capital Improvement Rent Offset, together with such supporting documentation as the Superintendent may reasonably request.

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

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

## 6. Late Charge; Interest.

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

## 7. Contingencies.

7.1 Preliminary Contingencies. Lessee and the City acknowledge that the Preliminary Contingencies in Section 7.1.1 and 7.1.3 have been satisfied, and the contingency in Section 7.1.4 has been waived. The Preliminary Contingencies in Section 7.1.2 have been satisfied, except Lessee's obligation to reimburse the City for 100% of the cost of the Phase II investigation upon invoice within ten days after Lessee takes

possession of the Premises under Section 7. Lessee may include the cost of the Phase II in Lessee's Capital Improvement Rent Offset.

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

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

7.1.3 Land Use Code Amendments. Lessee and the Superintendent shall reasonably cooperate to develop and Superintendent shall propose to City Council, amendments to Seattle Municipal Code Chapter 23.72 (Sand Point

Overlay District). If the Seattle Municipal Code Chapter 23.72 is not amended to the reasonable satisfaction of both parties by April 30, 2009, Lessee may terminate this Lease by providing written notice to City not later than May 31, 2009, and the parties shall have no further rights or obligations under this Lease.

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

7.1.5 **[DELETED]**

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

7.2.1 Lessee Financing. No later than April 23, 2011, Lessee shall provide to the Parks Finance Director, for his/her review and approval (which approval shall not be unreasonably withheld, conditioned or delayed), reasonable evidence that it has funding committed to complete all Building alterations necessary to obtain a certificate of occupancy ("Funding"). If Lessee fails to provide reasonable evidence it has secured adequate Funding by this date, the City may terminate this Lease upon thirty (30) days written notice to Lessee and the parties shall have no further rights or obligations under this Lease. Notwithstanding the foregoing, in the event that Lessee obtains such Funding within the thirty (30) day period, this Lease shall continue in full force and effect. The City shall be deemed to have approved the Funding unless it rejects the Funding in writing within thirty (30) days of Lessee's request for approval.

7.2.2 Lessee Third Party User Commitments. No later than May 23, 2011, Lessee shall provide the Superintendent, for such official's review and approval (which approval will not be unreasonably withheld, conditioned, or delayed), reasonable evidence, such as letters of intent, that Lessee has sublease commitments with third parties accounting for fifty percent (50%) of the rentable square feet within the Building. Also on or before that date, Lessee shall provide the Superintendent, for such official's review and approval (which approval will not be unreasonably withheld, conditioned, or delayed) reasonable evidence, such

as letters of intent, that Lessee has made written offers to third parties sufficient to lease at least fifty percent (50%) of the rentable square feet within the Building required to be occupied by water-related uses as described in Section 2.5.4. If Lessee fails to provide such evidence by this date, the City may terminate this Lease by providing written notice to Lessee and the parties shall have no further rights or obligations under this Lease.

7.2.3 Building Permits. No later than May 23, 2011, Lessee shall have complied with all of the requirements to obtain the necessary building permit or permits to construct the Initial Capital Improvements for Phase I: shell and core. If Lessee fails to obtain such permits by this date, the City may terminate this Lease by providing written notice to Lessee and the parties shall have no further rights or obligations under this Lease.

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

7.3.1 Approval of Signage Plan for the Premises. Lessee has submitted the "Building 11 Sign Guidelines" signage plan dated November 20, 2010, to the Superintendent for review and approval. The Superintendent approves Lessee's signage plan, finding it consistent with the Sand Point Sign Code, Ordinance 123543. The signage plan must also be reviewed and approved as required by SMC Chapter 25.12.

7.3.2 Park Access Improvements. Parks and Lessee agree to cooperate in the construction of a new entrance to Magnuson Park as anticipated in the Magnuson Park Master Plan approved by City Council under Resolution 29429 and as depicted on Exhibit I – Proposed Driveway Design. Prior to applying for any permits related to the new entrance, the plans shall be reviewed and approved as required by SMC Chapter 25.12. At its sole cost, Lessee will be responsible for all necessary construction design, for obtaining permits for construction, and for constructing the driveway in compliance with all applicable terms in this Lease, including Section 11.2. Parks will be responsible for re-landscaping the area around the new entrance and for removal and replacement of any affected trees. Prior to commencing construction, Lessee will provide the Superintendent with copies of the permits, the final bid and construction documents for the work, and will incorporate the recommendations of the Parks Engineer in the final design of the driveway. Lessee shall incorporate the insurance requirements contained in Sections 16.3 and 16.4 applicable to Lessee's Contractors into any construction contract for the driveway. Any proposed changes to the design or location in Exhibit I are subject to the Superintendent's approval, which will not be unreasonably conditioned or withheld. During construction, Lessee shall provide Parks with copies of all inspection reports. After completion of the construction, Lessee shall provide Parks with as-built drawings and shall assign

the improvements to the City. Lessee may include the driveway in its "Initial Capital Improvements" eligible as an offset against Rent subject to the requirements and procedures under Section 5.

7.4 Lessee's Notice. Lessee shall provide written notice to the City within fifteen (15) days of the time when both of the following conditions have been met: (i) Lessee has received all permits necessary for construction of the Initial Capital Improvements, (ii) Lessee has submitted its proof of Funding as required under Section 7.2.1, and (iii) Lessee's contingencies in Section 7.3 have been satisfied or waived ("Lessee's Notice"). In the event that Lessee does not provide Lessee's notice by May 23, 2011, the City may, in its discretion, (i) terminate this Lease, or (ii) extend the time period for receipt of Lessee's Notice. In any case, the City is not required to terminate any existing permits or leases at the Premises prior to receipt of Lessee's Notice.

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

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

**8. Lessee's Operations.**

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

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

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

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

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

8.6 Exclusive Uses.

8.6.1 RESERVED.

8.6.2 Daycare. Provided that Lessee or a subtenant of Lessee opens and continuously operates, according to the standard of continuous operation described in Section 2.8, a child daycare business on the Premises, City shall not permit the operation of a child daycare business north of the National Oceanic and Atmospheric Administration (NOAA) access roadway in Magnuson Park. As used in this section, a child daycare business means a business that offers childcare on a regular basis for parents who may or may not be using Park amenities. Child daycare business does not include childcare services provided on a short term basis for visitors and users of Magnuson Park Facilities, nor does it include daycamps. The continuous operations obligations set forth herein shall not apply during the periods of Lessee's initial lease up and build out of space at the Premises for a child daycare use or subsequent lease up periods by Lessee or

its sublessee for a new tenant in such space, provided that such subsequent lease up periods do not exceed twelve (12) consecutive months. In the event such subsequent lease up period exceeds twelve (12) consecutive months, then Lessee shall enforce the terms of its sublease as set forth in Section 2.8 of this Lease.

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

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

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

8.7 Public Benefit Programs. Given that the Premises are located within a public park with an ideal of universal access by the public to both facilities and programs, Lessee agrees to encourage all of its tenants to develop programs and services that provide free or discounted use of its facilities and services that are available to the general public regardless of income level (collectively, "Public Benefits"). To further this goal, Lessee must provide public benefits with a total value of no less than ten percent (10%) of the Rent Due, during each year of the Lease Term, and consistent with the programs described in Exhibit G. Failure to provide these required benefits will constitute a default by Lessee as described in Section 21. In the annual Management and Operations Plan described in Section 8.4, Lessee shall identify the amount of Public Programs it is proposing for the subsequent calendar year and provide detail on Public Programs proposed. The Superintendent will review the request with reference to the recognized Public Benefits described on Exhibit G, and will act reasonably in reviewing the request. Provided the proposed Public Benefits are consistent with the Public Benefits in Exhibit G and meet the goals stated in this Section, the Superintendent will approve such Public Benefits and will respond within 30 days stating the Public Programs allowed for the upcoming calendar year. At the end of each calendar year, the Lessee shall submit to

the Superintendent a report detailing Lessee's actual performance in providing the public benefits proposed for that year (the "Public Benefits Report"). Following the Superintendent's review of the Public Benefits Report, the Parks Department shall submit it to the City Clerk's Office for filing with the Agreement.

8.8 Compliance with Laws; Nondiscrimination.

8.8.1 General Obligation. City warrants that as of the time of City's execution of this Lease, it has not received a notice of violation of any statute, ordinance, regulation or law at the Premises. Lessee shall not use or permit the Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, ordinance or regulation. Lessee shall promptly comply, at its sole cost and expense, with all laws, ordinances, and regulations now in force or hereafter adopted relating to or affecting the renovation or improvement of the Premises or use or occupancy of the Premises.

8.8.2 Nondiscrimination. Without limiting the generality of Subsection 8.8.1, Lessee shall comply with any applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and The City of Seattle, including but not limited to Chapters 14.04, 14.10 and 20.42 of the Seattle Municipal Code, as they may be amended from time to time, and rules, regulations, orders and directives of the associated administrative agencies and their officers.

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

8.10 Hazardous Substances. As used in this Lease, "Hazardous Substances" means any substance or material designated as, or containing any component now or hereafter designated as hazardous, dangerous, toxic or harmful and/or subject to regulation under any federal, state or local law, regulation or ordinance.

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

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

8.10.3 Hazardous Substances Covenants. Lessee acknowledges that it has received and reviewed the Quitclaim Deed recorded by the King County Recorder's Office under recording number 9905041194 whereby the United States of America granted Building 11 and other portions of Magnuson Park to the City (the "USA Deed"), including Section 8 – Hazardous Materials Covenants. Lessee shall ensure that at all times during the Lease Term, Lessee's use of the Premises and any use of the adjacent Park property will not violate the USA Deed's provisions regarding Hazardous Materials. Additionally, Lessee covenants that it will not undertake,

without first obtaining the written approval of the Superintendent, any utility work, maintenance, construction, or work of any type that: (i) penetrates Building 11's foundation or interior slab, (ii) penetrates any type of pavement covering the ground in areas adjoining the Building or in the vicinity of the Building, or (iii) requires excavation of soil at depths in excess of 12 inches at any location. The Superintendent's approval of said work may be conditioned or restricted, in which case Lessee agrees to comply with the restrictions or conditions. Lessee shall include provisions in its subleases requiring its subtenants and licensees to comply with this Section.

8.10.4 Lessee Warrants. Lessee shall not, without City's prior written consent, keep on or about the Premises any substance designated as, or containing any Hazardous Substance except that Lessee and its subtenants may keep Hazardous Substances commonly used in medical offices, if such use is permitted by the Department of Planning and Development at the Premises, and customary office, kitchen, cleaning and other supplies reasonably related to the Permitted Uses in normal quantities handled in compliance with applicable laws. With respect to any Hazardous Substances stored with City's consent, Lessee shall promptly, timely and completely comply with all governmental requirements for reporting and record keeping; submit to City true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities; within five (5) days after City's request therefore, provide evidence satisfactory to City of Lessee's compliance with all applicable governmental rules, regulations and requirements; and comply with all governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment and disposal of Hazardous Substances. Any and all reasonable costs incurred by City and associated with City's inspections of the Premises and City's monitoring of Lessee's compliance with this Subsection, including City's attorneys' fees and costs, shall be due and payable to City within ten (10) days after City's demand therefore, if Lessee's material violation of this Section 8.10 is discovered as a result of such inspection or monitoring. Lessee shall be fully and completely liable to City for any and all cleanup costs and expenses and any and all other charges, expenses, fees, fines, penalties (both, civil and criminal) and costs imposed with respect to Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances in or about the Premises.

8.10.5 Indemnification. Lessee shall indemnify, defend and hold City harmless from any and all of the costs, fees, penalties, claims, liabilities, damages, charges and expenses assessed against, or imposed, upon City (as well as City's reasonable attorneys' fees and costs) as a result of (i) the failure of Lessee or its subtenants to comply with any of Lessee's obligations in this Section 8.10, and (ii) Lessee's or its subtenants' use, disposal, transportation, generation and/or sale of Hazardous Substances on or about the Premises.

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

**9. Utilities.**

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

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

9.3 Interruption. City shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption or failure of services, including, but not limited to, electrical surges, or from failure to make any repairs or perform any maintenance. No temporary interruption or failure of such services incident to the making of repairs, alterations or improvements or due to accident, strike or conditions or events beyond City's reasonable control shall be deemed an eviction of Lessee or to relieve Lessee from any of Lessee's obligations hereunder or to give Lessee a right of action against City for damages. City has no obligation to provide emergency or backup power to Lessee. The provision of emergency or backup power to the Premises or to enable the equipment therein to properly function shall be the sole responsibility of Lessee. Notwithstanding the foregoing, (i) City shall use reasonable efforts to restore the services and (ii) in the event of an interruption of such services for more than twenty-four (24) hours due to Parks' negligent acts or omissions, Rent shall abate from the first day of the interruption until the interrupted utilities or services are fully restored.

