

EXAMPLE USE AGREEMENT/LEASE FOR THE GEORGETON STEAM PLANT

THIS LEASE (“Lease”) is entered into this ____ day of _____, 20__, by and between **THE CITY OF SEATTLE** (“City”), a city of the first class of the State of Washington, acting by and through its City Light Department (“City Light”), and _____ (“Lessee”) a [insert type of entity] organized under the laws of the State of _____.

RECITALS

AGREEMENT

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

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

1.1 **Premises.** The Georgetown Steam Plant and its grounds, situated on real property legally described on Exhibit A. **[NOTE: When City Light’s access easement from King County International Airport is granted, this will be listed as well.]**

1.2 **Commencement Date.** This Lease shall commence on _____, ____, 2018.

1.3 **Termination Date.** This Lease shall terminate on _____, ____, 20__, unless the Term of this Lease is extended pursuant to Section 3 of this Lease, or terminated earlier pursuant to Section ____ of this Lease. **[Twenty years after commencement. [Note to proposers: this is open to discussion with the chosen proposer]**

1.4 **Rent and Additional Charges.**

1.4.1 **Rent:** no rent shall be charged for the use of this facility. The rent consideration shall be in the nature of the provision by Lessee of certain services and performance of certain obligations related to the operation of the facility as a historic building and museum as described in this Agreement, including but not limited to public tours, historical interpretation, maintenance, janitorial and other public services.

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

1.5 **Notice Addresses.**

To City:	The City of Seattle City Light Department
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Attention:
Julianna Ross

P.O. Box 34023

Seattle, WA 98124-4023

To Lessee:

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

Exhibit A - Legal Description

Exhibit B – Map of GTSP Property

Exhibit C - Seattle Landmark Ordinance #111884 (including map showing boundaries)

Exhibit D - National Historic Landmark Designation (Designation Letter, dated 9/13/1984)

Exhibit E - Inventory of Non-fixed Equipment and Materials

2. **Premises**.

2.1 Grant. City hereby leases to Lessee and Lessee hereby leases from City those certain premises referenced in Section 1 (the “Premises”), which are located on the real property described on Exhibit A and as shown on Exhibit B, attached to and incorporated into this Lease.

2.2 Condition. City leases the Premises and Lessee accepts the Premises in its "AS-IS, WHERE IS" condition as of the date of commencement of this Lease.

2.3 Non-fixed equipment and materials. The City and the Lessee have inspected the contents of the Premises and Exhibit E reflects all non-fixed equipment and materials that City Light has made available to the Lessee for its use for the term of this lease. All such non-fixed equipment shall be returned in proper condition to City Light upon termination of the Lease.

2.4 Parking. Parking in connection with the Permitted Use of the Premises is available on the lawn to the east and south of the GTSP building. Once the GTSP Access Project is complete, there will be 40 parking spaces available.

2.5 Permitted Use. Lessee shall use the Premises in a manner that preserves this National and Seattle Historic Landmark per the Secretary of the Interior’s Standards for the Treatment of Historic Properties (SOIS), and Seattle Ordinance #111884, while:

- interpreting and protecting the Landmark and its history for the general public,
- fostering neighborhood identity and community pride.
- promoting arts, cultural, educational, and other community uses of and events/gatherings at the facility and its grounds,
- and promoting the participation and use of the Premises by the Georgetown and wider community, including historically underserved communities in Seattle.

2.6 Lessee shall not use the Premises for any purpose whatsoever other than the uses specifically permitted herein without the prior written consent of the City. (collectively, the “Permitted Uses”).

2.7 Alterations. City reserves the right from time to time (i) to install, use, maintain, repair, relocate and replace pipes, ducts, conduits, wires and appurtenant meters and equipment for utility services to the Premises (ii) to protect, alter, improve, renovate, restore, or expand the Premises in any manner the City deems necessary or desirable.

3. Lease Term.

3.1 Initial Term. This Lease shall be for a term (“Lease Term” or “Term”) beginning on the Commencement Date specified in Subsection 1.2 and ending on the Expiration Date specified in Subsection 1.3, unless the Lease Term is terminated earlier in accordance with the provisions of this Lease or extended as provided in Subsection 3.2 below.

3.2 Extended Terms. Lessee may extend this Lease for up to two successive individual extended term[s] of ten years [each] with the written approval of the City (“Extended Term[s]”) on the same terms and conditions set forth herein, or may be amended in writing by the Parties. Lessee may request to extend the Lease Term by giving City written request for and Extended Term at least one hundred eighty (180) days prior to the beginning of the Extended Term. The City shall then respond with its approval or non-approval at least forty-five (45) days prior to the beginning of the Extended Term. As used in this Lease, the “Lease Term” means the original term commencing on the Commencement Date and ending on the Expiration Date specified in Subsection 1.3, and any and all Extended Term[s] agreed upon by the City and Lessee.

