CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 118161

AN ORDINANCE authorizing the Superintendent of the Department of Parks and Recreation to execute an amended and restated ground lease between the City of Seattle and the Center for Wooden Boats for development, operation and maintenance of an Education Center in Lake Union Park.

WHEREAS, the Department of Parks and Recreation has jurisdiction over and manages Lake Union Park ("the Park"); and

WHEREAS, pursuant to Ordinance 123207 (December 2009), as modified by Ordinance 123797 (December 2011), the City of Seattle ("City") and the Center for Wooden Boats ("CWB") entered into a Ground Lease setting forth the terms and conditions under which CWB may develop, operate and maintain an education center in the Park; and

WHEREAS, CWB has completed the design of the proposed education center and such design requires a minor modification to CWB's leasehold area; and

WHEREAS, the City and CWB wish to further amend the Ground Lease to accommodate the final building design and make other minor modifications to the agreement; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of the Department of Parks and Recreation is authorized to execute, for and on behalf of the City, an amended and restated Ground Lease between the City and the Center for Wooden Boats in substantially the form of Attachment 1 hereto.

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 _____, 2014, and signed by me in open session in authentication of its passage this _____ day of _____, 2014.

_____

President _____ of the City Council

Approved by me this ____ day of _____, 2014.

_____

Edward B. Murray, Mayor

Filed by me this ____ day of _____, 2014.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Amended and Restated Ground Lease Between the City of Seattle and the Center for Wooden Boats

Exhibit A-1 to Attachment 1: Site Plan
Exhibit A-2 to Attachment 1: Construction Area
Exhibit B-1 to Attachment 1: CWB's Improvements, First Floor Plan
Exhibit B-2 to Attachment 1: CWB's Improvements, Second Floor Plan
Exhibit C to Attachment 1: City Capital Investment
Exhibit D to Attachment 1: Insurance Requirements
Exhibit E to Attachment 1: Public Benefit Requirements

AMENDED GROUND LEASE

THIS AMENDED GROUND LEASE (the "Agreement") is made and entered into this ___ day of _____, 2014, by and between **THE CITY OF SEATTLE** ("City"), a first class city of the State of Washington, acting by and through its Superintendent of Parks and Recreation ("Superintendent"), and **THE CENTER FOR WOODEN BOATS** ("CWB"), a Washington nonprofit corporation.

RECITALS

WHEREAS, the Seattle Department of Parks and Recreation ("DPR") has jurisdiction over and manages Lake Union Park, including the buildings, wharf, and facilities thereon (the "Park"); and

WHEREAS, the DPR's mission is "to provide safe and welcoming opportunities to play, learn, contemplate, and build community;" and

WHEREAS, CWB is a 501(c)(3) not-for-profit corporation established to provide a gathering place where maritime history comes alive through direct experience and our small craft heritage is enjoyed, preserved, and passed along to future generations and for the purpose of contributing support for maritime cultural organizations in the Puget Sound region; and

WHEREAS, the parties desire that CWB occupy, use, and improve a portion of the Park for the purposes of providing programs of great public benefit, recreational opportunities and education, and for related office and administrative purposes; and

WHEREAS, CWB and City entered into that certain Ground Lease dated on or about August 11, 2011, which was amended by a First Amendment executed in January 2012 (together, the Amended Ground Lease) for the purpose of setting forth the terms and conditions under which CWB will occupy and use portions of the Park for the above-stated purposes, including terms and conditions related to the financing and construction of certain improvements to the leased premises; and

WHEREAS, CWB and the City now wish to amend and restate the Amended Ground Lease in order to modify certain provisions including a more detailed description of CWB's Improvements Area, bonding, environmental provisions, and the City's Capital Investment.

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

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

1.1 Premises. Lots 2, 3 and 4, Block 74 of Lake Union Shorelands, (the "Premises) provided, however, that City expressly reserves to itself for public park and recreation purposes,

the use of those portions of the Park located outside the footprint of CWB's Improvements, when and as constructed in accordance with the approved site plan attached as Exhibit A-1 ("CWB's Improvements").

1.2 Effective Date. The date this Agreement is fully executed, as provided in Section 34.

1.3 Possession Date. January 1, 2014.

1.4 Rent Commencement Date. The date the City of Seattle Department of Planning and Development issues a certificate of occupancy for CWB's Improvements.

1.5 CWB's Improvements. The improvements that CWB is required to make to the Premises, the conceptual plan and program for which is attached hereto as Exhibit B-1.

1.6 Expiration Date. The date that is twenty-five (25) years from the Rent Commencement Date, unless this Agreement is extended pursuant to Section 3.2.

1.7 Rent and Additional Rent.

1.7.1 Rent. $50,000.00 per year.

1.7.2 Additional Rent. Whether or not so designated, all other sums due from CWB under this Agreement shall constitute Additional Rent, payable when specified in this Agreement and if not specified, then upon CWB's receipt of City's invoice therefor.

1.8 Parking. There is no dedicated or reserved parking associated with the Premises except as provided in Section 2.3 below.

1.9 Notice & Delivery Addresses.

To City: The City of Seattle
Department of Parks and Recreation
Attention: Manager
Property and Acquisition Services
800 Maynard Ave S.
Seattle, WA 98134

To CWB: 1010 Valley Street
Seattle, Washington 98109
Attn: Executive Director

1.10 Exhibits. The following exhibits are made a part of this Agreement:

Exhibit A-1: Approved Site Plan, including location of CWB's Improvements, temporary parking / Staging Area, abutments, and Boat Haul Out.

Exhibit A-2: Construction Area, showing area to be fenced-off during construction of CWB's Improvements
Exhibit B-1: First Floor Plan, showing limits of CWB's Improvements
Exhibit B-2: Second Floor Plan showing limits of CWB's Improvements
Exhibit C: Description of City Capital Investment
Exhibit D: Insurance Requirements
Exhibit E: Public Benefits

2. **Premises**.

2.1 Grant. Subject to all of the terms and conditions contained herein, City hereby leases to CWB and CWB hereby leases from City, the Premises.

2.2 Condition. The Parties acknowledge and agree that the City has completed those improvements to the Premises described in **Exhibit C** (the "City Capital Investment"). CWB accepts the Premises in their condition on the Possession Date. Without limiting the generality of the foregoing, and to the extent not already provided, the City agrees to provide the two, four-inch electrical conduits from an existing electrical vault to within five feet of the Pad (as specified in paragraph 2.c of Exhibit C), which have not yet been located at the date of this Agreement.

2.3 License. CWB and its licensees, invitees and customers may use the public areas of Lake Union Park (the "Park") including all areas reserved to City hereunder, as the same may be constituted from time to time, in common with the general public and other Park occupants and their respective licensees, invitees, customers and employees. Notwithstanding the foregoing, commencing on the Possession Date and until the completion of construction of CWB's Improvements, CWB shall have the exclusive right to use fifteen (15) parking stalls in the parking lot immediately north of Valley Street and depicted on **Exhibit A-1**, for CWB staff, volunteer and visitor parking. In addition, from the date CWB receives a notice to proceed with construction from the Superintendent and for so long as is reasonably necessary to carry out the work, CWB and its licensees, invitees and contractors may use these stalls and the other areas shown in **Exhibit A-1** for construction staging; provided, that unless the Superintendent agrees otherwise, at the conclusion of construction CWB shall return the stalls and other areas to their pre-existing condition. DPR agrees to issue a Revocable Use Permit for CWB's construction activities as necessary.

2.4 Permitted Use. CWB shall use the Premises to construct CWB's Improvements as shown in **Exhibits A-1, B-1 and B-2.** Thereafter, throughout the Term of this Agreement, CWB's Improvements shall be used only for the presentation of public educational programs involving the construction, renovation, maintenance, storage, display, and use of historically significant wooden boats, including the public rental thereof; for land and water-based maritime heritage skill programs; for related instructional, educational, and recreational programs for the benefit of visitors to the Park, CWB and its members, and City; and for such incidental purposes as administrative offices, fundraising activities and for occasional special events in direct support of CWB's mission. Throughout the Term of this Agreement the portions of the Premises outside

CWB's Improvements may be used by CWB for non-vehicular access to CWB's Improvements and for festivals and other special events sponsored by CWB and related to CWB's mission, with the prior approval of scheduled festivals and special events by the DPR Superintendent, which approval may be granted, conditioned or withheld in the Superintendent's sole discretion. Unless the Superintendent agrees otherwise, in writing, CWB shall not install any fencing or other feature on the Premises outside of CWB's Improvements, nor use such portion of the Premises to store boats or other materials of any nature whatsoever. CWB shall operate at times and in a manner consistent with its Management and Operations Plan described in Section 9.4. In addition, from the Possession Date until commencement of construction of CWB's Improvements and with the Superintendent's prior approval, CWB may erect temporary structures on the Premises and use such structures for public programming as described above. If CWB requires any utility services in connection with such temporary structures or uses, it shall secure the same at CWB's sole expense.

With the Superintendent's prior approval, CWB may sell food and beverages, or authorize third-parties to sell food and beverages, from mobile carts or vehicles on the south and east side of the Premises provided such operations are fully licensed and comply with applicable health and safety laws and regulations. Unless the Superintendent agrees otherwise, there shall be no more than one food vendor operating on the Premises at a time.

2.5 Continuous Operation. CWB shall conduct its business operations on the Premises continuously throughout the Term and shall keep CWB's Improvements open for business during the usual business hours of each and every business day as is customary for businesses of like character except for closures for remodeling, repair or renovation that the Superintendent approves, in advance. The specific hours of operation shall be established as part of the annual Management and Operations Plan described in Section 9.4.

2.6 City Usage. Except for weekends and holidays, City shall have the right to use CWB's Improvements at no cost to City for up to three (3) City-sponsored events each year throughout the Term on an "as available" basis. City may reserve dates by contacting CWB at least one (1) week but not more than thirty (30) days in advance of each proposed use date. If, at the time of the request, there is no event or activity scheduled for the proposed use date, CWB shall reserve CWB's Improvements for City use. Any use by City shall be subject to CWB's standard Facilities Rental Contract, including deposit requirements (but excluding rental payment).

3. **Lease Term**.

3.1 Term. This Agreement shall be for a term (the "Term") beginning on the Effective Date specified in Section 1.2 and ending on the Expiration Date specified in Section 1.6, unless the Agreement is extended as provided in Section 3.2 or terminated earlier as provided herein.

3.2 Extended Terms. Provided CWB is not in default under this Agreement beyond any applicable notice and cure period at the time of exercise, CWB shall have the option to extend the Term of this Agreement for two (2) additional terms of five (5) years, each, on the

same terms and conditions as are set forth herein. CWB shall exercise its option(s) to extend the Term by giving City written notice of its intention to do so at the address specified in Section 25, at least ninety (90) days prior to the expiration of the then-current Term. Prior to the expiration of the Term or any extended Term, if requested by CWB and provided CWB is not in default hereunder, the Superintendent and CWB shall negotiate in good faith to extend the term of this Agreement further, but if such negotiations are unsuccessful, the parties shall have no further obligations with respect to one another.

4. **Rent**.

4.1 Payment. CWB shall pay Rent in advance, in equal monthly installments, beginning on the Rent Commencement Date and thereafter, on the 20th day of each month throughout the Term. CWB shall deliver the Rent to City at the address and to the account City specifies, without notice or demand, in lawful money of the United States. The Rent and, if appropriate, as reasonably determined by City, Additional Rent shall be prorated on a daily basis for any partial month within the Term. Notwithstanding the foregoing, CWB shall have the right to prepay all or any portion of the Rent for the initial Term, without penalty.