**10. Licenses and Taxes.**

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

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

## 11. Alterations by Lessee.

11.1 Approval of Alterations. Lessee shall not make any alterations, additions or improvements in or to the Premises, including without limitation, the Initial Capital Improvements, without first submitting to City professionally-prepared plans for such work and obtaining Superintendent's prior written approval thereof, which approval shall not be unreasonably withheld, conditioned or delayed. Lessee shall also submit plans to both the State Historic Preservation Officer and the City's Historic Preservation Officer, as required, for their concurrent review and comment. Notwithstanding the foregoing, Lessee may make improvements to each subtenant's space in the Premises not to exceed fifty thousand dollars ($50,000) in any twelve (12) month period without City's prior consent. Lessee covenants that it will cause all alterations, additions and improvements to the Premises to be completed at Lessee's sole cost and expense by a Washington State licensed contractor and in a manner that (a) is built in accordance with City-approved plans and any reasonable conditions imposed by City in connection therewith; (b) is in conformity with other similar Parks facilities; (c) includes reasonably acceptable insurance coverage for City's benefit; (d) does not negatively affect the structural integrity of the Premises or any of the Premises' systems; and (e) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Premises. In addition, Lessee shall meet with City's Green Building Team and shall use commercially reasonable efforts to incorporate green building practices and sustainable design into its design for the Building alterations.

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

therewith. For any contract for the Initial Capital Improvements, Lessee shall require its contractors to pay a wage commensurate with prevailing wages as described in RCW 39.12. Except as provided in Section 15 with regard to concurrent negligence, Lessee shall indemnify, defend and hold City harmless from and against all losses, liabilities, damages, liens, costs, penalties and expenses (including attorneys' fees, but without waiver of the duty to hold harmless) arising from or out of Lessee's performance of such alterations, additions and improvements, including, but not limited to, all which arise from or out of Lessee's breach of its obligations under terms of this Section 11.

11.3 Historic Site Preservation. If Lessee wishes to undertake any installation, alteration, modification, repair, renovation or any other work on or to the exterior of the Premises, the Lessee shall obtain a Certificate of Approval for such work as required by SMC Chapter 25.12, and shall comply with all applicable laws, regulations and ordinances concerning historic preservation, including standards outlined in the Sand Point Historic Properties Reuse and Protection Plan. City agrees to reasonably cooperate, at no cost to City, in Lessee's efforts to obtain the necessary approvals therefor.

11.4 Alterations as Property. All alterations, additions and improvements (expressly including all light fixtures; heating and ventilation units; floor, window, and wall coverings; and electrical wiring), except Lessee's and Lessee's subtenant's moveable trade fixtures and appliances and equipment not permanently affixed to the Premises (including without limitation furniture, computers, point of sale systems and registers) shall become the property of City at the expiration or termination of this Lease without any obligation on its part to pay for any of the same. At City's request, Lessee shall execute a deed or bill of sale in favor of City, in substantially the same form attached as Exhibit E, with respect to such alterations and/or improvements. Notwithstanding the foregoing, Lessee shall remove all or any portion of such alterations and/or improvements on the expiration or termination of this Lease if City specifically so directs, in writing, at the time of City's issuance of its approval thereof. Within ninety (90) days after the completion of the Initial Capital Improvements to the Premises, Lessee shall deliver to City a full set of "as-built" plans of the Premises showing the details of all alterations, additions and improvements made to the Premises by Lessee as part of the Initial Capital Improvements. Additionally, upon City's request, Lessee shall deliver a full set of "as-built" plans of the Premises following completion of any additional major renovations, repairs or improvements made to the Premises during the term of the Lease.

## 12. Care and Maintenance of Premises.

12.1 Lessee's Maintenance Obligation. Lessee shall maintain the Premises in a clean, orderly, and neat fashion, and to a standard found at other Parks properties similar in age, level of public use, and public visibility. Except as provided otherwise in this Section 12, Lessee shall be responsible for all minor and major maintenance of the

Premises during the Term of this Lease including but not limited to repairs of cracking and breaking glass, regular exterior painting and masonry maintenance, roof repairs and replacement, and HVAC repair and replacement. If any portion of the Premises or any system or equipment in the Premises that Lessee is obligated to repair cannot be fully repaired or restored, Lessee shall promptly replace such portion of the Premises or system or equipment in the Premises ("Replacement") at Lessee's sole cost and expense. Notwithstanding the foregoing, if the total amount of the Capital Improvement Rent Offset related to any such Replacement would exceed the total amount of Rent due during the remainder of the Lease Term, Lessee and City shall use good faith efforts to agree to a plan for completing and paying for such Replacement (the "Replacement Plan"). In the event that Lessee and City cannot agree to a Replacement Plan within thirty (30) days of their initial meeting to discuss the same, Lessee may terminate this Lease upon thirty (30) days prior written notice.

12.2 Prior Approval. Prior to making any expenditure in excess of fifty thousand dollars ($50,000) necessary to comply with the terms and provisions of this Section, Lessee shall submit to City professionally prepared preliminary plans for such work and obtain City's prior written approval thereof, which approval shall not be unreasonably withheld, conditioned or delayed. City shall be deemed to have approved the plans and specifications unless it rejects the plans and specifications in writing within thirty (30) days.

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

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

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

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

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

## 13. Signs and Advertising.

13.1 On-Premises Signs. Lessee may install permanent exterior signage in accordance with the Signage Plan as set forth Section 7.3.1 and as otherwise approved by Superintendent. Prior to any such approvals, signs must receive a Certificate of Approval as required by SMC Chapter 25.12.

13.2 Signs, Generally. Lessee may also inscribe, post, place, or display any sign, notice, picture, poster, or any other advertising matter anywhere within the interior of the Premises, without the Superintendent's prior written consent. Lessee shall remove all signage at the expiration or earlier termination of this Lease and repair any damage or injury to the Premises.

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

**14. Surrender of Premises.**

At the expiration or sooner termination of the Lease Term, Lessee shall return the Premises to City in the same condition in which received on the Commencement Date (or, if altered, then the Premises shall be returned in such altered condition unless otherwise directed by City at the time of City's approval of such alterations pursuant to Section 11), reasonable wear and tear and casualty excepted. Notwithstanding the foregoing, in no event shall Lessee be required to remove any of the Initial Capital Improvements unless the City so directs as and when specified in Section 11.4. Prior to such return, Lessee shall remove its moveable trade fixtures and appliances and equipment that have not been attached to the Premises, and shall repair any damage resulting from their removal. In no event shall Lessee remove floor coverings; heating or ventilating equipment; lighting equipment or fixtures; or floor, window or wall coverings unless otherwise specifically directed by City in writing at the time when City's approval of their installation is issued. Lessee's obligations under this Section 14 shall survive the expiration or termination of this Lease. Lessee shall indemnify City for all damages and losses suffered as a result of Lessee's failure to remove the specified alterations, moveable trade fixtures and appliances and to redeliver the Premises on a timely basis.

**15. Indemnification.**

15.1 Lessee's Indemnification. To the fullest extent permitted by law, 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 officers, employees, agents, contractors, licensees or invitees, (ii) Lessee's breach of its obligations hereunder or (iii) any negligent or intentional act or omission by any subtenant or licensee of Lessee, or of any officer, agent, employee, contractor, licensee or invitee of any of the same in or about the Premises, except to the extent caused by the City's negligent acts, intentional misconduct or breach of this Lease. City agrees that the foregoing indemnity specifically excludes injury to any person or loss or damage to property resulting from conditions on property adjacent to the Premises unless Lessee's actions or those of its officers, employees, agents, contractors, subtenants, licensees or invitees caused or contributed to the harm alleged. As used herein, "adjacent to the Premises" means areas outside the area where Lessee provides custodial service, as further described in Subsection 12.6. The indemnification and defense obligation of this subsection shall survive termination or expiration of this Lease. Lessee agrees that the foregoing indemnity specifically covers actions brought by its own employees; as a result, the foregoing indemnity is specifically and expressly intended to constitute a waiver of Lessee's immunity under Washington's Industrial Insurance Act, RCW Title

51, but only as to City and to the extent necessary to provide City with a full and complete indemnity from claims made by Lessee and its employees, to the extent of their negligence. Lessee shall promptly notify City of casualties or accidents occurring in or about the Premises. **CITY AND LESSEE ACKNOWLEDGE THAT THEY SPECIFICALLY NEGOTIATED AND AGREED UPON THE INDEMNIFICATION PROVISIONS OF THIS SECTION 15.**

15.2 City's Indemnification. Except as otherwise provided in this section, City shall indemnify, defend (using legal counsel reasonably acceptable to Lessee) and save Lessee, Lessee's officers, agents, employees, lenders and contractors, harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including Lessee's actual and reasonable personnel and overhead costs and attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to, any property arising out of or in connection with (i) City's breach of its obligations hereunder, or (ii) any negligent act or omission of City or of any officer, agent or employee of City in or about the Park, except to the extent caused by the negligent acts, intentional misconduct or breach of this Lease by Lessee or its agents or subtenants. Further, City agrees to indemnify and defend Lessee and Lessee's childcare center operator solely with respect to claims arising out of occurrences that are in any way related to the condition of the Play Area or the public's use of the Play Area during the hours when the Play Area is open and available for public use, unless the liability results from the acts or omissions of said childcare center operator or those of its agents, employees, licensees or invitees. The indemnification and defense obligation of this subsection shall survive termination or expiration of this Lease. City agrees that the foregoing indemnity specifically covers actions brought by its own employees; as a result, the foregoing indemnity is specifically and expressly intended to constitute a waiver of City's immunity under Washington's Industrial Insurance Act, RCW Title 51, but only as to Lessee and to the extent necessary to provide Lessee with a full and complete indemnity from claims made by City and its employees, to the extent of their negligence. **CITY AND LESSEE ACKNOWLEDGE THAT THEY SPECIFICALLY NEGOTIATED AND AGREED UPON THE INDEMNIFICATION PROVISIONS OF THIS SECTION 15.2.**

## 16. Insurance.

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

16.1.1 Commercial General Liability ("CGL") insurance including:

- Premises/Operations
- Products/Completed Operations

- Personal/Advertising Injury
- Contractual Liability
- Stop Gap/Employers Liability
- Independent Contractors Liability
- Host Liquor Liability

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

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

- $1,000,000 each accident/disease/employee Stop Gap (alternatively, may be evidenced as Employer's Liability insurance under Part B of a Workers Compensation insurance policy);

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

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

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

of the Capital Improvements (the "Completed Value"). The Completed Value shall be subject to the City Risk Manager's review and approval prior to the commencement of the Capital Improvements and shall be used (1) during the period of construction as the amount of builder's risk property insurance and (2) thereafter as the replacement cost amount of property insurance on the Premises, subject however to annual adjustment to current replacement valuation as agreed by the City upon each insurance policy anniversary. The deductible for said property insurance shall not exceed $10,000 without the City's written approval, which approval shall not be unreasonably withheld, conditioned or delayed; however, the deductible for earthquake insurance only may be an amount up to ten percent (10%) of the replacement cost of the Building.

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

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

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

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

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

16.4.3 The property insurance required by Subsection 16.1.4, with respect to the Premises only (excluding Business Contents and Tenant Improvements) shall name Lessee's lender as the loss payee under such insurance. The City of Seattle shall be named as an additional insured or additional loss payee under such policy, which shall also provide a waiver of subrogation in favor of the City.

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

16.4.5 No insurance policy may be cancelled without thirty (30) day written notice of such cancellation, except ten (10) day written notice as respects cancellation for non-payment of premium except as may otherwise be specified in Revised Code of Washington (RCW) 48.18.290 (Cancellation by insurer). The City and the Lessee mutually agree that for the purpose of RCW 48.18.290 (1) (e), for both liability and property insurance the City is deemed to be a "mortgagee, pledgee, or other person shown by the policy to have an interest in any loss which may occur thereunder." Written notice shall mailed to the City of Seattle (Attention: Risk Management), P. O. Box 94669, Seattle, WA 98124-4669 or delivered electronically by fax to number (206) 470-1270 or by email to riskmanagement@seattle.gov.

