Eric Friedli
DPR Building 11 SWS Agreement ORD
May 13, 2013
Version #5

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117895

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent to enter into a lease agreement with Seattle Waldorf School to occupy and use a portion of Building 11 at Warren G. Magnuson Park.

WHEREAS, in 2000 the U.S. Navy transferred ownership of Building 11 to the City; and

WHEREAS, Building 11 is now in need of substantial upgrades to accommodate tenant occupancy; and

WHEREAS, Seattle Waldorf School (Waldorf School) will pay rent and have the opportunity to complete upgrades as part of the lease agreement; and

WHEREAS, the Waldorf School is inclusive, diverse and committed to community involvement; and

WHEREAS, the Waldorf School's educational mission parallels the mission of Seattle Parks and Recreation through service learning and community stewardship;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of Parks and Recreation (Superintendent) or his designee, is authorized to execute for and on behalf of the City, a ten year lease agreement (with two options to extend) with Seattle Waldorf School to operate its high school in a section of Building 11 at Warren G. Magnuson Park, substantially in the form of the Magnuson Park Building 11 Lease between the City of Seattle and Seattle Waldorf School attached to this Ordinance as Attachment 1.

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 _____, 2013, and signed by me in open session in authentication of its passage this _____ day of _____, 2013.

_____

President _____ of the City Council

Approved by me this ____ day of _____, 2013.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2013.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment:

Attachment 1: Magnuson Park Building 11 Lease between the City of Seattle Department of Parks and Recreation and Seattle Waldorf School

City of Seattle
Office of the Mayor

July 30, 2013

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill which authorizes the Superintendent of Parks and Recreation to enter into a lease agreement with the Seattle Waldorf School (SWS) to use a portion of Building 11 at Warren G. Magnuson Park to operate its high school program.

Building 11 was transferred to City ownership in 2000. In the last few months, the City has been approached by various tenants interested in occupying portions of the building, one being SWS. The school enhances the mission of Seattle Parks and Recreation by offering a unique educational program focusing on physical, emotional and intellectual needs; while incorporating service learning and community stewardship. Warren G. Magnuson Park provides an opportunity for building environmental and community partnerships with local citizens.

Approval of this legislation will provide for the improvement and occupancy of Building 11, as well as revenue to the City. Thank you for your consideration of this legislation. Should you have questions, please contact Eric Friedli at 684-8369.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

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

Tel (206) 684-4000
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mike.mcginn@seattle.gov

Eric Friedli
DPR Building 11 SWS Agreement ATT 1
August 29, 2013

MAGNUSON PARK BUILDING 11 LEASE

Seattle Waldorf School

THIS LEASE ("Lease") is entered into this ____ day of _____, 2013, by and between **THE CITY OF SEATTLE** ("City"), a city of the first class of the State of Washington, acting by and through its Department of Parks and Recreation ("Parks") and the Superintendent thereof ("Superintendent"), and **SEATTLE WALDORF SCHOOL** ("Lessee") a not for profit corporation organized under the laws of the State of Washington.

RECITALS

WHEREAS, Seattle Waldorf School is inclusive, diverse and committed to community involvement; and

WHEREAS, Seattle Waldorf School's educational mission parallels the mission of Seattle Parks and Recreation through service learning and community stewardship; and

NOW, THEREFORE, City and Lessee desire to enter into this Lease for the lease by Lessee of certain premises within Building 11 at Warren G. Magnuson Park, Seattle, Washington.

AGREEMENT

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

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

1.1 Building. Building 11 at Warren G. Magnuson Park located at 7777 Sand Point Way NE, Seattle, King County, Washington 98115 situated on a portion of the real property legally described on Exhibit A.

1.2 Premises. As used in this Lease, Premises means portions of the Building described below:

1.2.1 Exclusive Use Premises. A space of 12,910 square feet located on the first floor of the Building and depicted on the floor plan attached as Exhibit B-1 and described on the room plan attached as Exhibit B-4 and further described in Section 2.

1.2.2 Second Right of Refusal Space. Provided that the conditions in Section 2.11 are met, Premises includes a space of 1,150 square feet located on the first floor of Building

11 and depicted on the floor plan attached as Exhibit B-3 and described on the room plan attached as Exhibit B-4 and further described in Section 2.11.

1.2.3 Shared Use Premises. A space of 2,760 square feet located on the first floor of the Building, depicted on the floor plan attached as Exhibit B-2 and described on the room plan attached as Exhibit B-4 and further described in Section 2.

1.3 Commencement Date. April 1, 2014.

1.4 Rent Commencement Date. August 1, 2014.

1.5 Expiration Date. July 31, 2024, unless the Term of this Lease is extended pursuant to Section 3.

1.6 Rent and Additional Charges. Rent for Exclusive Use Premises: $22.00 per square foot per year. Rent for Shared Use Premises: $11.00 per square foot per year, both as particularly described in Section 4.

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

1.7 Security Deposit: NA

1.8 Notice Addresses.

To City:

Department of Parks and Recreation
Regional Parks and Strategic Outreach
Attention: Director
6310 NE 74th St Suite 109E
Seattle, WA 98109

To Lessee: Seattle Waldorf School
Attention: Head of Administration
2728 NE 100th
Seattle, WA 98125

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

Exhibit A	Legal Description
Exhibit B - 1	Floor Plan south Exclusive Use
Exhibit B - 2	Floor Plan north Shared Use
Exhibit B - 3	Floor Plan north Expansion
Exhibit B - 4	Room Plan Square Footage
Exhibit C	Shared Use Premises Protocols

Exhibit D	Ancillary Spaces
Exhibit E	Insurance Requirements
Exhibit F	Shared Use Premises Improvements

2. **Premises**.

2.1 Premises Grant. City hereby leases to Lessee and Lessee hereby leases from City those certain Premises described in Section 1.2, subject to the reservations herein.

2.2 Shared Use Premises. City leases the Shared Use Premises to Lessee subject to the following: Lessee shall have exclusive use and occupancy of the Shared Use Premises only between the hours of 8 a.m. and 5 p.m. PT, Monday through Friday, from August 15th through May 31st of each year during the Term. City reserves to itself all rights to the Shared Use Premises at all other times, including the right to lease or license the Shared Use Premises to third parties. Prior to the Commencement Date, the City will complete the improvements to the Shared Use Premises as described in Exhibit F. Required protocols for use of the Shared Use Premises are included in Exhibit C.

2.3 Re-measurement of Premises. The term "rentable square feet" as used in this Lease shall have the same meaning as defined in the Building Owner's and Manager's Association publication ANSI Z65.1 1996 ("BOMA"). Within 90 days following the Commencement Date or the Lessee's exercising its option to expand the Premises under Section 2.11 either party may elect to have the rentable square feet of the Premises re-measured by a licensed architect reasonably acceptable to both parties, using the method under ANSI Z65.1-1996. Any resulting change in the area of the Premises shall be documented in an amendment to this Lease. If neither party notifies the other of such re-measurement within the deadlines set forth in this Section then the rentable square feet set forth in this Lease shall be deemed correct.

2.4 Condition. If Lessee is not satisfied with the condition or suitability of the Premises as of the Commencement Date, Lessee shall have one of two options: 1) terminate this Lease without further liability upon ten (10) days written notice to City, or 2) extend the Commencement Date and Rent Commencement Date by mutual written agreement with City. Once Lessee takes possession of the Premises, City leases the Premises and Lessee accepts the Premises in their "as is" condition.

2.5 Parking. No parking rights are associated with this Lease. All parking at Magnuson Park is available on a first come/first served, unreserved basis, and any areas designated by the Superintendent for parking shall be deemed Common Areas under this Lease. The City will ensure that a minimum of 25 unreserved parking spaces are within 500 feet of the Premises.

