RESOLUTION R-5740

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE AGREEMENT TO LEASE WITH SLAPSHOT LLC, TO EFFICIENTLY FACILITATE CONSTRUCTION OF THE KRAKEN ICEPLEX KIRKLAND & KIRKLAND COMMUNITY CENTER.

WHEREAS, in December 2025, the City Council approved Resolution R5704, authorizing a public/private partnership between the City of Kirkland and the Seattle Kraken to facilitate construction of a new iceplex and community center at the former Houghton Park & Ride, which will feature two NHL ice rinks, a public restaurant, a team store, and a City-operated community center; and

WHEREAS, the approved Agreement to Lease requires building permit approval before closing on the Ground Lease, but a late contractor change has delayed the Kraken from obtaining the building permit, which will also likely delay substantial completion of the project; and

WHEREAS, to keep construction on track and efficiently address Kraken's financing needs, Kraken is requesting an amendment to the Agreement to Lease removing the pre-permit requirement for closing on the Ground Lease and making some additional modifications to the previously approved Ground Lease, specifically extending the substantial completion date in the Ground Lease, correcting the timing for when Kraken will being paying into the capital maintenance fund, and updating entity names; and

WHEREAS, City staff have negotiated an amendment that preserves all the necessary protections and benefits to the City in the original agreement while accommodating the Kraken request.

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager or his designee is hereby authorized and directed to execute on behalf of the City of Kirkland an Amendment to the Agreement to Lease in substantially similar form to that attached to this resolution as Attachment 1, which also modifies the provisions of the Ground Lease attached to the Agreement to Lease, through Exhibit C to Attachment 1.

Passed by majority vote of the Kirkland City Council in open meeting this 7th day of July, 2026.

Signed in authentication thereof this 7th day of July, 2026.

Kelli Curtis, Mayor

Attest:

~~Anastasiya Warhol, City~~ Clerk
Emilee Ferguson, Deputy City Clerk

AMENDMENT TO AGREEMENT TO LEASE

THIS AMENDMENT TO AGREEMENT TO LEASE (this "**Amendment**") is made as of July ___, 2026 (the "**Effective Date**"), by and between the City of Kirkland, a municipal corporation (the "**City**"), and Slapshot LLC, a Delaware limited liability company ("**Developer**").

RECITALS:

A. The City and Developer are parties to that certain Agreement to Lease dated as of December 31, 2025 (the "**Agreement**"), which sets forth the parties shared intent, outlines prerequisites to closing the Ground Lease (as hereinafter defined), and defines conditions under which the Ground Lease will be executed upon Closing.

B. The Agreement contemplated that Developer would seek a single complete permit covering the entire Project. Due to a late change contractor delay, Developer instead pursued a phased permitting approach, seeking multiple permits in sequence rather than waiting for issuance of one complete permit. Pursuant to an Early Access Agreement dated as of June 18, 2025 and amended on May 31, 2026 (together, the "**Access Agreement**"), by and among Developer, Kirkland Ice Center LLC, and the City, Developer has been performing certain preconstruction work, including staging and installation of fencing and temporary power, and vegetation removal.

C. Closing on the Ground Lease is a prerequisite to close on Developer's financing, and to enable Developer to access financing for the Project, the City agrees to modify the conditions precedent set forth in the Agreement to allow Developer to close on the Ground Lease following a phased permitting approach.

D. All capitalized terms used but not defined herein shall have the meanings set forth in the Agreement.

NOW THEREFORE, the parties agree as follows:

1. **Conditions Precedent**. The City acknowledges that Developer is pursuing all Entitlements required to construct the Project via phased permitting, however, as of the Effective Date, the final building permit has not yet been issued. The City agrees that Developer may proceed to Closing the Ground Lease prior to issuance of the final building permit to allow Developer to close on its construction financing and commence certain construction work as described in the Access Agreement. Accordingly, the Agreement is amended as follows:

(a) <u>Section 6.2.4.4</u>. Section 6.2.4.4 currently states:

> "6.2.4.4. Prior to the Closing Date, Developer shall have obtained all permits necessary to commence construction of the Project and closing on its financing for the Project. Developer shall provide copies of such permits to the City prior to the Closing Date."

This language is hereby deleted in its entirety and replaced with the following:

> "6.2.4.4. Notwithstanding anything to the contrary contained in this Section 6.2, the City agrees that Developer may proceed to Closing on the Ground Lease prior to issuance of the final building permits, provided, however, that following Closing, Developer shall continue to follow the design process set forth in the Agreement, including without limitation, Section 6.2 of the Agreement. Developer understands and acknowledges that issuance of Project building permits by the City

requires compliance with the terms of the Agreement, including without limitation, Section 6.2 of the Agreement."

(b) Section 8.1.2. Section 8.1.2 currently states:

"8.1.2. **Entitlements**. Developer shall have received Final Approval with respect to the various Entitlements required for the Project."

This section is hereby deleted in its entirety and will instead show as intentionally omitted.

(c) Section 8.2.5. Section 8.2.5 is hereby modified as follows, as shown in legislative markup with additions shown in underline:

"8.2.5. **Deliverables**. Developer shall have completed all tasks, permits, drawings, specifications, and other documents and deliverables (including, without limitation, all project documents) set forth in Section 6.2 ("**Deliverables**") for those permits obtained by Developer prior to the date of Closing."

(d) Section 8.2.6. Section 8.2.6 currently states:

"8.2.6. **Final Approval**. Developer shall have received Final Approval with respect to the various Entitlements required for the Project."

This section is hereby deleted in its entirety and will instead show as intentionally omitted.

(e) Section 9.3.4. Section 9.3.4 currently states:

"9.3.4. Two (2) duly executed counterparts of the sublease agreement between the City and Developer with respect to the Community Center Sublease."

This section is hereby deleted in its entirety and will instead show as intentionally omitted.

(f) Section 9.4.4. Section 9.4.4 currently states:

"9.4.4 Two (2) duly executed counterparts of the Community Center Sublease."

This section is hereby deleted in its entirety and will instead show as intentionally omitted.

(g) Section 9.5.3. Section 9.5.3 is hereby modified as follows, as shown in legislative markup with additions shown in underline and deletions shown in strikethrough:

"9.5.3. Deliver to the Developer: (i) a conformed copy (showing all recording information thereon) of the Memorandum of Lease; (ii) a fully executed original of the Ground Lease; and (iii) a fully executed original of the General Assignment; and ~~(iv) a fully executed original of the Community Center Sublease; and~~"

(h) Section 9.5.4. Section 9.5.4, related to the City's Deposit of Documents into Escrow, is hereby modified as follows, as shown in legislative markup with additions shown in underline and deletions shown in strikethrough:

> "9.5.4. Deliver to the City: (i) a conformed copy (showing all recording information thereon) of the Memorandum of Lease; (ii) a fully executed original of the Ground Lease; and (iii) a fully executed original of the General Assignment. ~~; and (iv) a fully executed original of the Community Center Sublease~~

(i) Section 9.9. A new Section 9.9 is hereby added as follows:

> "9.9. **Community Center Sublease**. The Community Center Sublease shall be entered into following Substantial Completion of the Community Center."

2. **Ground Lease**. The form of the Ground Lease set forth as Exhibit C in the Agreement is hereby deleted in its entirety and replaced with the form of attached hereto as Exhibit C (which revised form shows the revisions from the original form of Ground Lease set forth in the Agreement).

3. **Extent of Modification**. The Agreement, together with this Amendment, represent the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, either oral or written. Except as expressly modified herein, all provisions of the Agreement shall remain in full force and effect.

4. **Conflict**. In the event of any conflict or inconsistency between the terms and provisions of this Amendment and the terms and provisions of the Agreement, the terms and provisions of this Amendment shall control.

[*Signatures on following page*]

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

CITY:

City of Kirkland

By: ____________________________
Name: Kurt Triplett
Title: City Manager

DEVELOPER:

Slapshot LLC,
a Delaware limited liability company

By: ____________________________
Name: Victor de Bonis
Title: President

EXHIBIT C

Revised Form of Ground Lease

[Attached]

GROUND LEASE

THIS GROUND LEASE (the "**Lease**") is made and entered into as of ____________, 20__ (the "**Commencement Date**"), by and between the City of Kirkland, a municipal corporation ("**Lessor**"), ~~and______________~~and Kirkland Ice Center LLC, a Delaware limited liability company ("**Lessee**").

RECITALS:

A. This Lease concerns certain real property located in the City of Kirkland, King County, State of Washington. The real property is comprised of an approximately [______] acre parcel of land more particularly described in the attached Exhibit A (the "**Land**"). The buildings, structures, parking areas, landscaping and other improvements located on the Land as of the Commencement Date are collectively referred to as the "**Existing Improvements**".

B. The Land, the Existing Improvements, together with any and all buildings, structures, systems, facilities and fixtures currently located and to be located within the Land pursuant to this Lease, as well as all easements and other appurtenant rights, are referred to collectively as the "**Premises**".

C. Lessee has agreed to demolish the Existing Improvements and Develop the Land by constructing, maintaining, and operating a two story Seattle Kraken branded, two (2) ice rink facility with rink seating, restaurant, and a parks and recreation community space (the "**Project**" or "**Leasehold Improvements**" as further defined in Section 11.1), consisting of gross square footages of approximately (i) 62,500 square feet of ice rinks and seating, (ii) no less than 2,300 square feet of restaurant space, and (iii) approximately 13,500 square feet of public community center space, of which 12,614 is usable square feet (the "**Community Center**").

D. Lessee is willing to construct the Leasehold Improvements and operate the Premises as the Project in accordance with the terms and conditions set forth in this Lease on the express condition that Lessor enter into a long-term lease of the Premises on the terms and conditions set forth below.

E. Lessor is willing to enter into a long-term lease of the Premises on the express condition that Lessee constructs the Leasehold Improvements and thereafter operates the Premises as the Project during the Term of this Lease on the terms and conditions set forth below.

F. Lessor and Seattle Hockey Partners LLC ("**Developer**") are the parties to that certain Agreement to Lease dated as of ~~[______________]~~December 31, 2025, (the "**Agreement to Lease**") pursuant to which Developer has the right to lease the Premises from Lessor upon the satisfaction of certain conditions precedent. Developer has assigned its interest in the Agreement to Lease to Lessee by separate agreement. The conditions precedent for execution of the Lease having now been satisfied, Lessor and Lessee desire to enter into this Lease.

NOW, THEREFORE, in consideration of the rents to be paid hereunder and of the agreements, covenants and conditions contained herein, the parties hereby agree as follows:

1. Basic Lease Information

The following is a summary of basic lease information. Each term or item in this Section 1 shall be deemed to incorporate all of the provisions set forth below pertaining to such term or item and to the extent there is any conflict between the provisions of this Section 1 and any more specific provision of this Lease, the more specific provision shall control.

Lessor:	City of Kirkland 123 5th Avenue Kirkland, WA 98034 Attention: Kurt Triplett Phone: 425-486-3001 Email: CityManagersOffice@kirklandwa.gov And also email: CityAttorneyOffice@kirklandwa.gov
Lessee:	~~[__________________]~~ Kirkland Ice Center LLC c/o Seattle Hockey Partners LLC 10601 5th Ave. NE, Suite 100 Seattle, WA 98125 Attn: Lance Lopes Email: llopes@seattlekraken.com
Term:	[________] (34) years from Commencement Date.
Commencement Date:	Date of this Lease
Expiration Date:	__________day and month of __, 2026_ **[NOTE: Commencement Date + 34 years.]**
Base Rent (Section 6):	Base Rent in the amount of $1.00.
Use (Section 10):	The Premises shall be used by Lessee for the Development and operation of an ice-skating facility with associated amenities, such as locker rooms, a restaurant(s), and a community space

2. **Definitions**

All capitalized terms not otherwise defined in this Lease shall have the meanings set forth in the Glossary attached to this Lease and made a part hereof.

3. **Lease of Premises; Reservation of Rights**

3.1. **Lease of Premises**. As of the Commencement Date, Lessor hereby demises and leases the Premises to Lessee, and Lessee hereby accepts and leases the Premises from Lessor, on and subject to the terms and conditions set forth in this Lease. This Lease shall be subject to (a) all Applicable Laws and all zoning and other governmental regulations and entitlements now or hereafter in effect, and (b) all liens, assessments, encumbrances, restrictions, rights and conditions of law or of record existing as of the Commencement Date, **TOGETHER WITH** all appurtenances, rights, privileges, and easements benefiting, belonging, or pertaining thereto, and together with the buildings, structures, and improvements erected or to be erected thereon, whether presently or in the future. All rights and interests of the Lessor in any personal property contained within or used in connection with the Premises are hereby made subject to this Lease for the Term of this Lease, subject to the agreement to transfer back to Lessor pursuant to Section 27 hereof. Lessor and Lessee agree that from time to time, they each will promptly execute and deliver all further commercially reasonable instruments and documents, and take all further action, that may be necessary or desirable, in order to reflect the disposition of such personal property.

3.2. **Reservation of Rights**.