16.4.6 Any deductible or self-insured retention ("S.I.R.") in excess of $10,000 must be disclosed to, and shall be subject to reasonable approval by, the City. Lessee shall cooperate to provide such information as the City may reasonably deem to be necessary to assess the risk bearing capacity of the Lessee to sustain such deductible or S.I.R. The cost of any claim falling within a deductible or S.I.R. shall be the responsibility of Lessee. If a deductible or S.I.R. for CGL or equivalent insurance is not "fronted" by an insurer but is funded and/or administered by Lessee or a contracted third party claims administrator, Lessee agrees to defend and indemnify the City to the same extent as the City would be protected as an additional insured for primary and non-contributory limits of liability as required herein by an insurer.

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

16.5 Evidence of Insurance (Does not Apply to Workers Compensation). As evidence of insurance coverage, on or before the Commencement Date, and thereafter, not later than five (5) days prior to the expiration or renewal date of each such policy, the following certification must be delivered to the City at its address as specified in Subsection

1.7 hereof with a copy delivered electronically by fax to fax number (206) 470-1270 or by email to riskmanagement@seattle.gov:

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

16.5.2 Documentation shall be provided that coverage will not be cancelled without at least thirty (30) day written notice of such cancellation, except at least ten (10) day written notice as respects cancellation for non-payment of premium, unless otherwise specified in Revised Code of Washington (RCW) 48.18.290 (Cancellation by insurer).

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

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

## 17. Assignment or Sublease.

17.1 City Consent Required. The City's willingness to enter this Lease is conditioned, in part, upon the City's determination that Lessee is capable of providing the public benefits, capital renovations, and recreational facilities to be provided by Lessee under this Lease. Except as expressly provided in this Section and Section 17.2, Lessee shall not sublet or encumber the whole or any part of the Premises, nor shall this Lease or any interest thereunder be assignable or transferable by operation of law or by any process

or proceeding of any court or otherwise without the prior written consent of City, which consent shall be at the discretion of the Superintendent. The granting of consent to a given transfer shall not constitute a waiver of the consent requirement as to future transfers. Any assignment or sublease, without City's prior written consent, at City's option, shall be void. No assignment or sublease shall release Lessee from primary liability hereunder. Each assignment and sublease shall be by an instrument in writing in form satisfactory to City. If Lessee is a corporation, then any transfer of this Lease by merger, consolidation or liquidation, or any direct or indirect change, in the ownership of, or power to vote the majority of, Lessee's outstanding voting stock, shall constitute an assignment for the purposes of this Lease. If Lessee is a partnership, then a change in general partners in or voting or decision-making control of the partnership shall also constitute an assignment.

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

In addition, the City acknowledges that Lessee intends to obtain federal historic rehabilitation tax credit ("Rehab Tax Credit") financing from a tax credit investor ("Investor") to provide additional funds for renovation of the Premises. To obtain Rehab Tax Credit financing, Lessee will be required to master sublease the Premises to a master subtenant ("Tax Credit Entity") and the Tax Credit Entity will sub-sublease the Premises back to the Lessee. The Tax Credit Entity will be wholly owned by the Investor and provides the Investor the ability to obtain all Rehab Tax Credits available from the renovation of the Premises. The sublease of the Premises to the Tax Credit Entity and the sub-sublease by the Tax Credit Entity of the Premises to the Lessee is so structured solely to deliver the Rehab Tax Credits to the Investor and the Rehab Tax Credit financing proceeds to the Lessee. The City, as lessor of the Premises, hereby consents to the sublease of the Premises to the Tax Credit Entity and the sub-sublease of the Premises to the Lessee for the purpose of providing Rehab Tax Credit financing proceeds to the Lessee.

17.3 Non-Disturbance Agreement. The Superintendent, for and on behalf of the City, shall sign the Attornment and Non-Disturbance Agreement for the benefit of the daycare and pediatric doctor's office subtenants, attached as Exhibit J, if such uses are

allowed by the Department of Planning and Development at the Premises. Additionally, if Lessee or a subtenant approved by the Superintendent (such as Sail Sand Point) shall require, as a condition of sublease, that the Superintendent, for and on behalf of the City, execute a non-disturbance agreement, then the Superintendent shall execute a non-disturbance agreement substantially in the form of Exhibit K so long as the Superintendent has approved the terms and conditions of the proposed sublease, in advance, and such subtenant has agreed to make a substantial investment in the subtenant's premises in terms of cost or time.

**18. Assignment by City.**

If City sells or otherwise transfers the Premises, such purchaser or transferee thereof shall be deemed to have assumed City's obligations under this Lease arising after the date of such transfer, and City shall thereupon be relieved of all liabilities under this Lease arising thereafter, but this Lease shall otherwise remain in full force and effect. Lessee shall attorn to City's successor, provided that such successor accepts the Premises subject to the terms, conditions and covenants of this Lease, assumes and agrees to perform all of City's obligations under this Lease and recognizes Tenant's right to the use and possession of the Premises pursuant to the terms of this Lease as long as Tenant is not in default hereunder beyond any applicable notice and cure period.

**19. Destruction.**

19.1 Duty to Repair: If the Premises are partially or totally destroyed by any casualty that is covered by the insurance described in Subsection 16.1.4 above, Lessee promptly and with due diligence shall restore the Premises to substantially the same condition as they were in immediately before such destruction, provided that the Leasehold Lender makes the Net Proceeds available to Lessee in accordance with the terms described in Subsection 41.2.15. Lessee shall be solely responsible for and shall pay the amount of any deductible or self-insured retention under all applicable insurance policies and any underinsured amounts. Any restoration required by this Section 19.1 shall be completed within twenty four (24) months after the date of destruction. City shall have no responsibility for and shall not be liable to Lessee for damages, compensation or other sums for inconvenience, loss of business or disruption arising from any repairs to or restoration of any portion of the Premises. During any period of repair or restoration of the Premises pursuant to this Section 19, the Rent shall be equitably abated to reflect the extent to which the damage to the Premises interferes with Lessee's use of the Premises.

19.2 Termination Upon Failure to Repair. If the conditions contained in Subsection 41.2.15 have not been satisfied to the Leasehold Lender's reasonable satisfaction and the Leasehold Lender does not otherwise elect to make the Net Proceeds available for repair and restoration of the Premises, Lessee shall immediately notify City of the Leasehold Lender's determination and the Lessee, at its sole option, may elect to: (i) restore the Premises to substantially the same condition as they were in immediately

before such destruction; or (ii) terminate this Lease effective as of the date of such destruction. If Lessee elects to restore the Premises, such restoration shall be completed as soon as possible, and otherwise in accordance with the restoration provisions contained in Section 19.1 above. The entire insurance award, less the Net Proceeds, shall be held in escrow but available to Lessee to use for the repair and restoration of the Premises. In the event Lessee elects to terminate this Lease, then the entire insurance award, less all amounts retained by Leasehold Lender pursuant to Subsection 41.2.15, shall be paid as follows:

(a) First, to City an amount sufficient to remove any alterations, additions or improvements made to the Premises by Lessee in order to return the Premises to its condition as of the Commencement Date or, at City's option, to restore the Premises to their condition immediately preceding the damage or destruction; and

(b) The remainder, if any, shall be paid to City except (i) Lessee shall be paid for the amount of the Capital Improvement Rental Offset not previously offset against Rent at the time of the casualty, and (ii) Lessee shall receive the portion of the insurance proceeds payable with respect to Lessee's personal property and any coverage for business interruption obtained by Lessee pursuant to this Lease or in addition to the coverage for business interruption required herein.

**20. Condemnation.**

Each party shall promptly provide the other with all correspondence received from or sent to a governmental agency relating to a threatened, proposed or actual taking of all or any portion of the Premises.

20.1 Total or Functional Total Taking. If there is a taking or damaging of all of the Premises, whether by legal proceedings or otherwise, by a governmental agency with jurisdiction either under threat of condemnation or while legal proceedings for condemnation are pending (a "Condemnation"), or there is a taking or damaging by condemnation of a portion of the Premises such that there can be no reasonable use of the Premises by Lessee for the purposes intended by this Lease, then either party may terminate this Lease by providing written notice of such termination to the other party. No termination of this Lease by Lessee pursuant to this Section 20.1 shall be effective unless consented to in writing by Leasehold Lender holding a Leasehold Deed of Trust then in effect. In the event this Lease is terminated pursuant to this Section 20.1, the amount of the condemnation proceeds shall be paid as follows:

(a) First, to any Leasehold Lender with a Leasehold Deed of Trust then in effect, to the extent of all amounts then secured by the Leasehold Deed of Trust;

(b) Second, to City an amount sufficient to remove any alterations, additions or improvements made to the Premises by Lessee in order to return the Premises to its condition as of the Commencement Date; and

(c) The remainder, if any, shall be paid to City except Lessee shall first be paid for the amount of the Capital Improvement Rental Offset not previously offset against Rent at the time of the award.

20.2 Partial Taking. If there is a partial taking of the Premises by Condemnation, and this Lease is not terminated pursuant to Section 20.1 above, then Lessee shall undertake restoration of the Premises and condemnation proceeds will be made available to Lessee to perform such restoration. All amounts which are to be made available to Lessee for payment of the cost of the repair, reconstruction or replacement of the Premises shall be held by Leasehold Lender, if any, or, if none, at City's request, shall be held in escrow until the Premises have been repaired, reconstructed or replaced and the cost thereof paid in full or upon receipt of lien releases by materialmen, mechanics, and laborers for progress payment as work is completed and assurances reasonably satisfactory to City that remaining funds are adequate to complete all required work. During any period of repair or restoration of the Premises pursuant to this Section 20, the Rent shall be equitably abated to reflect the extent to which the taking by Condemnation interferes with Lessee's use of the Premises.

## 21. Default by Lessee.

21.1 Definition. The occurrence of any of the following shall constitute a default ("Default") by Lessee: (a) a failure to pay Rent or other charge within five (5) days after written notice thereof from City; (b) the abandonment or vacation of the Premises or the failure of Lessee or its permitted subtenants to occupy and operate the Premises in accordance with this Lease and failure to reoccupy them within thirty (30) days after City (i) delivers a written notice to Lessee's notice address set forth in Section 1.7 above demanding such re-occupancy, and (ii) mails by certified or registered mail a copy of the notice to any forwarding address given by Lessee to City in writing; provided that Lessee shall not be in Default of the Lease in the event one of its subtenants fails to occupy and operate its portion of the Premises under its sublease if Lessee diligently pursues its remedies under the sublease with such subtenant; and in the event there is vacant space, the Lessee diligently markets the space to new subtenants; (c) a violation, breach, or failure to keep or perform any other term, provision, covenant, or any obligation of this Lease for a period in excess of thirty (30) days after written notice thereof from City (provided that if the nature of Lessee's obligation is such that more than thirty (30) days is required for performance, then Lessee shall not be in Default if it commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion); (d) a violation of the Minimum Public Benefits Requirements described in Section 5.3.2 and failure to remedy that violation within twelve (12) months after written notice thereof from City, subject to force majeure; (e) if Lessee files or is the subject of a petition in bankruptcy, or if a trustee or receiver is

appointed for Lessee's assets or if Lessee makes an assignment for the benefit of creditors, or if Lessee is adjudicated insolvent, or becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or liquidated, voluntarily or otherwise; or (f) if Lessee fails to keep 16,890 square feet available for Park and Recreation Uses, 5,000 square feet of Studio Space , and 5,000 square feet of ground floor space for Water-Related Uses.

21.2 City Remedies. If Lessee has defaulted and such Default continues or has not been remedied to the reasonable satisfaction of the Superintendent within the notice and cure periods set forth above, then City shall have the following nonexclusive rights and remedies at its option: (1) to cure such default on Lessee's behalf and at Lessee's sole expense and to charge Lessee for all actual and reasonable costs and expenses incurred by City in effecting such cure as an additional charge; or (2) to terminate this Lease.

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

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

**22. City's Remedies Cumulative; Waiver.**

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

**23. Default by City.**

23.1 Definition. City shall be in default if City fails to perform its obligations under this Lease within thirty (30) days after its receipt of notice of nonperformance from Lessee; provided, that if the default cannot reasonably be cured within the thirty (30) day period, City shall not be in default if City commences the cure within the thirty (30) day period and thereafter diligently pursues such cure to completion.