2.6 Permitted Use. Lessee shall use the Premises for K-12 educational purposes. Educational purposes shall include Lessee's academic, vocational, and recreational uses, as well as the support functions, such as office space and school cafeteria, necessary to support these educational uses. Lessee shall not use the Premises for any purpose whatsoever other than the uses specifically permitted herein (collectively, the "Permitted Use").

2.7 Common Areas. During the Term, Lessee and its employees, contractors, licensees, and invitees shall have the non-exclusive right to use the lobbies, stairs, corridors, restrooms and other public areas of the Building and Magnuson Park (the "Common Areas") in common with City, the general public, and other Building occupants and their respective licensees, invitees, customers and employees. Use of the Common Areas shall be governed by Park rules as the Superintendent may amend them from time to time. City shall at all times have exclusive control and management of the Common Areas and no diminution thereof shall be deemed a constructive or actual eviction or entitle Lessee to compensation or a reduction or abatement of Rent.

2.8 Ancillary Spaces. During the Term, in addition to the use of the Premises, Lessee may use the spaces ("Ancillary Spaces") as described in Exhibit D – Ancillary Spaces. The Ancillary Spaces will be made available on mutually agreeable times and dates, according to the process and conditions further described Exhibit D. Lessee will provide City a schedule of desired times and dates by January 1 of each calendar year during the Term to allow City to schedule the use of the Ancillary Spaces. Use of the Ancillary Spaces is subject to the terms and conditions and covenants of the quitclaim deed granting Magnuson Park to the City of Seattle, recorded on May 4, 1999, in the records of King County at Recording Number 9905041194.

2.9 Special Events. Lessee shall not utilize the Magnuson Park Common Areas for special events unless Lessee has obtained a standard Department of Parks and Recreation Special Events Permit. In addition, recognizing that Magnuson Park has limited capacity to handle multiple events with large attendance, if Lessee promotes any event that it reasonably anticipates will draw more than 50 people beyond its normal use and occupancy at one time, Lessee shall provide DPR with no less than thirty (30) days' advance written notice. If the City reasonably determines that the event would conflict with other high-capacity events that have already been scheduled to take place at Magnuson Park the same time, the City shall notify the Lessee within five (5) business days after receipt of the notice. Upon receipt of such notice the Lessee shall reschedule the event or limit the attendance at the event to less than 50 people at one time.

2.10 Alterations. City, in its discretion, may increase, decrease or change the number, locations and dimensions of any hallways, lobby areas, Common Areas, Ancillary Spaces, and other improvements shown that are not within the Premises. Such increase, decrease, or change shall not materially interfere with Lessee's business as permitted in Subsection 2.7. Permitted Use. City reserves the right from time to time (i) to install, use, maintain, repair, relocate and replace pipes, ducts, conduits, wires and appurtenant meters and equipment for service to the Premises or to other parts of the Building in areas above the suspended ceiling surfaces, below the floor surfaces, within the walls and elsewhere in the Building; (ii) to alter or expand the Building; and (iii) to alter, relocate or substitute any of the Common Areas.

2.11 Second Right of Refusal. Lessee shall have the option to expand the Premises to include the Second Right of Refusal Space, on the same terms and conditions of this Lease. Lessee acknowledges that through September 1, 2014, another tenant in the Building, Cascade Bicycle Club, holds the primary option to lease the Expansion Space. If Cascade Bicycle Club either 1) provides notice to City in writing that Cascade will not exercise its option to lease the

Second Right of Refusal Space, or 2) Cascade fails to exercise its option prior to September 1, 2014, then the Superintendent shall notify Lessee that the Second Right of Refusal Space is available. Lessee shall then have the right to exercise its option to lease the Second Right of Refusal Space by notifying the Superintendent in writing no later than sixty days following the date of Superintendent's notice that the Second Right of Refusal Space is available. Lessee's option to lease the Second Right of Refusal Space is conditioned upon Lessee exercising the option in the time and manner required under this Section 2.11. Additionally, if Lessee has defaulted on any obligation under this Lease at any time prior to exercising the option, Lessee must cure the default to the satisfaction of the Superintendent prior to exercising the option, and in any case no later than the expiration date of the option, otherwise the option shall automatically terminate. Additionally, if Lessee has defaulted on any material obligation under this Lease more than one time, even if such default has been cured, the Superintendent shall have the right to terminate the option prior to its expiration date by written notice to Lessee, in the Superintendent's discretion. If Lessee validly exercises its option under this Section, City shall deliver the space no later than thirty days later, all references in the Lease to the Premises and Excusive Use Space shall include the Second Right of Refusal Space, and Lessee shall pay Rent on the Second Right of Refusal Space at the per square foot rate charged for Exclusive Use Space. Otherwise, the option shall automatically expire.

3. **Lease Term**.

3.1 Initial Term. This Lease shall be for a term ("Lease Term" or "Term") beginning on the Commencement Date specified in Subsection 1.3 and ending on the Expiration Date specified in Subsection 1.5, unless the Lease Term is terminated earlier in accordance with the provisions of this Lease or extended as provided in Subsection 3.2 below.

3.2 Extended Terms. Lessee shall have the option to extend this Lease for up to two (2) successive individual extended terms of five (5 years) each (each an "Extended Term") on the same terms and conditions set forth herein, provided that Rent shall be as provided under Section 4.3. Lessee may extend the Lease Term to include any Extended Term by giving City written notice of its intention to do so at least ninety (90) days prior to the Expiration Date of the then-current Lease Term. As used in this Lease, the "Lease Term" means the original term commencing on the Commencement Date and ending on the Expiration Date specified in Subsection 1.5, and any and all Extended Term[s] exercised by Lessee hereunder.

4. **Rent**.

4.1 Base Rent. Beginning on the Rent Commencement Date, and thereafter on or before the first day of each month during the Term, Lessee shall pay to City at the address and to the account specified by City, without notice or demand or any setoff or deduction whatsoever, in lawful money of the United States (a) one twelfth of the annual amount of Rent specified for the Premises in Subsection 1.6 in advance; and (b) the monthly amount of any Leasehold Excise Tax due under Section 10; and (c) Additional Charges as and when specified elsewhere in this Lease, but if not specified, then within ten (10) days after written demand. Rent and, if appropriate, as reasonably determined by City, Additional Charges shall be prorated

on a daily basis for any partial month within the Lease Term, and for any partial initial month in the Lease Term shall be paid on the first day of the Lease Term.

4.2 Adjustments to Rent. Beginning on the first anniversary of the Rent Commencement Date and annually thereafter until the expiration or termination of the initial Term, the Rent shall be adjusted upwards by three percent (3%) of the then-current Rent.

4.3 Rent During Extended Terms. If Lessee exercises its option to any Extended Term, the Rent shall be adjusted to fair market rent effective on the first day of each applicable Extended Term. As used in this Lease, "fair market rent" shall mean the rent per square foot that a willing Lessee would pay in an arms-length transaction for comparable space in the Building and in comparable buildings in comparable locations, for a similar term and on similar conditions. Within thirty (30) days of receiving notice of Lessee's exercise of any option to extend the Term, the City shall provide Lessee notice of the fair market rent for the Premises. The City's statement of fair market rent shall specify whether the rent includes utilities and the amount of any rent escalation during the applicable Extended Term. If Lessee fails to object in writing within ten (10) business days, the Rent shall be adjusted to the City's fair market rent beginning on the first day of the applicable Extended Term. If Lessee objects to the City's statement of fair market rent, Lessee shall also include its proposed fair market rent with the objection and the parties may negotiate regarding the fair market rent until thirty days prior to the first day of the Extended Term. At that time, if the parties have not agreed upon fair market rent, the matter shall be submitted to arbitration according to the following procedure. Each party will select an arbitrator who is a real estate broker, licensed in the State of Washington, who has been regularly engaged in the business of commercial leasing in the Puget Sound region for at least 10 years immediately preceding the appointment under this Lease. If either party fails to select an arbitrator, the fair market rate will be determined by the arbitrator selected by the other party. Each arbitrator will independently make her or his determination of the fair market rate within 20 days after appointment. If the two arbitrators' determinations are not the same, but the higher of the two values is not more than one hundred five percent (105%) of the lower, then the fair market rent will be deemed to be the average of the two values. If the higher of the two values is more than one hundred five percent (105%) of the lower, then the two arbitrators will jointly appoint a third arbitrator within 10 days after the second of the two determinations described above has been rendered. The third arbitrator will independently make her or his determination of the fair market rent within 20 days after her or his appointment. The highest and the lowest determinations of value among the three arbitrators will be disregarded and the remaining determination will be deemed to be the fair market rate.