4.2 Rent Adjustments. Beginning on the fifth (5th) anniversary of the Rent Commencement Date and every five (5) years thereafter until the expiration or termination of this Agreement (each, a "Rent Adjustment Date"), the Rent shall be increased to an amount determined by multiplying the Rent payable during the year immediately preceding the Rent Adjustment Date by a fraction, the denominator of which shall be the Consumer Price Index for All Urban Consumers (All Items) in the Seattle-Tacoma-Bremerton region (1982-84 = 100) ("CPI"), published by the Bureau of Labor Statistics, United States Department of Labor, in effect as of the date which is five (5) years prior to the Rent Adjustment Date, and the numerator of which shall be the CPI in effect as of the date immediately preceding the Rent Adjustment Date.

By way of example, only, if the CPI on the commencement date of this Agreement is 100 and the CPI most recently issued prior to the first Rent Adjustment Date is 110 and the annual Rent due under this Agreement is $60,000.00, then the total CPI adjustment would be 110% and the annual Rent under this Agreement would increase to $66,000.00 effective as of the Rent Adjustment Date.

If the CPI is discontinued, the parties shall agree upon another similar index to be used to calculate the contemplated adjustment and, in the event of an inability to agree, the parties shall request the American Arbitration Association or its successor to appoint a qualified arbitrator to establish an appropriate adjustment standard to measure inflation.

Under no circumstances shall the Rent, as adjusted for any period, be less than Rent payable during the immediately preceding period.

4.3 Capital Improvement Rent Offset.

4.3.1 CWB's Capital Improvements Offset. Throughout the Term, CWB shall be entitled to apply as an offset against up to seventy-five percent (75%) of each monthly Rent payment CWB's actual remaining Unamortized Capital Improvement Costs. As used in this Agreement, the term "Capital Improvement Costs" means amounts expended by CWB and directly related to the design, permitting and construction of CWB's Improvements and any subsequent capital improvements to the Premises approved by the Superintendent pursuant to Section 7, below. These costs may include hard and soft costs such as, but not limited to, labor, materials, architecture and engineering fees, permits, licensing fees, equipment costs or rental fees, construction or project management fees, sales tax, and consultants' fees, but shall not include interest on construction financing. Volunteer labor shall not be included in the computation of CWB's Capital Improvement Costs and donated or discounted materials shall be included at their actual cost to CWB. As used in this Agreement, the term "Unamortized Capital Improvement Costs" means, as of any given time, an amount equal to CWB's total Capital Improvement Costs minus any offsets against Rent taken by CWB under this Section 4.3.

4.3.2 Superintendent's Approval of Alterations Budget. Before commencing construction of CWB's Improvements and any subsequent capital improvement to the Premises, CWB shall submit a budget for the same (the "Construction Budget") to the Superintendent for his or her approval, including all hard and soft costs and anticipated use of volunteer labor, by construction element. Within thirty (30) days after receipt of the Construction Budget, the Superintendent shall indicate the total amount of budgeted construction costs for the improvements that are potentially eligible for the Capital Improvement Rent Offset.

4.3.3 Superintendent's Approval of Alterations' Actual Costs. Not later than six (6) months after CWB finally completes CWB's Improvements, as evidenced by CWB's receipt of a certificate of occupancy therefor (and thereafter, within six (6) months of completing any further Superintendent-approved capital improvement), CWB shall provide the Superintendent with an accounting of its actual costs associated with the capital improvements together with such supporting documentation as the Superintendent may reasonably request. The Superintendent shall certify the final amount of costs expended by CWB in connection with such improvements and this amount shall constitute the amount of CWB's Capital Improvement Rent Offset.

4.4 Public Benefits and Offsets.

4.4.1 Minimum Public Benefits Required. As part of the design and construction of CWB's Improvements, CWB will construct two public restrooms that shall be open and available for public use during CWB's hours of operation. In addition, each year during the Term of this Agreement CWB shall provide free or reduced-cost programs and activities for the general public that are consistent with those described in **Exhibit E** (the "Public Benefits") and are valued at not less than ten percent (10%) of the Rent for that particular year, prior to the application of any Capital Improvement Rent Offset. Such Public Benefits shall not be eligible for the Public Benefit Program Offset described in Section 4.4.2, and failure to provide the required benefits will constitute a default under Section 21. Together with each annual Management and Operations Plan described in Section 9.4, CWB shall provide a Public

Benefits Report supported by documentation that, to the Superintendent's reasonable satisfaction, demonstrates CWB's actual progress during the preceding year in providing Public Benefits. City shall be deemed to have approved the Public Benefits Report unless the Superintendent delivers written objections thereto to CWB within sixty (60) days after the Superintendent receives the report. If the Superintendent delivers written objections to the Report within the sixty (60) day period, the Superintendent and CWB shall negotiate in good faith a written agreement detailing subsequent actions to be taken by CWB that will satisfy the Superintendent's concerns.

4.4.2 Public Program Rental Offset. CWB may request a Public Program Rental Offset against the Rent to reflect the value of programming that is available to the general public at free or reduced cost and that is above and beyond those Public Benefits identified in Exhibit E that are an express condition of this Agreement. In the annual Management and Operations Plan, CWB may identify the amount of Public Program Rental Offset it is requesting for the upcoming calendar year based upon public programming it provided during the preceding calendar year along with any other justification for the request. In cases where public benefits are provided at a discount relative to market rates, the public benefit shall be calculated based on the difference between the market and discounted rates. The Superintendent will respond to the request within thirty (30) days, stating the amount, if any, of the Public Program Rental Offset allowed for the upcoming calendar year, which determination shall rest in the Superintendent's sole discretion. CWB may apply any annual Public Program Rental Offset that the Superintendent approves in a given year against up to a maximum of fifteen percent (15%) of each monthly Rent payment during that year. The Public Program Rental Offset is in addition to the Capital Improvement Rental Offset described in Section 4.3.

4.4.3 Examples. The following examples illustrate the computation and allocation of the requirements allowed under Section 4.4.1 and the offsets permitted under Section 4.4.2:

(i) Assume annual Rent payments totaling $50,000. In such case, CWB must provide Public Benefits of no less than $5,000 during that year (*i.e.*, 10% of $50,000).

(ii) Assume annual Rent payments totaling $50,000. Assume further that CWB provides Public Benefits totaling $11,000 during that calendar year. In such case, $5,000 worth of Public Benefit would be allocated to the 10% minimum required under Section 4.4.1, and the remaining $6,000 would be allocated to the Public Program Rental Offset allowed under Section 4.4.2.

(iii) Assume annual Rent payments totaling $50,000. Assume further that CWB provides Public Benefits totaling $19,000 during that calendar year. In such case, $5,000 worth of Public-Benefit would be allocated to the 10% minimum required under Section 4.4.1, and $7,500 of the remaining $14,000 would be allocated to the Public Program Rental Offset allowed under Section 4.4.2 (*i.e.*, 15% of $50,000).

4.5 Park Service Offset. The City may, at no cost to CWB, provide chairs for use by Park visitors. Each evening, CWB shall collect such chairs and store them in a location in the Park as specified from time to time by DPR staff. Each morning, CWB shall remove the chairs from storage and place them about the Park. CWB shall have no responsibility to maintain, repair, or replace such chairs. In return for its willingness to provide the services described in this Section 4.5, CWB may offset up to a maximum of ten percent (10%) of each monthly Rent payment. If the City fails to provide such chairs or the chairs subsequently become unavailable, then the parties may agree to have CWB perform another comparable park service.

4.6 Rent Offset Reporting. At least thirty (30) days prior to each anniversary of the Rent Commencement Date throughout the Term, CWB shall report to the Parks Finance Director or his or her designee (i) the current Unamortized Capital Improvement Costs; (ii) the dollar amount of Capital Improvement Rent Offset it is applying to the upcoming year's Rent; (iii) the dollar amount of Public Program Rental Offset it is applying to the upcoming year's Rent; and (iv) the dollar amount of the Park Service Offset it is applying to the upcoming year's Rent. If the amount of the Rental Offsets exceeds the total Rent due and payable under this Agreement for any one or more years, then CWB shall not have any right to recover the balance from City, which balance shall be deemed to have been donated to the City upon the termination or expiration of this Agreement.

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

6. **Recordkeeping and Reporting; Audit**. CWB shall keep true and complete books of account setting forth CWB's expenditures relating to CWB's Improvements and any subsequent capital improvements, and all public programming for which CWB claims any Rent offset. City shall be allowed to inspect CWB's books of account at CWB's office upon five (5) days' prior written notice to CWB and to procure audits thereof by an auditor at City's sole cost and expense. CWB shall retain all books of accounting and any other information that will affect the determination of the Rent for a period of six (6) years after the last day of the period that such particular record covers.

7. **Initial Improvements and Subsequent Alterations**.

7.1 CWB's Initial Improvements. The parties acknowledge and agree that the construction of CWB's Improvements, as generally described in **Exhibit B-1** and anticipated to cost approximately Four Million Five Hundred Thousand Dollars ($4,500,000) in hard and soft costs (including the estimated fair market value of volunteer labor and donated materials), is a fundamental purpose of this Agreement. Provided there is no significant expense to DPR, DPR will cooperate with CWB in its efforts to secure such permits and approvals from other City departments or other governmental agencies as are necessary to construct CWB's Improvements.

7.2 Approval of Plans and Specifications, Schedule and Construction Team.

7.2.1 The parties acknowledge and agree that the Superintendent, in his role as Superintendent and in compliance with the Agreement between the City and the Parks

Foundation, which has also given its approval, has approved the conceptual design for CWB's Improvements prepared by Olson Kundig Architects. The approved site plan showing the location of CWB's Improvements is attached as **Exhibit A-1** and that any material changes or refinements to that design will require the Superintendent's concurrence.

7.2.2 CWB shall cause detailed plans and specifications for CWB's Improvements to be prepared that are consistent with the approved conceptual design. CWB shall submit such plans and specifications, together with a detailed construction schedule and a description of CWB's proposed construction team, to the Superintendent for review and approval, which shall not be unreasonably withheld. The Superintendent will approve the plans and specifications, schedule and construction team, or provide CWB with written comments thereon, within sixty (60) days of receipt. If the Superintendent does not deliver written comments on any of the plans and specifications, schedule or construction team within the sixty (60) day period, then such item shall be deemed approved by the Superintendent for purposes of this Agreement, only. If the Superintendent delivers written comments within the sixty (60) day period, CWB shall make such modifications to the plans and specifications, schedule and construction team as will address the Superintendent's concerns. Within fourteen (14) calendar days from the date the Superintendent's concerns are fully resolved, he or she will provide CWB with a Letter of Approval of the above elements.

7.3 Construction Commencement. Subject to the provisions of Section 7.5, CWB shall commence construction of CWB's Improvements within four (4) years of the Effective Date. If CWB fails to commence construction of CWB's Improvements by such date, the City may terminate this agreement by providing written notice to CWB and the parties shall have no further rights or obligations with respect to one another.

7.4 Inspection. The City shall have the right to inspect the construction site at reasonable times and upon reasonable notice to CWB to ensure construction is in compliance with this Agreement and with the approved plans and specifications.