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

**24. Attorneys' Fees.**

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

**25. Access by City.**

City and its agents shall have the right to enter the Premises (1) at any reasonable time to examine the same, and to show them to prospective purchasers or lenders, and (2) upon forty-eight (48) hours notice to make such repairs, alterations, improvements, additions or improvements to the Premises as City may deem necessary or desirable or to show the Premises to prospective tenants during the last year of the Lease Term or the Extended Term, if applicable. If Lessee is not personally present to permit entry and an entry is necessary in an emergency, City may enter the same by master key or may forcibly enter the same, without rendering City liable therefore, except in the event of City's negligence or intentional misconduct. Nothing contained herein shall be construed

to impose upon City any duty of repair or other obligation not specifically stated in this Lease. Lessee shall change the locks to the Premises only through City and upon paying City for all actual and reasonable costs related thereto. Notwithstanding the foregoing, City shall not unreasonably interfere with the use and occupancy of the Premises by Lessee or any of its subtenants.

**26. Holding Over.**

Unless otherwise agreed in writing by the parties hereto, any holding over by Lessee after the expiration of the Lease Term, whether or not consented to by City, shall be construed as a tenancy from month-to-month on the terms and conditions set forth herein; provided that City may, by written notice to Lessee delivered not less than thirty (30) days prior to the next due rental payment, increase such rental rate to one hundred fifty percent (150%) of the Rent for the last month of Lease Term. Either party may terminate any holdover tenancy by written notice delivered to the other party not later than twenty (20) days prior to the end of the final month. If Lessee fails to surrender the Premises upon the expiration or termination of this Lease without City's written consent, Lessee shall indemnify, defend and hold harmless City from all losses, damages, liabilities and expenses resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant arising out of such failure. Lessee's obligations under this section shall survive expiration or termination of this Lease.

**27. Notices.**

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

**28. Successors or Assigns.**

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

**29. Authority and Liability.**

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

**30. Partial Invalidity.**

If any court determines that any provision of this Lease or the application hereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**31. Force Majeure.**

Neither City nor Lessee shall be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to any cause beyond its reasonable control, including, but not limited to an act of Nature, act of civil or military authority, fire, flood, windstorm, earthquake, strike or labor disturbance, civil commotion, delay in transportation, governmental delay, or war.

**32. Counterparts.**

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

**33. Headings.**

The section headings used in this Lease are used for purposes of convenience and do not alter in any manner the content of the sections.

**34. Context.**

Whenever appropriate from the context, the use of any gender shall include any other or all genders, and the singular shall include the plural, and the plural shall include the singular.

**35. Execution by City and Lessee; Effective Date.**

Neither City nor Lessee shall be deemed to have made an offer to the other party by furnishing the other party with a copy of this Lease with particulars inserted. No contractual or other rights shall exist or be created between City and Lessee until the Effective Date, as defined in Section 1.2.

**36. Time of Essence; Time Calculation Method.**

Time is of the essence with respect to this Lease. Except as otherwise specifically provided, any reference in this Lease to the word "day" means a "calendar day"; provided, however, that if the final day for any action required hereunder is a Saturday, Sunday or City holiday, such action shall not be required until the next succeeding day that is not a Saturday, Sunday or City holiday. Any reference in this Lease to the word "month" means "calendar month."

**37. Standards.**

Lessee recognizes that, although it is operating its facilities as an independent operator, City is organized and exists in part for the purpose of maintaining park and recreation facilities for the use and enjoyment of the general public. Lessee, its agents and employees, will devote their efforts toward rendering courteous service to the public, with a view of adding to the enjoyment of the patrons of this recreational facility. Lessee shall operate and conduct the facilities on the Premises in a businesslike manner, and will not permit any conduct on the part of Lessee's employees, which would be detrimental to City's operations. In the event that City determines that Lessee is not complying with the terms of this Section 36, City shall provide written notice thereof to Lessee and the parties shall reasonably cooperate to meet and resolve the same.

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

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

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

38.2 Traffic Regulation. City may regulate all traffic within and adjacent to the Premises, including the operation and parking of vehicles of Lessee and its invitees, employees, and patrons; provided that the City may not reduce the number of parking spaces or move the location of the parking area as shown on the attached Exhibit C ("Parking Area").

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

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

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

38.6 Change of Businesses. Except as provided in Sections 8.6 and 38.5 above, City may change the size, number, and type and identity of concessions, stores, businesses and operations being conducted or undertaken in the vicinity of the Premises.

**39. Lessee's Records.**

Lessee shall keep true, full, and accurate books of account setting forth Lessee's receipts, together with any other information that will affect the determination of Rent, Additional Rent, and additional charges. City shall be allowed after five (5) days' prior written notice to Lessee to inspect Lessee's books of account at Lessee's office and to procure audits thereof by an auditor at City's sole cost and expense (except as provided below). If in the reasonable judgment of such auditor Lessee's books of account are incomplete or improperly reflect the information necessary for an accurate determination of the Rent, Additional Rent, or additional charges, or if the audit shall show that the reports submitted by Lessee understated Lessee's receipts by more than three percent (3%) thereof for any year covered by the audit, the reasonable costs and fees for such audit shall be paid by Lessee to City. If an audit discloses any willful or intentional effort to understate Lessee's receipts, then, at City's option, Lessee may be required to surrender possession of the Premises under the provisions of Section 21 of this Lease.

Lessee shall retain all books of accounting and any other information that will affect the determination of Rent, Additional Rent, and additional charges for a period of six full calendar (6) years after following the completion of each calendar year during the Term, and Lessee shall make them available for inspection at Lessee's office within ten (10) days of City's prior written demand therefore. Lessee's obligations under this section shall survive expiration or termination of this Lease.

**40. Miscellaneous.**

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

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

40.3 Memorandum of Lease. The parties agree that they will execute in recordable form a memorandum of lease which shall be recorded in the recording office of King County for purposes of putting other parties on notice of the existence of this Lease.

**41. Lessee Financing of Leasehold Improvements.**

41.1 Leasehold Deed of Trust. Notwithstanding any other provision of this Lease, Lessee from time to time, without the City's prior written consent, may encumber Lessee's leasehold estate with a deed of trust (a "Leasehold Deed of Trust") in favor of a bank, insurance company or other lender (a "Leasehold Lender") as security for any indebtedness of Lessee ("Leasehold Loan"), and the City hereby consents to any such Leasehold Loan and also to the assignment or transfer of Leasehold Lender's interest in the Leasehold Deed of Trust to any transferee of the indebtedness so secured. The City further consents to the transfer of Lessee's leasehold estate to a Leasehold Lender or other third party either through trustee's sale, foreclosure, deed in lieu of foreclosure, or other transfer upon the exercise of Leasehold Lender's remedies under a Leasehold Deed of Trust. In no event shall the City's fee interest in the Premises be subordinate to the lien of any Leasehold Deed of Trust, and in no event may more than one Leasehold Deed of Trust be in effect at any one time. Lessee shall furnish the City with copies of any Leasehold Deed of Trust and any contracts or agreements executed in connection therewith, including a notice or other written statement setting forth the name and address of the Leasehold Lender to which any

notices contemplated by this Section are to be sent. Any Leasehold Lender may change its address for notice by written notice to the City.

41.2 Leasehold Lender Provisions. In connection with such financing and so long as a Leasehold Deed of Trust remains in full force and effect, the following provisions shall apply:

41.2.1 Acknowledgements and Consents. The City shall execute such estoppels, acknowledgements, and consents as Leasehold Lender may request as a condition of Leasehold Lender's issuing each Leasehold Loan to Lessee, provided, however, that the terms of such Leasehold Lender required documentation must be commercially reasonable and shall not impair the City's rights hereunder in any material manner. Lessee shall pay the City's administrative costs, if any, incurred in complying with any such requests.

41.2.2 Amendment or Termination. The City shall not modify or amend this Lease in any manner that could reasonably be expected to be detrimental to the interest of Leasehold Lender, nor agree with Lessee to any termination, cancellation, rescission, or surrender of this Lease or any of Lessee's rights under this Lease, without the prior written consent of Leasehold Lender. The exercise by Lessee of an option or right to terminate this Lease shall require the consent of Leasehold Lender.

41.2.3 Notice of Default. The City, upon serving Lessee any notice of default under this Lease, shall also serve a copy of such notice upon Leasehold Lender pursuant to Section 41.2.6 below, and no such notice of default shall be deemed to have been duly given to Lessee or Leasehold Lender unless and until served on Leasehold Lender.

41.2.4 Right to Cure Monetary Defaults. For any default that is capable of being cured by the payment of money, Leasehold Lender shall have the right to cure or otherwise remedy such default for a period of thirty (30) days after the later of (a) the payment due date or (b) the expiration of the cure period, if any, provided to Lessee under this Lease, and the City shall accept such performance by or at the instance of Leasehold Lender as if the same had been made by Lessee.

41.2.5 Right to Cure Non-Monetary Defaults. For any non-monetary default, Leasehold Lender's cure period shall be the same as that of Lessee, plus an additional thirty (30) days; provided, however, if such default cannot reasonably be cured within the required time period, the City shall not terminate this Lease so long as: (i) all monetary defaults under this Lease have been cured; and (ii) Lessee or Leasehold Lender has commenced and is in good faith continuing to cure all non-monetary defaults under this Lease. In no event shall any Leasehold Lender be required to cure any default by Lessee not reasonably

capable of being cured by a Leasehold Lender (such as the bankruptcy or insolvency of Lessee). Furthermore, nothing herein contained shall require any Leasehold Lender as a condition to its exercise of rights hereunder to cure any nonmonetary default of Lessee not reasonably susceptible of being cured by such Leasehold Lender in order to comply with the provisions of this Section 41.2.5 or as a condition of entering into the New Lease provided for by Section 41.2.8. No default, the cure of which requires possession of the Premises, shall be deemed reasonably susceptible of cure or performance by any Leasehold Lender until it has acquired the right to such possession of the Premises or can otherwise effect such cure through the appointment of a receiver (if such receiver can be so appointed), provided such Leasehold Lender is complying with the monetary obligations of Lessee under this Lease.

41.2.6 Notice Requirements. Any notice that the City is required to give Leasehold Lender pursuant to this Lease shall be in writing, delivered in accordance with the notice provisions of this Lease, and addressed to Leasehold Lender at the address set forth in the Leasehold Deed of Trust or to such other address as Leasehold Lender designates in writing. Any notice that Leasehold Lender is required to give the City pursuant to this Lease shall be in writing, delivered in accordance with the notice provisions of this Lease.

41.2.7 Restrictions on Assignment. Any restrictions on assignment of this Lease, including those that may require the consent of the City, shall not be binding upon or applicable to Leasehold Lender or any successor to Leasehold Lender by or following foreclosure of the Leasehold Deed of Trust or deed in lieu thereof. The City further agrees that Leasehold Lender shall not be liable under this Lease following assignment or other disposition of Lessee's interest therein, or otherwise be responsible for obligations under this Lease, unless and until Leasehold Lender shall become the owner of Lessee's Leasehold Interest. Any person or entity that becomes the owner of Lessee's Leasehold Interest shall be bound by the terms of this Lease, but only for so long as such person or entity shall be the owner of the Lessee's Leasehold Interest.

41.2.8 New Lease. In the event of the termination of this Lease as a result of Lessee's default or in connection with any bankruptcy, insolvency or similar proceeding involving either the City or Lessee, including any rejection under Section 365 of the Bankruptcy Code or a termination otherwise decreed by any judge in any state or federal bankruptcy or insolvency proceeding, the City shall, in addition to providing the notices of default and termination as required by Sections 41.2.5 and 41.2.6 above, provide the Leasehold Lender with written notice that this Lease has been terminated, together with a statement of all sums that would at the time be due under this Lease but for such termination, and of all other defaults, if any, then known to the City (the "Termination Notice"). Upon Leasehold Lender's written request of the City, the City agrees to enter into a new lease (a "New Lease") of the Premises with such Leasehold Lender (or an affiliate

of Leasehold Lender if Leasehold Lender guaranties the affiliate's obligations under the New Lease) for the remainder of the term of this Lease, effective as of the date of termination, at the same Rent and upon the terms, covenants, and conditions (but excluding requirements that are not applicable or that have already been fulfilled) of this Lease, provided:

(a) Request. Such Leasehold Lender shall make written request upon the City for such New Lease within ninety (90) days after the date such Leasehold Lender receives the City's Termination Notice. If no such request is given to the City within that period, such Leasehold Lender's right to a New Lease shall automatically terminate.