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

6. **Security Deposit**. **NA.**

7. **Lessee's Operations**.

7.1 Use of Premises. Lessee shall use the Premises only for the Permitted Use. As City's willingness to enter into this Lease with Lessee was predicated, in part, on the nature of Lessee's Permitted Use, and the compatibility of such Permitted Use with the use of the remainder of the Building, Lessee shall not use or permit the use of the Premises for any other business, or purpose, or under any other name, without City's prior written consent, which consent shall may be withheld in the Director's sole discretion. Lessee shall promptly comply, at its sole cost and expense, with such reasonable rules and regulations relating to the use of the Premises, Building, and Common Areas as the City, from time to time, may promulgate. Any newly promulgated rules and regulations shall not materially interfere with Lessee's Permitted Use of the Premises. In the event of any conflict between the rules and regulations promulgated by City and the terms of this Lease, the terms of this Lease shall prevail. Lessee shall maintain the Premises in a clean, orderly and neat fashion and to a standard reasonably established by the Superintendent for the Building, permitting no objectionable odors to be emitted from the Premises. Lessee shall neither commit waste of the Premises nor permit any waste to be committed thereon. Lessee shall not permit any accumulation of trash on or about the Premises. Lessee shall not create or contribute to the creation of a nuisance in either the Premises or the Building, and Lessee shall not engage in or permit any action that will unreasonably disturb the quiet enjoyment of any other occupant in the Building.

7.2 Compliance with Laws; Nondiscrimination.

7.2.1 General Obligation. Lessee shall not use or permit the Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, ordinance or regulation. Lessee shall promptly comply, at its sole cost and expense, with all laws, ordinances and regulations now in force or hereafter adopted relating to or affecting the condition, use or occupancy of the Premises (provided that Lessee shall not be responsible for maintaining in compliance with laws those portions of the Building (including the Premises) that are City's responsibility to maintain under terms of this Lease).

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

7.3 Liens and Encumbrances. Lessee shall keep the Premises and Building free and clear of, and shall indemnify, defend and hold City harmless from, any and all, liens and encumbrances arising or growing out of any act or omission, or breach of this Lease or its use, improvement or occupancy of the Premises by Lessee or any of its principals, officers, employees or agents or subtenants. If any lien is so filed against the Premises or Building, Lessee shall either cause the same to be fully discharged and released of record within ten (10) days after City's written demand therefore or, within such period, provide City with cash or other

security acceptable to City in an amount equal to one and one-half (1½) times the amount of the claimed lien as security for its prompt removal. City shall have the right to disburse such security to cause the removal of the lien if City deems such necessary, in City's sole discretion.

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

8. **Utilities**.

8.1 General. So long as Lessee is not in default under this Agreement, the City shall furnish and pay for electric, water, sewer, and garbage collection services to the Premises. In addition, if natural gas service is made available to the Premises, the City shall pay for gas service; however, the City shall not be required to make natural gas service available. Lessee shall be responsible for the cost of any telecommunications utilities or any other services necessary for Lessee's Permitted Use of the Premises. Lessee shall obtain the Superintendent's prior written consent before installing lights or equipment in the Premises that exceed the Premises standard mechanical loads. The Superintendent may refuse to grant consent unless Lessee agrees to pay (1) the costs incurred by the City for installation of supplementary air conditioning capacity or electrical systems as necessitated by Lessee's equipment or lights and (2) in advance, on the first day of each month during the Term, the amount estimated by the

Superintendent as the excess cost of furnishing electricity or utility service for the operation of equipment or lights above normal building levels.

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

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

10.1 Contests. Lessee shall have the right to contest the amount and validity of any taxes by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving Lessee of its covenant to pay any such taxes. City shall not be subjected to any liability or for the payment of any costs or expenses in connection with any such proceeding brought by Lessee, and Lessee hereby covenants 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. Improvements by Lessee, Tenant Improvement Allowance.

11.1 Improvements. Lessee shall not make any alterations, additions or improvements in or to the Premises without first submitting to City professionally prepared plans and specifications for such work and obtaining City's prior written approval thereof. Lessee covenants that it will cause all alterations, additions and improvements to the Premises to be completed at Lessee's sole cost and expense by a contractor approved by City and in a manner that (a) is consistent with the City approved plans and specifications and any conditions imposed by City in connection therewith, including prevailing wages; (b) is in conformity with first–class, commercial standards; (c) includes acceptable insurance coverage for City's benefit; (d) does not affect the structural integrity of the Premises or the Building or any of the Premises' or Building's systems;(e) does not disrupt the business or operations of any other occupant of the Building; and (f) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Premises or the Building. Lessee shall secure all governmental permits and approvals required for the work; shall comply with all other applicable governmental requirements and restrictions; and reimburse City for any and all expenses incurred in connection therewith. Lessee shall complete design and construction of all improvements and alterations within the Exclusive Use Premises in compliance with all permitting and legal requirements, including but not limited to compliance with applicable building codes and with the Americans with Disabilities Act (ADA). Lessee expressly acknowledge that the provisions of the ADA may exceed requirements contained in building codes and other regulations and that such instances, the ADA requirements shall control. 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) to the extent 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. All alterations, additions and improvements (expressly including all light fixtures; heating and ventilation units; floor, window and wall coverings; and electrical wiring), except Lessee's moveable trade fixtures and appliances and equipment not affixed to the Premises (including without limitation furniture, computers, point of sale systems and registers) shall become the property of City at the expiration or termination of this Lease without any obligation on its part to pay for any of the same. At City's request, Lessee shall execute a deed or bill of sale in favor of City with respect to such alterations and/or improvements. Notwithstanding the foregoing, Lessee shall remove all or any portion of such alterations and/or improvements on the expiration or termination of this Lease if City specifically so directs, in writing, at the time of City's issuance of its approval thereof. Within ninety (90) days after the completion of any alteration, addition or improvement to the Premises, Lessee shall deliver to City a full set of "as-built" plans of the Premises showing the details of all alterations, additions and improvements made to the Premises by Lessee.

11.2 Tenant Improvement Allowance (TIA). The City will allow Lessee a one-time Tenant Improvement Allowance of $1,000,000. The TIA will be in the form of an offset against the Rent of costs associated with improvements to the Exclusive Use Premises undertaken by Lessee ("Tenant Improvements") as approved by City and as completed in compliance with Section 10.1. The TIA may include reasonable design fees, permitting fees, construction fees,

brokerage commission paid by Lessee, FF &E, moving costs and any other approved expenses associated with occupying the Exclusive Use Premises. In order for any construction-related cost to qualify for a TIA offset against Rent, Lessee must identify Lessee's intention and request approval at the time Lessee requests the Superintendent's approval for the improvement under Section 11.1. In order for any category of cost that is not expressly contemplated in this Subsection to qualify for a TIA offset against Rent, Lessee shall seek the Superintendent's approval prior to incurring the cost. Upon completion of the Tenant Improvements, City and Lessee shall confirm in writing the final amount of the TIA.