7.5 CWB's Funding Responsibilities. CWB shall be fully responsible for and shall promptly pay all costs associated with CWB's Improvements including, but not limited to, all design, permitting and construction costs. City will complete the City Capital Investment, but will not provide any funds for CWB's Improvements. Prior to commencing construction of any portion of CWB's Improvements, CWB shall present evidence to the reasonable satisfaction of the Parks Finance Director that it has raised funds (*i.e.*, obtained cash or pledges or other commitments for grants, and/or donations) equal to one hundred percent (100%) of the reasonable anticipated cost of CWB's Improvements, including a reasonable contingency amount for potential cost overruns, changes and unforeseen conditions as follows: (a) not less than fifteen percent (15%) for site excavation and foundation work, any soil remediation chargeable to CWB, and any underground utility installation for which CWB is responsible; (b) not less than seven percent (7%) for remaining project hard costs. Upon completion of site and foundation work, the 15% contingency above is no longer required. Upon completion of fifty percent (50%) of the project, the 7% requirement for remaining project hard costs shall be reduced to five percent (5%) of the remaining project hard costs. In-kind contributions of

engineering, architectural and/or legal services and contributions of materials shall be deemed donated at fair market value and contribute toward CWB's funding requirement herein. If CWB fails to present such satisfactory evidence, City may terminate this Agreement by providing written notice to CWB, the parties shall have no further rights or obligations with respect to one another and CWB shall restore the Premises to their original condition if CWB shall have altered them in any way. In determining whether CWB has satisfied its funding requirement, volunteer labor shall be deemed donated at fair market value, based on current local industry standards and 100% of the volunteer commitment must be supported by firm pledges.

7.6 LEED Certification. CWB's Initial Improvements shall qualify for certification at the silver level under the US Green Building Council's rating system. CWB shall apply for and obtain the certification as part of the design and construction process and shall thereafter maintain such certification. Notwithstanding the foregoing, if CWB's Improvements will not qualify for LEED silver certification without making improvements to the surrounding site that would constitute a material change to the Park design, or there are other extenuating circumstances, then the Superintendent may waive the requirement of this paragraph.

7.7 Subsequent Improvements and Alterations. Following construction of CWB's Improvements, CWB shall not make any alterations, additions or improvements to the Premises without first submitting to the Superintendent professionally-prepared and stamped plans and specifications and a construction schedule for such work and obtaining the Superintendent's prior written approval thereof. Notwithstanding the foregoing, no approval shall be required for interior, non-structural alterations, additions, or improvements to the Premises.

7.8 Alteration Standards and Requirements. CWB covenants that all alterations, additions and improvements it causes to be made to the Premises will be constructed at CWB's sole costs and expense and will be (a) completed by licensed contractors approved by City; (b) built in accordance with Superintendent-approved plans and specifications and any conditions imposed by the Superintendent in connection therewith; (c) in conformity with first-class, commercial standards; (d) insured and bonded, for the City's benefit, by companies acceptable to City; (e) designed and constructed in a manner that does not negatively affect the structural integrity of the Premises or any of the Premises' systems; and (f) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Premises. CWB shall secure all governmental permits and approvals required for the work, and shall comply or cause its contractors to comply with all other applicable governmental requirements and restrictions, including RCW 39.12 pertaining to prevailing wages.

7.9 As-Built Drawings. Within ninety (90) days after the completion of CWB's Improvements, CWB shall deliver to the Superintendent a full set of "as-built" plans showing the details of the improvements made to the Premises by CWB. CWB shall deliver to the Superintendent as-built drawing for all future alterations, additions and improvements it makes to the Premises if typically produced for alterations and improvement of like character.

8. **Ownership of Alterations**. All alterations, additions and improvements to the Premises shall become City's property at the expiration or termination of this Agreement. At the

Superintendent's request, CWB shall execute a bill of sale or other documents in favor of City with respect to such alterations and/or improvements.

9. **CWB's Operations**.

9.1 Use of Premises. As City's willingness to enter into this Agreement with CWB was predicated, in part, on the nature of CWB's business, and the compatibility of such business with the use of the remainder of the Park, CWB shall use CWB's Improvements only for the Permitted Use and shall not use or permit the use of any portion of the Premises for any other business or purpose or in any manner inconsistent with this Agreement without City's prior written consent. City shall at all times have exclusive control and management of the Park including those areas reserved to City for park purposes hereunder and CWB shall promptly comply, at its sole cost and expense, with such reasonable rules and regulations relating to the use of the Premises and the Park as City, from time to time, may promulgate, provided that such rules and regulations shall not materially interfere with CWB's authorized business operations. Notwithstanding anything in this Agreement to the contrary, CWB expressly agrees that it will not cause any waste, debris or similar materials to accumulate anywhere on the Park, whether within or without the Premises and that any such materials that CWB permits to so accumulate shall immediately be deemed abandoned and available for disposal, at CWB's expense.

9.2 Alcoholic Beverages. Although the Premises are located in a City park area managed by City's Department of Parks and Recreation, prohibitions on the serving and consumption of alcoholic beverages on the Premises shall not apply to the extent that CWB may permit alcoholic beverages to be served within CWB's Improvements but not outside, unless pursuant to a Parks Department permit, and provided, further, that CWB is responsible for seeing that all required liquor permits/licenses are obtained.

9.3 Third-Party and High-Capacity Events. CWB may license the use of all or part of CWB's Improvements to individuals or organizations for special events, each event lasting no longer than three (3) consecutive days. Since Lake Union Park has limited capacity to handle multiple events with large numbers of attendees, if CWB reasonably anticipates that more than 150 people will be in attendance at any event on the Premises, CWB shall provide City with no less than thirty (30) days' advance written notice of the event. If City determines that the event would conflict with other high-capacity events that have already been scheduled to take place at the same time, City shall notify CWB within five (5) business days after receipt of CWB's notice. Upon receipt of such notice, CWB shall either reschedule the event or reduce the size of the event to less than 150 attendees.

9.4 Management and Operations Plan. CWB shall prepare and submit to the Superintendent, for his or her approval (which shall not be unreasonably withheld, conditioned, or delayed), an annual plan for the management and operation of the Premises. The first plan shall be due on or before the date that is thirty (30) days prior to CWB's occupancy of the Premises for operational purposes, and each subsequent plan shall be due on or before December 31st. The Management and Operations Plan shall include such information as the Superintendent may reasonably specify from time to time and as is typically required for

comparable Parks facilities, but at a minimum shall include a description of CWB's proposed capital improvements to the Premises (other than CWB's Improvements); the anticipated programming for the upcoming year; the proposed hours of operation for the upcoming year, CWB's estimate of the number of people served during the preceding year and projected for the upcoming year; the dollar amount of scholarships given for the past year and anticipated to be given for the upcoming year; and criteria for scholarship awards. City shall be deemed to have approved the Management and Operations Plan (and all uses and events noted therein) unless the Superintendent delivers to CWB written objections thereto within sixty (60) days after submission of the Management and Operations Plan to City. If the Superintendent delivers written comments on the Management and Operations Plan within the sixty (60) day period, City and CWB shall negotiate in good faith such revisions to the Management and Operations Plan as will satisfy the Superintendent's concerns. CWB may amend or modify the plan from time to time with the prior approval of the Superintendent, which approval shall not be unreasonably withheld, conditioned, or delayed. City shall be deemed to have approved the amended plan (and all uses and events noted therein) unless it rejects the amended plan in writing within twenty (20) days.

9.5 Joint Park Programming and Access Committees. CWB shall participate in a Joint Park Programming Committee with the purpose of ensuring that the programming offered in Lake Union Park is coordinated and compatible with the purpose of the park and its facilities, and a Park Access Committee with the purpose of ensuring access (vehicle, pedestrian, bicycle, parking) to Lake Union Park is compatible with the park design and park programs.

9.6 Compliance with Laws; Nondiscrimination.

9.6.1 General Obligation. CWB shall not use or permit the Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, ordinance or regulation, or for any purpose offensive to the standards of the community. CWB shall promptly comply, at its sole cost and expense, and ensure that its contractors and agents comply, with all laws, ordinances and regulations now in force or hereafter adopted relating to or affecting the renovation or improvement of the Premises or condition or use or occupancy of the Premises during the term of this Agreement.

9.6.2 Nondiscrimination. Without limiting the generality of Section 9.6.1, CWB 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.

9.7 Liens and Encumbrances. CWB shall keep the Premises free and clear of, and shall indemnify, defend and hold City harmless from, any and all, liens and encumbrances arising or growing out of any act or omission of CWB or any of its officers, employees, agents or subtenants. CWB shall inform City in writing of any lien filed against the Premises within ten (10) days of the filing date of the lien. If any lien is filed against the Premises, CWB shall either

cause the same to be fully discharged and released of record within ten (10) days after City's written demand therefor or, within such period, provide City with cash or other security acceptable to City in an amount equal to one and one-half (1½) times the amount of the claimed lien as security for its prompt removal. City shall have the right to disburse such security to cause the removal of the lien if City deems such necessary, in City's sole discretion. The indemnification and defense obligation of this Section shall survive the expiration or earlier termination of this Agreement.

9.8 Firearms Policy. CWB agrees to adopt and implement a policy prohibiting any person, except for law enforcement officers and on-duty security personnel, from possessing firearms on the Premises.

10. **Hazardous Substances**.

10.1 Definitions. For the purpose of this Article, the following terms are as defined below unless the context clearly requires a different meaning:

A. "Environmental or Safety Law" means any and all federal, state, regional, local or international statutes, regulations, rules, ordinances, orders, court or regulatory agency directives, permits, licenses, governmental authorizations and common law causes of action that apply to: (1) any hazardous substance or material regulated or restricted under any state or federal law, including, but not limited to, any petroleum or petroleum-based products; (2) any other pollutant, contaminant, or waste as established by federal, state or local laws, regulations or ordinances ; (3) the health or safety of persons; or (4) the protection of the environment or land use. "Environmental or Safety Law" includes past and future amendments and supplements to such laws, and all regulations promulgated thereunder.

B. "Hazardous Substances" means any hazardous, toxic, or dangerous substance, waste, or material that is regulated under any Environmental or Safety Law.

C. "Existing Hazardous Substances" means any Hazardous Substances existing on, in or under the Premises on the date of this Agreement.

D. "Unknown Hazardous Substances" means any Hazardous Substances existing on, in or under the Premises that have not been discovered or detected as of the date of this Agreement.

E. "Remedial Work" means all activities that are performed by or on behalf of CWB or the City in connection with the identification, investigation, characterization, assessment, excavation, cleanup, removal, mitigation, monitoring or containment of Hazardous Substances to meet the requirements of any federal, state or local law, regulation or ordinance or which are ordered by any court or any other federal, state or local governmental agency with appropriate jurisdiction.

10.2 Compliance with Environmental and Safety Laws; Correction of Violations. Throughout the Term of this Agreement, CWB shall conduct its activities on the Premises in compliance with all Environmental or Safety Laws. If CWB or any of CWB's employees, agents, licensees or contractors violates any applicable Environmental or Safety Law or any of the terms of this Agreement concerning the presence or use of Hazardous Substances on the Premises following the completion of the Remedial Work, then, upon receipt of notice of such violation or the expiration of all challenges and appeals by CWB of such notice, whichever occurs later, CWB shall promptly take such action as is necessary to mitigate and correct the violation. If the City or the Superintendent has reason to believe that CWB or CWB's agent or contractor is in violation of any Environmental or Safety Law, or that CWB's actions or omissions present a threat of violation or a threat of damage to the Premises or CWB's Improvements, then the City reserves the right, but not the obligation, upon reasonable prior notice to CWB, to act in place of CWB (for which purpose, only, CWB hereby appoints the City as its agent), to come onto the Premises or CWB's Improvements and to take such action as is necessary to ensure compliance or to mitigate the violation, all at CWB's sole cost and expense. The provisions of this paragraph shall be subject to the dispute resolution provisions of Article 28.