3.2.1. Reserved Rights. Lessor hereby reserves the right, at all reasonable times and, following reasonable advance written notice to Lessee (which notice may be by email), to enter and to permit governmental bodies, public or private utilities and any other persons or entities authorized by Lessor to enter upon the Premises for the purposes of installing, operating, maintaining, renewing, relocating and replacing water, oil, gas, steam, storm sewer, sanitary sewer and other pipe lines, telephone, electric, power and other lines, conduits, and facilities. Lessor further reserves the right, at all reasonable times and, following reasonable advance notice to Lessee, to permit Lessor, governmental bodies, public or private utilities and any other persons or entities authorized by Lessor to enter upon the Premises for the purposes of remediation of Hazardous Substances in, on, or under, the Premises or any other property in the vicinity of the Premises; provided, such entry and work performed shall not materially and adversely impact the operations of Lessee at the Premises and shall not interfere with the occupancy of any Subtenant at the Premises (including the use of the Premises by any PWHL or NHL team) and shall (except in cases of emergency) be conducted during normal business hours.

3.2.2. Inspection. Lessor shall be entitled, at all reasonable times and upon reasonable notice to Lessee, and in a commercially reasonable manner, to go upon and into the Premises and the Improvements for the purposes of (i) inspecting the same; (ii) inspecting the performance by Lessee of the terms, covenants, agreements and conditions of this Lease; (iii) posting and keeping posted thereon notices of non-responsibility for any construction, alteration or repair; (iv) performing (or permitting third parties to perform) any work, testing or monitoring in connection with any governmental requirements that is not otherwise the responsibility of Lessee under this Lease, and (iv) any other reason permitted under this Lease; provided that Lessor shall not materially and adversely impact the operations of Lessee at the Premises, and Lessor shall not interfere with the occupancy of any Subtenant at the Premises (including the use of the Premises by any PWHL or NHL team).

3.2.3. Waiver of Claims. Except to the extent of Lessor's gross negligence or willful misconduct in the exercise of its rights under this Section 3.2, or breach of this Lease, Lessee hereby waives and releases any claims against Lessor or any Lessor Parties for damages for any injury or inconvenience to or interference with Lessee's business at the Premises, any loss of occupancy or quiet enjoyment or the Premises or any other loss, damage, liability or cost occasioned by Lessor's exercise of the rights reserved to Lessor under, or granted to Lessor pursuant to, this Section 3.2. In no event shall Lessee be entitled to terminate this Lease as a result of Lessor's exercise of its rights under this Section 3.2, notwithstanding any possible liability of Lessor for damages resulting from the exercise of such rights. Notwithstanding the foregoing, the waiver and release set forth in this Section 3.2.3 are not intended and shall not be construed to affect or impair any rights or remedies that Lessee may have against Lessor as a result of any breach of any representations or warranties made by the Lessor or any of the covenants of the Lessor set forth in this Lease.

3.2.4. Repair of Damage. Lessor shall at Lessor's sole cost and expense repair any damage done to the Premises to restore the Premises to the condition that existed immediately prior to the exercise by Lessor of its rights under this Section 3.2.

3.2.5. Entitlements and Agreements. As fee owner of the Premises and of other real property in the vicinity of the Premises, Lessor may desire from time to time to apply for entitlements, seek rezoning, or otherwise endeavor to negotiate agreements with the governmental entities having jurisdiction over Lessor's property. So long as Lessor's efforts (i) do not have a material adverse impact on Lessee's use, operation, value or marketability of the Premises, or (ii) do not discriminate against the Premises or disproportionately burden the Premises as compared to other properties in the vicinity of the Premises, Lessee shall not publicly oppose or object to any such efforts by Lessor.

4. **Acceptance Of Premises**

4.1. **Lessee's Due Diligence**. Prior to entering into this Lease, Lessee has made a thorough, independent examination of the Premises and all matters relevant to Lessee's decision to enter into this Lease, and Lessee is thoroughly familiar with all aspects of the Premises and is satisfied that they are in an acceptable condition and meet Lessee's needs. Without in any way limiting the generality of the foregoing, Lessee's inspection and review has included, to the extent that Lessee in its sole discretion has deemed necessary or appropriate:

4.1.1. all matters relating to title, and all municipal and other legal requirements such as taxes, assessments, zoning, use permit requirements and building codes;

4.1.2. the physical condition of the Premises, the Existing Improvements, and the land underneath the Existing Improvements, including the soils and groundwater, any other geological conditions, engineering data (including, but not limited to, structural, seismic and engineering evaluations that might impact the Improvements), the presence or absence of known Hazardous Substances upon or in the vicinity of the Premises, and all other physical and functional aspects of the Premises;

4.1.3. the suitability of the Premises for the permitted use;

4.1.4. the boundaries of the Premises and all access rights to which the Premises are subject;

4.1.5. the Development potential of the Premises and/or the zoning, land use, or other legal status of the Premises or compliance with any public or private restrictions on the use of the Premises, as the same are in effect as of the Commencement Date, or may be hereafter modified, amended, adopted, published, promulgated or supplemented; or the compliance of the Premises or Improvements with any Applicable Laws;

4.1.6. the availability, existence, quality, nature, adequacy and physical condition of utilities servicing the Premises;

4.1.7. Lessee's ability to obtain appropriate licenses and satisfy all licensing requirements under Applicable Laws;

4.1.8. all material information relating to the leasing and operation of the Premises (including occupancy as of the Commencement Date); and

4.1.9. the economics and feasibility of the Development of the Improvements and the business operations Lessee intends to conduct on the Premises, including without limitation, market conditions and financial viability.

4.2. **Acceptance of the Premises**. Lessee acknowledges that, except as otherwise provided in this Lease, Lessor has made no representations or warranties, express or implied, regarding the Premises or matters affecting the Premises, whether made by Lessor, on Lessor's behalf or otherwise, including, without limitation, the physical conditions beneath the Premises; title to, or the boundaries of the Premises; the presence, existence or absence of Hazardous Substances on, under or in the vicinity of the Premises; compliance of the Premises with Applicable Laws; traffic patterns, the availability of utilities, the Development potential of the Premises, market data, economic conditions or projections; the suitability of the Premises for the permitted use; the economic feasibility of the business operations Lessee intends to conduct on the Premises; or any other matter pertaining to the Premises or the market and physical environments in which the Premises are located. Lessee acknowledges: (a) Lessee has engaged a sophisticated real estate developer with sufficient experience and expertise to evaluate the Premises, feasibility of the Project, and the risks associated with acquiring a leasehold interest in the Premises upon the terms and conditions set forth herein; (b) Lessee has received sufficient information and had adequate time to make such an evaluation; (c) Lessee has entered into this Lease with the intention of relying upon its own investigation or that of third parties with respect to the Premises; (d) in connection with its investigations and inspections of the Premises, Lessee has had the opportunity to obtain the advice of advisors and consultants as Lessee deemed to be necessary, and that Lessee has reviewed thoroughly the reports of such advisors and consultants, as well as all materials and other information given or made available to Lessee by Lessor and by public and governmental entities; and (e) Lessee is not relying upon any statements, representations or warranties of any kind, other than those specifically set forth in or required pursuant to this Lease or the Agreement to Lease. Lessee further acknowledges that it has not received from or on behalf of Lessor any accounting, tax, legal, architectural, engineering, property management or other advice with respect to this transaction and is relying solely upon the advice of third party accounting, tax, legal, architectural, engineering, property management and other advisors. Lessee agrees and acknowledges that any surveys, reports, studies, plans or other documentary information about the Premises that may have been delivered to Lessee by Lessor were delivered merely as a courtesy, and without any representation or warranty relating to the validity of such documents; Lessee has not relied on such documents, and Lessee is responsible for verifying the accuracy and completeness of such documents and any information contained therein. Lessee has satisfied itself as to such suitability and other pertinent matters by Lessee's own inquiries and tests into all matters relevant in determining whether to enter into this Lease. Except as otherwise specifically provided in this Lease or in the Agreement to Lease, Lessee accepts the Premises and all conditions in the vicinity of or affecting the Premises in their existing condition and hereby expressly agrees that if any investigation, remedial or restoration work is required in order to conform the Premises to the requirements of Applicable Laws, Lessee shall assume sole responsibility for any such work. Except as otherwise specifically provided in this Lease, **Lessee is acquiring on the Commencement Date a leasehold interest in the Premises in its "AS IS" condition and "WITH ALL FAULTS".**

5. **Term**

5.1. **Term**. The term of this Lease (the **"Term"**) shall be for the period stated in the Basic Lease Information, commencing on the Commencement Date and expiring at 11:59 p.m. on the Expiration Date or on such earlier date as this Lease may be terminated as hereinafter provided.

5.2. **Extension Options**. Provided Lessee is not in Default beyond any applicable cure period, Lessee shall have the right (each an "**Option**") to extend the initial Term of the Lease for two (2) consecutive periods of fifteen (15) additional years each (each, an "**Option Term**"). Lessee may exercise each Option by providing Lessor with written notice of such exercise no later than nine (9) months prior to the expiration of the then-existing Term in effect, provided, at the time Lessee exercises such Option, Lessee is not in Default of this Lease. Following Lessee's timely and valid exercise of an Option, Lessee shall prepare and Lessor shall execute and deliver to Lessee an amendment to this Lease confirming the Term as extended by the Option Term. There shall be no further options to extend or renew the Term beyond the two (2) Option Terms. If Lessee elects not to exercise the first Option or the second Option as provided herein, the option privilege shall be extinguished and the Term shall end upon the expiration of the initial Term or the first Option Term, as the case may be.

5.3. **Terms of Extension Options**. If one or more Options is exercised, as aforesaid, all of the same terms, provisions and conditions set forth in this Lease shall apply and Lessee shall pay the Base Rent in the amount and as required during the initial Term.

5.4. **Early Termination Right**. In the event that Lessor acquires the Improvements from Lessee pursuant to that certain Option to Purchase by and between Lessor and Lessee set forth in Section 37 herein, this Lease shall automatically terminate on the date when the Improvements are conveyed by quit claim improvements deed from Lessee to Lessor. Upon Lessor's acquisition of the Improvements, Lessor and Lessee will enter into the Operating Lease (as defined in the Agreement to Lease) whereby Lessor leases the Skating Facility and Restaurant (as each are defined in the Agreement to Lease) to Lessee in exchange for Lessee's payment of rent as described in Section 37.1.13.

6. **Rent; Capital Expenditures.**

6.1. **Rent**.

6.1.1. **Base Rent.** Commencing on the Commencement Date, and thereafter on each anniversary of the Commencement Date through the date of Substantial Completion, Lessee shall pay Base Rent equal to $1.00 per year. In the event Lessor does not exercise the Option to Purchase the improvements, Lessor shall pay rent under the Community Center Sublease equal to the amount that Lessee's debt service payments of the permanent financing exceed the amount that Lessee would have paid in rent as described in Section 37.1.13 had Lessor issued the Bond Financing.

6.1.2. **CapEx Fund Payments**. Commencing on the ~~Commencement Date~~date of Substantial Completion and thereafter on the first day of each month during the Term, Lessee shall pay the Lessor an amount equal to $8,333.33 (which is equal to one-twelfth of the annual CapEx Fund payments and which is the equivalent of $1.60 per square foot of the Skating Facility) ("**Monthly CapEx Fund Payments**") which amounts shall be deposited into the CapEx Fund to be used in accordance with Section 6.2.3. On each anniversary of the Commencement Date, the amount of the Monthly CapEx Fund Payments shall be increased by the CPI Change.

6.2. **Capital Expenditures**. During the Term, as extended, Lessee is solely and exclusively responsible for the performance of all capital maintenance, capital replacement, capital restoration, capital repairs, capital re-equipping and capital improvements necessary to meet the Applicable Standard and to fulfill Lessee's rights and obligations under the CapEx Work Plan (the "**CapEx Work**"), and for all costs and expenses thereof (the "**CapEx Expenses**"). CapEx Work includes any capital work that is reasonably required to be performed in and about the Premises to comply with the Applicable Standard and Applicable Law, including, but not limited to, all necessary capital improvements identified in any Facility Assessment, and CapEx Work necessitated by damage, normal wear and tear, defects in construction or design, or any other cause.

6.2.1. **Lessee's Obligation to Fund CapEx**. Lessee shall be responsible for performing all work necessary to meet the Applicable Standard and to fulfill Lessee's obligations under the CapEx Work Plan without respect to the sufficiency of the CapEx Fund to fund, or reimburse Lessee for, the cost of such CapEx Work at the time such work is performed. The parties acknowledge and agree that Lessee is responsible for obtaining all Permits and Approvals with respect to the CapEx Work, with the cost of such Permits and Approvals paid as CapEx Expenses. Lessee acknowledges and agrees that Lessor shall have no liability for any CapEx Work.

6.2.2. **CapEx Fund**.

6.2.2.1. Establishment. Lessor shall establish a CapEx Fund, from which costs and expenses for CapEx Work shall be paid, consistent with this Section 6.

6.2.2.2. Lessee CapEx Contributions. Lessee's Monthly CapEx Fund Payments to the CapEx Fund shall be paid in accordance with Section 6.1.2.