Lessee may apply approved TIA by stating in its monthly rent payment the amount of Rent being offset. The Rent cannot be offset by more than 35% in any single month. For example, if the Rent due is $3,000 then the maximum offset amount is $1,050.

11.3 Termination for Excessive Tenant Improvement Costs. If, prior to December 31, 2013 Lessee discovers and documents that costs associated with renovating the Exclusive Use Premises for the Permitted Uses exceeds the TIA, then Lessee may terminate this Agreement without liability by providing thirty days written notice to the City. If written notice of termination is not received by the City on, or prior to, December 31, 2013, then Lessee waives its right to terminate this Lease without liability under this Section 11.3.

11.4. Prevailing Wage. As a condition of any Rent offset for construction, alterations, or improvements to the Premises, Lessee shall require its contractor to pay prevailing wages in accordance with Washington's Prevailing Wage Statute, RCW 39.12.

12. **Care of Premises**.

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

12.2 Custodial Service for Premises. Lessee shall at its own expense, at all times, keep the Premises and areas immediately adjacent thereto in a neat, clean, safe, and sanitary condition; and keep the glass of all windows and doors serving such areas clean and presentable. Lessee shall furnish all cleaning supplies and materials needed to operate such areas in the manner prescribed in this Lease; Lessee shall provide all necessary janitorial service to adequately maintain the inside of such areas using a company reasonably approved by City. Lessee shall be responsible for keeping the areas immediately adjacent to the perimeter of such areas free of litter and clean of spills resulting from Lessee's operations.

If, after City provides written notice to Lessee of Lessee's failure to comply with this Section, Lessee fails to take good care of such areas, City, at its option, may do so, and in such event, upon receipt of written statements from City, Lessee shall promptly pay the entire actual and reasonable cost thereof as an Additional Charge. City shall have the right to enter the Premises for such purposes. City shall not be liable for interference with light, air or view.

All normal repairs necessary to maintain the Building (including the structural aspects and exterior of the Premises), the Common Areas, and the heating, ventilation, utility, electric and plumbing and other systems and equipment serving the Building (including the Premises) in a good operating condition, as reasonably determined by City, shall be performed by City at its expense. The foregoing sentence does not extend to maintenance occasioned by a negligent or intentional act or omission of Lessee or its officers, agents, employees, or contractors. Except in the event of City's negligence or intentional misconduct, there shall be no abatement or reduction of rent arising by reason of City's making of repairs, alterations or improvements.

12.3 Prohibition Against Installation or Integration of Any Work of Visual Art on Premises Without City's Consent. City reserves to and for itself the right to approve or disapprove of the installation or physical integration on or in the Premises of any "work of visual art," as that term is defined in the Visual Artists Rights Act of 1990, as now existing or as later amended, if the removal of the work may result in its distortion, mutilation, modification or destruction. 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, including but not limited to a waiver of the artist's rights of integrity upon removal granted by the artist in favor of the City, or withheld in City's discretion. The requirements of this Section 12.3 are not intended to apply to temporary installations of artwork that may be removed from the Premises without damage, destruction, mutilation or modification of the work.

12.4 Lessee's Indemnification of City Against Liability under Visual Artists Rights Act of 1990. Lessee shall protect, defend, and hold City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of (a) the installation or integration of any work of visual art on or into the Premises; or (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any breach of Subsection 12.3 of this Lease; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by Lessee or any of its officers, employees or agents. This indemnification obligation shall exist regardless of whether City or any other person employed by City has knowledge of such installation, integration, or removal or has consented to any such action or is not required to give prior consent to any such action. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Lease

13. **Signs**.

13.1 Signs, Generally. Lessee shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster, or advertising matter whatsoever in the Shared Use Premises or on the exterior of the Premises or portions of the Premises visible to the general public anywhere in or about the Premises, without the Superintendent's prior written consent. Lessee shall remove all exterior and interior signage at the expiration or earlier termination of this Lease and repair any damage or injury to the Premises resulting from such signage.

13.2 On-Premises Signs. Lessee may install permanent exterior signage approved by the Superintendent. Exterior signage shall be constructed in a style and size consistent with the Parks sign policy.

14. Surrender of Premises.

14.1 General Matters. At the expiration or sooner termination of the Lease Term, Lessee shall return the Premises to City in the same condition in which received on the Rent Commencement Date (or, if altered with the Superintendent's approval, then the Premises shall be returned in such altered condition unless otherwise directed by City pursuant to Section 11), reasonable wear and tear, casualty and condemnation damages excepted. Prior to such return, Lessee shall remove its moveable trade fixtures and appliances and equipment that have not been attached to the Premises, and shall repair any damage resulting from their removal. In no event shall Lessee remove floor coverings; heating or ventilating equipment; lighting equipment or fixtures; or floor, window or wall coverings unless otherwise specifically directed by City in writing at the time when City's approval of their installation is issued. Lessee's obligations under this Section 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 voice and data cables, wiring and communication lines and moveable trade fixtures and appliances and to redeliver the Premises on a timely basis.

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

15. Indemnification; Release.

15.1 Lessee's Indemnification. Except as limited by law or otherwise provided in this section, Lessee shall indemnify, defend (using legal counsel reasonably acceptable to City) and save City, City's officers, agents, employees and contractors harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable personnel and overhead costs and attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to, any property arising out of or in connection with (i) Lessee's occupation, use or improvement of the Premises, or that of any of its employees, agents, subtenants, or contractors, (ii) Lessee's breach of its obligations hereunder, or (iii) any act or omission of Lessee or any employee, officer,

agent, subtenant, licensee, invitee, assignee or concessionaire of Lessee, or invitee of any of the same in or about the Premises or Building. Lessee's obligation to indemnify the City shall not apply to any claim or liability resulting from the City's negligence, willful misconduct, or breach of this Lease, or that of any of its employees, contractors, tenants, or agents. Lessee agrees that the foregoing indemnity specifically covers actions brought by its own employees. As a result, the foregoing indemnity is specifically and expressly intended to constitute a waiver of Lessee's immunity under Washington's Industrial Insurance Act, RCW Title 51, but only as to the City and to the extent necessary to provide City with a full and complete indemnity as provided under this Section. Lessee shall promptly notify City of casualties or accidents occurring in or about the Premises. Lessee's obligation to defend and indemnify the City under this Section shall survive the expiration or termination of this Lease with respect to any claim or liability arising from acts, omissions, occurrences, or events occurring during the term.

15.2 City's Indemnification. Except to the extent limited by law, City shall indemnify, defend (using legal counsel reasonably acceptable to Lessee) and save Lessee, Lessee's officers, agents, employees and contractors harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including 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 to the extent arising out of or in connection with (i) City's use and occupation of the Shared Use Premises, or that of any of its employees, or (ii) City's negligence, or the negligence of the City's employees. The City's obligations under this Section 15.2 are not intended to and shall not be deemed a waiver of City's immunity under RCW 4.24.210, as now existing or hereafter amended.

15.3 **CITY AND LESSEE ACKNOWLEDGE THAT THEY SPECIFICALLY NEGOTIATED AND AGREED UPON THE INDEMNIFICATION PROVISIONS OF THIS SECTION 15.**

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

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

16. **Insurance**. Lessee shall secure and maintain in full force and effect throughout the Term, at no expense to the City, insurance as specified in Exhibit E.