10.3 Hazardous Substances Discovered During Construction. Subject to the provisions of Section 10.7, CWB shall bear all remedial action costs and expenses arising from or related to any and all Existing Hazardous Substances and Unknown Hazardous Substances in, on or under the Premises. CWB shall immediately notify the Superintendent of any discovery of Unknown Hazardous Substances, and the parties' designated representatives shall immediately meet and confer concerning the appropriate actions to be taken for investigating and remediating or removing such Unknown Hazardous Substance(s). The parties shall work together in good faith to reach agreement on the appropriate course of action regarding Unknown Hazardous Substances with a minimum of delay to CWB's construction. Any dispute relating thereto that cannot be resolved by the parties' designated representatives shall be resolved after construction is complete in accordance with the dispute resolution procedures set form in Article 28.

10.4 Other Releases of Hazardous Substances. CWB shall promptly remove any and all Hazardous Substances released on the Premises or in CWB's Improvements by CWB or any of its employees, agents, licensees or contractors during the term of this Agreement. Upon the expiration or termination of this Agreement, CWB shall remove from the Premises and CWB's Improvements all Hazardous Substances on site as a result of any activities by or for CWB or any activities associated with the operation of the education center.

10.5 Standards for Removal and Remediation. CWB shall perform any removal and any remediation of Hazardous Substances in accordance with all applicable federal, state and local requirements, including but not limited to the transportation and disposal of any Hazardous Substances to a fully-licensed and permitted landfill or treatment, storage and disposal (TSD) facility. CWB shall further perform any removal and any remediation of Hazardous Substances to the reasonable satisfaction of the Superintendent, subject to the dispute resolution provisions of Article 28. CWB shall make available for inspection at CWB's place of business, upon reasonable request by the City, all records pertaining to investigation, remediation and disposal

of any Hazardous Substances from the Premises, and shall not destroy such records without prior City approval.

10.6 Completion of Remedial Work; Accounting and Offset.

(a) Once CWB has completed Remedial Work of Existing Hazardous Substances and Unknown Hazardous Substances during construction and renovation of the Premises, CWB shall provide the City with invoices and documentation establishing the nature, extent and cost of the work (the "Remedial Work Accounting"). The City shall have thirty (30) days to review the Remedial Work Accounting. If the City disagrees with the Remedial Work Accounting, then the City shall provide written notice of its disagreement within thirty (30) days. If the City does not provide written notice of disagreement within thirty (30) days of actual receipt of the Remedial Work Accounting, then the costs of the Remedial Work Accounting shall be deemed approved.

(b) With respect to the remediation of Existing Hazardous Substances and Unknown Hazardous Substances, the amount approved through the Remedial Work Accounting process shall be included in CWB's Capital Improvement Costs and offset against the Rent as described in Section 4.3.

10.7 Right of Termination. If in the opinion of CWB, the cost of Remedial Work (other than Remedial Work required under Section 10.4 above) is reasonably anticipated to exceed Two Hundred Thousand Dollars ($200,000.00), then CWB may notify the City in writing of its intention to terminate this Agreement at the end of thirty (30) days. In the event of termination, CWB shall thereafter have no further obligation to construct CWB's Improvements and CWB shall restore the Premises to their condition immediately prior to the date of this Agreement.

10.8 Reimbursement of City Costs. In addition to any remedy provided above, the City shall be entitled to full reimbursement from CWB whenever the City incurs any remedial action cost directly resulting from a violation by CWB or CWB's employees, licensees, agents or contractors of any Environmental or Safety Law or of the terms of this Article after the effective date of this Agreement, including, but not limited to; (a) the costs of any investigation, clean-up and other remedial activity; (b) the fees of consultants, contractors, and attorneys required for the remedial action; (c) fines and penalties assessed directly against the City; and (d) injuries to third persons or other property. Any request for reimbursement under this section shall be subject to the dispute resolution provision of Article 28.

10.9 Release.

(a) In addition to all other obligations contained in this Agreement, CWB shall release and hold the City free and harmless from any and all losses, damages, expenses and/or liabilities incurred by CWB arising out of any of the following: (i) the presence on, in or under the Premises or CWB's Improvements or the migration from the Premises or CWB's Improvements of any Hazardous Substance brought onto the Premises or CWB's Improvements by CWB or by any of its employees, licensees, agents or contractors, (ii) CWB's breach of any

provision of this Section 10, or (iii) any claims by CWB's employees, agents, contractors or subcontractors based upon delay in construction or other activity resulting from Remedial Work or other environmental remediation activities conducted during the term of the Agreement.

(b) In addition to all other obligations contained in this Agreement, the City shall release and hold CWB free and harmless from any and all losses, damages, expenses and/or liabilities incurred by the City arising out of any of the following: (i) the presence of Existing Hazardous Substances or Unknown Hazardous Substances on, in or under the Premises; or (ii) the transport or migration of any Existing Hazardous Substances or Unknown Hazardous Substances onto or beneath any other private or public property or into any surface water body or groundwater.

11. **Utilities**.

11.1 General. In constructing CWB's Improvements, CWB shall cause all utilities serving the Premises to be separately metered and billed directly to CWB to the extent practicable. CWB shall pay when due to the appropriate providers or to City, all charges for utilities for the Premises, including but not limited to, electricity, water and sewer, Surface Water Management Fees, data and telecommunications.

11.2 Refuse Collection; Recycling of Waste Materials. CWB shall be responsible for proper storage and removal of trash, litter pickup and recycling, consistent with City standards and Park rules and regulations.

11.3 Interruption. Except as a result of the negligence or willful misconduct of City, 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 utility services due to any cause whatsoever, and no temporary interruption or failure of such services shall relieve CWB from any of CWB's obligations hereunder or give CWB a right of action against City for damages. City has no obligation to provide emergency or backup power or other utilities for the Premises.

12. **Licenses and Taxes**.

12.1 Payment of License Fees and Taxes. Without any deduction or offset whatsoever, CWB shall be liable for, and shall pay prior to delinquency, all taxes (including leasehold excise and personal property taxes) and license and excise fees arising out of and applicable to CWB's use of the Premises, including all fees, charges, or costs for any governmental inspections or examinations relating to CWB's use and occupancy of the Premises.

12.2 Contests. CWB 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 CWB 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 CWB, and CWB hereby covenants to indemnify and hold City harmless from any such costs or expenses. The indemnification obligation contained in this Section shall survive the expiration or earlier termination of this Agreement.

13. **Care of Premises.**

13.1 General Obligation. CWB shall take good care of all improvements on the Premises and shall promptly repair all damage done to the improvements, normal wear and tear excluded. CWB shall maintain the improvements in a clean and neat fashion and to a standard found at other Parks properties similar in age, level of public use, and public visibility and to the Superintendent's reasonable satisfaction, permitting no objectionable odors to be emitted from the improvements and shall neither commit waste nor permit any waste to be committed thereon. CWB shall not permit any accumulation of trash on or about the Premises.

13.2 Minor and Major Maintenance Obligation. CWB shall be solely responsible for all maintenance of the improvements erected on the Premises during the Term including, but not limited to, repairs of cracked or broken glass, regular exterior painting and masonry maintenance, roof repairs and replacement and HVAC repair and replacement. The foregoing sentence does not extend to maintenance occasioned by an act or omission of City or its officers, agents, employees, or contractors, for which City shall be responsible. Subject to the provisions of Section 13.3, City shall maintain the Park common areas to the standard typical of other, similar park properties.

13.3 Custodial Service for Premises. At all times and at its own expense, CWB shall keep the interior of all improvements on the Premises, including the public restrooms, the entrance to the improvements and areas within ten (10) feet of the improvements' exterior walls in a neat, clean, safe, and sanitary condition; provided, however, that CWB shall have no obligation to maintain any landscaping, walkways or other Park amenities unless the same were damaged by an act or omission of CWB or of persons for whom CWB is responsible. CWB shall furnish dumpsters, which shall be located within the footprint of CWB's Improvements, and all cleaning supplies, materials and janitorial services needed to perform its obligations under this Section. CWB shall be responsible for the cost of dumpster and any pick-up service. CWB shall remove all garbage and recycling from the Premises at regular intervals and deposit the same into CWB's dumpster(s).

13.4 Boat Haul Out. During the term of this Agreement, CWB shall be entitled to the nonexclusive right to use the boat haul out area identified on **Exhibit A-1** to launch and retrieve boats. In no event shall CWB install or affix any equipment or machinery or other materials in or about the boat haul out area nor allow the boat haul out area to be unreasonably or permanently obstructed or impaired.

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

13.6 City Remedy upon CWB's Failure to Maintain Premises. If CWB fails to maintain the Premises in good order, condition and repair, City shall give CWB notice to undertake such work as is reasonably required to so maintain the Premises. If CWB fails to commence such work within thirty (30) calendar days after the date of City's notice and to

diligently prosecute it to completion, then City shall have the right, at its option and in addition to all other remedies, to undertake such work and to invoice CWB for the costs reasonably incurred by City in connection therewith and CWB shall promptly pay the same as Additional Rent. City shall have no liability to CWB for any damage, inconvenience, or interference with CWB's use of the Premises as a result of City's performing any such work, except to the extent it is City's, or its agents' or contractors' gross negligence or intentional misconduct.

13.7 Installation or Integration of Works of Visual Art on Premises. CWB agrees not to install or integrate on or in the Premises 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, unless CWB has obtained a full and unconditional waiver of the creator's "moral rights" with respect to such artwork.

13.8 CWB's Indemnification of City against Liability under Visual Artists Rights Act of 1990. CWB shall protect, defend, and hold City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of (a) the installation or integration of any work of visual art on or into the Premises; or (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any breach of Section 13.7 of this Agreement; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by CWB 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 and defense obligation contained in this Section shall survive the expiration or earlier termination of this Agreement.

14. **Signs and Advertising**.

14.1 Signs, Generally. Except for CWB's customary interpretive signage and signs authorized by the Superintendent in connection with the approval of CWB's Improvements, temporary signs permitted under Section 14.2, and the sign described in Section 14.3, CWB shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster, or any advertising matter whatsoever on the exterior portions of the Premises, without the Superintendent's prior written consent. CWB shall remove all signage at the expiration or earlier termination of this Agreement and repair any damage or injury to the Premises caused by such removal.

14.2 Temporary Signs. Temporary signs or banners not more than 24 square feet in size may be displayed on the Premises to advertise a special event beginning two weeks immediately before the event advertised, through the conclusion of such event.

14.3 Recognition. CWB shall install one sign on or about the exterior of the Premises with the Seattle Parks Department logo and a statement recognizing Seattle Parks and Recreation's ownership of Premises. The design and location of such sign are subject to the Superintendent's approval.