4. Lessee 's Operations.

4.1 Use of Premises. Lessee shall use the Premises only for the Permitted Uses. As City's willingness to enter into this Lease with Lessee was predicated, in part, on the nature of Lessee 's activities, and the compatibility of such activities with the preservation and public enjoyment of the Premises as an historic landmark facility, Lessee shall not use or permit the use of the Premises for any other business, or purpose, or under any other name, without City's prior written consent. Lessee shall maintain the Premises in a clean, orderly and neat fashion (provided that Lessee shall not be responsible for maintaining those portions of the Premises that are City's responsibility to maintain under terms of this Lease)], and shall neither commit waste nor permit any waste to be committed on or within the Premises. Lessee shall not permit any accumulation of trash on or about the Premises. Lessee shall not create or contribute to the creation of a nuisance within or on the Premises.

4.2 Staff. Lessee shall provide qualified personnel or assign volunteers in sufficient numbers to meet their program staffing needs. Lessee shall review the conduct of any of its employees whose activities may be inconsistent with the proper administration of the Premises and take such action as is necessary to correct the situation. Lessee shall engage a licensed agency or company to perform background checks of all staff it intends to work with youth under 18 before they are hired. Lessee shall retain records of such background checks which will be available for inspection by the City upon request. Lessee shall provide City with written a list of the names and addresses of the members of its board of trustees and paid and volunteer staff working at the GTSP at the beginning of each calendar year, and notify City of changes throughout the year.

4.3 Management and Operations Plan. Each year during the term of the agreement, Lessee shall prepare and submit to the General Manager/Chief Executive Officer of Seattle City Light ("General Manager/CEO") an annual plan for the management and operation of the Premises (the "Management and Operations Plan"). The Lessee shall submit the initial Management and Operations Plan within thirty (30) days from the Commencement date. All subsequent Management and Operations Plans shall be due on or before October 1st of each year of the Lease Term. **[NOTE to proposers: the due dates of this annual Plan may be adjusted in negotiations to recognize the Lessee's fiscal year.]** The Management and Operations Plan shall include such information as the General Manager/CEO may reasonably request from time to time, and, at a minimum, shall include a description of (1) the previous year's activities and programs, the revenue (including gross receipts derived from the sublicensing of the Premises) and expenses, programs offered, number of people served, outreach efforts to traditionally underserved communities, and improvements made to the Premises; and (2) the upcoming year's programming, anticipated user fees/rental rates for third-party programming, the Lessee's outreach program to traditionally underserved communities, and anticipated improvements to the Premises. Lessee may amend or modify the Management and Operations Plan from time to time upon prior written notice to the General Manager/CEO.

4.4 Compliance with Laws; Nondiscrimination.

4.4.1 General Obligation. Lessee shall not use or permit the Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, ordinance or regulation, or for any purpose offensive to the standards of the community. Lessee

shall promptly comply, at its sole cost and expense, with all laws, ordinances and regulations now in force or hereafter adopted relating to or affecting the condition, use or occupancy of the Premises.

4.4.2 Nondiscrimination. Without limiting the generality of Subsection 4.4.1, Lessee agrees to and shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and The City of Seattle, including but not limited to Chapters 14.04, 14.10 and 20.42 of the Seattle Municipal Code, as they may be amended from time to time, and rules, regulations, orders and directives of the associated administrative agencies and their officers.

4.5 Liens and Encumbrances. Lessee shall keep the Premises free and clear of, and shall indemnify, defend and hold City harmless from and against, any and all liens and encumbrances arising or growing out of any act or omission, or breach of this Lease or its use, improvement or occupancy of the Premises by Lessee or any of its principals, officers, employees agents, contractors, subcontractors, or permittees or licensees. If any lien is so filed against the Premises, Lessee shall either cause the same to be fully discharged and released of record within ten (10) days after City's written demand for such discharge or release, 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 it necessary, in City's sole discretion.