17. **Assignment or Sublease**. Lessee shall not sublet or encumber the whole or any part of the Premises, nor shall this Lease or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court or otherwise without the prior written consent of Superintendent, whose consent shall be given or withheld in his or her sole discretion. The granting of consent to a given transfer shall not constitute a waiver of the consent requirement as to future transfers. Any assignment or sublease, without Superintendent's prior written consent, at the Superintendent'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 Superintendent. If Lessee is a corporation, then any transfer of this Lease by merger, consolidation or liquidation, or any direct or indirect change, in the ownership of, or power to vote the majority of, Lessee's outstanding voting stock, shall constitute an assignment 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.

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

19. **Destruction**. If the Premises or the Building are rendered partially or totally untenantable by fire or other casualty, and if the damage is repairable within twelve (12) months from the date of the occurrence, then if insurance proceeds or self-insurance coverages are available to pay the full cost of the repairs (except for the deductible amounts) City shall repair the Premises (excluding Lessee's fixtures and improvements, which are subject to Section 15.4), and if applicable, the Building, with due diligence. Rent and Additional Charges shall be abated in the proportion that the untenantable portion of the Premises bears to the whole thereof, as the City determines, for the period from the date of the casualty to the completion of the repairs. If the damage to the Premises is uninsured or cannot be repaired within twelve (12) months from the date of the occurrence, City or Lessee may terminate this Lease upon written notice to the other party. If thirty percent (30%) or more of the Building regardless of whether the Premises are damaged or not or twenty-five percent (25%) or more of the Premises is destroyed or damaged, then Lessee or the City may elect to terminate this Lease upon written notice to the other party. Termination by either party under the conditions in this Section shall be effected by giving written notice to the other party within sixty (60) days after the occurrence. In the event of damage by casualty, Lessee shall, at its sole cost and expense, repair all damage to its own personal property. Except in the event of City's gross negligence, intentional misconduct or breach of this Lease, City shall not be liable to Lessee for damages, compensation or other sums for inconvenience, loss of business or disruption arising from any repairs to or restoration of any portion of the Building or Premises.

20. **Eminent Domain**.

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

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

21. **Default by Lessee**.

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

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 thirty (30) days after

written notice thereof has been provided to Lessee, then City shall have the following nonexclusive rights and remedies at its option: (i) to cure such default on Lessee's behalf and at Lessee's sole expense and to charge Lessee for all actual and reasonable costs and expenses incurred by City in effecting such cure as an Additional Charge; (2) to terminate this Lease; provided, however, that if the nature of Lessee's obligation (other than monetary obligations and other than vacation or abandonment of the Premises) is such that more than thirty (30) days is required for performance, then Lessee shall not be in default if it commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. Lessee's failure to pay any Rent obligation or Lessee's abandonment or vacation of the Premises shall not be subject to any extension of the thirty (30) day cure period without the express written permission of the Superintendent.

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 therefrom all or any part of the personal property located therein and may place the same in storage at any place selected by City, including a public warehouse, at the expense and risk of Lessee. City shall have the right to sell such stored property, after reasonable prior notice to Lessee or such owner(s), after it has been stored for a period of thirty (30) days or more. The proceeds of such sale shall be applied first, to the cost of such sale; second, to the payment of the charges for storage, if any; and third, to the payment of any other sums of money that may be due from Lessee to City; the balance, if any, shall be paid to Lessee.

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 therefrom, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any costs incurred in authorizing others the use and occupancy of the Premises and in preparing the Premises for such use and occupancy, and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington. The provisions of this Subsection 21.4 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, agreement, term or condition hereof or to deprive City of its right to cancel or forfeit this Lease, upon the written notice provided for herein, at any time that cause for cancellation or forfeiture may exist, or be construed so as to stop City at any future time from promptly exercising any other option, right or remedy that it may have under any term or provision of this Lease.

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

24. **Termination for Convenience**. Notwithstanding anything else in this Lease to the contrary, the City may, at any time and without liability of any kind to Lessee, terminate this Lease upon written notice to Lessee if the City determines that the Premises are required for a different public purpose. The City must provide such written notice one year prior to termination, and no later than August 1st of any calendar year. If City terminates for convenience, in the Superintendent's discretion, the City may allow Lessee to accelerate the rate of its TIA Rent offset between the date of notice and termination, up to the full amount of Lessee's actually expended TIA costs. Additionally, within 30 days of the effective termination date, City shall reimburse Lessee for any portion of Lessee costs actually expended under the Tenant Improvement Allowance that remain unapplied as of City's termination date.

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

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

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

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

28. **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.

29. **Successors or Assigns**. All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon City, Lessee and, subject to the terms of Sections 17 and 18, their respective heirs, administrators, executors, successors and permitted assigns, and upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

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

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

32. **Agency Representation; Broker's Commission**. City and Lessee represent to each other that they have had no dealings with any broker or finder in connection with this Lease or the transactions contemplated hereby, except that George Jakotich of New Venture Group has represented Lessee. The parties represent to each other that no other broker or person other than the broker identified herein is entitled to receive any broker's commissions or finder's fees or similar compensation in connection with any aspect of this transaction. Additionally, the City's obligation to pay for any broker or finder's fee arising from Lessee's interest under this Lease is

limited to Lessee's ability to include such cost in the TIA/Rent offset. It is agreed that if any claims for brokerage commissions or fees are ever made against Lessee or City in connection with this transaction other than the commission to the brokers set forth above (which commission Lessee agrees to pay per separate agreement), all such claims shall be handled and paid by the party whose actions or alleged commitments form the basis of such claim. The party against whom the claim for such fees is made shall indemnify and defend and hold the other party harmless from any and all such claims or demands with respect to any brokerage fees or agent's commissions or other compensation asserted by any person, firm, or corporation in connection with this Agreement or the transactions contemplated herein.

33. **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.

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

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

36. **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.

37. **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.

38. **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. This Lease shall not become effective until the date (the "Effective Date") on which this Lease is executed by both City and Lessee following an authorizing ordinance by the Seattle City Council. City shall have no liability to Lessee and shall have the right to terminate this Lease upon written notice to Lessee if this Lease is legislatively disapproved.

39. **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."

40. **Continuous Operation**. Lessee shall keep the Premises open and use them to transact business consistent with a K-12 school. Lessee will operate the school on an ongoing basis as necessary to support its mission. Subject to the Superintendent's prior reasonable approval, Lessee may, upon posting a written notice to the public of not less than one (1) week in duration prior to any approved closure, close the Premises or a portion thereof for a reasonable period for repairs or any approved remodeling, or taking inventory. Lessee shall close to accommodate reasonable operational requirements of City's business, upon thirty (30) days' prior written notice to Lessee, and Lessee shall immediately close in the case of any emergency as determined by the Superintendent; provided, however, that if Lessee shall close pursuant to this sentence at the direction of City, and if Lessee remains closed at the direction of City for more than three (3) days, then Lessee's Rent and Additional Charges shall be prorated for the duration of the closure in the proportion that the number of days of the closure bears to the number of days of the month. Lessee shall furnish an approved sign at the Premises entrance advising the public of any approved closure, unless closed at the Direction of City.

41. **Standards**. Lessee recognizes that although it is operating its facilities as an independent education organization, Seattle Parks and Recreation is organized for the purpose of maintaining parks and recreation facilities for the use and the enjoyment of the general public. Lessee shall make best efforts to ensure that its agents, employees and students conduct themselves in a manner around the Building that does not detract from the public's use of the park or patrons of this recreational facility.

Lessee shall operate and conduct its Permitted Use 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.

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

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

42.2 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.

42.3 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.

42.4 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.