6.2.2.3. City CapEx Annual Contributions. Lessor may contribute such additional funds as Lessor may elect, in its sole discretion.

6.2.2.4. CapEx Fund Management. The CapEx Fund shall be managed by Lessor consistent with this Lease. Interest and other earnings on the CapEx Fund will be retained in and constitute part of the CapEx Fund account. All disbursements from the CapEx Fund shall be consistent with the terms and provisions of Section 6.2.3.

6.2.3. **CapEx Fund Use**.

6.2.3.1. Expenditure of Funds: Limitations. All amounts in the CapEx Fund shall be used for CapEx Expenses; provided, Lessor may, but shall not be obligated to, use funds in the CapEx Fund to cure any Event of Default, after any applicable cure period and consistent with Section 25, in addition to exercising any other rights Lessor has to cure any Event of Default. Lessee shall be entitled to undertake CapEx Work and cause Lessor to either pay such CapEx Expenses directly from the CapEx Fund or to reimburse Lessee from the CapEx Fund for such CapEx Expenses if the CapEx Work item: (i) is contemplated by the current approved CapEx Work Plan or is otherwise approved by Lessor in writing; (ii) constitutes an emergency item pursuant to Section 6.2.3.6; (iii) is used for restoration following non-Catastrophic Damage in accordance with Section 20; or (iv) costs no more than $50,000 for an individual improvement nor more than $100,000 in the aggregate for all such improvements in a Lease Year, such amounts to be adjusted each Lease Year in proportion to the CPI Change from the previous Lease Year. Any other use of funds from the CapEx Fund shall require Lessor's advance written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Expenditures from the CapEx Fund shall not be used for Operating Expenses or Maintenance Expenses.

6.2.3.2. Limitation on Reimbursements to Lessee. Following the fifth (5^{th}) Lease Year, Lessee may not be reimbursed from the CapEx Fund for CapEx Work undertaken by Lessee if such reimbursement would reduce the balance of the CapEx Fund below $100,000 (the "**Minimum Balance**"), nor shall funds from the CapEx Fund directly pay CapEx Expenses if such direct payment would cause the balance of the CapEx Fund to fall below the Minimum Balance. Lessee shall directly pay the costs and expenses of performing any and all CapEx Work necessary to meet the Applicable Standard and to fulfill Lessee's obligations under the CapEx Work Plan until such time as the Minimum Balance is sufficient to be maintained after reimbursing Lessee for CapEx Work or after directly paying the costs and expenses of the CapEx Work. Lessee shall be reimbursed from the CapEx Fund retroactively for any such directly funded CapEx Work as and when the CapEx Fund balance is sufficient to maintain the Minimum Balance.

6.2.3.3. Third-Party Reimbursements. Lessee shall promptly reimburse to the CapEx Fund any amounts paid therefrom for any CapEx Work to the extent Lessee receives funds from any source as reimbursement for CapEx Expenses incurred during the Term (including, but not limited to, insurance proceeds and recovery from third parties).

6.2.3.4. Disbursement at End of Term. Upon the expiration of the Term, any remaining amounts in the CapEx Fund shall be retained by the Lessor.

6.2.3.5. CapEx Fund During Event of Default. If an Event of Default occurs during the Term and is not cured upon the termination of this Lease, no amount of the CapEx Fund shall be distributed to Lessee until the Event of Default is cured or otherwise resolved, and may be used by Lessor, in its reasonable discretion, to pay Lessee obligations that have accrued and are owing hereunder to Lessor as of such date. Upon cure of any such Event of Default, any amounts remaining in the CapEx Fund shall be distributed to Lessee.

6.2.3.6. Emergency Major Maintenance and Capital Improvements. If Lessee reasonably determines that the health or safety of persons or property, or the ability to play host NHL or PWHL practices or events in the Facility, will be jeopardized absent the immediate commencement of CapEx Work, Lessee may commence such CapEx Work without the prior written approval of Lessor and be reimbursed from the CapEx Fund for such purpose, provided Lessee promptly notifies Lessor of all such CapEx Work made by Lessee pursuant to this Section.

7. **Taxes**

7.1. **Taxes**.

7.1.1. Leasehold Excise Tax. In addition to the Base Rent, Lessee shall pay all leasehold excise tax on all "Taxable Rent", as defined in RCW 82.29A (currently 12.84% of Taxable Rent). Taxable Rent includes that portion of the Base Rent, and other consideration considered "Contract Rent" as defined in RCW 82.29A. Notwithstanding any provision of this Lease to the contrary, following an assignment or other transfer by Lessor of its interest in the Premises (including an assignment of its interest under this Lease), leasehold excise tax shall not be payable on Taxable Rent if the assignee is not the State of Washington, a county, city, port district, municipal corporation, public development authority, or other entity which is exempt from payment of ad valorem property taxes under Applicable Laws, or is not required to collect leasehold excise tax under RCW Chapter 82.29A, as amended from time to time, in which case, Lessee shall be responsible for payment of all real and personal property taxes assessed against the Premises as provided in Section 7.2.2 of this Lease.

7.1.2. Taxes. In addition to the leasehold excise tax described above, Lessee shall pay all real and personal property taxes, assessments (including assessments for public improvements), rates, charges, license and permit fees, municipal liens, levies, excises or imposts, sales, use and occupancy taxes, business and occupation taxes, leasehold excise taxes on subleases or otherwise, gross receipts and similar taxes, any tax or charge assessed against the fair market value of the Premises, and any taxes levied or assessed in addition to or in lieu of, in whole or in part, such taxes, assessments or other charges of every name, nature and kind whatsoever, including without limitation all governmental charges of every name, nature or kind that may be levied, assessed, charged or imposed or may be or become a lien or charge (i) upon the Premises or any part thereof; (ii) upon the rent or income of Lessee; (iii) upon the use or occupancy of the Premises; or (~~v~~iv) upon Lessor by reason of its interest in the Premises. All of the foregoing taxes, assessments and other charges which are the responsibility of Lessee are herein referred to as **"Taxes"**. If at any time during the Term, under any Applicable Laws, any new Tax is levied or assessed against Lessor directly, in substitution in whole or in part for Taxes then in effect, Lessee covenants and agrees to pay and discharge such Tax. The parties reasonably believe that neither the leasehold interest in the Premises or the Premises is subject to Taxes, and in the event the same becomes subject to such Taxes, Lessor agrees, at no cost to itself, to use commercially reasonable efforts to support and assist Lessee in obtaining an exemption from such Taxes. For purposes of clarity and the avoidance of doubt, and notwithstanding anything to contrary contained herein, (i) Lessor makes no representation or warranty regarding whether Lessee, the Premises, or Lessee's interest in the Premises is exempt from Taxes, (ii) Lessor shall be under no obligation to maintain any exemption from Taxes in any way, and (iii) Lessee shall be solely responsible for the costs of apply for and obtaining any exemption from Taxes.

7.1.3. Admissions Tax. All taxes collected on admissions sales at the Project shall be collected and credited towards capital maintenance funding of the Project.

7.1.4. Exclusions. Notwithstanding the foregoing, Lessee shall not be required to pay any income taxes (if any) or business and occupation taxes (if any) on the rents and other amounts received by Lessor from Lessee under this Lease unless such taxes are levied in substitution, in whole or in part, for Taxes then in effect.

7.2. **Payment**. Lessee shall pay all LET to Lessor, and Lessor shall collect all LET from Lessee and remit payment to the Washington State Department of Revenue.

7.3. **Right to Contest**. Lessee shall have the right to contest, by appropriate proceedings and at Lessee's sole cost and expense, the amount or validity, in whole or in part, of any Taxes; provided, however, that Lessee shall not have the right to contest the inclusion of the Premises in any existing assessment district currently affecting the Premises as of the Commencement Date. In the event the applicable taxing authority having jurisdiction over the contest proceedings allows the posting of security or some other method of deferring payment of the disputed Taxes, Lessee may do so; otherwise Lessee shall not postpone or defer payment of any disputed Taxes but shall pay such Taxes in accordance with Section 7.2 notwithstanding such contest. Lessor shall have no obligation to join in any such proceedings. Lessee shall indemnify and defend Lessor against and hold Lessor harmless from and against any and all Claims, arising from or in connection with any such proceedings.

7.4. **Proration**. Any Taxes relating to a fiscal period of any taxing authority, only a part of which period is included within the Term, shall be prorated as between Lessor and Lessee so that Lessor shall pay the portion thereof attributable to any period outside the Term, and Lessee shall pay the portion thereof attributable to any period within the Term.

7.5. **Future Assessment Districts**. Without limiting Lessee's obligations to pay Taxes pursuant to Section 7.2, Lessee shall participate in any new improvement or special assessment district proposed to be created by a governmental authority (a "**Proposed District**") and shall not have the right to contest the inclusion of the Premises in such Proposed District unless (i) Lessor is also contesting inclusion, or (ii) Lessor in its reasonable discretion gives written approval to Lessee to contest such inclusion. In the event either Lessor or Lessee receives any notice or other information relating to a Proposed District, the party receiving such notice shall promptly advise the other party in writing of such receipt. Lessor shall have no obligation to join in any challenge by Lessee of a Proposed District that Lessor permits Lessee to undertake, and Lessor shall be free to assert a position contrary to the position of Lessee with respect to any Proposed District. If the Proposed District is ultimately formed and affects the Premises, such assessments shall be included in Taxes for all purposes of this Lease, provided Lessee may pay any resulting assessments over the maximum period allowed by law, and shall be liable only for any installments that become due during the Term.

8. **Operational Provisions.**

8.1. **Hours of Operation**. Following Substantial Completion, the following hours of operation shall apply:

8.1.1. Skating Rinks. Lessee shall cause the skating rinks to continuously operate and be open for business during a minimum of the following hours: 6 a.m. to 10 p.m.

8.1.2. Restaurant. Lessee shall cause the Restaurant to continuously operate and be open for business in the Restaurant every day during the hours of 12 p.m. to 10 p.m. as a minimum. If after operating in the Restaurant for the hours required above for at least twelve (12) months, Lessee determines that certain hours on a particular day of the week are not profitable, Lessee shall notify Lessor and shall provide evidence supporting this determination. If Lessor in its reasonable judgment agrees that the operating hours are not profitable, Lessee shall not be required to remain open for the operating hours that are not profitable.

8.1.3. General. Lessee acknowledges that Lessor will be irreparably damaged if Lessee fails to open for business or otherwise to comply with this Section and that Lessor shall have the right to specifically enforce this provision. Lessee shall also have the right to cease operations during the Term for alterations and refurbishment of the skating rinks and/or Restaurant, as determined by Lessee for no longer than twenty (20) consecutive days without Lessor's approval. Lessee agrees to continue the operation of its business in the Premises to the extent reasonably practicable from the standpoint of good business during any period of reconstruction or repair.

8.2. **Operations; Maintenance; Lessee Submissions**.

8.2.1. Lessee Operations Obligations. Lessee is solely and exclusively responsible for performing Operations at the Premises. "**Operations**" means the routine and regular provision of all labor, materials, utilities and other services required to use, operate and manage the Premises, and shall include but not be limited to the following elements: (i) staffing the Premises during activities; (ii) scheduling, presenting and promoting hockey and skating events; and (iii) managing all other Operations of the Premises. Notwithstanding the foregoing, pursuant to the Community Center Sublease, Lessor, at its sole cost and expense, shall be responsible for performing all maintenance and repairs associated with the Community Center (but including only the plumbing, electrical and HVAC systems located within the Community Center and specifically excluding any shared lobby, elevator, roof, exterior walls, exterior doors and foundations of the Facility).

8.2.1.1. Applicable Standard. Following Substantial Completion of the Project, Lessee shall perform Operations at the Premises in a first class, professional, businesslike and efficient manner, consistent with the manner in which other first class, top-tier skating facilities are operated, including without limitation, the Kraken Community Iceplex located in Seattle, Washington, in conformance with the Operations Plan.

8.2.2. Lessee Maintenance Obligations. Lessee is solely and exclusively responsible for performing Maintenance of the Premises (except with respect to the Community Center). "**Maintenance**" means the routine and regular provision of all labor, materials, utilities and other services for: (i) performing all preventive or routine non-capitalized maintenance, including that which is stipulated in operating manuals for the Premises (and the equipment, fixtures and systems therein) as regular, periodic maintenance procedures; (ii) conducting regular non-capitalized maintenance for all Facility systems, including the heating, ventilation and air conditioning systems, electrical, plumbing and mechanical, technology infrastructure, vertical transportation, and roof; (iii) performing routine maintenance of the surface of the skating rinks; (iv) keeping all portions of the Premises clean and free from debris; and (v) performing all other non-capitalized routine repair and replacement of the Premises, all subject to normal wear and tear, casualty as set forth in Section 21 and condemnation. Lessee shall perform Maintenance of the Premises in compliance with the Maintenance Plan and Applicable Standard. Notwithstanding the foregoing, pursuant to the terms of the Community Center Sublease, Lessor, at its sole cost and expense, shall be responsible for performing all maintenance and repairs associated with the Community Center (but including only the plumbing, electrical and HVAC systems located within the Community Center and specifically excluding any shared lobby, elevator, roof, exterior walls, exterior doors and foundations of the Facility).