4.6 Hazardous Substances. Lessee shall not, without City's prior written consent, keep on or about the Premises any substance designated as, or containing any component now or hereafter designated as hazardous, dangerous, toxic or harmful and/or subject to regulation under any federal, state or local law, regulation or ordinance ("Hazardous Substances"), except customary office, kitchen, cleaning and other related supplies in normal quantities handled in compliance with applicable laws. With respect to any Hazardous Substances stored with City's consent, Lessee shall promptly, timely and completely comply with all governmental requirements for reporting and record keeping; submit to City true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities; within five (5) days after City's request therefor, provide evidence satisfactory to City of Lessee's compliance with all applicable governmental rules, regulations and requirements; and comply with all governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment and disposal of Hazardous Substances. Any and all costs incurred by City and associated with City's inspections of the Premises and City's monitoring of Lessee's compliance with this Subsection 4.6, including City's attorneys' fees and costs, shall be Additional Charges and shall be due and payable to City within ten (10) days after City's demand therefor, if Lessee's violation of this Subsection 4.6 is discovered as a result of such inspection or monitoring. Lessee shall be fully and completely liable to City for any and all cleanup costs and expenses and any and all other charges, expenses, fees, fines, penalties (both, civil and criminal) and costs imposed with respect to Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances in or about the Premises. Lessee shall indemnify, defend and hold City harmless from any and all of the costs, fees, penalties, charges and expenses assessed against, or imposed, upon City (as well as City's attorneys' fees and costs) as a result of Lessee's use, disposal,

transportation, generation and/or sale of Hazardous Substances on or about the Premises. The indemnification obligation of this subsection shall survive the termination of this Lease.

5. **Sale of Merchandise and Food.** Lessee may only sell general merchandise or food if such sales solely benefit Lessee and Lessee obtains all required approvals and permits. The sale and serving of all merchandise and food must comply with all applicable requirements and laws, such as those pertaining to health, serving and selling alcoholic beverages, fire and building safety. Sales of tobacco or cannabis products (including but not limited to e-cigarettes) are forbidden. Lessee shall obtain all required permits and complies with all applicable laws regarding the serving and sales of alcoholic beverages. Lessee shall retain records of such permits which will be available for inspection by the City upon request.

6. **Additional Concession Fee.** Commencing on the first (1st) anniversary of the Commencement Date, Lessee shall pay the City annually, as an “Additional Charge”, ten percent (10%) of gross receipts that are derived from its commercial use of the Premises during the immediately preceding one-year period. Lessee shall retain records of such gross receipts that are derived from the sublicensing of the Premises for a period of six years which will be available for inspection by the City upon request.

7. **Utilities.**

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

7.2 **Refuse Collection; Recycling of Waste Materials.** Lessee shall provide all necessary housekeeping and janitorial services for the Premises to a level consistent with other similar publicly-accessible facilities and operations and to the General Manager/CEO’s reasonable satisfaction. Lessee shall be responsible for proper storage and removal of trash, litter pickup and recycling consistent with City standards.

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

8. **Licenses and Taxes.** Without any deduction or offset whatsoever, Lessee shall be liable for, and shall pay prior to delinquency, all taxes, license and excise fees and occupation taxes

covering the business conducted on the Premises and all personal property taxes and other impositions levied with respect to all personal property located at the Premises; Lessee shall be responsible for, and shall pay prior to delinquency, all fees, charges, or costs, for any governmental inspections or examinations relating to Lessee's use and occupancy of the Premises.

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

9. Alterations by Lessee. Lessee shall not make any alterations, additions or improvements in or to the Premises without first submitting to City professionally-prepared plans and specifications for such work and obtaining City's prior written approval thereof. Lessee understands and agrees that the aforementioned SOIS will be a primary consideration of the City in its review and approval or rejection of such plans and specifications for any work on the Premises proposed by Lessee. Lessee covenants that it will cause all alterations, additions and improvements to the Premises to be completed at Lessee's sole cost and expense by a contractor approved by City and in a manner that (a) is consistent with the City-approved plans and specifications and any conditions imposed by City in its sole discretion in connection therewith; (b) is in conformity with first-class, commercial standards; (c) includes acceptable insurance coverage for City's benefit with the City named as an additional insured on such insurance coverage; (d) does not affect the structural integrity of the Premises or any of the Premises' systems; (e) does not adversely affect the preservation of the historic character defining features of the Premises; and (f) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Premises. Lessee shall secure all governmental permits and approvals required for the work; shall comply with all other applicable governmental requirements and restrictions; and shall reimburse the City for any and all expenses incurred in connection therewith. Lessee understands and agrees that "all government permits and approvals" includes required approvals from the City of Seattle Landmarks Preservation Board, that seeking such approvals will be the responsibility of the Lessee and that such approvals will be sought only after Lessee has received written approval for the work as described in this Section 9. If the Landmark Preservation Board's approves something other than what the City previously approved, then the Lessee shall request approval from the City of the revised plan before implementing it. Lessee shall complete design and construction of all improvements and alterations within the Premises in compliance with all permitting and legal requirements, including but not limited to compliance with applicable building codes and with the Americans with Disabilities Act (ADA). Lessee expressly acknowledges that the provisions of the ADA may exceed requirements contained in building codes and other regulations and that such instances, the ADA requirements shall control. Within ninety (90) days after the completion of any alteration, addition or improvement to the Premises, Lessee shall deliver to City a full set of "as-built" plans of the Premises showing the details of all alterations, additions and improvements made to the Premises by Lessee. Except as provided in Section 14 with regard to concurrent negligence, Lessee shall indemnify, defend and hold City harmless from and against all losses, liabilities, damages, liens, costs, penalties and expenses (including attorneys' fees, but