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

43. Lessee's Records. Lessee shall keep true, full, and accurate books of account setting forth Lessee's receipts related to the cost of Tenant Improvements for which the Lessee seeks a rent offset and any other information that will affect the determination of Lessee's TIA rent offset. City shall be allowed after five (5) days' prior written notice to Lessee to inspect at Lessee's office Lessee's books of account relating to the TIA rent offset 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 amount of TIA offset applied by Lessee against Rent, Lessee shall reimburse the City for any offset that is disallowed by the audit.

43. **Miscellaneous**.

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

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

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

CITY:
THE CITY OF SEATTLE

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

LESSEE:
SEATTLE WALDORF SCHOOL

By: _____
_____
_____

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

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

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

_____ _____
[Signature] *[Printed Name]*

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

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

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

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

_____ _____
[Signature] *[Printed Name]*

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

EXHIBIT A

Legal Description

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

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

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

EXHIBIT B-1
EXCLUSIVE SPACE

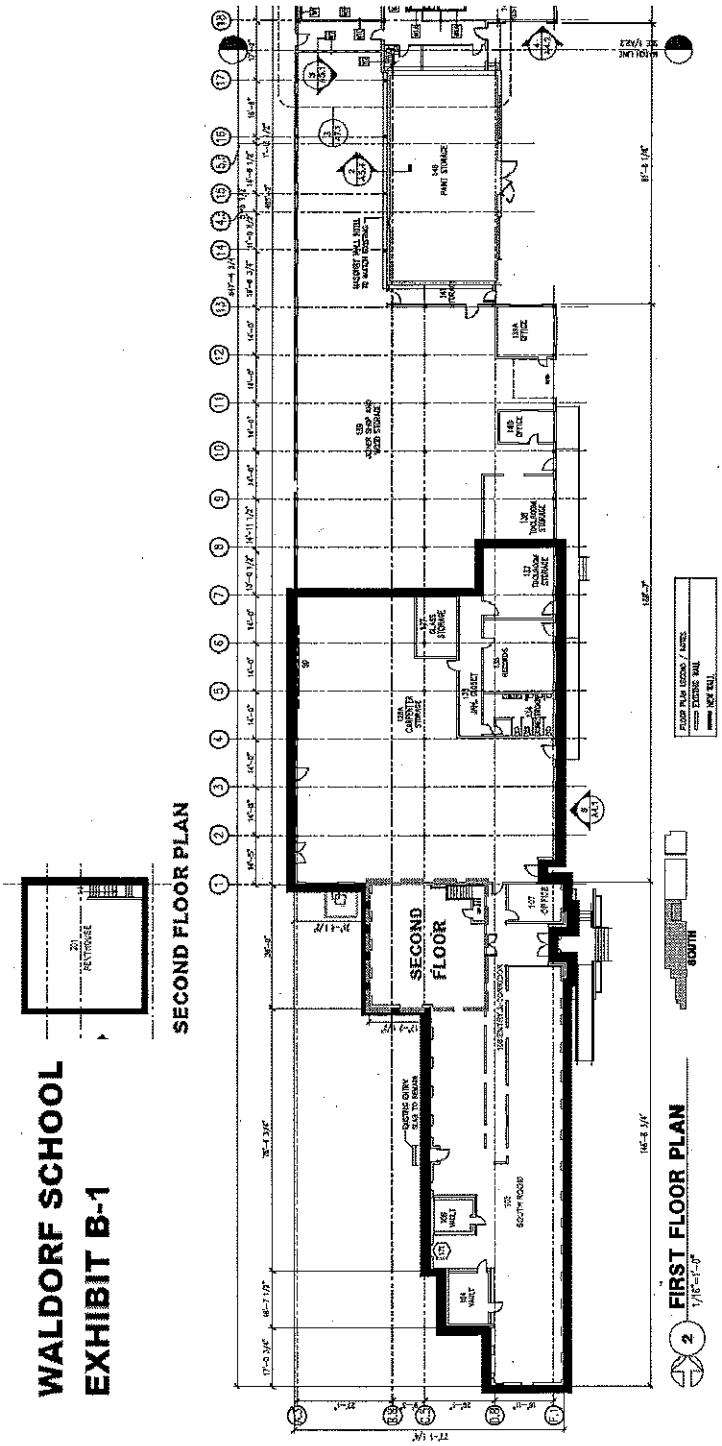
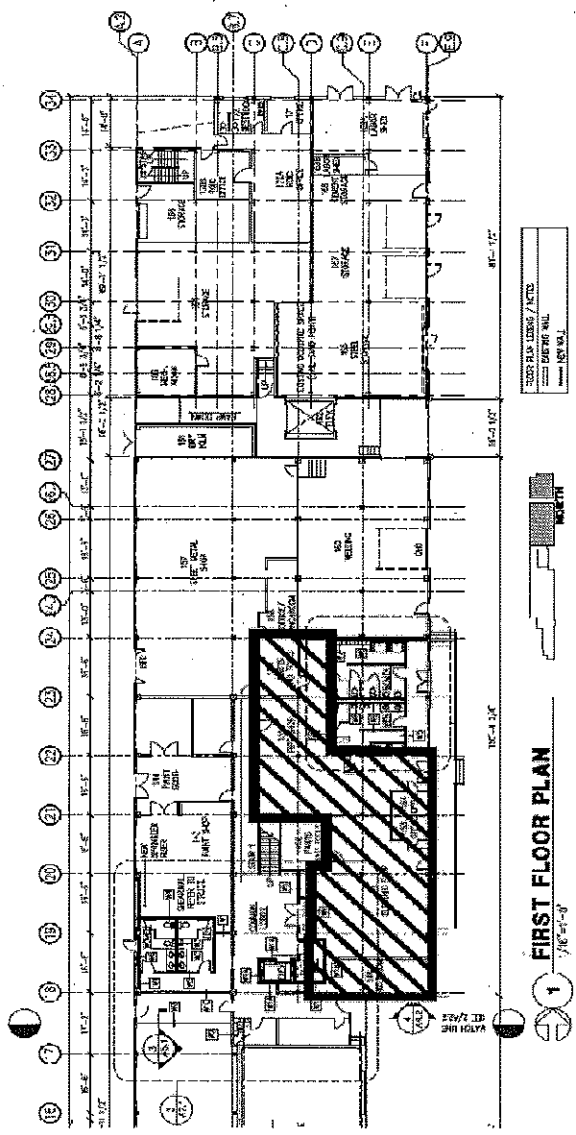