8.2.3. Operations Expenses and Maintenance Expenses. Lessee is solely and exclusively responsible for and shall pay all costs and expenses associated or incurred in connection with performing (i) Operations (the "**Operating Expenses**"), and (ii) Maintenance (the "**Maintenance Expenses**") of the Premises (except with respect to the Community Center as provided above). Lessee covenants and agrees to provide sufficient funding to satisfy these obligations and acknowledges and agrees Lessor shall have no liability for the performance or cost and expense of any Operations or Maintenance. The City, at its sole cost and expense, shall be responsible for all operating expenses and maintenance expenses associated with the Parking Area.

8.2.4. Delegation of Operations. Maintenance and CapEx Work. Lessor acknowledges that Lessee shall have the right to delegate performance of its Operations, Maintenance and CapEx Work obligations to a wholly-owned subsidiary of Lessee, or to an affiliate controlled by or under common control with Lessee, provided that (i) Lessee promptly notifies the City of such delegation, (ii) Lessee shall not be released from liability to Lessor under this Lease for the performance of all such duties and (iii) Lessee shall be responsible for ensuring that Operations are performed consistent with the Operations Plan and Applicable Standard and that Maintenance and CapEx Work are performed consistent with the Facility Management Plan and Applicable Standard. This delegation shall in no manner limit Lessee's duty to indemnify Lessor Indemnities under Section 20.

8.2.5. Outsourcing of Operations and/or Maintenance Duties. Lessee (or its affiliate or subsidiary, pursuant to Section 8.2.4 above) may outsource its Operations and/or Maintenance duties to a third-party operator, subject to Lessor's approval, which approval shall not be unreasonably withheld, conditioned or delayed, provided the third-party operator has substantial experience operating and maintaining facilities similar to the Facility. Lessee shall not be released from liability to Lessor under this Lease for any such outsourced Operations and/or Maintenance work and shall remain responsible for ensuring that such outsourced services are performed consistent with Lessee's obligations under this Lease. Lessee's outsourcing of Operations and/or Maintenance duties shall in no manner limit Lessee's duty to indemnify Lessor Indemnities under Section 20.

8.2.6. Permits and Approvals. The Parties acknowledge and agree that Lessee is responsible for obtaining all necessary Permits and Approvals with respect to the use, management, Operations and Maintenance of the Premises.

8.3. Practice Facility. During the Term following Final Completion, Lessee shall:

8.3.1. With respect to visiting NHL teams scheduled to play the Seattle Kraken at the Climate Pledge Arena that require a practice site outside of the Climate Pledge Arena, Lessee shall prioritize use of the Facility for practice purposes over other facilities, including, without limitation, the Kraken Community Iceplex. In furtherance of the foregoing, Lessee agrees to use commercially reasonable efforts to cause such visiting NHL teams to practice at the Facility from time to time each Lease Year.

8.3.2. With respect to the Seattle-based PWHL team, Lessee will use commercially reasonable efforts to cause such PWHL team to use the Facility as its practice facility at the time of Final Completion and thereafter to the extent commercially feasible.

8.4. **Lessee Submissions**. Following Final Completion, by September 1 of each Lease Year, beginning in the first calendar year following the issuance of a final certificate of occupancy for the Project, Lessee shall prepare and submit to Lessor two plans, the "Operations Plan" and the Management Plan", that together set forth how, for the subsequent Lease Year, Lessee will carry out its Operations in a manner consistent with the Applicable Standard and its Maintenance and CapEx Work obligations in a manner consistent with the Applicable Standard.

8.5. **Operations Plan**. The "**Operations Plan**" shall comprise an annual budget and the following elements, all consistent with the Applicable Standard:

8.5.1. A schedule of events for the Premises for the upcoming calendar year, including proposed practice times for NHL and PWHL teams to the extent known; recreational league play; and free skate time periods.

8.5.2. A report of Restaurant operations for the then current Lease Year and whether Lessee anticipates any substantial alterations or modifications to the Restaurant space or a change in the operator for the subsequent Lease Year.

8.5.3. A report of Lessee's activities and investments undertaken pursuant to Section 10.4 (Public Benefits) for the prior Lease Year and plan for the same that Lessee will undertake during the subsequent Lease Year.

8.6. **Facility Management Plan**. The "**Facility Management Plan**" shall comprise (a) the "**Maintenance Plan**"; and (b) the "**CapEx Work Plan**", as described below.

8.6.1. The Maintenance Plan shall include an annual plan for all (a) routine and regular provision of all labor, materials and other maintenance services and (b) non-capitalized repair, replacement and maintenance of the Premises, all consistent with the Applicable Standard.

8.6.2. The CapEx Work Plan shall include the following elements, all consistent with the Applicable Standard:

8.6.2.1. An accounting of annual and cumulative costs and expenses borne by Lessee for CapEx Work not reimbursed by the CapEx Fund;

8.6.2.2. An annual plan and budget for CapEx Work to be performed in the subsequent Lease Year and a rolling ten-year plan and budget for all CapEx Work to be performed within such ten-year period.

8.6.2.3. Such conceptual or schematic designs and other plans and information as Lessor may reasonably request. Lessee may submit the CapEx Work Plan without including such designs and plans if the same are not available when such plan is submitted, provided Lessee submits such designs and plans promptly upon their availability.

8.6.3. Plan Review Timeframes. Lessor shall have not less than sixty (60) days to review the Operations Plan and not less than sixty (60) days to review and approve the Facility Management Plan, and provided that Lessor shall have ninety (90) days to review and approve the Facility Management Plan when such plan has been submitted subsequent to completion of a new Facility Assessment pursuant to Section 8.6.7 (either period being the "**Plan Review Period**").

8.6.4. Lessor Approval Rights and Limitations.

8.6.4.1. The Operations Plan shall be subject only to Lessor's review and comment and shall not be subject to Lessor's approval, except that Section 8.5.3 shall be governed by Section 10.4 (Public Benefits). The Parties expect that input and consultation between the parties will occur informally and may continue on an ongoing basis. Lessee will give reasonable good faith consideration to any input received from Lessor in reviewing and carrying out the Operations Plan. If Lessor believes that any element of the Operations Plan will cause Lessee to fail to carry out its obligations in a manner consistent with the Applicable Standard, and if consultation between the Parties does not resolve this concern, Lessor may submit the issue to the dispute resolution process set forth in Section 38.23.

8.6.4.2. The Facility Management Plan shall be subject to Lessor's review and approval, provided Lessor's approval right shall be limited to ascertaining whether the Facility Management Plan is consistent with and conforms to the Applicable Standard.

8.6.4.3. If Lessor does not approve or disapprove the Facility Management Plan within the Plan Review Period, the Facility Management Plan shall be deemed approved by Lessor.

8.6.4.4. If Lessor disapproves the Facility Management Plan, such disapproval shall be in writing and shall state with specificity the provisions that are inconsistent with the Applicable Standard and the changes needed to such plan to achieve compliance with the Applicable Standard in order to obtain City approval. Lessor shall have an additional thirty (30) days to review and approve such plan elements in any plan resubmitted by Lessee in response to an initial City disapproval.

8.6.4.5. If Lessee disputes Lessor's disapproval of all or any elements of the Facility Management Plan, it may submit such dispute to dispute resolution in accordance with the dispute resolution provisions set forth in Section 38, provided that the sole question presented to the Panel in such resolution process shall be whether Lessor unreasonably withheld its approval.

8.6.4.6. Any elements of the Facility Management Plan approved by Lessor that are not subject to dispute resolution shall take effect upon Lessor's approval thereof. The Facility Management Plan shall be amended to reflect changes agreed to by the Parties or determined to be necessary pursuant to any dispute resolution process.

8.6.5. Modifications and Deviations. If, subsequent to Lessor's review of the Operations Plan or its review and approval of the Facility Management Plan, Lessee believes materially modifying or deviating from any element of the Operations Plan or Facility Management Plan is necessary, Lessee will advise Lessor of such proposed material modification or deviation, as applicable, and Lessor will then have the same opportunity to review and comment (with respect to the Operations Plan) or to review and approve (with respect to the Facility Management Plan) such modification or deviation that it had with respect to the originally submitted Operations Plan and Facility Management Plan.

8.6.6. Security and Emergency Management Plan. Lessee shall maintain and shall regularly update a security and emergency management plan for the Premises, consistent with Applicable Law.

8.6.7. Facility Assessment Updates. Not later than the tenth (10^{th}) Lease Year, nor later than every tenth Lease Year thereafter, Lessee shall initiate, and Lessee and City shall cooperate in commissioning, a Facility Assessment to update and inform the identification of CapEx Work necessary for the Facility to comply with the Applicable Standard. Lessee shall select a firm to conduct the Facility Assessment that is expert in the design, construction, economics and operations of similar facilities, subject to Lessor's reasonable approval. The cost of such Facility Assessment shall be borne by the Parties equally. The Facility Assessment shall be commissioned with the intent that it may be the basis for recommendations regarding Lessee's CapEx Work Plan, but shall not limit Lessee's obligations hereunder.

8.7. **Parking and Access to Community Center**.

8.7.1. Access. Lessor, its employees, directors, agents, independent contractors, representatives and invitees shall have such access to the Community Center via the Facility's lobby as is reasonably necessary and appropriate for use of the Community Center by community members. Lessee's security system and parking plan shall be administered so as not to unreasonably interfere with ingress to and egress from the Community Center by community members. Lessee may place reasonable limitations on access and movement in areas of the Facility other than the Community Center during events or as otherwise necessary for Lessee operations.

8.7.2. No Rent. Lessor shall not be required to pay Lessee any rental fee for Lessor's use of, or access to, the Community Center, parking spaces and any public meeting space in the Facility. Lessor shall not be required to pay or reimburse Lessee for any operating costs incurred by Lessee with respect to electricity, heating, air conditioning, water, sewer use, or ordinary security requirements resulting from Lessor's use of the Community Center and any public meeting space in the Facility, except to the extent that any of electric, water or gas utilities are not separately metered.

8.7.3. Parking. Lessor reserves the right to charge for parking in the adjacent Lessor-operated Parking Area outside of the Premises. Lessor will not implement paid parking before the end of the local hockey season in the spring of 2029. Lessor will not charge a higher "per hour" rate for parking at the Community Center than the highest amount Lessor charges for parking at any of the Lessor's waterfront parks (which currently, in 2025, is $1/hour). Lessor may charge a special event parking fee for any event where the entire Facility is being used by Lessor for Lessor purposes. Lessor and Lessee may charge a special event parking fee by mutual written agreement, with Lessor providing Lessee with fifty percent (50%) of the revenue from such special event parking fees, unless a different apportionment is otherwise agreed by the parties. Lessor will be responsible for operating, maintaining, and repairing the Parking Area outside the Premises. In the Parking Area, Lessor will provide a minimum of twenty-five (25) spaces primarily dedicated to staff parking for staff of the Community Center, Skating Facility, and Restaurant. Lessee and Lessor will work in good faith to coordinate available parking when either Party is hosting a special event with an expected attendance of 200 individuals or more. If Lessor anticipates hosting an event at the Community Center with an expected attendance of 100 individuals or more, the City will provide Lessee with thirty (30) days' notice to coordinate available parking and mitigate traffic impacts; provided that in the event Lessor is unable to provide such thirty (30) day notice due to a City-sponsored event occurring in less than thirty (30) days from scheduling of the event, Lessor will provide Lessee with such advance notice as is reasonably possible under the circumstances.

9. Net Lease; No Counterclaim or Abatement

9.1. **Net Lease**. The Rent due hereunder shall be absolutely net to Lessor and shall be paid without assertion of any counterclaim, offset, deduction or defense and without abatement, suspension, deferment or reduction. Lessor shall not be expected or required under any circumstances or conditions whatsoever, whether now existing or hereafter arising, and whether now known or unknown to the parties, to make any payment of any kind whatsoever with respect to the Premises or be under any obligation or liability hereunder, except if and solely to the extent expressly so provided elsewhere in this Lease.

9.2. **Operating Expenses**. Lessee shall pay, or if not paid directly fund when due all Operating Expenses. To the extent feasible, Lessee shall pay all Operating Expenses directly, and shall contract directly for all required services, utilities and other items described herein; provided, however, that Lessor shall, following thirty (30) days prior written notice to Lessee of such default, and Lessee's failure to correct such default within the 30-day period, have the right to contract for any such services, utilities or other items if Lessee has failed to do so, or has failed to make any payment of Operating Expenses which is due and owing. Lessee shall provide Lessor, upon written request, with copies of invoices, receipts, canceled checks and/or other documentation reasonably substantiating Lessee's payment of all Operating Expenses. Lessor shall be responsible for all costs for utilities, services, maintenance, repair, replacement, marketing, insurance, employment, or other costs of any type whatsoever accruing at any time during the Term in connection with the operation, management, maintenance, repair, replacement, restoration, use, occupancy or enjoyment of the Community Center pursuant to the Community Center Sublease (as defined in the Agreement to Lease). Notwithstanding the foregoing, Lessor and Lessee shall share equitably in the cost of the repair and maintenance of any item or space shared jointly by Lessee and Lessor such as the elevators.