(b) Payment. Such Leasehold Lender shall pay or cause to be paid at the time of the execution and delivery of such New Lease, to the City, the amount of any Rent then past due, plus all reasonable expenses, including reasonable attorneys' fees, that the City shall have incurred by reason of (A) such termination, and (B) the preparation, execution and delivery of the New Lease and that have not otherwise been received by the City from Lessee or any other party in interest under Lessee. Upon the execution of such New Lease, the City shall allow the Lessee named therein as an offset against the sums otherwise due under this Section or under the New Lease, an amount equal to the Rent paid by any other person to the City for the use of the Premises during the period from the date of termination of this Lease to the date of the execution of such New Lease. In the event of a controversy as to the amount to be paid to the City pursuant to this Section, Leasehold Lender shall pay the amount not in controversy and Leasehold Lender agrees to pay any additional sum ultimately determined to be due plus interest at the rate of eight percent (8%) per annum from the date the amount would have been paid but for the dispute. The parties shall cooperate to determine any disputed amount promptly in accordance with the terms of this Lease.

(c) Other Defaults. Such Leasehold Lender shall agree to remedy any of Lessee's defaults of which said Leasehold Lender was notified by the City in or with its Termination Notice and that are reasonably susceptible of being so cured by Leasehold Lender.

(d) Priority. Any New Lease made pursuant to this Section 41.2.8 and any extension of this Lease exercised by a Leasehold Lender shall have the same priority as this Lease as against any mortgage or other lien, charge, or encumbrance on the fee of the Premises, and the Lessee under such New Lease shall have the same right, title, and interest in and to any subleases, licenses, concessions or similar rights or interests therein, and to the Premises and the Leasehold Improvements thereon as Lessee had under this Lease; provided, however, that the City shall not make any warranty of title, express or implied, with respect to any New Lease, and shall have no obligation to deliver possession

of the Premises under the New Lease except for any liens, claims or encumbrances created by the City or arising through the City.

(e) Third-Party Beneficiary. Each Leasehold Lender is an intended third-party beneficiary of this Lease, but only with respect to (i) the rights of Leasehold Lender under this Section 41, and (ii) any other provisions in this Lease that specifically refer to Leasehold Lender.

41.2.9 No Merger. So long as any Leasehold Deed of Trust is in existence, unless Leasehold Lender shall otherwise expressly consent in writing, the fee title to the Premises and the leasehold interest of Lessee created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and leasehold interest by Lessee or by a third party, by purchase or otherwise.

41.2.10 Bankruptcy. In the event of any proceeding by either the City or Lessee under the United States Bankruptcy Code (Title 11 U.S.C.) as now or hereafter in effect:

(a) Rejection by Lessee. If this Lease is rejected in connection with a bankruptcy proceeding by Lessee or a trustee in bankruptcy for Lessee, such rejection shall be deemed an assignment by Lessee to Leasehold Lender of all of Lessee's obligations and interests under this Lease, and this Lease shall not terminate and Leasehold Lender shall have all the rights of Leasehold Lender under this Section 41 as if such bankruptcy proceeding had not occurred, unless such Leasehold Lender shall reject such deemed assignment by notice in writing to the City within thirty (30) days following the later of (i) rejection (or deemed rejection) of this Lease by Lessee or Lessee's trustee in bankruptcy; (ii) approval of such rejection by the bankruptcy court, or (iii) the date Leasehold Lender receives written notice of rejection. If any court of competent jurisdiction shall determine that this Lease shall have been terminated notwithstanding the terms of the preceding sentence as a result of rejection by Lessee or the trustee in connection with any such proceeding, the rights of any Leasehold Lender to a New Lease from the City pursuant to Section 41.2.8 above shall not be affected thereby. Such Leasehold Lender shall pay or cause to be paid to the City at the time of the deemed assignment, the amount of any Rent then past due.

(b) Rejection by the City. If this Lease is rejected or otherwise terminated in connection with a bankruptcy proceeding by the City or by the City's trustee in bankruptcy:

(i) Lessee shall not have the right to treat this Lease as terminated except with the prior written consent of all Leasehold Lenders, and the right to treat this Lease as terminated in such event shall be deemed assigned to each and every Leasehold Lender, whether or not

specifically set forth in any such Leasehold Deed of Trust, so that the concurrence in writing of Lessee and each Leasehold Lender shall be required as a condition to treating this Lease as terminated in connection with such proceeding.

(ii) If this Lease is not treated as terminated in accordance with Section 41.2.10(a) above, then this Lease shall continue in effect upon all the terms and conditions set forth in this Lease, including Rent, but excluding requirements that are not then applicable or pertinent to the remainder of the Term. Thereafter, Lessee or its successors shall be entitled to any offsets against Rent payable hereunder for any damages arising from such rejection and any such offset properly made shall not be deemed a default under this Lease. If Lessee shall fail to pay to the City any amount previously offset within ten (10) days after a final and nonappealable order or judgment that Lessee is required to pay such amount, then the City shall have all rights and remedies (subject to all other terms and conditions) provided in this Lease with respect to the nonpayment of Rent. The lien of any Leasehold Deed of Trust then in effect shall extend to the continuing possessory rights of Lessee following such rejection with the same priority with respect to each such Leasehold Deed of Trust as it would have enjoyed had such rejection not taken place.

(iii) If, in any bankruptcy or similar proceeding in which the City is the debtor, the Premises are sold or proposed to be sold free and clear of the interests of Lessee under this Lease, each of Lessee and any Leasehold Lenders shall be entitled to notice thereof, to contest such sale or proposed sale, and shall be entitled to petition for and to receive adequate protection of their respective interests under this Lease.

41.2.11 No Liability Until Foreclosure. For purposes of this Lease, the creation or establishment of any Leasehold Loan shall not be deemed to constitute an assignment, sale, or conveyance of Lessee's interest in the Premises and the improvements thereon, or any portion thereof, nor shall any Leasehold Lender be deemed to be an assignee or transferee of this Lease or of the Lessee's leasehold estate so as to require any Leasehold Lender to assume the performance of any of the terms, covenants or conditions on the part of Lessee to be performed hereunder. The purchaser at any sale of Lessee's interests under this Lease and of the Lessee's leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Deed of Trust, or the assignee or transferee of this Lease and of the leasehold estate hereby created under any instrument or assignment or transfer in lieu of the foreclosure of any Leasehold Deed of Trust, shall be deemed to be an assignee or transferee within the meaning of this paragraph, and shall be deemed to have agreed to perform all of the terms, covenants, and conditions on the part of the Lessee to be performed hereunder accruing from and after the date of such purchase and assignment.

Notwithstanding the foregoing, in no event shall any Leasehold Lender be (i) liable for the erection, completion or restoration of any improvements comprising or to comprise a part of the Premises; (ii) liable for any condition of the Premises which existed prior to the date of its acquisition of the Lessee's interest in the Premises, or for any damage caused by such preexisting condition, or for the correction thereof or the compliance with any law related thereto; (iii) liable for any act or omission of any prior Lessee of any portion of the Premises (including Lessee), including any failure to pay rent hereunder; or (iv) bound by any amendment or modification of this Lease made without the prior written consent of the Leasehold Lender. Any agreement of Lessee to indemnify the City under this Lease shall apply to a Leasehold Lender only to the extent of any actual damage suffered by the City as a result of such Leasehold Lender's failure to perform any obligation of the Lessee under this Lease after the date it acquired the Lessee's interest in the Premises, and before the date it assigns this Lease to any third party as provided herein.

41.2.12 Notices. The City will provide any Leasehold Lender of which it receives notice pursuant to this Section with copies of any notices it sends to Lessee pursuant to this Lease, other than rent and other periodic billing notices.

41.2.13 Limitations on Liability. If a Leasehold Lender shall acquire title to the Premises, the liability of such Leasehold Lender under this Lease shall be limited to its interest in the Premises, and in no event shall any such Leasehold Lender, or any of their respective officers, directors, shareholders, agents, representatives, servants, employees or partners ever be personally liable for any claims or liabilities pursuant to this Lease.

41.2.14 Option to Extend. Leasehold Lender shall have the right to exercise on behalf of Lessee, any option or right Lessee may have under this Lease to extend or renew the term of this Lease.

41.2.15 Insurance and Condemnation Proceeds. The City and Lessee agree that all insurance proceeds payable with respect to the damage or destruction of the Premises, and all proceeds payable with respect to a Condemnation shall be paid to the Leasehold Lender with a Leasehold Deed of Trust encumbering the Premises at the time of the damage or destruction or the Condemnation, as applicable; provided, however, the Leasehold Lender shall make the "Net Proceeds" (defined below), available to Lessee for the repair and/or restoration of the Premises, if the following conditions have been satisfied to the Leasehold Lender's reasonable satisfaction:

(a) No default or event of default has occurred under the Leasehold Mortgage and is continuing, and no events have occurred or circumstances then exist, which with notice, the passage of time or both will become a default or event of default under the Leasehold Deed of Trust; provided, however,

that for any default that is capable of being cured by the payment of money, the City shall have the right to cure or otherwise remedy such default for a period of thirty (30) days after the later of (a) the payment due date or (b) the expiration of the cure period, if any, provided to Lessee under the Leasehold Deed of Trust, and the Leasehold Lender shall accept such performance by or at the instance of the City as if the same had been made by Lessee;

(b) In the Leasehold Lender's judgment, the rebuilding and restoration work can be completed at least three (3) months prior to the maturity date of the Leasehold Loan;

(c) The Leasehold Lender shall have received and approved (i) a detailed budget and cost breakdown for the restoration and repair work, describing the nature and type of expenses and the cost thereof estimated by Lessee for such restoration and rebuilding work, including without limitation, the cost of materials and supplies, architect's, engineer's and designer's fees, general contractor's fees, and the anticipated monthly disbursement schedule; (ii) the construction contract for the repair and restoration, and if required by the Leasehold Lender, the Leasehold Lender shall have received payment and performance bonds with a dual obligee rider; (iii) evidence that the Net Proceeds are adequate to restore the Premises to its condition immediately prior to the casualty or Condemnation, and if the Net Proceeds are insufficient, the Leasehold Lender shall have received from Lessee the amount of the deficiency for disbursement with the Net Proceeds; (iv) evidence that Lessee has funds available to it sufficient to pay all operating expenses, taxes, debt service and other carrying costs of the Premises through the period of repair or restoration; (v) plans and specifications for the restoration or rebuilding work, and written evidence satisfactory to it that the same has been approved by all governmental authorities having jurisdiction over the Premises; (vi) evidence that the leases of the Premises will remain in full force and effect pending the completion of the repairs, or upon completion of the repair or restoration work, the Premises will produce sufficient income and be of sufficient value to be adequate security for the Leasehold Loan; and (vii) evidence there has been no material adverse change in the financial condition or credit of Lessee or any guarantor of the Leasehold Loan since the date of the Leasehold Deed of Trust.

If the foregoing conditions are satisfied (or the Leasehold Lender otherwise elects to make the Net Proceeds available for repair and restoration of the Premises), the Net Proceeds shall be disbursed by the Leasehold Lender to, or as directed by, Lessee, in an amount equal to the costs actually incurred from time to time for work in place as part of the repair or restoration work, less customary retainage from time to time during the course of the work, not more frequently than once per month, upon receipt of evidence satisfactory to the Leasehold Lender that (i) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the work have been paid for in full, (ii) there exist no notices of pendency,

stop orders, mechanic's or materialman's liens or notices of intention to file the same, or any other liens or encumbrances of any nature whatsoever on the Premises arising out of the repair or restoration work which have not either been fully bonded and discharged of record or in the alternative fully insured to the satisfaction of the Leasehold Lender by the title company insuring the lien of the Leasehold Deed of Trust, and (iii) all other disbursement conditions reasonably required by the Leasehold Lender have been satisfied. Final payment from the Net Proceeds shall be made after submission to the Leasehold Lender of all licenses, permits, certificates of occupancy and other required approvals of governmental authorization having jurisdiction and, if required by Leasehold Lender, a certification of an independent consulting engineer selected by the Leasehold Lender that the repair and restoration has been fully completed. If the foregoing conditions are not satisfied, and the Leasehold Lender does not otherwise elect to make the Net Proceeds available for repair and restoration of the Premises, for purposes of a casualty under Section 19 above, Net Proceeds shall first be paid to the Leasehold Lender with a Leasehold Deed of Trust then in effect, to the extent of all amounts then secured by the Leasehold Deed of Trust, and then as provided in Section 19 above, and for purposes of a Condemnation as provided in Section 20 above. The term **"Net Proceeds"** as used in this Section 41 means, with respect to any Condemnation awards or insurance proceeds, the gross proceeds from any Condemnation or casualty remaining after payment of all expenses, including reasonable attorneys' fees, incurred in the collection of such gross proceeds.

Lessee shall obtain from any Leasehold Lender a written commitment to make Net Proceeds available for repair and restoration purposes in accordance with but subject to the conditions set forth in this Section 41.2.15.