15. **Surrender of Premises**. At the expiration or sooner termination of this Agreement, CWB shall deliver the Premises, including any improvements thereon, to City in good repair and in a clean and neat condition, ordinary wear and tear, casualty, and condemnation excepted. Prior to such return, CWB 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. Any personal property remaining on the Premises will be deemed abandoned and City may remove the same at CWB's expense. In no event shall CWB remove floor coverings; heating or ventilating equipment; lighting equipment or fixtures; window or wall coverings; or other elements for which a Capital Improvement Rent Offset was granted, unless otherwise specifically directed by City in writing at the time when City approves their installation. CWB's obligations under this Section 15 shall survive the expiration or termination of this Agreement.

16. **Waiver; Indemnification**.

16.1 Waiver of Subrogation. CWB hereby waives any and all rights of subrogation against City for losses covered by insurance and will have its insurer endorse any policy required under this Agreement, to provide for such waiver.

17. **Insurance**. At all times throughout the Term of this Agreement, CWB shall comply with the requirements of **Exhibit** E with respect to insurance.

18. **Assignment or Sublease by CWB**.

18.1 Assignment or Sublease. CWB shall not sublet or encumber the whole or any part of the Premises, nor shall this Agreement 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 the Superintendent, whose consent may be given, withheld or conditioned in his, her, or its sole discretion. An assignment of this Agreement to a lender for security purposes shall constitute an assignment requiring the prior written consent of the Superintendent. The granting of consent to a given transfer shall not constitute a waiver of the consent requirement as to future transfers. Any assignment or sublease without the Superintendent's prior written consent, at the Superintendent's option, shall be void. No assignment or sublease shall release CWB from primary liability hereunder. Each assignment and sublease shall be by an instrument in writing in form satisfactory to the Superintendent.

18.2 Fees Due to City upon Transfer. If the Superintendent consents to any assignment or subletting, CWB shall pay the Superintendent a fee not to exceed twenty-three and one-half percent (23.5%) of one month's installment of Rent due (before any offset) to City, for expenses incurred in connection with processing of documents necessary to the giving of such consent and the additional monitoring and administration related to the same.

19. **Destruction**. If the improvements to the Premises are rendered partially or totally untenantable by fire or other casualty, and if the damage is repairable within twenty-four (24) 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), CWB shall

repair the Premises with due diligence and in addition, shall promptly repair, at its sole cost and expense, all damage to its personal and business property. If the improvements to the Premises are repaired, the Rent and Additional Rent shall be abated in the proportion that the untenantable portion of the Premises bears to the whole thereof, as City determines, for the period from the date of the casualty to the completion of the repairs. If the damage to the improvements to the Premises is uninsured or cannot be repaired within twenty-four (24) months from the date of the occurrence, CWB may terminate this Agreement upon sixty (60) days' written notice to City. If this Agreement is terminated due to casualty, City shall be entitled to all insurance proceeds payable on account of the loss to the improvements to the Premises.

20. **Eminent Domain**.

20.1 Taking. If all of the Premises are taken by Eminent Domain, this Agreement shall terminate as of the date CWB is required to vacate the Premises and all Rent and Additional Rent shall be paid to that date. The term "Eminent Domain" shall include the taking or damaging of property by, through or under any governmental or statutory authority, and any purchase or acquisition in lieu thereof, whether the damaging or taking is by government or any other person. If a taking of any part of the Premises by Eminent Domain renders the remainder thereof unusable for CWB's business, in the reasonable judgment of CWB, CWB may terminate this Agreement by written notice given to City not more than thirty (30) days after City gives CWB written notice of the taking, and such termination shall be effective as of the date when CWB is required to vacate the portion of the Premises so taken. If this Agreement is so terminated, all Rent and Additional Rent shall be paid to the date of termination. Whenever any portion of the Premises is taken by Eminent Domain and this Agreement 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 land to the condition they were in immediately prior to such taking, and CWB, 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 Rent payable hereunder shall be reduced from the date CWB is required to partially vacate the Premises in the same proportion that the usable area of the Premises taken bears to the total usable area of the Premises prior to taking.

20.2 Award. If this Agreement is terminated as a result of Eminent Domain, City reserves all rights to the entire damage award or payment for such taking and CWB waives all claim whatsoever against City for damages for termination of its leasehold interest in the Premises or for interference with its business. CWB hereby grants and assigns to City any right CWB 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. CWB, however, shall have the right to claim from the condemning authority all compensation that may be recoverable by CWB on account of any loss incurred by CWB in moving CWB's merchandise, furniture, trade fixtures and equipment and the cost of restoring its personal property.

21. **Default by CWB**.

21.1 Definition. If CWB violates, breaches, or fails to keep or perform any term, provision, covenant, or any obligation of this Agreement; or if CWB files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for CWB's assets or if CWB makes an assignment for the benefit of creditors, or if CWB 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 CWB shall be deemed in default ("Default").

21.2 City Remedies. If CWB 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 CWB, then City shall have the following nonexclusive rights and remedies at its option: (i) to cure such default on CWB's behalf and at CWB's sole expense and to charge CWB for all actual and reasonable costs and expenses incurred by City in effecting such cure as an Additional Charge; (ii) to terminate this Agreement; provided, however, that if the nature of CWB'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 CWB shall not be in default if it commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

21.3 Re-entry by City upon Termination. Upon the termination of this Agreement, City may reenter the Premises, take possession thereof, and remove all persons therefrom, for which actions CWB shall have no claim thereon or hereunder. CWB 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 CWB. City shall have the right to sell such stored property, after reasonable prior notice to CWB 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 CWB to City; the balance, if any, shall be paid to CWB.

21.4 Vacation or Abandonment. If CWB vacates or abandons the Premises in their entirety and fails to re-occupy them within thirty (30) days after City (1) delivers a notice to CWB's notice address set forth in Section 1.9, above, demanding such re-occupancy and (2) mails by certified or registered mail a copy of the notice to any forwarding address given by CWB to City in writing, CWB shall be in Default under this Agreement.

21.5 City's Non-exclusive Remedies upon Termination due to Default of CWB. Notwithstanding any re-entry by City and anything to the contrary in this Agreement, in the event of the termination of this Agreement due to the Default of CWB, the liability of CWB for all sums due under this Agreement provided herein shall not be extinguished for the balance of the Term of this Agreement. CWB 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 CWB's failure to perform its obligations under this Agreement or that in the ordinary course of things would be likely to result therefrom, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any costs incurred in authorizing others the use and occupancy of the Premises and in preparing the Premises for such use and occupancy, and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington. The provisions of this Section 21.5 shall survive the expiration or earlier termination of this Agreement.

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 CWB shall not be deemed a waiver of, or alter, affect or prejudice any other right or remedy that City may have under this Agreement 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 Agreement 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 Agreement, upon the written notice provided for herein, at any time that cause for cancellation or forfeiture may exist, or be construed so as to estop City at any future time from promptly exercising any other option, right or remedy that it may have under any term or provision of this Agreement.

23. **Quiet Enjoyment**. CWB, upon fully complying with and promptly performing all of the terms, covenants and conditions of this Agreement on its part to be performed, and upon the prompt and timely payment of all sums due hereunder, shall have and quietly enjoy the Premises for the Term set forth herein.

24. **Holding Over**. Unless otherwise agreed in writing by the parties hereto, any holding over by CWB after the expiration of the Agreement Term, whether or not consented to by City, shall be construed as a tenancy from month-to-month on the terms and conditions set forth herein. Either party may terminate any holdover tenancy by written notice delivered to the other party not later than twenty (20) days prior to the end of the final month. If CWB fails to surrender the Premises upon the expiration or termination of this Agreement without City's written consent, CWB 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. CWB's obligations under this Section shall survive expiration or termination of this Agreement.

25. **Notices**. Any notice, demand or request required hereunder shall be given in writing to the party's address set forth in Section 1.9 hereof by any of the following means: (a) personal service; (b) commercial or legal courier; or (c) registered or certified, first class mail, postage prepaid, return receipt requested. Such addresses may be changed by notice to the other parties given in the same manner as above provided. Notices shall be deemed to have been given upon the earlier of actual receipt, as evidenced by the deliverer's affidavit, the recipient's acknowledgment of receipt, or the courier's receipt, except in the event of attempted delivery

during the recipient's normal business hours at the proper address by an agent of a party or by commercial or legal courier or the U.S. Postal Service but refused acceptance, in which case notice shall be deemed to have been given upon the earlier of the day of attempted delivery, as evidenced by the messenger's affidavit of inability to deliver stating the time, date, place and manner in which such delivery was attempted and the manner in which such delivery was refused, or on the day immediately following deposit with such courier or, if sent pursuant to Subsection (c), forty-eight (48) hours following deposit in the U.S. mail.

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

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

28. **Dispute Resolution**. The parties shall make their best efforts to resolve disputes as expeditiously as possible through negotiations at the lowest possible decision-making level. If an issue cannot be resolved by negotiations between subordinate staff of CWB and City's Department of Parks and Recreation, the matter shall be referred to the Superintendent and CWB Executive Director. If those officials are unable to resolve the dispute within a period of 15 days after the matter has been referred to them for resolution, they shall meet during the immediately succeeding seven (7) days to select a mediator to assist in the resolution of the dispute. If the Superintendent and CWB Executive Director cannot agree upon a mediator within such seven (7) day period, either party may apply to the American Arbitration Association for the appointment of a mediator according to the process that is established by such entity for such action. CWB and City shall share equally the costs charged for the mediation of any dispute.

29. **Partial Invalidity**. If any court determines that any provision of this Agreement or its application to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Agreement, 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 Agreement shall be valid and be enforced to the fullest extent permitted by law.

30. **Force Majeure**. Neither City nor CWB 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 CWB from the timely payment of the Rent and Additional Rent due hereunder, when due.

31. **Counterparts**. The parties may execute this Agreement in counterparts, each of which shall be deemed to be an original having identical legal effect.

32. **Headings**. The section headings used in this Agreement are for purposes of convenience only, and do not alter in any manner the content of the sections.

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

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

35. **Time of Essence; Time Calculation Method**. Time is of the essence with respect to this Agreement. Except as otherwise specifically provided, any reference in this Agreement 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 Agreement to the word "month" means "calendar month."

36. **Standards**. CWB recognizes that, although it is operating its facilities as an independent operator, Seattle Parks and Recreation is organized and exists for the purpose of maintaining park and recreation facilities for the use and enjoyment of the general public. CWB, its agents and employees, will devote their efforts toward rendering courteous service to the public as though they were employees of City, with a view toward adding to the enjoyment of the patrons of this recreational facility.

37. **City's Control of Premises and Vicinity**. All common and other facilities provided by City are subject to City's exclusive control and management by City. Accordingly, provided that City acts reasonably to minimize the impacts on use of and access to the Premises, 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 CWB:

37.1 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. No alteration or change to the driveways or access points depicted on the site plan attached hereto as **Exhibit A-1** shall be made that would permanently materially and adversely affect CWB's operations within the Premises.

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

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

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

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

38. **City's Consent or Approval**. Whenever the consent of City or the Superintendent to any act to be performed by CWB is required under this Agreement (a) CWB must obtain the consent or approval in writing expressly for purposes of this Agreement, regardless of whether a consent or approval shall have been granted by City in its regulatory, public utility, or other capacity; and (b) unless otherwise expressly stated herein, such consent or approval shall not be unreasonably withheld, conditioned, or delayed.

No permission, consent, or approval of City or the Superintendent contained herein or given pursuant to this Agreement is, or shall be construed as, a representation or assurance that the matter consented to or approved complies with applicable laws, regulations, ordinances or codes, nor shall any such consent or approval be construed to authorize any failure to comply with any of the foregoing.