9.3. **Expenses of Lessor**. Lessee shall pay to Lessor, within ten (10) days after the date of mailing or personal delivery of statements for the following: (a) all reasonable costs and expenses, including attorneys' fees, paid or incurred by Lessor: (i) required to be paid by Lessee pursuant to this Lease (including without limitation pursuant to any indemnity provision), (ii) in enforcing any of Lessee's covenants or obligations in this Lease following an Event of Default, (iii) in protecting Lessor against or remedying any default of this Lease by Lessee, (iv) in recovering possession of the Premises or any part of the Premises after an Event of Default, (v) in collecting or causing to be paid to third parties any amounts payable by Lessee under this Lease, within thirty (30) days of receiving notice of the amount that is then due and unpaid, (vi) in connection with any estoppel requested by Lessee, or (vii) in connection with any litigation (other than condemnation proceedings) commenced by or against Lessee to which Lessor shall without fault be made a party (unless defended by Lessee at Lessee's cost); and (b) Lessor's Administrative Fees as otherwise provided in this Lease. All such costs, expenses and fees shall constitute additional rent. Lessee's obligations under this Section 8.3 shall survive the expiration or earlier termination of the Term.

9.4. **No Release**. Except as otherwise expressly provided herein, this Lease shall continue in full force and effect, and the obligations of Lessee hereunder shall not be released, discharged or otherwise affected, by reason of (unless otherwise provided to the contrary contained in this Lease): (a) any damage to or destruction of the Premises or any portion thereof or any Improvements thereon, or any Condemnation; (b) any restriction or prevention of or interference with any use of the Premises or the Improvements or any part thereof; (c) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other proceeding relating to Lessor, Lessee or any constituent partner of Lessee or any Subtenant, licensee or concessionaire or any action taken with respect to this Lease by any trustee or receiver, or by any court, in any proceeding; (d) any claim that Lessee or any other person has or might have against Lessor; (e) any failure on the part of Lessor to perform or comply with any of the terms hereof or of any other agreement with Lessee or any other person; (f) any failure on the part of any Subtenant, licensee, concessionaire, or other person to perform or comply with any of the terms of any sublease or other agreement between Lessee and any such person; and (g) any termination of any sublease, license or concession, whether voluntary or by operation of law.

9.5. **Independent Covenants**. The obligations of Lessee under this Lease shall be separate and independent covenants, and each covenant of Lessee shall be both a covenant and a condition. Except to the extent expressly provided elsewhere in this Lease, Lessee hereby waives, to the maximum extent permitted by Applicable Laws, any rights that it may now or in the future have to quit or surrender the Premises, to terminate this Lease, or to any abatement, deferment, diminution, reduction or suspension of Rent on account of any event or circumstance, including without limitation any rights it might otherwise have under the provisions of Applicable Laws.

10. Use And Operation of Premises

10.1. **Permitted Use**. Subject to all provisions and limitations contained herein, the Premises and all Improvements at any time located thereon shall at all times during the Term be used and operated only for the purposes stated in Section 1 and in this Section 10, and for no other purpose. Lessee acknowledges that the foregoing covenant is a material consideration for Lessor's agreement to enter into this Lease. Any violation of said covenant shall constitute a material breach of this Lease and entitle Lessor to exercise any and all of its rights and remedies under this Lease or otherwise at law or in equity.

10.2. **Prohibited Uses**. Without limiting the foregoing or any other provision of this Lease, Lessee shall not do any act, or allow any Subtenant or other user of the Premises to do any act, and in no event shall the Premises be used: (a) for any purpose that in any manner causes, creates, or results in a nuisance or waste; (b) for any purpose that is of a nature to involve substantial hazard (and the parties agree that ice-skating, ice-hockey, and other ice sports are not deemed to be a substantial hazard); (c) for any purpose that would or could invalidate or be in conflict with the provisions of any fire or other insurance policies covering the Premises; (d) for any purpose that involves any Release of Hazardous Substances; or (e) for any purpose that violates any Applicable Law or any covenant, condition, agreement or easement applicable to the Premises. Lessee shall not do anything, or permit anything to be done, in or about the Premises that would: (i) invalidate or be in conflict with the provisions of any fire or other insurance policies covering the Premises or any property located therein; or (ii) result in a refusal by insurance companies of good standing.

10.3. **Impacts on Neighboring Property**. Lessee shall design, Develop, maintain and manage the Premises so as to avoid any material negative impact on (i) the other properties in the vicinity of the Premises that are owned by Lessor or (ii) any wetlands in the vicinity of the Premises.

10.4. **Public Benefits**.

10.4.1. Community Use and Involvement. Lessee agrees to establish (a) in Kirkland and the Eastside community promotion and charitable services and community participation in a manner reasonably consistent with Lessee's past practice at the Kraken Community Iceplex through the One Roof Foundation, or similar organization; and (b) generally support the City of Kirkland's civic activities, civic events and community service organizations, all in a manner consistent within Lessee's management of Facility operations (together with the items referenced in Section 10.4.3, the "**Public Benefits**"). Lessee's obligations with respect to community use and involvement under this Lease may be fulfilled directly or indirectly, including through affiliates, and shall at all times be conducted within Lessee's overall reasonable budgetary, economic and operating constraints, generally in accordance with past practice.

10.4.2. Reasonable Affordability. Lessee shall provide the following:

10.4.2.1. Discounted rates to disadvantaged groups including uniforms and equipment necessary to participate in programs provided at the Facility.

10.4.2.2. Lessee shall provide no less than two (2) hours of free open skate ice rink access per month to any Kirkland resident showing proof of residency, subject to rink capacity.

10.4.2.3. Lessee will make commercially reasonable efforts to partner with local businesses (defined as businesses within the City of Kirkland) during the Term, including, without limitation, hotels and restaurants.

10.4.3. Community Based Benefits. Lessee, either directly or in partnership with the One Roof Foundation or an equivalent organization, will provide, in a manner and extent reasonably consistent with Lessee's practice through the One Roof Foundation but designed to meet identified needs in the Kirkland community, community promotion and charitable services based on the One Roof Foundation's three pillars: youth homelessness, environmental justice, and access to play for disadvantaged communities.

10.4.4. Non-Discrimination. Without limiting Lessee's general obligation to comply with Applicable Law, for the duration of the Term, Lessee, and all parties subcontracting under the authority of Lessee, shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, King County, and City of Kirkland.

10.4.5. Women and Minority-Owned Business Enterprises Inclusion. Lesse shall ensure open and fair opportunities for minority and women owned businesses ("**WMBE(s)**") to obtain, or compete for contracts and subcontracts as sources of supplies, equipment, construction and services, to provide the maximum practicable opportunity for increased participation by WMBE(s) in CapEx Work. Lessee shall establish WMBE goals for CapEx Work undertaken during the Term that are generally consistent with then current City of Kirkland goals for its own major capital improvement facilities.

10.4.6. Women and Minority-Owned Business Enterprises. Lessee shall require its CapEx Work contractors of every tier to make affirmative efforts to solicit and contract with WMBEs on subcontracting and supply opportunities, including requiring its contractors to agree to such efforts through the submission of contractor WMBE inclusion plans, and to make a good faith effort to achieve each goal under the plan, as a material condition of such contracts.

10.4.7. Compliance. Lessee shall require that CapEx Work contractors make good faith efforts to ensure that goals for the participation of WMBEs are met.

11. **Leasehold Improvements; Construction of Alterations**

11.1. **Leasehold Improvements.** As material consideration for this Lease, Lessee has agreed to undertake, at its sole cost and expense, the Development of the Project pursuant to the approved plans and specifications for the Project (the "**Project Plans**"), the related documents set forth in Exhibit B attached hereto ("**Project Documents**") and in accordance with the terms and conditions of this Lease and the Agreement to Lease (collectively, "**Leasehold Improvements**"). The Development of the Leasehold Improvements and other Buildings shall be referred to as the "**Project**". The Leasehold Improvements shall not include any paving or repair of the north parking lot on the Land.

11.1.1. Lessor acknowledges that the Project Plans and Project Documents have been approved by Lessor as of the Commencement Date. Except as provided in Section 11.2.1, in the event Lessee desires to make any material changes to Project Plans or the Project Documents that impact the Community Center previously approved by Lessor, Lessee shall submit such revised Project Plans and Project Documents to Lessor, upon which any changes shall be indicated, for Lessor's prior written approval. Lessor shall notify Lessee of its rejection of any material revisions to the Project Plans and/or Project Documents within ten (10) Business Days after receiving Lessee's written submission (along with one (1) electronic submission). In the event Lessor has not given written notice rejecting such revisions to the Project Plans and/or Project Documents within ten (10) Business Days of submission, (including the reasoning for such rejection) such revisions to the Project Plans and/or Project Documents shall be deemed to have been approved by Lessor. Lessor shall not unreasonably withhold, condition or delay its approval of such revised Project Plans and/or Project Documents if they do not deviate in any material way from approved Schematic Design Documents (as defined in the Agreement to Lease). If Lessor rejects any aspect of Lessee's proposed revisions, Lessee shall make whatever changes are reasonably necessary to address the rejected item and shall resubmit it for Lessor's written approval. Lessee shall not proceed with the rejected item, or any item affected by the rejected item, until Lessor has approved Lessee's changes.

11.1.2. Lessor shall designate from time to time the persons and/or staff positions of Lessor who are authorized under this Agreement to provide consents and approvals on behalf of Lessor and to whom documents are to be submitted by Lessee for Lessor's approval ("**Lessor's Authorized Representative**"). As of the Commencement Date, Lessor designates Jen Davis-Hayes as Lessor's Authorized Representative. Lessor shall designate the person who will represent Lessor in day-to-day communication with Lessee, and who will coordinate activities for Lessor ("**Lessor's Project Manager**"). Lessor may, from time to time, change Lessor's Authorized Representative and/or Lessor's Project

Manager by providing notice to Lessee. As of the Commencement Date, Lessor designates Anneke Davis as Lessor's Project Manager. During the Development of the Project Lessor's Authorized Representative and Lessor's Project Manager shall be invited to participate in monthly progress meetings with Lessee's Project Development Team.

11.1.3. Design Team and Project Development Team. Lessor has approved and Lessee has previously retained the architects, engineers and related consultants identified in Exhibit C attached hereto in connection with the preparation of preliminary conceptual documents (the "**Design Team**"). Lessee shall not substitute any member identified as part of the Design Team without the prior written consent of Lessor, such consent not to be unreasonably withheld, delayed or conditioned; provided that Lessee submits sufficiently detailed information about the proposed substitute member concurrently with the request for approval. Lessee shall obtain Lessor's prior written approval (not to be unreasonably withheld or delayed) of the architect, landscape architect, structural engineer, contractor, and other major consultants and subcontractors necessary or desirable for the design, permitting and Development of the Project (the "**Project Development Team**"). Further, the general contractor shall be capable of being bonded, licensed in the State of Washington, and shall have experience in completing construction comparable to the Project in accordance with the Construction Documents. No approval by Lessor of the Design Team, the Project Development Team and/or Project Documents shall be deemed a warranty or other representation on Lessor's part that any such Project Document is accurate or correct, or that the Design Team or Project Development Team is qualified or appropriate.

11.1.4. Commencement of Construction. Lessee shall cause Construction Commencement to occur within fifteen (15) Business Days following the Commencement Date, subject to extensions agreed to by Lessor and Lessee, and subject to Unavoidable Delay ("**Outside Construction Commencement Date**"). Notwithstanding the foregoing, prior to commencement of any demolition or construction work on the Leasehold Improvements, Lessee shall have obtained all necessary permits and governmental approvals necessary to commence construction of the Project.

11.1.5. Failure to Commence Construction. In the event Lessee fails to cause Construction Commencement to occur prior to the Outside Construction Commencement Date, and if such failure is not cured within a period of sixty (60) days after written notice from Lessor to Lessee of Lessor's intention to exercise its rights to terminate this Lease due to such failure, then Lessor shall have the right to terminate this Lease following expiration of such 60-day period upon written notice to Lessee. If Lessor terminates this Lease under this Section 11.1.5 then (1) Lessee shall take all actions necessary to deliver and assign to Lessor the Lessee Materials, the Construction Documents and the Construction Contract, in accordance with Section 6.3 of the Agreement to Lease, and (2) this Lease shall be of no further force or effect. An Unavoidable Delay shall extend the deadlines Construction Commencement on a day-for-day basis up to ninety (90) days. Notwithstanding the foregoing, if Lessee in fact caused Construction Commencement prior to the date Lessor actually issues a notice of termination following expiration of such 60-day period, then such notice of termination shall be ineffective and this Lease shall remain in full force and effect. Further, the provisions of this subsection 11.1.5 shall be subject to the notice, cure and other rights of a Leasehold Mortgagee under Section 24 below, including the rights of a Leasehold Mortgagee to cure the failure and/or to cause commencement of construction to occur.