EXHIBIT B-2
SHARED SPACE



FIRST FLOOR PLAN

WALDORF SCHOOL

EXHIBIT B-2

EXHIBIT B-3
2ND RIGHT OF REFUSAL SPACE

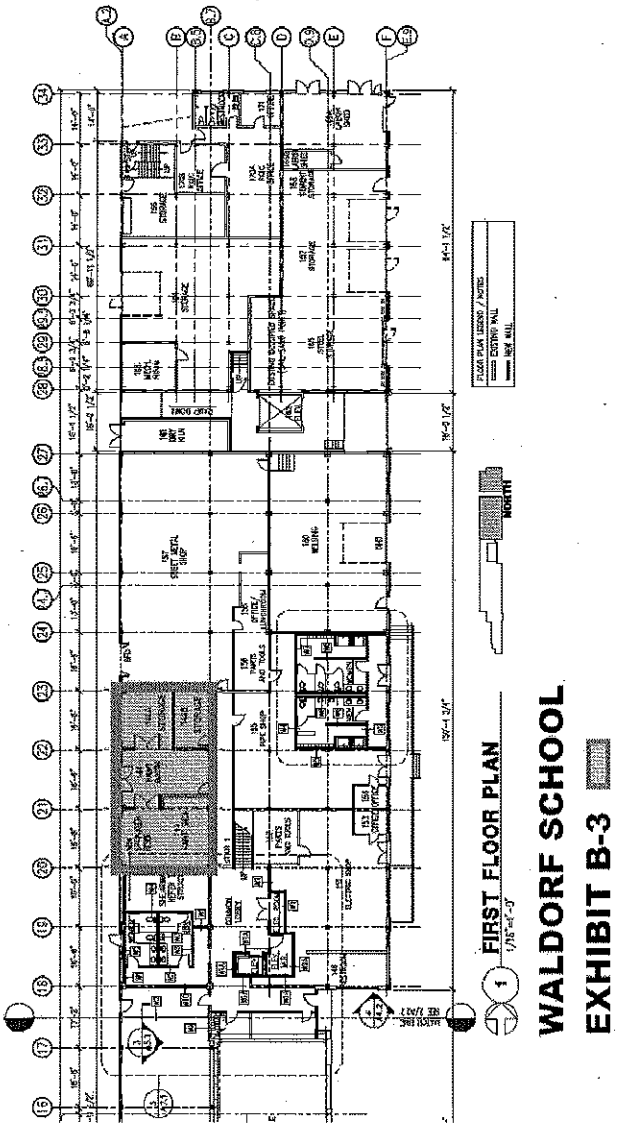


Exhibit B-4
Rooms With Square Footage

Rm. No.	Room Name	Area SF	Totals SF
	EXCLUSIVE SPACES		
104	Vault	190	
105	South Room	4,630	
106	Vault	80	
108	Entry & Corridor	590	
107	Office	170	
127	Glass Storage	200	
134	Restroom	200	
135	Records	400	
137	Tool room Storage	400	
201	2nd Floor Penthouse	1,000	
126A	Carpenter Storage	4,800	
133	Janitor Closet	250	
	Subtotal South	**12,910**	**12,910**
	SHARED SPACES		
148	Restroom	290	
151	Electric Shop	1,140	
153	Office	60	
154	Office	60	
155	Pipe Shop	1,050	
156	Parts Tools	160	
	Subtotal North	**2,760**	**2,760**
	2ND RIGHT OF REFUSAL SPACES		
143	Paint Shop	420	
144	Paint Booth	340	
144A	Storage	230	
144B	Storage	160	
	Subtotal 2nd Right of Refusal	**1,150**	**1,150**
	Totals Dedicated, Shared and 2nd Right of Refusal		**16,820**

EXHIBIT C

SHARED USE PROTOCOLS

Lessee shall be responsible for the cleaning and maintenance of the Shared Use Premises in compliance with the standards in the Lease at all times during each school year during the Term (September 1st –June 30th). During the school year, the City shall restore the Shared Use Premises to a clean and good condition following any use by the City or its authorized users, and shall repair any damage, ordinary wear and tear excepted.

The City shall be responsible for the cleaning and maintenance of the Shared Use Premises in compliance with the standards in the Lease during each summer break during the Term (July 1st through August 31st). Lessee may request use of the Shared Use Premises during summer break subject to availability, provided Lessee must schedule its event through Magnuson Park Events Scheduling office. During the summer break, Lessee shall restore the Shared Use Premises to a clean and good condition following any use by Lessee or its authorized users, and shall repair any damage, ordinary wear and tear excepted.

Parties will create an inventory detailing the ownership of any equipment and furniture in the Shared Use Space and will draft guidelines in for any shared use of equipment such as tables and chairs used in the shared spaces.

Unless expressly provided otherwise in this exhibit, all provisions of the Lease applicable to the Exclusive Use Premises shall also apply to the Shared Use Premises.

EXHIBIT D

ANCILLARY SPACE PROTOCOLS

MAGNUSON COMMUNITY CENTER

Lessee shall have the use of the Magnuson Community Center Gym for three afternoons per week during school hours (Monday-Friday, Noon---3pm) and 2 times per week after school (Monday-Friday, 3pm-6pm) on mutually agreed upon dates during the school year (September—June). Gym use will be solely for student athletic programming. Dates for usage will be negotiated between Parks and School between Thanksgiving and end of the calendar year for the upcoming school year use. For example dates for school year beginning in the fall of 2014 will be negotiated and agreed upon in December of 2013. Parties agree the non-profit hourly rate will be used for gym rentals.

MAGNUSON THEATRE

The City agrees Lessee shall have the exclusive use of the theatre on the dates and at rates mutually agreed to by Lessee and Seattle Musical Theater.

SPORTS FIELDS

Lessee shall have non-exclusive access to the Magnuson play field (cricket field) during school hours (8am-3pm, Monday-Friday) on mutually agreed upon dates and times, not to exceed 25 hours per week. Field use will be solely for school athletic programming. No field use fee will be charged for the playfield (cricket field). Athletic fields are available at the youth field use fee and can be scheduled through the Magnuson Park scheduling office.

Exhibit E
INSURANCE REQUIREMENTS

1.1 Lessee's Insurance Coverages and Limits. Lessee shall, at its sole cost and expense, maintain, and cause its Subtenant(s), if any, to maintain in full force and effect the following minimum limits of insurance throughout the entire Lease Term:

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

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

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

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

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

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

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

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

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

Property Insurance under which the Lessee's furniture, trade fixtures, equipment and inventory ("Business Personal Property") and all alterations, additions and improvements that Lessee makes to the Premises are insured throughout the Lease Term in an amount not less than the replacement cost new thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss (excluding earthquake), not less broad than provided by the insurance industry standard "Causes of Loss - Special Form (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, or above-ground oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises; (iv) loss from business interruption or extra expense, with sufficient coverage to provide for the payment of Rent and Additional Charge and other fixed costs during any interruption of Lessee's business. City shall be named as a loss payee as respects property insurance covering the alterations, additions and improvements under such policy.

Pollution Legal Liability is required if the Lessee will be using or storing hazardous materials or regulated substances, such as fuel. It is acceptable to add ISO endorsement CG 24 15 Limited Pollution Liability Extension or its equivalent to the CGL policy or obtain a separate pollution legal liability policy.

Builder's Risk during such time as Lessee is engaged in the performance of tenant improvements or other renovation of the Premises, the Lessee shall maintain in full force and effect "All Risks" Builder's Risk Property insurance or equivalent for the portion of the Premises under renovation, including fire and flood, on a replacement cost new basis subject to a deductible of no more than $50,000 each loss. It shall be Lessee's responsibility to properly coordinate with the City's Risk Management Division for the placement of Builder's Risk Property insurance prior to any new construction on, or structural alteration of, the Premises.

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

1.2 City's Property Insurance Coverage and Limits.

City will maintain at its expense Property Insurance or self-insurance under which the Premises, excluding Lessee's Business Personal Property and tenant improvements, are insured throughout the Lease Term in an amount not less than the replacement cost new thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss (including earthquake), not less broad than provided by the insurance industry standard "Causes of Loss - Special Form (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, or above-ground oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises. City's Property Insurance currently is subject to a $250,000 deductible for most claims. Lessee shall be responsible to pay the deductible to the proportional extent to which the loss or damage is attributable to Lessee's negligent acts.

The City may change the terms of its insurance in Sections 15.2 at any time based on market conditions, with no compensation due to the Lessee.

1.3 General Requirements for Lessee's Insurance.

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

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

1.3.3 Each insurance policy required hereunder shall be (1) subject to reasonable approval by City that it conforms with the requirements of this Section, and (2) be issued by an insurer rated A–:VII or higher in the then-current A. M. Best's Key Rating Guide and licensed to do business in the

State of Washington unless procured under the provisions of chapter 48.15 RCW (Unauthorized insurers).

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

1.4 Waiver of Subrogation. Unless such waiver would void the property insurance coverage to be provided pursuant to this section, the City and Lessee waive all subrogation rights each may have against the other, or any subtenant, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Premises.