39. **Miscellaneous**.

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

39.2 Negotiated Agreement. The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement 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

CWB:

CENTER FOR WOODEN BOATS

By: _____

_____

Center for Wooden Boats

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 of Notary)

_____
(Legibly Print or Stamp Name of Notary)
Notary public in and for the State of Washington,
residing at _____

My appointment 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 of Notary)

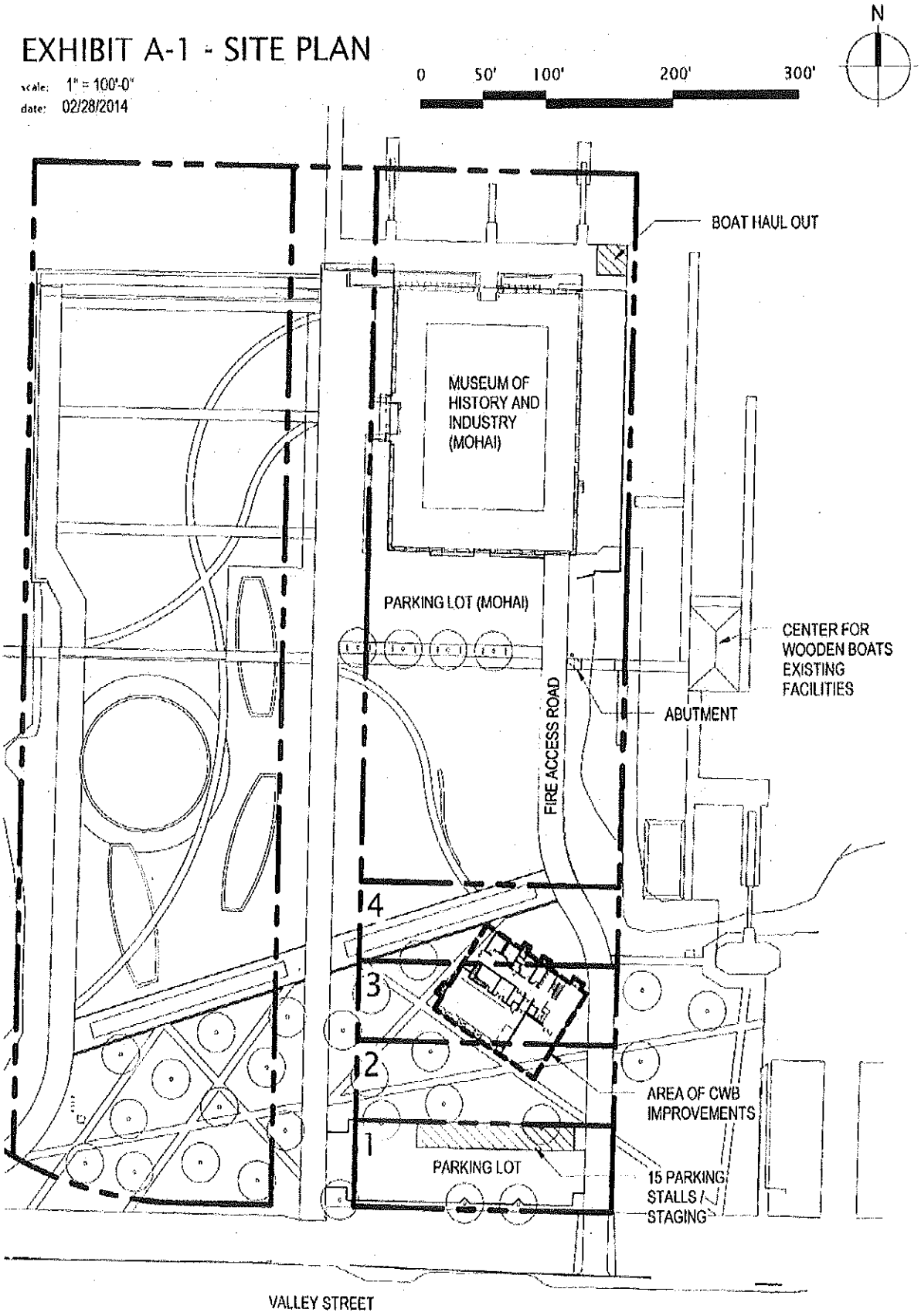
_____
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington,
residing at _____

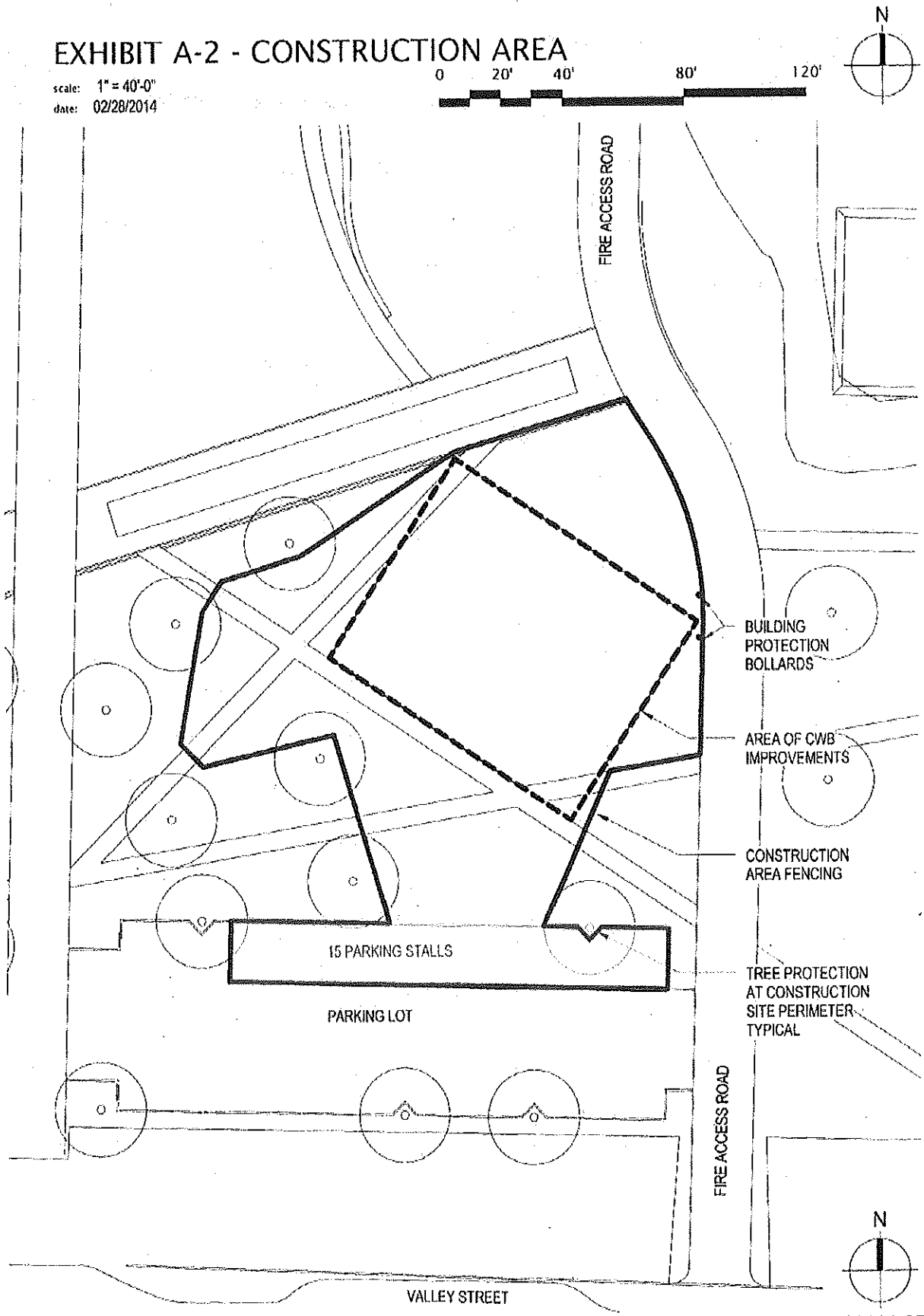
My appointment expires _____

EXHIBIT A-1 - SITE PLAN

scale: 1" = 100'-0"
date: 02/28/2014



Louis Webster
DPR Center for Wooden Boats Lease 2014 Amend ORD ATT 1
May 13, 2014
Version #1



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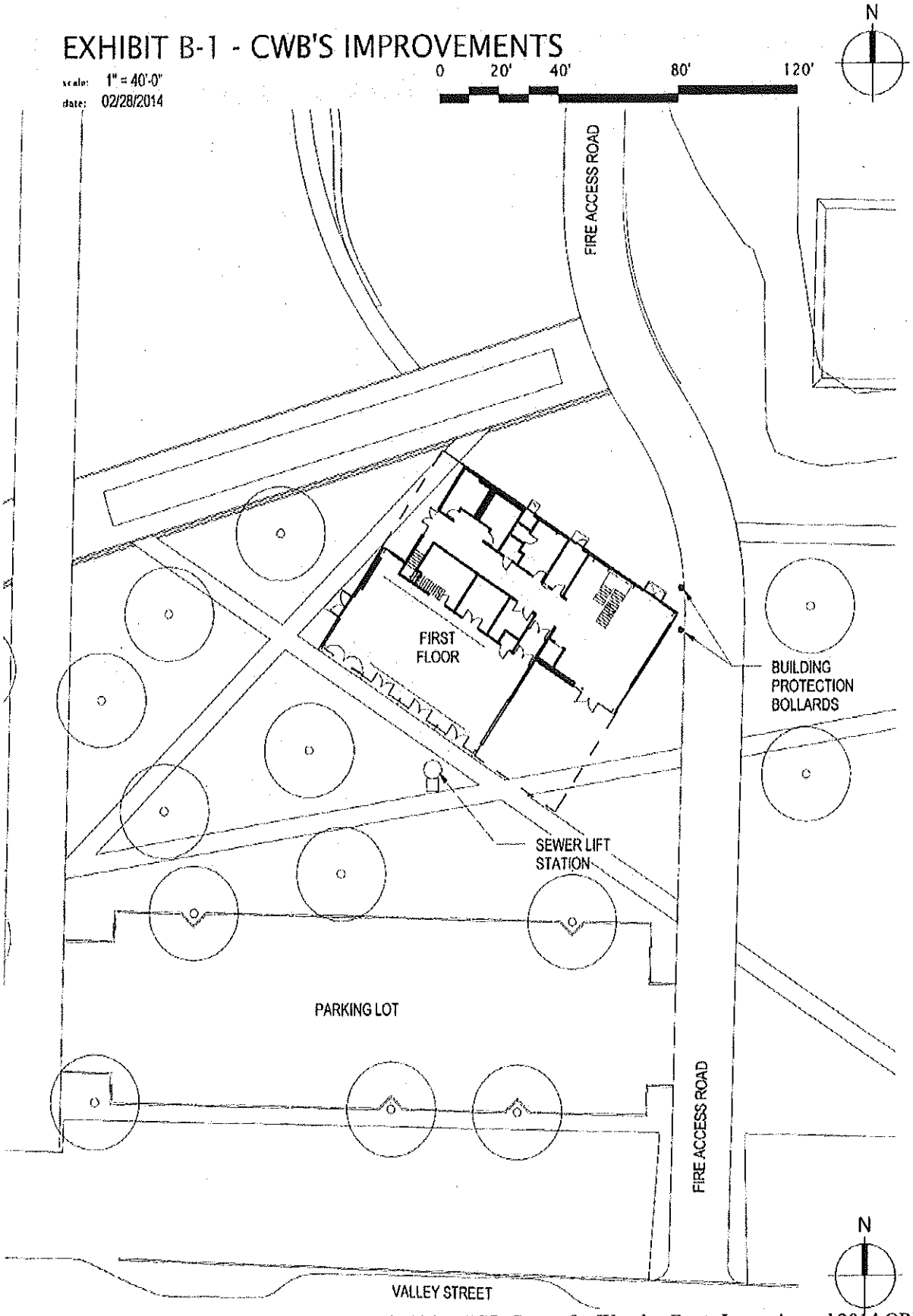