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

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

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

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

*[Signature]* *[Printed Name]*

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

.

My commission expires _____.

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

On this _____ day of _____, 20__, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of **BUILDING 11 INVESTORS LLC**, the entity that executed the foregoing instrument as _____; and acknowledged to me that he signed the same as the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and that he was authorized to execute said instrument for said entity.

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

_____ _____
*[Signature]* *[Printed Name]*

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

Nathan Torgelson
DPR Bldg 11 Lease Amend ORD EXH A
March 17, 2011
Version #3

**EXHIBIT A**
**Legal Description**

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

Those portions of the southwest quarter ($SW^4$) of the northwest quarter ($NW^4$) of Section 2, TWP 25N, RNG 04E and Govt. Lots 1 and 2 in said Section, together with the 1st Class Shore Lands adjacent ,abutting and attached thereto, as acquired by the U. S. Navy on behalf of the United States of America described as follows:

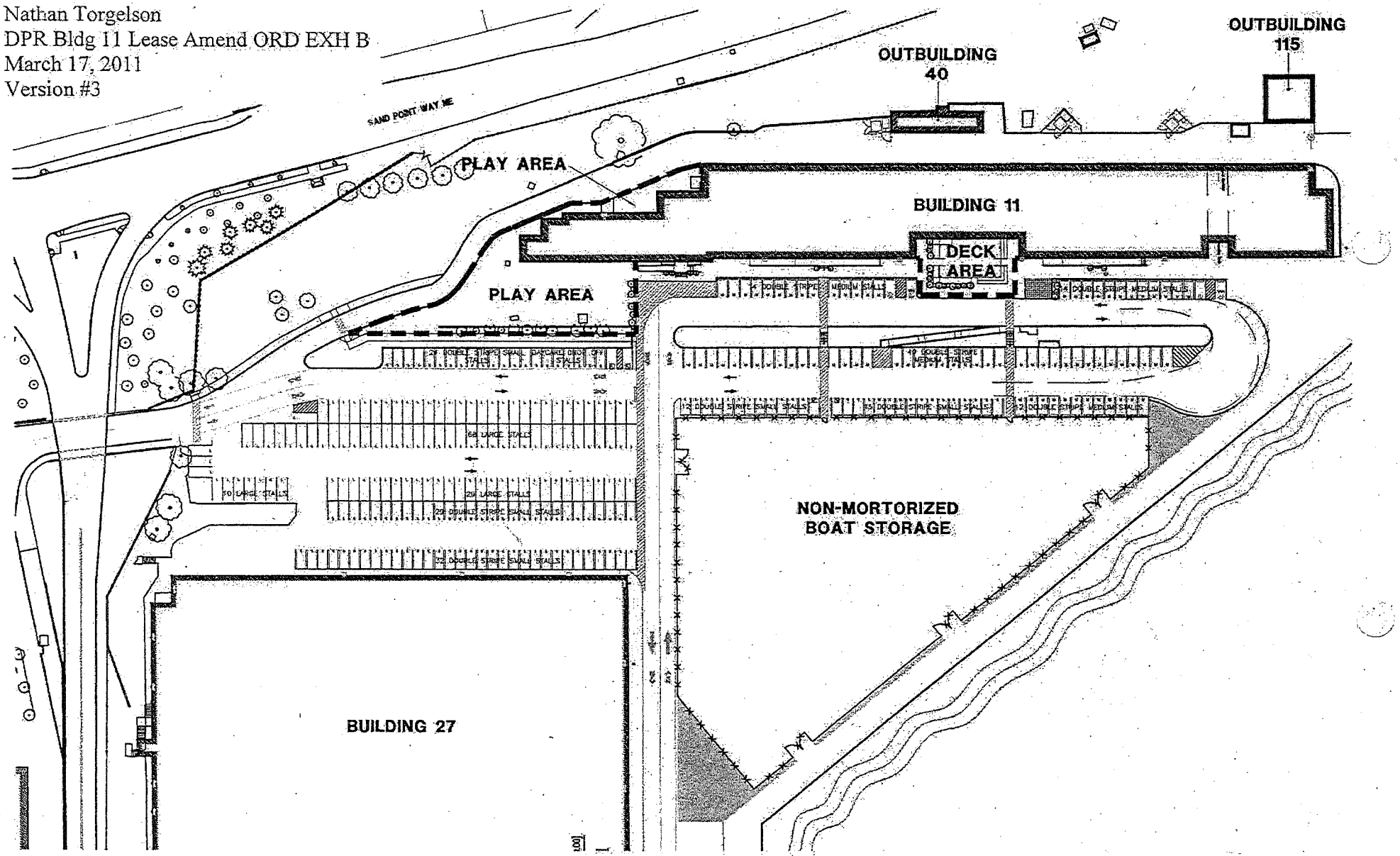
Commencing at the northwest corner of said Section 2, thence S 89°43'27" E on the north line of said Section a distance of 528.79 feet to the east margin of Sand Point Way NE (formerly referred to as the James Kiefer County Rd. No. 1283), and the **True Point of Beginning**; thence S 30°28'08" E on said east margin a distance of 360.75 feet to a point of curvature in said east margin of which the radial center bears S 59° 31' 52" W at a distance of 2336.20 feet, thence continuing on said east margin on a curve concave to the south and west through a central angle of 16°31'03" an arc distance of 673.49 feet, thence S 13° 57' 05" E on said east margin a distance of 225.43 feet, **to a point of intersection with the northerly boundary of a parcel of land under the jurisdiction of the United States Department of Commerce (NOAA) as surveyed and described in a record of survey drawing titled "BOUNDARY SURVEY for National Oceanic & Atmospheric Administration N.O.A.A. Western Regional Center Access Road", project No. 96545.00, by Penhallegon Associated Consulting Engineers, Inc, said point being identified by a 5/8" iron rebar with cap marked P.A.C.E., L.S. 11691 and herein referred to as a rebar marker,** thence leaving said east margin **and along a line adjoining said N.O.A.A. property the following courses and distances,**
S 30° 43' 19" E, a distance of 199.50 feet **to a rebar marker,**
thence S 85° 48' 24" E a distance of 87.72 feet **to a rebar marker,**
thence S 71° 12' 22" E a distance of 46.87 feet **to a rebar marker,**
thence S 76° 54' 27" E a distance of 20.06 feet **to a rebar marker,**
thence S 62° 39' 42" E a distance of 33.69 feet **to a rebar marker,**
thence N 00° 01' 44" W a distance of 485.07 feet **to a tack in lead,** thence N 89° 59' 11" E a distance of 252.00 feet **to a rebar marker,** thence N 25° 28' 42" E a distance of 277.22 feet to the Inner Harbor Line of the Lake Washington Shore Lands as established by the State of Washington Commissioner of Public Lands and according to the Maps thereof on file in Olympia, Washington, **and a point of departure from said line adjoining N.O.A.A.,**
thence N 50° 40' 00" W on said Inner Harbor Line a distance of 989.06 feet to the intersection with the north line of said Section 2, thence N 89° 43' 27" W on said north line a distance of 380.23 feet to the True Point of Beginning.



COUNCIL CLERK

# EXHIBIT B

Nathan Torgelson
DPR Bldg 11 Lease Amend ORD EXH B
March 17, 2011
Version #3




FULLER-SEARS ARCHITECTS

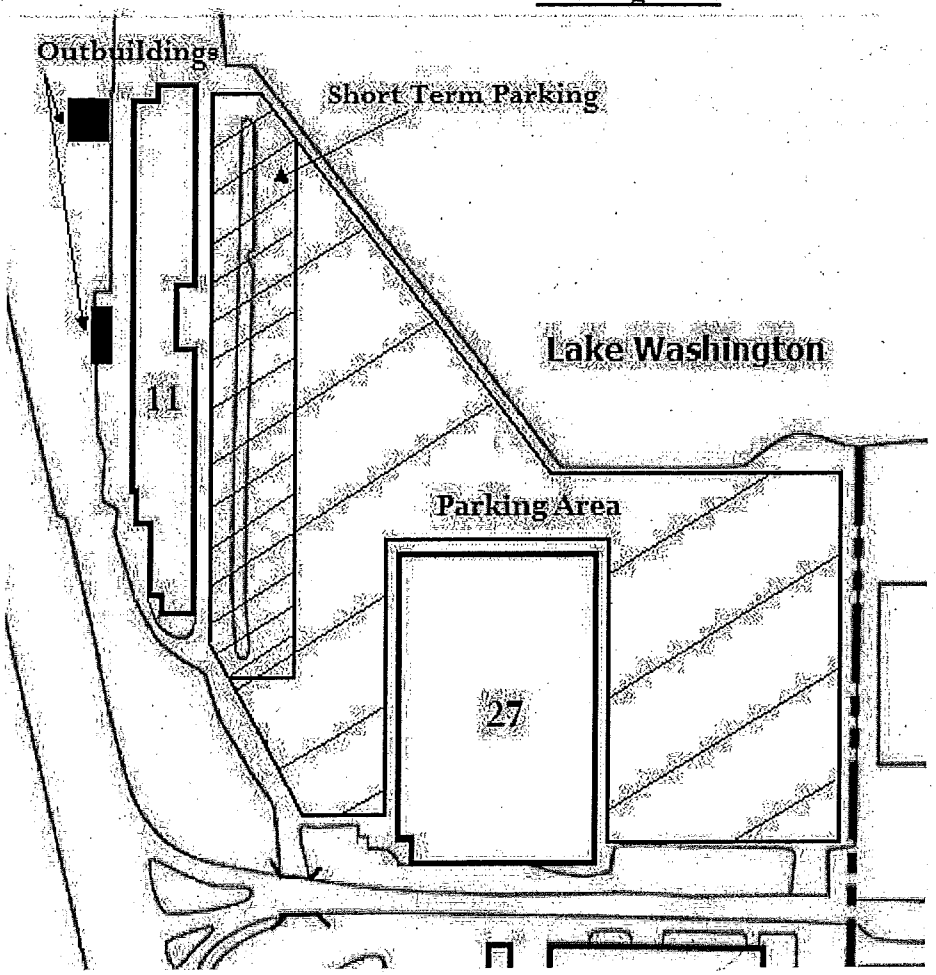
## BUILDING 11 - OUTLINE OF PREMISES

03.14.2011

EXH B to ATT 1 DPR Bldg 11 Lease Amend ORD

Nathan Torgelson
DPR Bldg 11 Lease Amend ORD EXH C
March 17, 2011
Version #3

**EXHIBIT C**
**Parking Area**



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Nathan Torgelson
DPR Bldg 11 Lease Amend ORD EXH D
March 17, 2011
Version #3

# EXHIBIT D
## Initial Capital Improvements Offset Categories

**SITEWORK:**
- Demolition
- Parking Lot Improvements
- Public Plaza
- Site Lighting
- Pedestrian Amenities
- Connection and Utility Fees
- Field Office
- Site Permits & Fees
- Project Signage
- Tenant Signage

**BUILDING CONSTRUCTION:**
- General Conditions
- Environmental Remediation
- Seismic Upgrades
- Life Safety/Sprinklers
- Plumbing
- HVAC
- Exterior Repair
- Interiors
- Electrical
- ADA Compliance
- Windows, Storefront, Canopies
- Roof
- Restrooms
- Elevator
- Interior Walls
- Paint
- Carpet
- Bldg. Permits and Fees

**DESIGN FEES:**
- Architecture
- Structural Engineering
- Civil Engineering
- Landscape Architecture
- Graphic Design
- Environmental Review
- Tenant Design Review
- Specific Design and Engineering Consultants

**DEVELOPMENT COSTS:**
- Feasibility Analysis
- Project Management Costs
- Legal Expenses for Construction Related Improvements
- Insurance for Construction Period