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

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

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

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

1.5.4 Pending receipt of the documentation specified in this Section 16, Lessee may provide a copy of a current complete binder. An ACORD certificate of insurance will not be accepted in lieu thereof.

Original certification of insurance shall be issued to:

Department of Parks and Recreation
Regional Parks and Strategic Outreach
Attention: Director
6310 Ne 74th St Suite 109E
Seattle, Washington 98115

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

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

1.8 Lessee's Responsibility: The procuring of the policies of insurance required by this Agreement shall not be construed to limit the Lessee's liability under the Lease.

Exhibit F

Shared Use Premises Improvements

The City has agreed to complete the improvements to the Shared Use Premises in Building 11 necessary to obtain a Certificate of Occupancy for the Shared Use Premises by September 1, 2014. To the extent not covered by the foregoing, the City will specifically complete the following items by this date: lighting, electrical power to the Shared Use Premises, drywall, paint, and floor covering.

Form revised: December 12, 2012

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Parks and Recreation	Eric Friedli/ 684-8369	Jeff Muhm /684-8049

Legislation Title: AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent to enter into a lease agreement with Seattle Waldorf School to occupy and use a portion of Building 11 at Warren G. Magnuson Park.

Summary of the Legislation:
The proposed legislation authorizes the Department of Parks and Recreation (DPR) to enter into a ten-year lease agreement with Seattle Waldorf School ("SWS") to occupy and use a portion of Building 11 at Magnuson Park for K-12 educational purposes. Educational proposes shall include support functions such as office space necessary to support the permitted use. The proposed agreement includes two options to extend for five-years each. SWS will start renovation of the premises in spring 2014 and fully occupy the space at the beginning of the school year in fall 2014.

SWS will occupy 12,910 square feet year round as their primary space for offices and classrooms. In addition they will share 2,760 square feet with DPR. SWS will have use of the shared space Monday - Friday, 8 a.m. to 5 p.m. during the school year. DPR will have the right to use the shared space during evenings, weekends, and when school is out of session for the summer. It is likely DPR will find other renters for the space during the times DPR controls it. Also included in the lease is a "second right of refusal" for 1,150 square feet on the west side of the building.

Building 11 transferred to City ownership from the Navy in 1999. At that time the building was in poor condition and in need of substantial upgrades. In 2005 Parks issued a request for proposals looking for someone to redevelop the building, fill it with a mix of parks and recreation and non-parks and recreation oriented tenants, all at no cost to the City. One proposal was received - Building 11 LLC (the LLC). The City entered into a lease agreement with the LLC in 2009. Insurmountable issues arose around implementing the 2009 Lease agreement and the subsequent desire for amendments by the LLC. In February 2013, The City and the LLC entered into a settlement agreement whereby the LLC will complete certain renovations to the building and terminate the lease agreement in exchange for payments totaling $7.25 M.

In addition to work being completed by the LLC, SWS has the option to make additional improvements, at the school's own cost, to the 12,910 sq ft at the south end of the building that will be exclusively occupied by SWS. Any improvements may be credited as a rent offset for up to $1,000,000. DPR is responsible for minimal upgrades to the 2,760 sq ft of "shared space.

Since March 2013 the City has been approached by various potential tenants interested in occupying portions of Building 11. SWS is one of those tenants. This agreement is the result of negotiations held during April/July 2013.

____ This legislation does not have any financial implications.

__X__ This legislation has financial implications.

Appropriations: N/A

Fund Name and Number	Department	Budget Control Level*	2013 Appropriation	2014 Anticipated Appropriation
TOTAL	**N/A**	**N/A**	**N/A**	**N/A**

Appropriations Notes:

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2013 Revenue	2014 Revenue
Park and Recreation Fund (10200)	Parks and Recreation	Income from Base Rent payment	$0	$85,145
TOTAL				**$85,145**

Revenue/Reimbursement Notes:
Tenant will pay market level rents. They will pay $22 sq ft for year round exclusive (12,910 sq ft) space and $11 sq ft for shared (2,790 sq ft) space that they will use Monday- Friday, 8a.m.-5p.m. during the school year Rent will increase by 3% per year beginning August 1 of each year.

SWS will be allowed to offset its rent to fund up to $1,000,000 in tenant improvements to the building. The rent offset maximum is 35% each month until the tenant improvements are fully reimbursed. Estimated rent (after tenant improvement reduction) each year is shown in Table 2.

Table 2: Estimated Rent Payment schedule

2014	$85,145
2015	$206,901
2016	$213,108
2017	$219,502
2018	$226,087
2019	$232,869
2020	$239,855

2021	$247,051
2022	$290,991
2023	$403,225

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

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2013 Positions	2013 FTE	2014 Positions*	2014 FTE*
TOTAL	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Position Notes:

Do positions sunset in the future? N/A

Spending/Cash Flow: N/A

Fund Name & #	Department	Budget Control Level*	2013 Expenditures	2014 Anticipated Expenditures
TOTAL	N/A	N/A	N/A	$51868

Spending/Cash Flow Notes:

Parks will pay utilities, common area maintenance and tenant management costs associated with this and other tenant agreements in the building. Based on experience with other buildings at Magnuson Park, we estimate those costs to be $3.31 sq. ft. The estimated cost is $51,868 for 2014.

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
Yes, as shown in Table 2 revenues continue to increase during the term of the agreement.

b) **What is the financial cost of not implementing the legislation?**
Parks will have to start searching for a different tenant or tenants to occupy the space. Rental revenue from these spaces would be delayed.

c) **Does this legislation affect any departments besides the originating department?**
No.

What are the possible alternatives to the legislation that could achieve the same or similar objectives?
Other than finding a similar tenant who can agree to similar terms, there are no feasible alternatives to the legislation that would achieve the same result.

d) **Is a public hearing required for this legislation?**
No

e) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No

f) **Does this legislation affect a piece of property?**
Yes - a map is included as exhibit 1 in Attachment 1 of the ordinance.

g) **Other Issues:**
None

List attachments to the fiscal note below:
Attachment A: Contract Summary Form

Isabel Hamilton
DPR Building 11 SWS Agreement FISC ATT A
July 17, 2013
Version #3

CONTRACT SUMMARY

Contracting Party/ Lessee/ Concessionaire/Other: Seattle Waldorf School

Contract Title and Contract Type: Lease agreement for a section of Building 11 at Magnuson Park

Non-Profit ___X___ or **For Profit** _____

New ___X___ or **Renewal (or extension of existing Lease)** _____

Premises: Approximately 12.970 sq ft of Building 11 to be used exclusively year round and approximately 2.760 square feet to be used Mon. – Fri. 8 a.m.-5 p.m. during the school year.

Term of Lease: 10 years plus two five-year extensions

Purpose of Lease Agreement (description of license): This agreement allows the Lessee to complete tenant improvements, necessary for occupancy, in a portion of the south end of Building 11 where the high school will be located.

Rent: Lessee will pay market level rents, $22.00 per sq. ft. per annum, that would escalate annually by 3% with a market reassessment in the 10th year. In addition, the lessee will pay $11.00 per ft. for the shared space, with an annual 3% increase.

Offset to Rent: Lessee will be allowed to offset rent to fund only tenant improvements approved by the City up to $1,000,000. The rent offset may never be more than 35% in any given month.

Public Benefit (e.g., description of permitted use): Locating a high school in Magnuson Park would benefit both the students and the community, by offering innovative and creative educational programming to high school students. Through association with tenant organizations, an educational model will be created for collaborative partnerships and urban stewardship of our parks and the environment.

Maintenance: Lessee is responsible for all minor maintenance, garbage, recycling and custodial within their Premises, The City is responsible for exterior and major building maintenance.