11.1.6. Substantial Completion. Lessee shall achieve Substantial Completion of the Project in accordance with the approved Project Plans no later than ~~October~~November 1, 2027 ("**Target Substantial Completion Date**"), which date may be extended for Unavoidable Delay; provided that such Target Substantial Completion Date shall not be extended due to Unavoidable Delay by more than twelve (12) months. Provided, however, if Lessee fails to achieve Substantial Completion of the Project prior to the last day of the thirty (30^{th}) month after Commencement Date, Lessor shall have the right to terminate this Lease upon written notice to Lessee, in which case Lessee shall take all actions necessary to deliver and assign to Lessor the Lessee Materials, the Construction Documents and the Construction Contract. Notwithstanding the foregoing, the provisions of this subsection 11.1.6 shall be subject to the notice, cure and other rights of a Leasehold Mortgagee under Section 24 below, including the rights of a Leasehold Mortgagee to cure the failure and/or to cause Substantial Completion to occur.

11.1.7. Ownership of Lessee Materials. If this Lease terminates pursuant to this Section 11.1, Lessee shall deliver to Lessor all studies, site plans, reports, surveys, permits, Design Development Documents, Construction Documents, permits, entitlements, and other documents relating to the Premises and the Project that were prepared by or on behalf of Lessee in connection with Lessee's due diligence investigation, as well as all Project Documents prepared in connection with the Project (collectively, "**Lessee Materials**"), to the extent owned by Lessee, together with a bill of sale for Lessee's interest in such Lessee Materials, but with neither warranty nor recourse to Lessee for losses and liabilities resulting from defective Lessee Materials, which Lessee Materials shall thereupon be the sole property of Lessor. Without limiting the foregoing, Lessee further agrees that, in the event this Lease terminates pursuant to this Section 11.1, Lessor may thereafter proceed with Development of the Project in a manner and with a site plan which is the same or substantially similar to that contemplated by Lessee.

11.1.8. Lease Guaranty. In connection with the Agreement to Lease, TeamCo and Slapshot LLC shall enter into a guaranty in favor of Lessor in the form attached hereto as Exhibit D ("**Guaranty**").

11.1.9. Records Retention and Audit Right. Lessee shall keep all records generated in connection with the Project for six (6) years after Substantial Completion of the Project. Lessor reserves the right to audit such records and Lessee shall make such records available for Lessor's review upon receipt of written request therefor.

11.2. **General Requirements for Project Alterations to the Community Center**.

11.2.1. Approval Threshold. Following Substantial Completion of the Project, Lessee shall have the right to construct and to make the following Alterations that impact the Community Center without Lessor's prior written consent: Alterations that (i) are reasonably expected to cost less than $500,000.00 (increased during the Term by five percent (5%) on every five (5) year anniversary of the Commencement Date); (ii) relate in whole or in part to any Lessee Environmental Activity; (iii) do not affect the structural integrity of the Premises or any part thereof (including the foundation); (iv) do not affect the exterior appearance of the Premises; and (v) do not require a change of use, an environmental impact statement (or its equivalent), or any application to a political jurisdiction for rezoning, comprehensive plan amendment, design review board or other discretionary approval (but not merely a building permit or other "Type I" approval) ("**Permitted Alterations**"). Alterations to the Community Center other than Permitted Alterations shall be subject to Lessor's prior written approval in accordance with this Section 11. Lessee shall have the right to make additional improvements, alterations, remodeling, or reconstruction of or to the Leasehold Improvements that do not impact the Community Center.

11.2.2. Interior Alterations. Notwithstanding the foregoing, item (i) of subparagraph 11.2.1 of this Section 11.2 shall not apply to, and Alterations shall expressly exclude, interior, non-structural alterations to the Premises and Lessor's prior written approval of any interior, non-structural alterations shall only be required if such alterations would otherwise require approval under items (ii) through (v) of subparagraph 11.2.1. Further, if any Alterations include some features or elements that require Lessor approval under this Lease and other features or elements that do not require Lessor approval under this Lease, only those features or elements that require Lessor approval shall be required to be submitted to Lessor for such approval.

11.2.3. Other Provisions. The Project and all Alterations, whether or not subject to Lessor's prior written approval, shall be subject to the provisions of Section 11.6.

11.2.4. Alteration Approval Process. In each instance in which Lessor's prior written approval of an Alteration is required, the following approval process shall apply:

11.2.4.1. Such approval shall not be unreasonably withheld, conditioned or delayed. Lessee shall provide Lessor with fifteen (15) Business Days prior written notice that Lessee intends to make a submission for Lessor's approval. Lessor shall use commercially reasonable efforts to respond to any request for approval within fifteen (15) Business Days after receiving Lessee's written request for such approval, along with any required accompanying plans, specifications, data or other information. In the event Lessor fails to respond within such fifteen (15) Business Day period, Lessee may deliver to Lessor a written second request for approval, labeled as such. If Lessor fails to respond to the second request for approval within five (5) Business Days after receipt of the second request, Lessor's failure to respond shall be deemed approval of the applicable request for approval. Upon reasonable advance notice, during Lessor's review period, Lessee agrees to meet with Lessor's designated representative(s) to review such request for approval (and if requested by Lessee and upon reasonable advance notice, Lessor agrees during Lessor's review period to meet directly with Lessee and its consultants regarding the request for approval and to review any applicable plans).

11.2.4.2. In the event Lessor disapproves any submitted plan, specifications or other request for approval, Lessor shall provide reasonable written detail to Lessee regarding the reasons for such disapproval, and Lessee shall have an additional fifteen (15) Business Days to revise the plans, specifications and/or request to reflect Lessor's requested changes. Lessee shall then resubmit the plans, specifications and/or request to Lessor, and Lessor shall advise Lessee within five (5) Business Days whether the revised plans, specifications or request is approved (and failure of Lessor to disapprove in writing within such five (5) Business Day period shall constitute Lessor's approval of such revised plans, specifications or request).

11.3. **Permits and Approvals**. Lessee shall be solely responsible for obtaining, at its sole cost and expense, the approval of the Lessor, as the permitting agency, and the approval of any other governmental agencies with jurisdiction over the Premises for any building, electrical and plumbing permits, environmental impact analysis and mitigations imposed thereby, or other governmental action necessary to permit the Development, construction and operation of any Alterations in accordance with this Lease. Lessor shall cooperate with Lessee in Lessee's efforts to obtain all permits and approvals and Lessor will assist in expediting the approval process by the permitting agency. Lessee shall apply for and prosecute any required governmental review processes for any discretionary approvals, comprehensive plan amendment, rezoning, variance or use permit only with the written approval of Lessor, such approval not to be unreasonably withheld, delayed or conditioned, and Lessee shall not submit any (i) environmental impact statement, addendum, checklist, or (ii) other State Environmental Policy Act document, or any consultant's report containing information regarding Lessor, Lessor's lands or Lessor's tenants to any public agency without Lessor's prior written approval, which Lessor may withhold in its sole discretion with respect to items in subparagraphs (i) and (ii) above. Lessee shall be solely responsible for compliance with all permits, conditions, and fees related to any Alterations.

11.4. **Design of Alterations**. The following provisions shall apply to all Alterations requiring Lessor's approval pursuant to Section 11.2:

11.4.1. The design of all such Alterations, including without limitation, the site plan, structural plans, landscaping plan, materials, colors and elevations shall be subject to Lessor's prior written approval.

11.4.2. Prior to formal submittal to Lessor, as the permitting agency, Lessee shall submit to Lessor, for Lessor's review, two (2) duplicate hard copy sets and one (1) electronic version of all design drawings for the proposed work of construction, whether or not they are required by Lessor, as the permitting agency, to commence the application for governmental design approval. The design drawings shall be subject to Lessor's prior written approval. Lessee shall not apply for any governmental approvals until after obtaining Lessor's prior written approval of the design drawings.

11.4.3. Lessee acknowledges that Lessor may be obligated to meet and consult with certain committees and other persons within Lessor's organization. Lessee shall provide Lessor with such information and materials as Lessor reasonably may request, attend committee and other meetings with Lessor and other persons associated with Lessor, and take such other actions at Lessee's sole cost and expense as Lessor deems reasonably necessary to satisfy the requirements of such committees and other persons within Lessor's organization, and to otherwise respond to Lessee's request for approval of the proposed Alterations.

11.4.4. Prior to finalizing any construction documents that differ in any material respect from any design or other construction documents previously approved by Lessor, Lessee shall submit to Lessor for Lessor's prior written approval one (1) electronic set of such documents, upon which any changes shall be indicated.

11.4.5. Prior to entering into a contract with any design architect, landscape architect or general contractor for any Alterations requiring Lessor's approval, Lessee shall obtain Lessor's prior written approval of the identity of each such design architect, or general contractor (unless previously approved by Lessor in connection with work previously done at the Premises within the preceding five (5) years). Upon execution, Lessee shall furnish to Lessor a true copy of Lessee's contracts with the architect and general contractor. Each such contract shall contain provisions reasonably acceptable to Lessor that permit the contract to be assumed by Lessor or its designee, at Lessor's sole discretion, following a termination of this Lease or in the event of an Event of Default by Lessee under this Lease. Any such assumption shall be on the same terms and conditions (including fees and prices) as set forth in the contract.

11.4.6. The provisions of this Section 11.4 shall apply to any material change in the design elements of the Alterations that are subject to Lessor's prior written approval and that have been approved by Lessor, and to any deviations in the actual construction of the Alterations from such approved design elements.

11.5. **Prerequisites to Commencement of Construction**. In addition to all other requirements set forth in this Section, before commencing the construction of the Project and any Alterations (whether or not requiring Lessor's approval), and before any building materials have been delivered to the Premises by Lessee or under Lessee's authority, Lessee shall:

11.5.1. Furnish Lessor with a true copy of Lessee's contract with the general contractor and all permits and approvals required to commence construction.

11.5.2. Deliver to Lessor true copies of all documents evidencing the commitment of construction financing for any new construction, or evidence satisfactory to Lessor regarding other arrangements to provide for payment for work undertaken by Lessee.

11.5.3. Procure and/or cause Lessee's contractor to procure and keep in force during the course of construction the insurance coverage described below, subject to reasonable deductibles, and provide Lessor with certificates of such insurance in form satisfactory to Lessor. All such insurance shall comply with the requirements of this Section 11 and of Section 19.

11.5.3.1. During the course of construction, to the extent not covered by property insurance maintained by Lessee pursuant to Section 19, and for construction projects in excess of $1,000,000, builder's risk property insurance on an "all risk" basis insuring against the perils of, fire and extended coverage, and physical loss or damage, including theft, vandalism and malicious mischief, collapse, false work, temporary buildings, and debris removal, including demolition resulting from the enforcement of any Applicable Laws, in the amount of the construction contract price, including all change orders, on a replacement cost basis until completion. The policy will cover the Project or any Alterations in place on the Premises, all materials and equipment stored at the Premises and furnished under contract, and all materials and equipment that are in the process of fabrication at the premises of any third party or that have been placed in due course of transit to the Premises when such fabrication or transit is at the risk of, or when title to or an insurable interest in such materials or equipment has passed to, Lessee or its construction manager, contractors or subcontractors (excluding any contractors', subcontractors' and construction managers' tools and equipment, and property owned by the employees of the construction manager, any contractor or any subcontractor.

11.5.3.2. Commercial general liability, and if necessary, umbrella liability insurance for the construction project, which insurance may be effected by the policy required to be carried pursuant to Section 19. The policy will cover bodily injury and property damage, including but not limited to coverage for premises/operations, products/completed operations, elevators, contractual, personal and advertising, injury, and independent contractors. The policy will be written on an occurrence basis and in an amount not less than the amount at the time maintained by prudent Lessors of comparable construction projects in King County and reasonably satisfactory to Lessor, but in any event not less than $25,000,000 in the aggregate. Lessor and the Lessor Parties shall be named as additional insureds, as their interest may appear. Any general aggregate shall apply per project. The policy shall contain a cross-liability clause or separation of insureds provision and an endorsement deleting the property damage exclusion as to explosion, underground, and collapse hazards.

11.5.3.3. Automobile and, if necessary, umbrella liability insurance including coverage for owned, non-owned, leased or hired vehicles, written on an insurance industry standard form or equivalent, with limits of not less than $5,000,000 each accident.

11.5.3.4. Worker's compensation insurance for all workers engaged in the construction project, in the amounts and coverages required under workers' compensation, disability and similar employee benefit laws applicable to the Premises,

11.5.3.5. Employer's liability Insurance with limits not less than $5,000,000 each accident or each employee for bodily injury by disease, or such higher amounts as may be required by law.

11.6. **General Construction Requirements**.

11.6.1. Costs. All construction and other work in connection with the Project and any Alterations shall be the responsibility of the Lessee, and shall be done at Lessee's sole cost and expense and in a prudent and first-class manner and with materials per the approved plans and specifications for the Project. Throughout the construction of the Project and through the Final Completion of the same, Lessee shall provide Lessor with written progress reports as to the progress of construction and costs incurred related to the same, which reports shall be on a monthly basis.