without waiver of the duty to hold harmless) arising from or out of Lessee's performance of such alterations, additions and improvements, including, but not limited to, all which arise from or out of Lessee's breach of its obligations under terms of this Section 9. All alterations, additions and improvements (expressly including all light fixtures; heating and ventilation units; floor, window and wall coverings; and electrical wiring), except Lessee's moveable trade fixtures, exhibits, audio-visual equipment, appliances, and other equipment not affixed to the Premises (including without limitation furniture, computers, point of sale systems and registers) shall become the property of City at the expiration or termination of this Lease without any obligation on its part to pay for any of the same. At City's request, Lessee shall execute a deed or bill of sale in favor of City with respect to such alterations and/or improvements. Notwithstanding the foregoing, Lessee shall remove all or any portion of such alterations and/or improvements on the expiration or termination of this Lease if City specifically so directs Lessee.

10. **Care of Premises.**

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

10.2 **Joint Annual Inspection of Premises.** In order that a high standard of physical appearance, operations, repair, and maintenance is maintained, the Parties shall conduct a joint inspection of the Premises, annually.

10.3 **Custodial Service for Premises.** Lessee shall at its own expense, at all times, keep the Premises and areas immediately adjacent thereto in a neat, clean, safe, and sanitary condition; and keep the glass of all windows and doors serving such areas clean and presentable. Lessee shall furnish all cleaning supplies and materials needed to operate such areas in the manner prescribed in this Lease; Lessee shall provide all necessary janitorial service to adequately maintain the inside of such areas using a company approved by City. The Lessee shall submit its list of cleaning supplies, materials and procedures to the City for the City's approval as appropriate for use on historical surfaces and equipment. Lessee will be responsible for maintaining the grounds of the Premises in good condition and presentable to the public at all times.

If, after the City provides written notice to Lessee of Lessee's failure to comply with this Section, the City, at its option, may take any action to correct or mitigate Lessee's noncompliance, and in such event, upon receipt of written invoices from City, Lessee shall promptly pay the entire actual and reasonable cost thereof as an Additional Charge. City shall have the right to enter the Premises at any time for such purposes.

10.4 Use of tobacco and similar products. The use of tobacco or cannabis products (including but not limited to e-cigarettes) are forbidden on the Premises, including the grounds.

~~10.4~~**10.5 Routine Maintenance and Repair.** Lessee shall arrange and pay all costs for routine maintenance and repairs to the Premises and all building systems thereof, including but not limited to electrical and mechanical systems, glass, heating and plumbing systems, furniture, fixtures, and equipment. All work shall be performed in accordance with a plan

approved by the General Manager/CEO and to the General Manager/CEO's reasonable satisfaction, and shall comply with all applicable laws, rules, regulations, and City policies.

10.5.10.6 Major Maintenance and Repair.

~~10.5.1~~10.6.1 City's Responsibility. City will provide and be responsible for the following maintenance and repair of the Premises:

1. All necessary maintenance and repairs to the roof of the Premises building.
2. All necessary maintenance and repairs to the exterior envelope of the Premises building.
3. All necessary maintenance and repairs to the exterior doors of the Premises building.
4. All maintenance and repairs to supporting columns, beams and floor as may be necessary to protect the integrity and safety of the Premises structure.
5. All necessary major maintenance and repairs to the electrical, heating, ventilation and plumbing system of the Premises building as they exist and to the level of functionality and operation that exists at the Commencement Date.
6. All necessary maintenance and repairs to the property's fencing and gates.
7. All necessary maintenance and repairs as necessary as a result of failure of electrical or mechanical systems of the Premises building as they exist and to the level of operation that exists at the Commencement Date, or the roof, exterior shell and exterior doors of the Premises building as they exist and to the condition and level of functionality that exists at the Commencement Date.

The City's responsibilities and obligations in this Section 10.5.1 will be limited to repairs that City in its sole discretion deems necessary, reasonable and provided for within the existing City staffing level and approved budget.