**TENANT IMPROVEMENTS:**
- Tenant Building Improvements
  (Not cash allowances or payments)

**WHEREVER APPLICABLE:**
- Contractor Overhead and Fee
- WA State Sales Tax



COUNCIL CLERK

**EXHIBIT E**
FORM OF BILL OF SALE

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

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

DATED: _____

BUILDING 11 LLC,
a Washington limited liability company

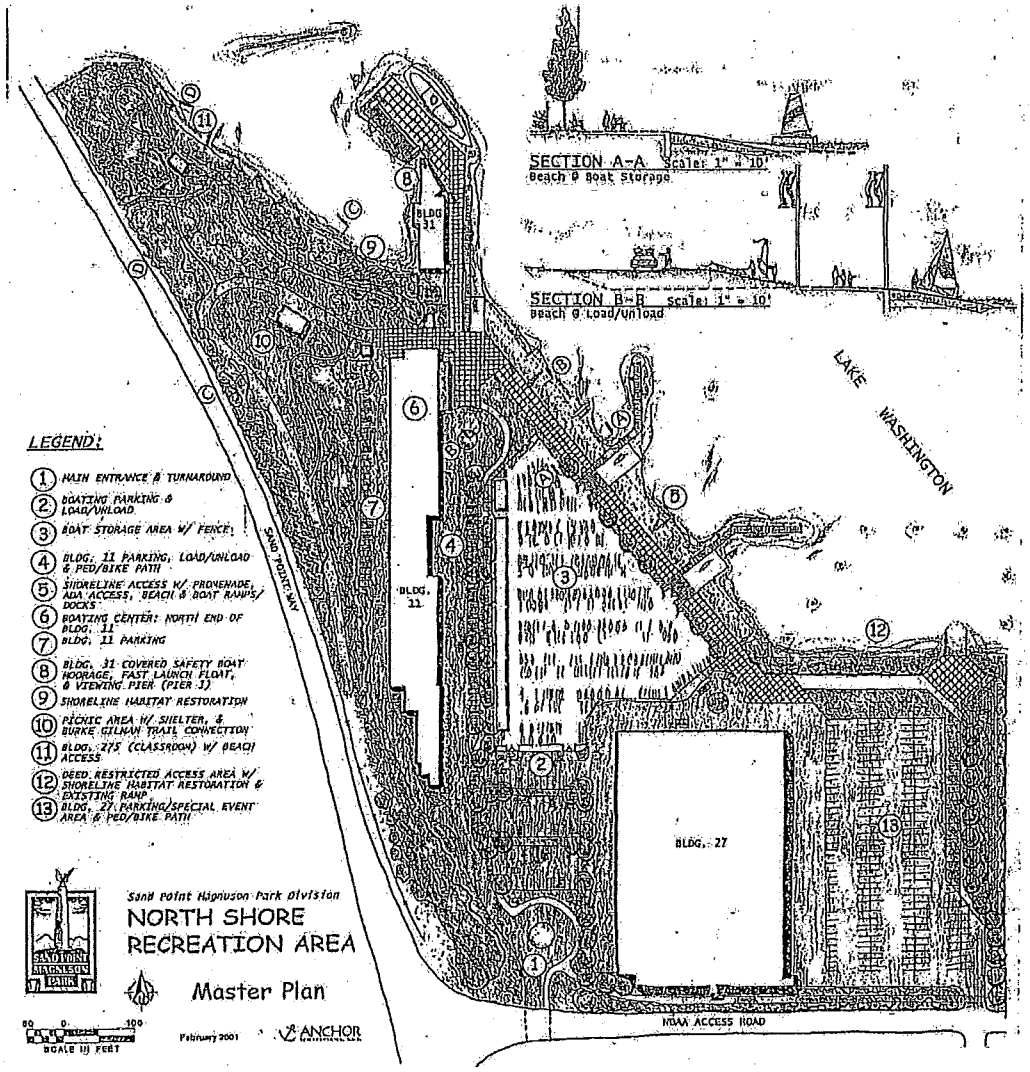
By: _____
Name: _____
Title: _____



COUNCIL CLERK

Nathan Torgelson
DPR Bldg 11 Lease Amend ORD EXH F
March 17, 2011
Version #3

# EXHIBIT F
## Magnuson Park Northshore Area Master Plan






COUNCIL CLERK

**EXHIBIT G**
**PUBLIC BENEFITS**

Building 11 LLC will provide public benefits for free and reduced-price recreation-related programs and services and for other improvements, as described below. Required Public Benefits for recreation-related programs and services are limited to those provided to low-income persons in the following groups: adults, children, seniors, and the handicapped. Applicable programs and services include the following:

- Open Boating Programs that offer free boating, on a walk-up basis;
- Reduced-Price Season Passes issued at or below 80% of market rate;
- Youth and Adult Racing Team memberships at or below 80% of costs;
- Youth Scholarships for free boat rentals and boating instruction;
- Partnership with YMCA and other youth recreation programs sponsored at or below 80% of costs;
- College Boating Program Sponsorships at or below 80% of costs;
- Hobie 101 training offered free to participants;
- US Boating Level One Instructor Safety Classes offered at an unreimbursed cost.

Public Benefits shall not include subsidies to hand-launched boats stored in Dry Boat Storage adjacent to Building 11.

Public Benefits are defined as programs and services that are incremental, and that would not be provided through a subtenant's regular course of business. Incremental services shall be determined at the discretion of the Parks Superintendent.

Additional recreation-related programs and services may be proposed for public benefits, and shall be approved at the sole discretion of the Parks Superintendent.

Other non-recreation benefits might include:

- Creating a defined pedestrian path to the portions of the park to the south of the North Shore Recreation Area.
- Providing a connector to the Burke-Gilman trail, located to the west of Building 11 and Magnuson Park.
- Extending and/or providing additional historically-appropriate lighting for cars and pedestrians.
- Providing landscape enhancements along the shoreline and within parking areas that do not require disturbing the asphalt area.

Building 11 LLC will also encourage other tenants in the building to develop their own free or reduced-price recreation-related programs and services, but until the tenants are identified, these specific programs cannot yet be described. As with the programs described above, any

**EXHIBIT G**
**PUBLIC BENEFITS**

additional tenant programs will be submitted to the Parks Superintendent for approval as described in the lease.

Nathan Torgelson
DPR Bldg 11 Lease Amend ORD EXH H
March 17, 2011
Version #3

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

BUILDING 11 LLC
NORTHSHORE RECREATION DISTRICT
MAGNUSON PARK

August 25, 2008

Mr. Jeff Reinhold
Sail Sand Point
Building 11
Magnuson Park

RE: Building 11, Magnuson Park *LEASE PROPOSAL*

Dear Jeff:

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

| | |
|---|---|
| **PROJECT:** | Building 11 is a 58,700 sf two-story building located on the north end of Magnuson Park in Seattle, Washington. Landlord intends to enter into a master lease with the City of Seattle, and sub-lease individual spaces to parks-oriented tenants. The legal description and site location are attached hereto as Exhibit A-1 and Exhibit A-2, respectively. |
| **LANDLORD:** | Building 11 LLC<br>2620 Second Avenue<br>Seattle, WA 98121<br>206-973-1304<br>206-985-0102 fax |
| **TENANT:** | Sail Sand Point<br>7777 62nd Avenue NE #101<br>Seattle, WA 98115<br><br>Tel. : 206-525-8782<br>Email: morgan@sailsandpoint.org |
| **TRADE NAME:** | Sail Sand Point |



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BUILDING 11 LLC
NORTHSHORE RECREATION DISTRICT
MAGNUSON PARK

| | |
|---|---|
| **LEASE PREMISES:** | Space XXX containing approximately 2,572 square feet shown as hi-lighted on the attached Exhibit C. Square footage will be confirmed by actual measurement. |
| **LEASE TERM:** | Ten (10) years, with seven options of five (5) years each to extend the lease, on the same terms and conditions as the original lease, exercised at Tenant's option, with notification no less than 180 days prior to the end of the then-current lease term. |
| **LEASE COMMENCEMENT DATE:** | On the Commencement Date of the lease between Building 11 LLC and the City of Seattle, estimated to be around July 1, 2009. This Date shall coincide with the termination date of the existing Concession Agreement between Sail Sand Point and the City of seattle, as it may be extended. |
| **RENT COMMENCEMENT DATE:** | On the Lease Commencement Date. |
| **TERMINATION DATE:** | Tenth (10th) anniversary from Rent Commencement Date. |
| **TENANT IMPROVEMENT PERIOD:** | None. Tenant will maintain continuous occupancy, and Landlord will undertake renovation work as required. |
| **FIXED MINIMUM RENT:** | Year 1: $12.00 per square foot per year.<br>Years 2 through 10: Annual rent increases equal to 3% of the Fixed Minimum Rent on each anniversary date.<br>Option terms: Annual 3% increases, as in the base term. |
| **TAXES, INSURANCE, COMMON AREA MAINTENACE CHARGES:** | Landlord is responsible for Leasehold Excise Tax, if any, insurance and common area expenses. |
| **UTILITIES AND HVAC CHARGES FOR TENANT'S PREMISES:** | Tenant will be responsible for any utilities that are individually-metered for Tenant's space, for which Tenant can be billed directly by utility provider. Landlord shall be responsible for all utilities that are shared with other tenants, or that apply to the common areas. |
| **ADDITIONAL RENT:** | Tenant will pay as additional rent an amount that is 25% of the actual gross rental income from dry boat storage in excess of a baseline of $70,000.00 per year. This amount |



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BUILDING 11 LLC
NORTHSHORE RECREATION DISTRICT
MAGNUSON PARK

| | |
|---|---|
| | shall be payable semi-annually in March and September for the preceding calendar half-year. |
| **PERMITTED USES:** | A non-motorized small-craft center with boat rentals, dry moorage, classes and training programs and other water-related activities available to members and to the general public. |
| **SECURITY DEPOSIT:** | None. |
| **GUARANTOR:** | None. |
| **ADDRESS OF GUARANTOR:** | None. |
| **DESCRIPTION OF LANDLORD'S AND TENANT'S WORK:** | Landlord will remodel the premises sufficiently to comply with all applicable building codes. Landlord will provide new electrical service and new HVAC systems. Additional improvements shall include interior and exterior paint, and selective door and window replacement. |
| **BROKERS COMMISSION; AGENCY DISCLOSURE:** | Neither Landlord nor Tenant is represented by Brokers, so no commissions are due to any third parties. |
| **PARKING:** | Tenant, Tenant's guests and invitees may use the available parking on a non-exclusive basis. Under Landlord's Lease with the City of Seattle, City is to provided and maintain 300 parking spaces adjacent to the building for use of Building 11 tenants and guests. |
| **OTHER CONDITIONS** | **Financials:**<br><br>This letter of intent to lease space shall be contingent upon the Landlords acceptance of the Tenant's financial condition. The Tenant shall submit a current balance sheet and income statements for the business for the last three years. |
| | **Signage:** |