11.6.2. Compliance. Lessee shall construct the Project and all Alterations in accordance with (i) all Applicable Laws, (ii) the approved Project Plans, and (iii) plans and specifications that are in accordance with the provisions of this Section 11 and all other applicable provisions of this Lease.

11.6.3. Safety. Lessee shall take all customary and necessary safety precautions during any construction.

11.6.4. As-Builts. Lessee shall prepare and maintain (and or require the general contractor to prepare and maintain) in accordance with normal construction practices (i) on a current basis during construction, annotated plans and specifications showing clearly all changes, revisions and substitutions during construction, and (ii) upon completion of construction, record drawings ("as-builts") showing clearly all changes, revisions and substitutions during construction, including, without limitation, field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions and other significant features of the Project and any Alterations. These as-built drawings and annotated plans and specifications shall be kept at the Premises and Lessee shall update them as often as necessary to keep them current. Lessee shall also make a copy of the as-built drawings and annotated plans and specifications at its sole cost and deliver electronic copies of the same to Lessor within sixty (60) days after the Project or the applicable Alterations have been substantially completed.

11.6.5. Completion Bonds. For the Project and for any Alterations costing more than $10,000,000 (increased during the Term by five percent (5%) on every five (5) year anniversary of the Commencement Date), Lessee shall deposit with Lessor certificates or other satisfactory evidence that the general contractor procured one or more bonds for a total amount not less than one hundred percent (100%) of the total cost of construction (including the correction of any design or construction defects), in form and content and with a surety or sureties satisfactory to Lessor, guaranteeing the full and faithful performance of the construction contract for such construction free and clear of all mechanics' and materialmen's liens and the full payment of all subcontractors, labor and materialmen, including without restricting the generality of the foregoing, all architects and interior designers, except that with respect to architects and interior designers, no such bond shall be required if Lessee delivers to Lessor a waiver of lien from such architect or interior designer. Any such bonds may also run to the benefit of any Leasehold Mortgagee, and the benefits of such bonds may be extended to Lessor and Leasehold Mortgagees via dual obligee riders or other method then customary to provide such added protection.

11.6.6. Apprenticeship. Lessee is encouraged to hire, and to cause its contractors to hire, apprentices where feasible as part of the construction of the Project or any Alterations.

11.7. **Construction Completion Procedures**. Upon completion of any construction, Lessee shall deliver to Lessor evidence reasonably satisfactory to Lessor of the payment of all costs, expenses, liabilities and liens arising out of or in any way connected with such construction (except for Liens that are contested in the manner provided in Section 16).

11.8. **On Site Inspection**. Lessor shall be entitled to have (at its option) on site, at all times during the construction of the Project and any Alterations requiring Lessor's approval and at Lessor's sole cost and expense, an inspector or representative who shall be entitled to observe all aspects of the construction. Lessor's inspection and observation shall in no way interfere with Lessee's and Lessee's Agents and contractor's work and construction of the Project and any Alterations. No inspection performed or not performed by Lessor hereunder shall (a) give, or be deemed to give, Lessor any responsibility or liability for the Project or any Alterations, or the design or construction thereof; (b) constitute, or be deemed to constitute, approval or acceptance of, any aspect of the design or construction of the Project or any Alterations; or (c) constitute or be deemed to constitute a waiver of any of Lessee's obligations hereunder.

11.9. **Restoration**. If this Lease expires or is terminated prior to the completion of construction of any Alterations, Lessee shall complete such construction of Alterations.

11.10. **Construction Costs**. During construction of the Improvements, Lessee shall provide

Lessor with (A) copies of all construction contracts entered into by Lessee in connection with construction of the Project; and (B) on a monthly basis, such reports and statements, including without limitation, copies of all materials submitted to Lessee's construction lender, if any, relating to construction draws, as may be reasonably requested by Lessor which establishes Lessee's cost of construction ("**Cost of Construction**").

11.10.1. Cost of Construction. It is the intent of the parties that the cost of construction shall be equal to Lessee's out of pocket cost and expense associated with the construction of the Improvements; provided that notwithstanding anything to the contrary contained herein, in no event shall the Cost of Construction exceed $65,000,000.00. Accordingly, the "Cost of Construction" shall mean the total costs, as evidenced by executed construction and/or architectural contracts with one or more general contractors or architects, of the cost of construction and design of the Project in accordance with the approved Project Plans, including, without limitation, the cost of building materials, supplies and improvements, infrastructure, labor and services; design; permits and other governmental approvals; general and subcontractor contracts, including, but not limited to, general contractor expenses associated with management, administration, overhead and profit; taxes paid or incurred; demolition; bid preparation and administration; equipment and other rental expenses; temporary sanitation and site preparation; temporary weather protection; temporary structures; project safety; safety equipment; progress cleanup; barricades and temporary fences; temporary signage; field office equipment, supplies, and all other infrastructure, improvements, work or services attributable to the Project, all as set forth in the approved Project Plans. "Cost of Construction" shall also include any construction management fee, which shall be for the management and administration of the Project. Notwithstanding anything to the contrary contained herein, "Cost of Construction" shall not include the Excluded Costs (as defined below). For the purposes of this Agreement, the term "**Excluded Costs**" shall mean any costs or expenses attributable or relating to:

A. Unused hard and soft cost contingency;
B. Lessee's financing costs and expenses, including interest;
C. Real estate or leasehold excise taxes; and
D. Legal, accounting, insurance counseling, or auditing services.

11.10.2 Right to Audit. Lessor shall have the right to audit and make copies of the books, records and computations pertaining to the Cost of Construction. Lessee shall retain such books, records, documents and other evidence pertaining to the Cost of Construction for a period of three (3) years following the Facility Completion Date, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available to Lessor, within ten (10) Business Days of Lessor's written request. Further, Lessee shall also require all subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Cost of Construction, and to allow Lessor similar access to those documents with prior written notice. The cost of the audit will be borne by Lessor.

12. Improvements And Alterations

During the Term, title to all Improvements and personal property now or hereafter located on the Land, including those to be constructed in accordance with the Project Plans, shall be vested in Lessee until either the date when the Improvements are conveyed to Lessor following Lessor's exercise of the Option to Purchase, or until the Expiration Date. Notwithstanding the foregoing, the ownership and disposition of all personal property, trade fixtures and improvements installed by any Subtenants of the Premises shall be as provided in their subleases.

Lessee's leasehold interest in the Premises and interest in the Improvements shall not be conveyed, transferred or assigned, except as permitted under Sections 22 and 24. Any attempted conveyance, transfer or assignment of Lessee's leasehold interest in the Land or ownership interest in the Improvements, whether voluntarily or by operation of law or otherwise, to any person, corporation or other entity shall be void and of no effect whatever, except as permitted under Sections 22 and 24. Notwithstanding the foregoing, Lessee may from time to time replace the Leasehold Improvements and any Alterations, provided that the replacements for such items are of equivalent or better value and quality, and such items are free from any liens and encumbrances except for equipment leases and any other financings expressly permitted hereunder.

13. Operation, Maintenance and Repairs

13.1. **Maintenance, Repairs and Operation**. Lessee agrees to operate the Buildings and Premises as a first-class building consistent with comparable projects in the region, including without limitation, the Kraken Community Iceplex, and taking into consideration normal wear and tear and the age, size and style of the Improvements and Premises. During the Term, except as set forth in the Community Center Sublease, Lessee shall, at its own cost and expense and without any cost or expense to Lessor, keep and maintain the Premises and all Improvements and appurtenant facilities, including without limitation the structural components, roof, fixtures, and building systems of the Improvements, grounds, groundwater, stormwater facilities, detention ponds, wetlands, soil, sidewalks, open space, parking and landscaped areas, in a first class condition. Lessee shall promptly make all repairs, replacements and alterations (whether structural or nonstructural, foreseen or unforeseen, or ordinary or extraordinary) necessary to maintain the Premises and the Improvements in a first-class condition and in compliance with all Applicable Laws and to avoid any structural damage or injury to the Premises, the Improvements, or any persons in or around the Premises. Lessee shall be responsible for maintaining all landscaping in a first-class standard and maintaining all sidewalks and parking lots serving the Buildings and Premises (including, without limitation, snow and ice removal) in order to provide an attractive and safe environment for users and visitors.

13.2. **Sustainability.** Lessor maintains high standards for environmental stewardship in operating and maintaining all of its facilities. Accordingly, Lessee agrees to operate and maintain the Premises with good faith, reasonable efforts to (a) use recycled and recyclable materials and products, (b) use Energy Star appliances or their equivalent and employ sound practices to conserve energy, (c) encourage and facilitate the ability of tenants to car pool and/or commute via public transportation or other alternative method of transportation, and (d) maintain and operate the Premises, and/or require that any third party property manager(s) maintain and operate the Premises, using products and practices designed to support environmental stewardship to include, without limitation, compliance with those sustainability standards and requirements required to maintain all of the installed equipment, systems and assets in accordance with the manufacturer's recommendations and industry standards.

13.3. **No Obligation of Lessor to Repair**. Except as otherwise set forth in the Community Center Sublease, Lessor shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Premises or the Improvements, and Lessee hereby expressly waives any right to terminate this Lease and any right to make repairs at Lessor's expense under any Applicable Laws.

14. Utilities And Services

Lessor and Lessee shall endeavor to have all utilities serving the Community Center separately metered. Except as otherwise set forth in the Community Center Sublease, Lessee shall be solely responsible for, shall make all arrangements for, and shall pay for all utilities and services furnished to or used at the Premises, including without limitation, gas, electricity, water, telephone, cable and other communication services, security services, sewage, sewage service fees, trash collection, and any Taxes thereon. All service lines of such utilities shall be installed and connected and maintained at no cost or expense to Lessor.

15. Mechanics' And Other Liens

15.1. **No Liens**. Except as permitted by Sections~~,~~ 22, 23, and 24, Lessee covenants and agrees to keep the Premises and every part thereof and all Improvements free and clear of and from any and all mechanics', material suppliers and other liens for: (a) work or labor done, services performed, materials, appliances, or power contributed, used or furnished, or to be used, in or about the Premises for or in connection with any operations of Lessee; (b) the Project or any Alterations; or (c) any work or construction by, for or permitted by Lessee on or about the Premises or Improvements (collectively, "**Liens**"). Lessee shall promptly and fully pay and discharge any and all claims upon which any such Lien may or could be based, and keep the Premises and Improvements free and clear of, and save and hold Lessor, the Premises and the Improvements harmless from, any and all such Liens and claims of Liens, damages, liabilities, costs (including, without limitation, attorneys' fees and costs), suits or other proceedings pertaining thereto.

15.2. **Lessor's Interests**. Nothing herein shall authorize Lessee to do any act that may encumber the fee simple title of Lessor in and to the Premises, nor shall the fee simple estate of Lessor therein be in any way subject to any claim of lien or encumbrance, whether claimed by operation of law or by virtue of any express or implied contract by Lessee. Any claim to a lien upon the Premises or any Improvements constructed thereon by Lessee, arising from any act or omission of Lessee, shall accrue only against the leasehold estate and shall in all respects be subject to the paramount fee simple title of Lessor. In no event shall any interest of Lessor in the Premises, including without limitation, Lessor's right to receive Rent and its other rights and interest under this Lease (collectively, "**Lessor's Interest**"), be subject or subordinate to any Lien.

Without limitation of the foregoing, no work performed by, through, under or for Lessee pursuant to this Lease shall be deemed to be for the immediate use or benefit of Lessor to the end that no mechanic's or other liens shall be allowed against the estate of Lessor by reason of any consent given by Lessor to Lessee to improve the Premises. Prior to commencement of any work or the supplying of materials, Lessee shall provide to any contractor or subcontractor performing services or supplying materials for or to Lessee notice that such service and/or supplies are not at the direction of Lessor.

15.3. **Lessor's Right to Cause Release of Liens**. If Lessee does not cause any Lien that Lessee does not contest in accordance with Section 16 to be released of record by payment or posting of a proper bond or insured over within thirty (30) days following the imposition of such Lien, Lessor shall have the right, but not the obligation, to cause the Lien to be released by any means Lessor may deem appropriate, and the amount paid by Lessor, together with Lessor's Administrative Fees, plus interest at the Interest Rate from the date of payment by Lessor, shall be immediately due and payable by Lessee to Lessor upon demand.

16. Right To Contest Liens

Lessee shall have the right to contest, in good faith, the amount or validity of any Lien, provided that, before doing so, Lessee shall give Lessor written notice of Lessee's intention to do so within thirty (30) days after the recording of such Lien and provided further that Lessee shall, at its expense, defend itself and Lessor against such Lien and shall pay and satisfy any adverse judgment that may be rendered concerning such Lien before that judgment is enforced against the Premises. In addition, at the request of Lessor, Lessee shall either (a) procure and record a bond freeing the Premises from the effect of such Lien; or, (b) at Lessee's election, cause such Lien to be insured over for the benefit of Lessor; or (c) post alternative security that is reasonably acceptable to Lessor and meets the requirements of Applicable Law to cause the Lien to no longer attach to Lessor's Interest. Lessee shall pay Lessor's Administrative Fees to Lessor in connection with any such contest.