~~10.5.2~~10.6.2 Lessee's responsibility. Lessee will provide and be responsible for:

1. All necessary maintenance and repairs to those components of the electrical, heating, ventilation and plumbing systems as the Lessee may have augmented or modified after the Commencement Date.
2. All necessary maintenance and repairs to the interior of the facility for any improvements that may have been installed or constructed by the Lessee, or are otherwise not included in 10.5.1 #4, above.

3. All necessary maintenance and repairs to any structures that the Lessee may add to the property outside the main Premises building.

~~10.6~~10.7 Prohibition Against Installation or Integration of Any Work of Visual Art on Premises Without City's Consent. City reserves to and for itself the right to approve or disapprove of the installation or integration on or in the Premises of any “work of visual art,” as that term is defined in the Visual Artists Rights Act of 1990, as now existing or as later amended, and to approve or disapprove of each and every agreement regarding any such installation or integration. Lessee shall not install on or integrate into, or permit any other person or entity to install on or integrate into, the Premises any such work of visual art without City’s prior, express, written consent. City's consent to the installation of any such art work may be granted, granted upon one or more conditions, or withheld in City's discretion

~~10.7~~10.8 Lessee’s Indemnification of City Against Liability under Visual Artists Rights Act of 1990. Lessee shall protect, defend, and hold City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys’ fees and costs) arising as a consequence of (a) the installation or integration of any work of visual art on or into the Premises; or (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any breach of Subsection 10.7 of this Lease; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by Lessee or any of its officers, employees or agents. This indemnification obligation shall exist regardless of whether City or any other person employed by City has knowledge of such installation, integration, or removal or has consented to any such action or is not required to give prior consent to any such action. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Lease.

11. Communications of Board Actions. The Lessee will send to the City copies of any agendas and minutes of Lessee’s Board of Directors or Trustees meetings and proceedings, for which such agendas and/or minutes concern the Premises.

12. Security/keys/access cards. **[NOTE to proposers: We need to work out exactly how to phrase this. These are the points that City Light thinks should be included:**

- **The Lessee should maintain the direct control of the keys and access cards and the ability to add their staff and volunteers on the access list without requiring action by City Light.**
- **City Light needs a reasonable number of keys or access cards for City Light to access independently.**
- **The Lessee (or perhaps its contracted security service?) will receive and respond to alarms. The responsibility for the overall security of the Premises will be the Lessee’s, not City Light’s.**
- **Within these constraints, if any of City Light’s existing security/alarm equipment would be useful to the Lessee, City Light would make it available to them.**

- **There may be a brief initial transition period, during which time City Light would retain responsibility for security.]**

13. **Signs and Advertising.**

13.1 **Signs, Generally.** Lessee shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster, or any advertising matter whatsoever anywhere in or about the Premises, without the General Manager/CEO's prior written consent. Lessee shall remove all signage at the expiration or earlier termination of this Lease and repair any damage or injury to the Premises. Signs affixed to the Steam Plant building or otherwise within the boundaries of the Seattle Landmark may also require the approval of the Seattle Landmarks Preservation Board under Section 9.

13.2 **On-Premises Signs.** Lessee may install permanent exterior signage only with the prior written approval of the General Manager/CEO. Temporary signs or banners not more than 24 square feet in size may be displayed on or about the Premises to advertise a special event beginning two weeks immediately before the event advertised, through the conclusion of such event. Exterior signage shall include the Premises' name, Lessee's name and the Seattle City Light logo.

13.3 **Recognition.** Lessee shall include a statement and the Seattle City Light logo on or in its printed materials stating, in effect, that: "The Georgetown Steam Plant is owned by Seattle City Light."

14. **Surrender of Premises.**

14.1 **General Matters.** At the termination of the Lease, Lessee shall return the Premises to City in the same condition in which received on the Commencement Date (or, if altered, then the Premises shall be returned in such altered condition unless otherwise directed by City pursuant to Section 9), except for reasonable wear and tear, and casualty and condemnation damages not resulting from or contributed to by the negligent or intentional acts or omissions of Lessee. Prior to such return, Lessee shall remove its moveable trade fixtures and appliances and equipment that have not been attached to the Premises and shall repair any damage resulting from their presence or removal. In no event shall Lessee remove floor coverings; heating or ventilating equipment; lighting equipment or fixtures; or floor, window or wall coverings unless otherwise specifically directed by City in writing at the time when City's approval of their installation is issued. Lessee's obligations under this Section 14 shall survive the termination of this Lease. Lessee shall indemnify City for all damages and losses suffered as a result of Lessee's failure to remove any of Lessee's personal property, voice and data cables, wiring and communication lines and moveable trade fixtures and appliances, or failure to vacate and redeliver the Premises to the City on a timely basis.