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BUILDING 11 LLC
NORTHSHORE RECREATION DISTRICT
MAGNUSON PARK

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

**Additional City Lease:**

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

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

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

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

Sincerely,

**BUILDING 11 LLC**

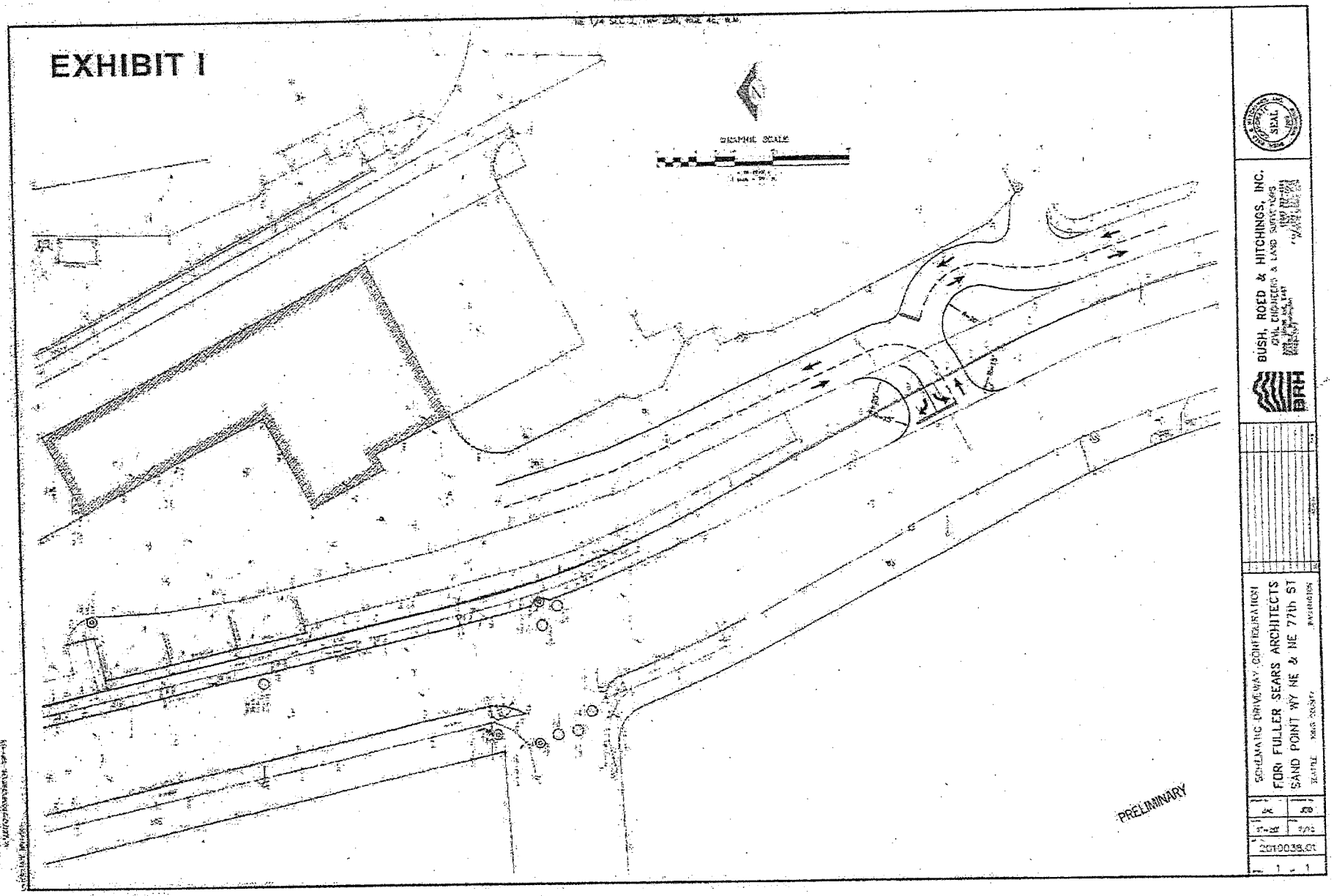
Darrell M. Vange
Manager

| Landlord: | Tenant: |
|---|---|
| Approved and accepted this 29 day of August, 2008 | Approved and accepted this 31 day of August, 2008 |
| Building 11 LLC | Sail Sand Point |
| By _____ Its: _____ | By Jeff Reinhold, Pres. |
| | By Jeff Reinhold, Pres. |



COUNCIL CLERK

Nathan Torgelson
DPR Bldg 11 Lease Amend ORD EXH I
March 17, 2011
Version #3



Nathan Torgelson
DPR Bldg 11 Lease Amend ORD EXH J
March 17, 2011
Version #3

**EXHIBIT J**
**PROPOSED NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

This Nondisturbance and Attornment Agreement (the "Agreement") is made and entered into this ___ day of _____, 2011, by and among the CITY OF SEATTLE (the "Landlord"), BUILDING 11 INVESTORS LLC, a Washington limited liability company ("Sublandlord"), and _____, a _____ ("Subtenant").

**RECITALS**

**A.** Pursuant to that certain Lease dated February 24, 2009 (the "Master Lease"), Landlord has leased the premises consisting of an approximately 58,780 square foot building located at 7777 62nd Avenue NE, Seattle, Washington 98115 (the "Premises") to Sublandlord.

**B.** Sublandlord desires to sublease a portion of the Premises to Subtenant ("Subleased Premises") pursuant to the terms of the sublease attached hereto as Attachment 1 (the "Sublease").

**C.** It is a condition precedent to the effectiveness of the Sublease that Subtenant be assured of continued occupancy of the Subleased Premises under the terms of the Sublease.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is acknowledged, and in order to induce Subtenant to enter into the Sublease, it is hereby declared, understood and agreed as follows:

1. Subtenant would not enter into the Sublease without the execution of this Agreement by Landlord.

2. Landlord has reviewed and consents to and approves the terms of the Sublease and all of its provisions.

3. If Landlord terminates the Master Lease, repossesses or forecloses upon the Premises, or otherwise regains possession or control of the Premises, Landlord will not join Subtenant in any judicial or nonjudicial proceedings, nor shall Subtenant's possession of the Subleased Premises be interrupted or disturbed, so long as Subtenant is not in default under any of the material provisions of the Sublease. Notwithstanding anything to the contrary in this Agreement, to the extent that there are inconsistencies between the non-business terms of the Sublease and the Master Lease, Landlord may modify such non-business terms in the Sublease to be consistent with the terms of the Master Lease and Subtenant agrees to



COUNCIL CLERK

**EXHIBIT J**
**PROPOSED NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

comply with such changes. For purposes of Sections 3 and 4 of this Agreement, Landlord shall not be permitted to modify the business terms of the Sublease. Business terms shall include, but not be limited to terms in the Sublease relating to Rent (Minimum Rent and Additional Rent), Common Area charges, Lease Term, Use and Exclusive Use provisions, Security Deposit, Public Benefit Program obligations, Tenant Improvement Allowances, or any other provision that, if modified, would materially and/or adversely increase Subtenant's obligations under the Sublease.

4. If Landlord succeeds to the leasehold interest of the Sublandlord, whether by termination of the Master Lease, merger, foreclosure, purchase at foreclosure sale, assignment or deed in lieu of foreclosure, or by any other means, subject to Landlord's right to modify the Sublease as set forth in Section 3 above, Landlord agrees to be bound to Subtenant and to fully and faithfully carry out and perform all of the terms, covenants and conditions of the Sublease, and Subtenant shall, from and after Landlord is vested with Sublandlord's interest under the Master Lease, or assumes management, control or possession of the Premises, have the same remedies against Landlord for the breach of any agreement contained in the Sublease that Subtenant might have had under the Sublease against the Sublandlord, as landlord therein, if Landlord had not succeeded to the interest of Sublandlord.

5. If Landlord succeeds to the interest of Sublandlord, Subtenant shall attorn to Landlord as its landlord subject to the terms and conditions of the Sublease, as may be modified pursuant to this Agreement.

6. This Agreement and each of the provisions hereof, shall inure to the benefit of or bind as the case may require the parties hereto and their respective heirs, successors and assigns.

7. This Agreement may be signed in counterpart, each of which shall be deemed an original.

[Signatures to appear on the following page]



COUNCIL CLERK

**EXHIBIT J**
**PROPOSED NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

**LANDLORD:**

CITY OF SEATTLE
a municipal corporation

By: _____
Printed Name: _____
Its: _____

**SUBLANDLORD:**

BUILDING 11 INVESTORS LLC,
a Washington limited liability company

By: _____
Printed Name: _____
Its: _____

**SUBTENANT:**

_____
_____

By: _____
Printed Name: _____
Its: _____



COUNCIL CLERK

# Exhibit K
# RECOGNITION AND NONDISTURBANCE AGREEMENT

After Recording Return To:

Sail Sand Point
7777 – 62nd Avenue N.E., Suite 129
Seattle, Washington 98115

GRANTORS: City of Seattle (Landlord)
Building 11 Investors LLC (Sublandlord)

GRANTEE: Sail Sand Point (Subtenant)

Legal Description:
Abbreviated form:
Additional legal on page _____ of document

Assessor's Property Tax Parcel Account Number(s):

Reference number(s) of Related Document(s):

(Additional on page ____ of document)

# RECOGNITION AND NONDISTURBANCE AGREEMENT

This Recognition and Nondisturbance Agreement (the "Agreement") is made and entered into this ___ day of _____, 2011, by and among the CITY OF SEATTLE (the "Landlord"), BUILDING 11 INVESTORS LLC, a Washington limited liability company ("Sublandlord"), and Sail Sand Point, a Washington nonprofit corporation ("Subtenant").

## RECITALS

**A.** Pursuant to that certain Lease dated February 24, 2009 (the "Master Lease"), Landlord has leased an approximately 58,780 square foot building located at 7777 62nd Avenue NE, Seattle, Washington 98115 (the "Building") on the real property described in attached Exhibit A to Sublandlord.

**B.** Sublandlord desires to sublease a portion of the Building to Subtenant ("Premises") pursuant to the terms of the sublease attached hereto as Exhibit B (the "Sublease").

**C.** It is a condition precedent to the effectiveness of the Sublease that Subtenant be assured of continued occupancy of the Premises under the terms of the Sublease.

**D.** Landlord is willing to assure Subtenant of continued occupancy of the Premises pursuant to the terms of the Sublease as stated in this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce Subtenant to enter into the Sublease, the parties agree as follows:

## AGREEMENT

1. Subtenant would not enter into the Sublease without the execution of this Agreement by Landlord.

2. Landlord has reviewed and consents to and approves the terms of the Sublease and all of its provisions, including the right of Subtenant to extend the term of the Sublease on the terms set forth in the Sublease.

3. If Landlord terminates the Master Lease or otherwise regains possession or control of the Building, Landlord will not join Subtenant in any judicial or nonjudicial action or proceeding to terminate the Master Lease nor will Landlord name or join Subtenant as a

party in any suit, action or proceeding to enforce any rights Landlord may have against Sublandlord under the Master Lease.

4. Subtenant's possession of the Premises and Subtenant's rights in the Premises (or Building Common Areas as defined in the Sublease) and its right to use the Parking Areas (as defined in Tri-Party Agreement attached as an exhibit to the Sublease) shall not be interrupted, disturbed, affected or impaired by, nor will the Sublease or the term of the Sublease or Subtenant's right to extend the term of the Sublease contained therein be terminated or otherwise affected by any default by Sublandlord under the Master Lease or any suit, action or proceeding brought by Landlord to terminate or extinguish the Master Lease or to recover possession of the Building, or by the exercise of any other rights given to the Landlord by any other documents or as a matter of law.

5. So long as Subtenant is not in default under any of the terms, covenants or conditions of the Sublease after the expiration of all cure, notice or grace periods provided in the Sublease for Subtenant's defaults: The Sublease shall continue in full force and effect, the Sublease shall not be terminated, and Subtenant's use, possession and enjoyment of the Premises (and Building Common Areas) and Parking Areas shall not be interfered with. If the Landlord takes possession of Sublandlord's interest in the Building or starts collecting rent or becomes the owner of Sublandlord's interest in the Building by reason of termination of the Master Lease, the Sublease shall continue in full force and effect, without the necessity for executing any new Sublease, as a direct lease between Landlord and Subtenant or the then owner of Sublandlord's interest in the Building as landlord upon all of the same terms, covenants and provisions contained in the Sublease, including, but not limited to Subtenant's right to extend the term of the Sublease, and in that event Landlord or new owner shall be bound to Subtenant under all of the terms, covenants and provisions of the Sublease for the remainder of the term of the Sublease which terms, covenants and provisions Landlord or new owner agrees to assume and perform. Subtenant agrees, after receipt by Subtenant of notice from Landlord, to attorn to Landlord or its successor and accept the Landlord or any such successor owner as landlord under the Sublease, and to be bound by and perform all of the obligations imposed upon Subtenant by the Sublease.

6. All notices required under this Agreement must be given in writing and shall be sent by United States registered or certified mail, postage prepaid, or by national overnight air courier and addressed to the parties at the addresses set forth below:

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

| | |
|---|---|
| Sublandlord: | Building 11 Investors LLC<br>Attn: Darrell Vange<br>Building 11, Mailbox B-8<br>7727 – 63rd Avenue N.E.<br>Seattle, Washington 98115 |
| Tenant: | Sail Sand Point<br>7777 – 62nd Avenue N.E., Suite 129<br>Seattle, Washington 98115 |

These addresses may be changed from time to time by a party serving notice of the changes as provided above. Notices shall be deemed given upon receipt or attempted delivery where delivery is not accepted.

7. This Agreement, and each of the provisions hereof, shall inure to the benefit of or bind as the case may require, and be enforceable by the parties hereto and their respective heirs, personal representatives, successors and assigns.

8. This Agreement may not be modified other than by an agreement in writing signed by the parties hereto or by their respective successors in interest. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**LANDLORD:**

CITY OF SEATTLE
a municipal corporation

By: _____
Printed Name: _____
Its: _____

**SUBLANDLORD:**

BUILDING 11 INVESTORS LLC,
a Washington limited liability company

By: _____
Printed Name: _____
Its: _____

**SUBTENANT:**

SAIL SAND POINT, a Washington nonprofit corporation

By: _____
Printed Name: _____
Its: _____

STATE OF WASHINGTON )
) ss.
COUNTY OF KING )

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of SAIL SAND POINT, a Washington non-profit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

_____
Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

STATE OF WASHINGTON )
) ss.
COUNTY OF KING )

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of BUILDING 11 INVESTORS, LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

_____
Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

STATE OF WASHINGTON )
) ss.
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 Landlord, 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.

Dated: _____

_____
Notary Public
Print Name _____
My commission expires _____

(Use this space for notarial stamp/seal)

# EXHIBIT A

## LEGAL DESCRIPTION OF THE PROPERTY

# EXHIBIT B

## SUBLEASE