Louis Webster
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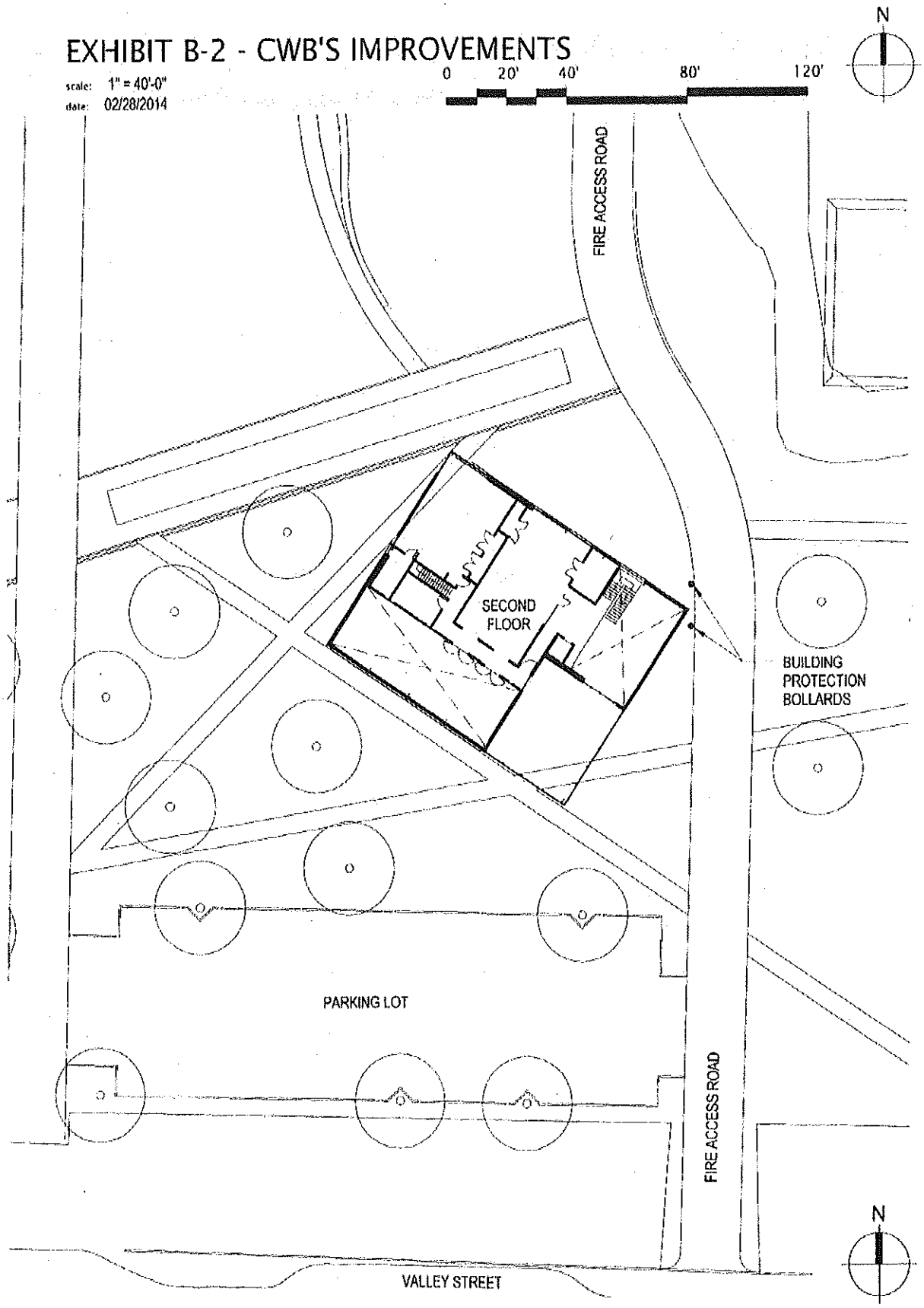


EXHIBIT C

CITY CAPITAL INVESTMENT

1. Grading. Grade and level the area included within the Premises as depicted on **Exhibit A-1** (the "Pad"); and install two inches (2") of crushed stone.

2. Utilities. Furnish the following utilities consistent with Phase II plans for Lake Union Park Construction:

   a. One (1) two and one-half inch (2 1/2") water service stubbed to within 5' of the Pad.
   b. Side sewer (minimum 4") connection stubbed to within 5' of the Pad at a low enough elevation to allow a water closet to be placed at slab elevation anywhere in the Pad. No additional storm line will be provided. The site is a combined system and the storm flows into the sanitary.
   c. Two (2) four inch (4") conduits from existing electrical vault (adequate for a 400 amp service) to within 5' of the Pad for primary power.
   d. One (1) four inch (4") conduit from telephone connection stubbed to within 5' of the Pad.

3. Abutment. Furnish the abutment for the gangway connecting the Park to Waterway #4 as depicted on **Exhibit A-1.**

EXHIBIT D

INSURANCE REQUIREMENTS

A. Insurance to be Secured by CWB. Prior to the commencement of any activity on the Premises, CWB (and its construction contractor, whenever any construction activity is occurring on the Premises) shall secure and shall thereafter maintain in full force and effect at no expense to City, insurance as specified below.

1. Commercial General Liability (CGL) Insurance, including:

- Premises/Operations
- Products/Completed Operations
- Personal/Advertising Injury*
- Contractual
- Fire/Tenant Legal
- Employers Liability/Stop Gap
- Host Liquor Liability*
- Pyrotechnic Liability Insurance*

*Not applicable to CWB's contractor

with a minimum limit of liability of $2,000,000 each occurrence combined single limit bodily injury and property damage, except:

- $ 1,000,000 each offense as respects Personal/Advertising Injury
- $ 100,000 each occurrence as respects Fire/Tenant Legal
- $1,000,000 each accident/employee as respects Employers Liability/Stop Gap.

The limits of liability required herein may be evidenced by primary insurance or any combination of primary and excess/umbrella liability insurance.

a. Host Liquor Liability Insurance with minimum limits of liability of $2,000,000 each Common Cause may be provided either by CWB any party or caterer using the Premises with CWB's consent.

b. Pyrotechnic Liability Insurance shall be required for any event requiring a permit from the Seattle Fire Marshall. Such insurance may be provided by CWB or by any party or caterer using the Premises with CWB's consent.

2. Automobile Liability insurance, including coverage for owned, non-owned, leased or hired vehicles as appropriate with a minimum limit of liability of $1,000,000 each occurrence combined single limit bodily injury and property damage.

3. Workers Compensation insurance in compliance with Title 51 of the Revised Code of Washington (RCW).

4. During such time as CWB is engaged in renovation of the Premises, CWB shall maintain, or cause its contractor to maintain, in full force and effect and at no cost to the City, builder's risk property insurance, on a replacement cost basis, subject to a maximum deductible of $25,000 each loss. In the event of a claim, CWB shall be responsible for paying any deductible under the policy except that CWB may require that any contractor pay all or a portion of the deductible to which the contractor caused or contributed to the loss or damage claimed.

5. Following completion of the Improvements, CWB shall maintain in full force and effect "all risks" property insurance, including earthquake and flood, on the Premises structures on a replacement cost basis based on the builder's risk amount of insurance, which amount shall be adjusted on each anniversary of the property insurance policy to reflect changes in the most recent annualized ENR Building Cost Index (ENR BCI. The deductible, payment of which shall be CWB's sole responsibility, shall be a maximum of $10,000 each loss, unless the Superintendent approves a different amount. Such property insurance shall include CWB's business personal property and trade fixtures. The placement and storage of business personal property in the Premises shall be the responsibility and at the sole risk of CWB. In addition, following beneficial occupancy of CWB's Improvements, CWB shall maintain business interruption insurance with sufficient limits of liability to fund CWB's rental obligations under Section 4 of the Lease.

B. Terms and Conditions. (Not Applicable to Workers Compensation Insurance).

1. Insurance shall be issued by an insurer rated A-VII or higher in the A.M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus lines by a Washington State licensed Surplus lines broker under the provisions of chapter 48.15 RCW, and is subject to the City's approval as to insurer, form and coverage.

2. Liability insurance shall include the City as an additional insured on a primary and non-contributory basis with all insurance and self-insurance the City maintains and shall protect the City from claims and risks in connection with activities CWB undertakes pursuant to this Agreement, or its use and occupancy of the Premises.

3. As respects property insurance (including builder's risk property insurance), CWB shall cause the insurer to name the City of Seattle as an additional insured as its interests may appear and as a loss payee, and to waive subrogation in favor of the City.

4. Any liability deductible of more than Fifty Thousand Dollars ($50,000) is subject to the City's approval,

5. Insurance shall not be cancelled without written notice of such cancellation being hand-delivered or mailed to the City not less than forty-five (45) days prior to the cancellation date, except thirty (30) days as respects insurance procured under the provisions of chapter 48.15 RCW (Surplus Lines) and ten (10) days as respects cancellation for non-payment of premium.

C. Evidence of Insurance. Certification of insurance coverage required under this Agreement shall be delivered to the following prior to any use or occupancy of the Premises under this Agreement.

Department of Parks and Recreation
Attention: Manager
Property and Acquisition Services
800 Maynard Ave S.
Seattle, WA 98134

A copy of the actual additional insured endorsement or blanket additional insured policy wording to the CGL insurance must be provided to document the City's additional insured status.

EXHIBIT E

PUBLIC BENEFITS

The Center for Wooden Boats "CWB" provides a gathering place where maritime history comes alive through direct experience and our small craft heritage is enjoyed, preserved, and passed along to future generations. CWB provides year-round free access to its collection of historically significant small craft and also working exhibits that keep traditional maritime crafts alive. CWB provides public access to the water, and to lifelong learning about the boats that carried forward the development of this region.

In partial consideration for the public support for the development of its new Education Center in Seattle's Lake Union Park and in fulfillment of its mission, CWB agrees that from and after the Opening Date of the Education Center through the Term of the Lease, it will provide:

1. Regional Maritime and Cultural History Museum. CWB will operate the Education Center as an integrated, publicly accessible regional maritime and cultural history museum with exhibits, events and educational programs. General public admission will be free.

2. School Programs. Develop and offer on-going educational programs for elementary, middle and high school classrooms and provide reduced fee and other scholarship assistance to students from schools that participate in federal free or reduced price school lunch programs or other groups that demonstrate need. In the event regional or other programs provide scholarship or transportation benefits to schools, CWB will participate in such programs.

3. Diversity in Programming. CWB will partner with other organizations to diversify the stories we tell and the experiences we offer.