14.2 **Cable and Wiring.** Notwithstanding any provision to the contrary in this Lease and if the City so directs, on or by the Termination Date, or if this Lease is terminated before the Termination Date, within fifteen (15) days after the effective termination date, whichever is earlier, Lessee shall remove all voice and data communication and transmission cables and wiring installed by or for Lessee to serve any telephone, computer or other equipment located in that portion of the Premises, which wiring and cabling shall include all of the same located within the

interior and exterior walls and through or above the ceiling or through or below the floor of such portion of the Premises or located in any equipment room, vertical or horizontal riser, raceway, conduit, channel, or opening connecting to the portion of the Premises to be vacated and surrendered to City as of such Termination Date or earlier termination. Lessee shall leave the mud rings, face plates and floor boxes in place.

15. **Waiver; Indemnification.**

15.1 **Lessee's Indemnification.** Except as otherwise provided in this section, Lessee shall indemnify, defend (using legal counsel reasonably acceptable to City) and save City, and the City's elected officials, officers, agents, employees and contractors harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable personnel and overhead costs and attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to any property arising out of or in connection with (i) Lessee's occupation, use or improvement of the Premises, or that of any of its employees, agents, invitees, licensees, volunteers, contractors or subcontractors, (ii) Lessee's breach of its obligations under this Lease, or (iii) any act or omission of Lessee or any subtenant, licensee, assignee or concessionaire of Lessee, or of any officer, agent, employee, guest or invitee of any of the same in or about the Premises. Lessee agrees that the foregoing indemnity specifically covers actions brought by its own employees. This indemnity with respect to acts or omissions during the Lease Term shall survive termination of this Lease. The foregoing indemnity is specifically and expressly intended to, constitute a waiver of Lessee's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the extent necessary to provide City with a full and complete indemnity from claims made by Lessee and its employees, to the extent of their negligence. Lessee shall promptly notify City of casualties or accidents occurring in or about the Premises. **CITY AND LESSEE ACKNOWLEDGE THAT THEY SPECIFICALLY NEGOTIATED AND AGREED UPON THE INDEMNIFICATION PROVISIONS OF THIS SECTION 15.**

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

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

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

16. **Insurance:**

16.1. **Lessee Furnished Coverages and Limits of Liability:** Lessee shall, at no expense to the City, maintain, and cause its subtenant(s), if any, to maintain in full force and effect the following minimum limits of insurance, and adhere to all terms and conditions below, at all times beginning on the Commencement Date and ending on the Expiration Date of this Lease.

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

\$1,000,000 per Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal/Advertising Injury Liability
\$ 1,000,000 Damage to Premises Rented to You
\$2,000,000 Liquor Liability for any events where alcohol will be served

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

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

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

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

16.1.1 Automobile Liability insurance at least as broad as ISO CA 00 01 including coverage for owned, non-owned, leased or hired vehicles as

applicable, with a minimum limit of \$1,000,000 each accident for bodily injury and property damage.

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

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

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

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

16.2 Terms and Conditions for Lessee's Insurance.

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

16.2.1 Required Separation of Insured Provision; Cross-Liability Exclusion and other Endorsements Prohibited: Lessee's insurance policy shall include a "separation of insureds" or "severability" clause that applies

coverage separately to each insured and additional insured, except with respect to the limits of the insurer's liability. Lessee's insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City of Seattle from coverage or asserting a claim under the Lessee's insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. Lessee's CGL policy shall NOT include any of the following Endorsements (or their equivalent endorsement or exclusions): (a) Contractual Liability Limitation, (CGL Form 21 39 or equivalent), b) Amendment Of Insured Contract Definition, (CGL Form 24 26 or equivalent), (c) Limitation of Coverage to Designated Premises or Project, (CGL Form 21 44 or equivalent), (d) any endorsement modifying or deleting the exception to the Employer's Liability exclusion, (e) any "Insured vs. Insured" or "cross-liability" exclusion, and (f) any type of punitive, exemplary or multiplied damages exclusion. Lessee's failure to comply with any of the requisite insurance provisions shall be a material breach of, and grounds for, the immediate termination of the Agreement with the City of Seattle; or if applicable, and at the discretion of the City of Seattle, shall serve as grounds for the City to procure or renew insurance coverage with any related costs of premiums to be repaid by Lessee or reduced and/or offset against the Agreement.

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

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

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

and indemnify the City to the same extent as the City would be protected as an additional insured for primary and non-contributory limits of liability as required herein by an insurer.

16.3 Property Insurance Coverage and Limits.

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

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

16.3.3 The City may change the terms of its insurance in Section 3.A. at any time based on market conditions, with no compensation due to the Lessee.

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

the Lessee or both as fiduciary. This waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, whether or not the person or entity paid the insurance premium directly or indirectly, and whether or not the person or entity has an insurable interest in the property damaged

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

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

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

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

16.5.4 Pending receipt of the documentation specified in this Section 15, Lessee may provide a copy of a current complete binder. An ACORD certificate of insurance will not be accepted in lieu thereof.

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

SPU contact email address or mailing, if that's preferred.

The certificate holder shall be:
City of Seattle

Address same as directly above

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

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

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

Notwithstanding said insurance, the Lessee shall be obligated for the full and total amount of any damage, injury or loss caused by negligence of the Lessee, or any of its agents, officers and employees or through use or occupancy of the Premises.

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

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

19. **Destruction.** If 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) City shall repair the Premises; otherwise City may elect to terminate this Lease. Rent and Additional Charges shall be abated in the proportion that the untenantable portion of the Premises bears to the whole thereof, as the City determines, for the period from the date of the casualty to the completion of the repairs. If the damage to the Premises is uninsured or cannot be repaired within twenty-four (24) months from the date of the occurrence, City or Lessee may terminate this Lease upon sixty (60) days' written notice to the other. If thirty percent (30%) or more of the Premises is destroyed or damaged, then, Lessee may elect to terminate this Lease upon written notice to City. City shall advise Lessee of City's election to terminate by giving notice to Lessee thereof within thirty (30) days after the occurrence. In the event of damage by casualty, Lessee shall, at its sole cost and expense, repair all damage to its own personal property. Except in the event of City's gross negligence, intentional misconduct or breach of this Lease, City shall not be liable to Lessee for damages, compensation or other sums for inconvenience, loss of business or disruption arising from any repairs to or restoration of any portion of the Premises.

20. **Eminent Domain.**

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

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

21. **Default by Lessee**.

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

21.2 City Remedies. If Lessee has defaulted and such Default continues or has not been remedied to the reasonable satisfaction of the General Manager/CEO within thirty (30) days after written notice thereof has been provided to Lessee, then City shall have the following nonexclusive rights and remedies at its option: (i) to cure such default on Lessee's behalf and at Lessee's sole expense and to charge Lessee for all actual and reasonable costs and expenses incurred by City in effecting such cure as an Additional Charge; (2) to terminate this Lease;

provided, however, that if the nature of Lessee's obligation (other than monetary obligations and other than vacation or abandonment of the Premises) is such that more than thirty (30) days is required for performance, then Lessee shall not be in default if it commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

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

21.4 Vacation or Abandonment. If Lessee vacates or abandons the Premises in their entirety and fails to reoccupy them within thirty (30) days after City (1) delivers a notice to Lessee's notice address set forth in Section 1.5 above demanding such reoccupancy and (2) mails by certified or registered mail a copy of the notice to any forwarding address given by Lessee to City in writing, Lessee shall be in default under this Lease.

21.5 City's Non-exclusive Remedies upon Termination due to Default of Lessee. Notwithstanding any reentry by City and anything to the contrary in this Lease, in the event of the termination of this Lease due to the Default of Lessee, the liability of Lessee for all sums due under this Lease provided herein shall not be extinguished for the balance of the Term of this Lease. Lessee shall also be liable to City for any other amount (excluding consequential or specific damages) necessary to compensate City for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any costs incurred in authorizing others the use and occupancy of the Premises and in preparing the Premises for such use and occupancy, and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington. The provisions of this Subsection 21.5 shall survive the expiration or earlier termination of this Lease.

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

construed so as to estop City at any future time from promptly exercising any other option, right or remedy that it may have under any term or provision of this Lease.

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

24. **Termination for Convenience.** Notwithstanding anything else in this Lease to the contrary, the Lessee may, at any time and without liability of any kind to City, terminate this Lease upon ninety (90) days' written notice to.

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

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

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

28. **Notices.** Any notice, demand or request required hereunder shall be given in writing to the party's address set forth in Subsection 1.5 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.

29. **Successors or Assigns.** All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon City, Lessee and, subject to the terms of Sections 17 and 188, their respective heirs, administrators, executors, successors and permitted assigns, and upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

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

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

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

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

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

35. **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.