4. City Use. Except for weekends and holidays, City shall have the right to use CWB's Education Center at no cost to City for up to three (3) City-sponsored events each year throughout the Term on an "as available" basis. City may reserve dates by contacting CWB at least one (1) week but not more than thirty (30) days in advance of each proposed use date. If, at the time of the request, there is no event or activity scheduled for the proposed use date, CWB shall reserve CWB's Improvements for City use. Any use by City shall be subject to CWB's standard Facilities Rental Contract, including deposit requirements (but excluding rental payment).

5. Restrooms. CWB will construct two public restrooms that shall be open and available for public use during CWB's hours of operation.

6. Meeting Space. CWB will provide meeting room space for noncommercial use by other maritime or community organizations for up to 10 hours a month on a first-come first-served basis, subject to demand for such meeting space, CWB's rules regarding use of such space and MOHAI's scheduling convenience. CWB will be compensated for (and may require

advance payment of) audio/visual, special security or staffing, special set up and other event special needs and costs, if CWB elects to provide the same.

7. Outdoor recreation and programs at Lake Union Park. CWB will make the Education Center available to the public consistent with CWB's role in providing access to the water, recreational and educational events and exhibits, and lifelong learning opportunities in the park.

Form revised: February 26, 2014

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Parks and Recreation	Donald Harris/684-8018	Forrest Longman/684-0331

Legislation Title:

AN ORDINANCE authorizing the Superintendent of the Department of Parks and Recreation to execute an amended and restated ground lease between the City of Seattle and the Center for Wooden Boats for development, operation and maintenance of an Education Center in Lake Union Park.

Summary of the Legislation:

The proposed legislation authorizes the Superintendent to amend the existing ground lease between the City and the Center for Wooden Boats, making changes to better reflect the project that has been developed since the original lease was signed in 2009.

Background:

In 2009, by Ordinance 123207, the City Council authorized a ground lease between the City and the Center for Wooden Boats (CWB) for construction of a new education center at Lake Union Park. The lease was amended in 2011 by Ordinance 123797 to remove a requirement that the City and State Department of Natural Resources have a signed agreement requiring the education center be used for park and recreation purposes only *before* the project got underway. Removal of this provision from the lease allowed CWB to increase its fund raising efforts as they were able to show their control of the site, and they are currently negotiating with DNR regarding their use of Waterway 4 on Lake Union.

CWB's plans are now well funded and they are ready to proceed with construction. As CWB prepared to get Department of Planning and Development approval for construction, they realized that the original legal description of the property leased was no longer correct since the building design had evolved. Given that City Council action was required to correct the legal description of the leased property, CWB and DPR agreed to revisit several provisions of the lease agreement.

The proposed amendments:

1. Correct the legal description for the leased property, reflecting the current location/design (very close to the same square footage as the original lease);
2. Modify the 15% contingency fund requirement, allowing the contingency amount to be reduced as construction proceeds thus allowing the Center to realize some cost savings;

3. Allow CWB to build the education center to a LEED Silver standard in lieu of the Gold standard;
4. Revise the unknown hazardous substances section to reduce CWB's responsibilities if unknown hazardous substances are found on site;
5. Change the name of the architect to the one currently doing the work for CWB; and
6. Exchange the earlier site plan and proposed improvements exhibits for current ones that have evolved since the original 2009 lease was signed.

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

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
No, the proposed lease amendments do not change the financial structure of the lease. The change to the contingency requirement is not anticipated to have any financial impact to the City. The change to the unknown hazardous substance section lessened CWB's responsibilities for hazardous substance clean-up, but the City may have been ultimately responsible as the property owner.

b) **What is the financial cost of not implementing the legislation?**
If the City chose not to amend the existing lease, CWB might abandon their plans to build the education center due to inordinate financial exposure from the unknown hazardous substance provisions, and the City would lose the rental income.

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

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** There are none.

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

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

g) **Does this legislation affect a piece of property?**
Yes. Attachment B shows a portion of Lake Union Park including the education center building pad location south of the Museum of History and Industry.

h) **Other Issues:** None

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

Attachment B: Site Plan

Attachment A
Seattle Department of Parks and Recreation

CONTRACT SUMMARY

May 19, 2014

Name of Contracting Party/ Lessee/ Concessionaire/ Other: Center for Wooden Boats (CWB)

Contract Type: Ground Lease, Amended and Restated

Non-Profit _X_ or For Profit ____

Term of Original Agreement: Twenty-five years beginning with the date of receipt of a Certificate of Occupancy for the proposed education center.

Purpose of Amendment: The purpose of the amendment is to change the legal description of the ground lease area, revise the construction contingency requirements, revise LEED building requirements, acknowledge a new architect for the project, revise language regarding unknown hazardous substances and include improved exhibits for the ground lease.

Brief description, overview, history, general terms and other pertinent info: In 2009, the City Council authorized a ground lease between the City and the Center for Wooden Boats for construction of a new education center at Lake Union Park (Ord. 123207). In 2011 the lease was amended to remove a requirement for a City/Department of Natural Resources agreement on waterway use that inhibited fundraising by CWB (Ord. 123797). Fundraising has progressed and the CWB is now ready to construct the education center per the terms of the ground lease.

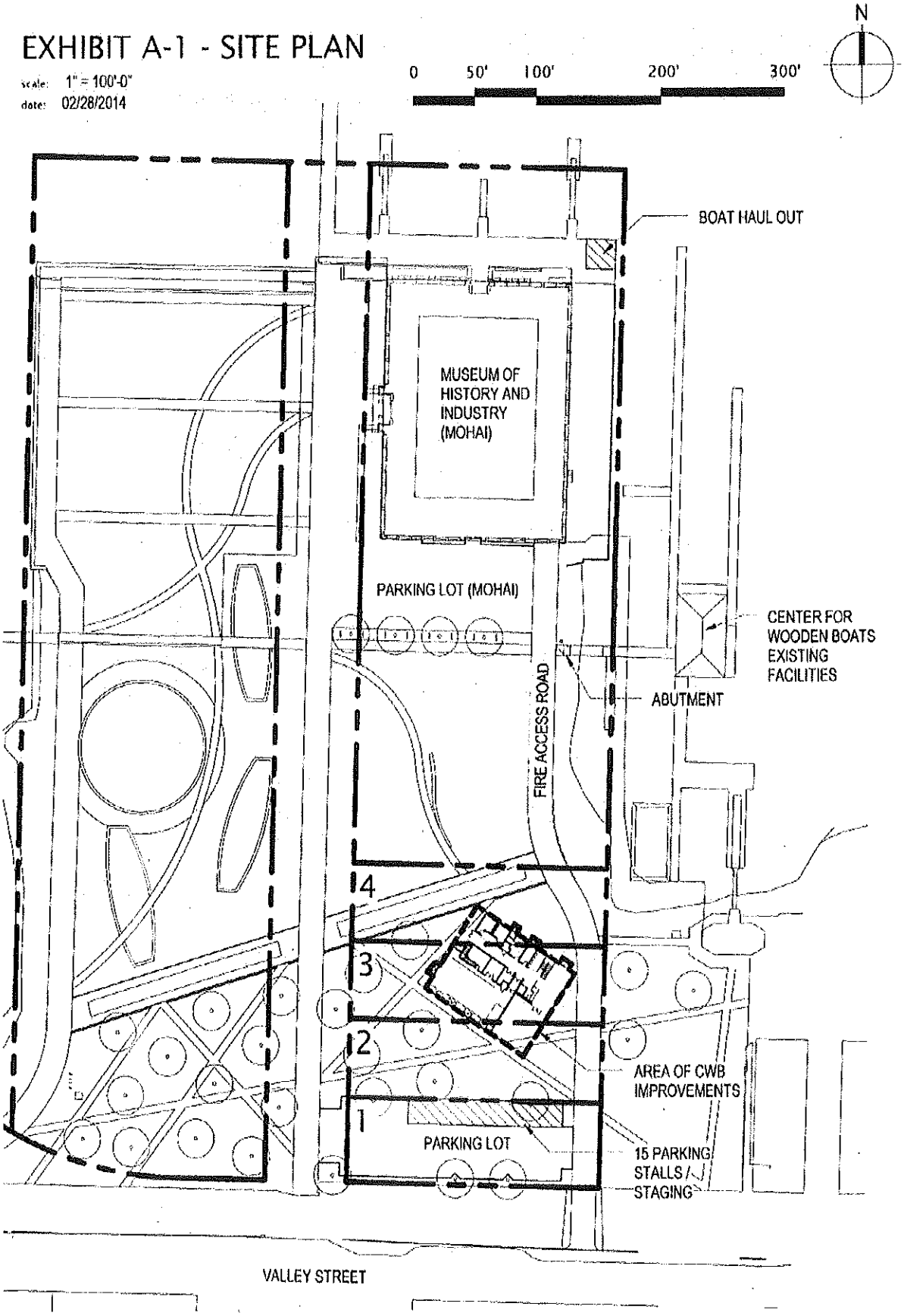
In 2014, CWB's plans for the education center evolved so as to require a change to the legal description of the ground lease. Given that City Council action was required to correct the legal description, CWB and DPR agreed to revisit several provisions of the original ground lease. Key changes include:

1. the 15% contingency fund requirement could be reasonably be modified to a lower level as construction proceeded thus allowing the Center to realize some cost savings;
2. CWB could build to a LEED Silver standard in lieu of the Gold standard;
3. list a new architect for the project;
4. reallocate responsibility for unknown hazardous substances, if any are discovered during construction; it was agreed that this section could be reasonably and fairly rewritten to protect the City and not unduly burden the Center;
5. substitute new exhibits that will assist DPR manage the lease.

Louis Webster
DPR Center for Wooden Boats Lease 2014 Amend FISC ATT B
May 19, 2014
Version #1

EXHIBIT A-1 - SITE PLAN

scale: 1" = 100'-0"
date: 02/28/2014



City of Seattle
Edward B. Murray
Mayor

July 8, 2014

Honorable Tim Burgess
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Burgess:

I am pleased to transmit the attached proposed Council Bill that authorizes the Superintendent of Seattle Parks and Recreation to amend and restate an existing ground lease with the Center for Wooden Boats (CWB) for a portion of Lake Union Park. CWB has finalized plans to build an education building on park property south of the Museum of History and Industry and is now prepared to begin construction.

The original ground lease with the Center for Wooden Boats was authorized by Ordinance 123207 in 2009 and was first amended in 2011 by Ordinance 123797 to remove a procedural requirement that was an impediment to fund raising efforts by the Center. The amendments proposed with this Council Bill more accurately reflect the planned development. Specifically, the amendments:

1. Correct the legal description of the leased area based on the evolution of building plans,
2. Modify the contingency funds required by the ground lease,
3. Revise the LEED standard to which CWB is required to build,
4. Allow substitution of CWB's approved architect and approved plans, and
5. Modify lease provisions having to do with unknown hazardous substances at the site.

None of the proposed amendments will have a significant impact on the size, design or use of the education building, or a financial impact to the City. Rather, the proposed amendments will better reflect the intended development.

Thank you for your consideration of this legislation. Should you have questions, please contact Donald Harris at 684-8018.

Sincerely,

Edward B. Murray
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Office of the Mayor
Seattle City Hall, 7th Floor
600 Fourth Avenue
PO Box 94749
Seattle, Washington 98124-4749

Tel (206) 684-4000
Fax: (206) 684-5360
Hearing Impaired use the Washington Relay Service (7-1-1)
www.seattle.gov/mayor