36. **Execution by City and Lessee; Effective Date.** Neither City nor Lessee shall be deemed to have made an offer to the other party by furnishing the other party with a copy of this Lease with particulars inserted. No contractual or other rights shall exist or be created between City and Lessee until all parties hereto have executed this Lease and the appropriate legislative

authority approves it. This Lease shall become effective on the date (the “Effective Date”) on which this Lease is executed by City and Lessee and approved by the Seattle City Council. City shall have no liability to Lessee and shall have the right to terminate this Lease upon written notice to Lessee if this Lease is legislatively disapproved.

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

38. **Continuous Operation.** Lessee shall keep the Premises open and use them to transact business with the public daily during hours as follows:

_____ [To be adopted from the proposal] or as otherwise may be approved by the General Manager/CEO. Subject to the General Manager/CEO’s prior approval, Lessee may, upon posting a written notice to the public of not less than one (1) week in duration prior to any approved closure, close the Premises or a portion thereof for a reasonable period for repairs or any approved remodeling, or for taking inventory. Lessee shall close to accommodate reasonable operational requirements of City’s business, upon thirty (30) days’ prior written notice to Lessee, and Lessee shall immediately close in the case of any emergency as determined by the General Manager/CEO ; provided, however, that if Lessee shall close pursuant to this sentence at the direction of City, and if Lessee remains closed at the direction of City for more than three (3) days, then Lessee’s Additional Charges shall be prorated for the duration of the closure in the proportion that the number of days of the closure bears to the number of days of the month. Lessee shall furnish an approved sign at the Premises entrance advising the public of any approved closure, unless closed at the direction of City.

39. **Standards.** Lessee recognizes that, although it is operating its facilities as an independent operator, City Light is organized and exists for the purpose of serving the public. Lessee, its agents and employees, will devote their efforts toward rendering courteous service to the public as though they were employees of the City, with a view of adding to the enjoyment of the patrons of this facility.

Lessee shall operate and conduct the facilities on the Premises in a businesslike manner, and will not permit any conduct on the part of Lessee’s employees, which would be detrimental to City’s operations.

40. **City’s Control of Premises and Access Road** All common and other facilities provided by the City in or about the Premises are subject to the City’s control and management. Accordingly, the City may do any and all of the following (among other activities in support of City Light’s and other municipal objectives), all without the City unreasonably interfering with Lessee’s operations and rights under this Lease:

40.1 The City may increase, reduce, or change in any manner whatsoever the number, dimensions, and locations of walks, buildings, landscaping, service areas, and parking areas in and around the Premises;

40.2 The City may regulate all traffic within and adjacent to the Premises, including the access road between Ellis Avenue and the GTSP Building, and the operation and parking of vehicles of Lessee and its invitees, employees, contractors, agents, and guests.⁴⁰

40.3 The City may erect, display, and remove erect, display, and remove promotional, educational, or other informational materials and signs, and permit special events on, adjacent to, and nearby the Premises.

40.4 The City may promulgate, from time to time, reasonable rules, regulations, and policies regarding the use and occupancy of any City property, including but not limited to the Premises.

41. **Lessee's Records.** Lessee shall keep true, full, and accurate books of account setting forth Lessee's operations and receipts, together with any other information related to the rent consideration provided, or that will affect the determination of Additional Charges. City shall be allowed after five (5) days' prior written notice to Lessee to inspect Lessee's books of account at Lessee's office and to procure audits thereof by an auditor at City's sole cost and expense (except as provided below). If in the reasonable judgment of such auditor Lessee's books of account are incomplete or improperly reflect the information necessary for an accurate determination of the Rent, or if the audit shall show that the reports submitted by Lessee understated Lessee's receipts by more than three percent (3%) thereof for any year covered by the audit, the costs and fees for such audit shall be paid by Lessee to City. If an audit discloses any willful or intentional effort to understate Lessee's receipts, then, at City's option, Lessee may be required to surrender possession of the Premises under the provisions of Section 21 of this Lease. Lessee shall retain all books of accounting and any other information that will affect the determination of Additional Charges for a period of six (6) years after the expiration or termination of this Lease, and Lessee shall make them available for inspection at Lessee's office within ten (10) days of City's prior written demand therefor. Lessee's obligations under this paragraph shall survive expiration or termination of this Lease.

42. **Miscellaneous.**

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

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

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

CITY:

LESSEE:

THE CITY OF SEATTLE

By: _____

By: _____

Print Name/Title: _____

Department of Parks and Recreation

EXHIBIT A

Legal Description

EXHIBIT B

Map of GTSP Property

EXHIBIT C

Seattle Landmark Ordinance #111884 (including map showing boundaries)

EXHIBIT D

National Historic Landmark Designation (Designation Letter, dated 9/13/1984)

EXHIBIT E

Inventory of Non-fixed Equipment and Materials