17. **Compliance With Laws**

Lessee, at Lessee's sole cost and expense, shall comply with all Applicable Laws relating to this Lease, the Premises, the Improvements during the Term. Lessee shall give Lessor prompt written notice of any violation of Applicable Laws by Lessee or its agents known to Lessee and, at its sole cost and expense, Lessee shall promptly rectify any such violation. Without in any way limiting the generality of the foregoing obligation of Lessee, Lessee shall be solely responsible for compliance with, and shall make or cause to be made all such Alterations to the Premises (including, without limitation, removing barriers and providing alternative services) as shall be required by the Americans with Disabilities Act (42 USC ~~section~~Section 12101 et seq.), as the same may be amended from time to time, and any similar or successor laws, and with any rules or regulations promulgated thereunder. Any work or installations made or performed by or on behalf of Lessee or any person or entity claiming through or under Lessee in order to conform the Premises to Applicable Laws shall be subject to and performed in compliance with the provisions of Section 11.

18. **Hazardous Substances**

18.1. **Hazardous Substances**. Except as provided in this Section 18.1, no Hazardous Substance shall be used, treated, kept, stored, transported, handled, sold or Released at, on, under or from the Premises during the Term. Notwithstanding the foregoing, Lessee and Lessee's Agents may use small quantities of standard janitorial, kitchen, and office products, and also such products as are incorporated into the functioning of building systems (e.g. HVAC units and elevators) that are necessary to the permitted use of the Premises and may use small quantities of Hazardous Substances as is necessary and typical in connection with the construction of the Premises, and then only in compliance with all Applicable Laws. Lessee shall (i) in all respects comply with all Environmental Requirements in its operation of the Premises and (ii) handle, treat, deal with and manage any and all Lessee's Hazardous Substances in total conformity with all Environmental Requirements, other Applicable Laws, and prudent industry practices regarding Hazardous Substances management.

18.2. **Permits; Inventories.** Lessee shall, at its own expense, procure, maintain in effect and comply with all conditions of any and all permits, licenses, and other governmental and regulatory approvals required for Lessee's use of Hazardous Substances at the Premises, including, without limitation, discharge of appropriately treated materials or wastes into or through any sanitary sewer serving the Premises.

18.3. **No Lien.** Lessee shall not suffer any lien to be recorded against the Premises as a consequence of any Lessee Environmental Activity, including any so-called state, federal or local Superfund lien related to the remediation of any Hazardous Substances in or about the Premises.

18.4. **Indemnity for Environmental Claims**.

18.4.1. To the greatest extent allowed by Applicable Laws, Lessee and its successors and assigns shall indemnify, protect, defend, reimburse, and save and hold harmless Lessor and the Lessor Parties from and against any and all Environmental Claims to the extent arising from or related to (a) Lessee Environmental Activity, (b) any non-compliance by Lessee with Environmental Requirements at the Premises, (c) any other acts or omissions of Lessee or Lessee's Agents in or about the Premises which result in the Release of Hazardous Substances, or (d) Lessee's demolition of the Existing Improvements and construction of the Leasehold Improvements. Lessee's obligations hereunder shall include, but not be limited to, the reimbursement of Lessor's costs and expenses related to the defense of all claims, suits and administrative proceedings (using counsel selected by Lessor in its sole discretion), even if such claims, suits or proceedings are groundless, false or fraudulent; participating in all negotiations of any description; and promptly paying and discharging when due any and all judgments, penalties, fines or other sums due against or from Lessor or the Premises. Notwithstanding anything to the contrary contained herein, Lessee's indemnity shall not apply to the acts or omissions, negligence or willful misconduct of Lessor or any Lessor Party.

18.4.2. To the greatest extent allowed by Applicable Laws, Lessor and its successors and assigns shall indemnify, protect, defend, reimburse, and save and hold harmless Lessee and the Lessee Parties from and against any and all Environmental Claims to the extent arising from or related to (a) any non-compliance or violation by Lessor of Environmental Requirements with respect to the Land, or (b) any other acts or omissions of Lessor or Lessor's Agents in or about the Premises which result in the Release of Hazardous Substances. Lessee's obligations hereunder shall include, but not be limited to, the reimbursement of Lessee's costs and expenses related to the defense of all claims, suits and administrative proceedings (using counsel selected by Lessee in its sole discretion), even if such claims, suits or proceedings are groundless, false or fraudulent; participating in all negotiations of any description; and promptly paying and discharging when due any and all judgments, penalties, fines or other sums due against or from Lessee or the Premises. Notwithstanding anything to the contrary contained herein, Lessor's indemnity shall not apply to the acts or omissions, negligence or willful misconduct of Lessee or any Lessee Party.

18.5. **Obligation to Remediate.** Notwithstanding the obligation of Lessee to indemnify Lessor pursuant to this Lease, during the Term of this Lease, Lessee shall, upon demand by Lessor, and at Lessee's sole cost and expense, promptly take all actions to remediate the Premises from the effects of any Lessee Environmental Activity and to obtain regulatory closure determinations (referred to by several Environmental Requirements as "No Further Action Opinion Letters") from all applicable Governmental Authorities or agencies having jurisdiction over the Premises, including without limitation the Environmental Protection Agency, Washington Department of Ecology, Lessor, and King County. Lessee shall be responsible for all reporting obligations under applicable Environmental Requirements relating to Lessee Environmental Activity, and Lessee agrees to be named on any remediation orders as the primarily responsible party for such Lessee Environmental Activity, and Lessor shall be named, if Lessor consents in writing to be named, only secondarily liable. Lessor shall have the right to participate in all negotiations with the Governmental Authorities having jurisdiction over any remediation. Lessee's remediation obligations with regard to Lessee Environmental Activity shall include, but not be limited to, the investigation of the environmental condition of the Premises, the preparation of any feasibility studies, reports or remedial plans, and the performance of any cleanup, remediation, containment, operation, maintenance, monitoring or restoration work, whether on or off of the Premises. Lessee shall take all actions required under Environmental Requirements to remediate the Premises from the effects of such Lessee Environmental Activity. All such work, including without limitation the contractor(s) performing the work and the work plan for the remediation, shall be reasonably approved in advance and in writing by Lessor. Lessee shall proceed continuously and diligently with such investigatory and remedial actions, provided that in all cases such actions shall be in accordance with all Applicable Laws. Any such actions shall be performed in a good, safe and workmanlike manner. Lessee shall pay all costs in connection with such investigatory and remedial activities, including but not limited to all power and utility costs, and any and all taxes or fees that may be applicable to such activities. Lessor's environmental consultant shall have the right to be present during any testing or investigation on the Premises, and Lessee shall promptly provide to Lessor copies of testing results and reports that are generated in connection with the above activities and any that are submitted to any governmental entity. Promptly upon completion of such investigation and remediation, Lessee shall permanently seal or cap all monitoring wells and test holes in accordance with sound engineering practice and in compliance with Applicable Laws, remove all associated equipment, and restore the Premises to the maximum extent possible, which shall include, without limitation, the repair of any surface damage, including paving, caused by such investigation or remediation.

Lessee shall, in compliance with this Section 18.5 and Environmental Requirements, other Applicable Laws, and prudent industry practices regarding Hazardous Substances management, be responsible for the removal, disposal, and/or remediation of any Hazardous Substances present in the Premises during demolition of the Existing Improvements and construction of the Leasehold Improvements.

18.6. **Obligation to Notify**. If Lessee or Lessor shall become aware of or receive notice or other communication in writing concerning any actual, alleged, suspected or threatened violation of Environmental Requirements, Release of Hazardous Substances, or liability for Environmental Claims in connection with the Premises, including but not limited to, notice or other communication concerning any actual or threatened investigation, inquiry, lawsuit, claims, citation, directive, summons, proceeding, complaint, notice, order, writ, or injunction, relating to same, then such Party promptly shall deliver to the other Party a written description of said notice or other communication within five (5) Business Days after receipt. Except as required by Applicable Laws, or as permitted by Lessor or Lessee in writing, Lessee and Lessor shall maintain the confidentiality of all information, reports and assessments regarding the environmental condition of the Premises, whether received by or prepared for Lessee or Lessor, unless otherwise required to be disclosed by Applicable Law.

18.7. **Right to Inspect**. Lessor shall have the right to enter and conduct an inspection of the Premises, including invasive tests, at any reasonable time and upon reasonable advance written notice, and in a commercially reasonable manner, to determine whether Lessee is complying with the terms of this Lease, including but not limited to the compliance of the Premises and the activities thereon with Environmental Requirements and the existence of Environmental Claims as a result of the condition of the Premises or surrounding properties and activities thereon. Lessor shall have the right, but not the obligation, to retain at its expense any independent professional consultant to enter the Premises to conduct such an inspection, and to review any report prepared by or for Lessee concerning such compliance. Lessee hereby grants to Lessor and Lessor's Agents the right to enter the Premises and to perform such tests on the Premises as are reasonably necessary in the opinion of Lessor to conduct such review and inspections. Except to the extent of Lessor's gross negligence or willful misconduct in the exercise of its rights under this Section 18.7, Lessee hereby waives and releases any claims for damages for any injury or inconvenience to or interference with Lessee's business at the Premises, any loss of occupancy or quiet enjoyment of the Premises or any other loss, damage, liability or cost occasioned by Lessor's exercise of the rights reserved to Lessor under, or granted to Lessor pursuant to this Section 18.7. In no event shall Lessee be entitled to terminate this Lease as a result of Lessor's exercise of such rights, notwithstanding any possible liability of Lessor for damages as a result of its inspection of the Premises pursuant to this Section 18.7. Notwithstanding the foregoing, the waiver and release set forth in this ~~Section18.7~~Section 18.7 are not intended and shall not be construed to affect or impair any rights or remedies that Lessee may have against Lessor as a result of any breach of any representations or warranties made by Lessor or any of the covenants of the Lessor set forth in this Agreement.

18.8. **Right to Remediate**. If Lessee fails to perform or observe any of its obligations or agreements pertaining to Hazardous Substances or Environmental Requirements, then Lessor shall have the right, but not the obligation, without limitation of any other rights of Lessor hereunder, following thirty (30) days prior written notice to Lessee, and Lessee's failure to commence remediation activities within the 30-day period, to enter the Premises personally or through Lessor's Agents and perform the same. Lessee agrees to indemnify Lessor for the costs thereof and liabilities therefrom as set forth above in this Section 18.8. With respect to any work undertaken by Lessor to remediate the Premises from the effects of Lessee Environmental Activity pursuant to this Section 18.8, Lessee shall be named as generator of all Hazardous Substances that are disposed of in connection with the remediation, and all such Hazardous Substances shall be disposed of using Lessee's hazardous waste generator number.

18.9. **Statute of Limitations.** Lessee hereby agrees that no statute of limitations relating to Lessee Environmental Activity, the presence of Hazardous Substances, the violation of Environmental Requirements or any other matter covered by this Section 18 shall commence to run unless and until Lessor obtains actual knowledge of any of the foregoing in the course of any inspection or assessment conducted by Lessor, whether independently, from Lessee, or by written notice from a governmental agency with jurisdiction over the environmental condition of the Premises or from Lessee (each, a "**Triggering Event**"). In the event of a Triggering Event, Lessor and Lessee shall enter into a commercially reasonable agreement to toll all applicable statutes of limitation, which the parties shall renew periodically during the Term; provided that by entering into such agreement Lessor shall not be deemed to have waived any enforcement rights, and Lessee shall not be deemed to have waived any substantive defenses, available pursuant to this Lease or any Applicable Laws.

18.10. **Existing Hazardous Substances**.

18.10.1. Lessee's Release. From and after the Commencement Date, Lessee hereby releases Lessor and all Lessor Parties from all liability to Lessee or Lessee Parties related to the Release of any Hazardous Substances in, on, under or about the Premises on or after the Commencement Date, as well as any migration, seepage or discharge on, under or in the Premises of Hazardous Substances originating off of the Premises occurring from and after the Commencement Date, except to the extent such liability arises as a result of the gross negligence or willful misconduct of Lessor or any Lessor Parties.

18.10.2. Lessor's Release. Lessor hereby releases Lessee and all of its officers, employees, agents and representatives of Lessee (the "**Lessee Parties**") from all liability to Lessor related to the (i) existence or Release of any Hazardous Substances in, on, under or about the Premises prior to the Commencement Date, as well as any (ii) migration, seepage or discharge on, under or in the Premises of Hazardous Substances originating off of the Premises that occurred prior to the Commencement Date, except to the extent such liability arises as a result of the gross negligence or willful misconduct of Lessee, or Lessee's exacerbation of any such Hazardous Substances prior to or following the Commencement Date. Notwithstanding the foregoing, Lessee shall not be released from its obligations pursuant to Section 18.5.

18.10.3. Other Claims. Nothing in this Section 18.10 shall prevent or limit Lessor or Lessee (separately or jointly) from pursuing claims against third parties who may have liability with respect to Environmental Claims and/or Hazardous Substances with respect to the Premises, whether arising before or after the Commencement Date.

18.11. **General Provisions.**

18.11.1. The obligations of Lessee under this Section 18 shall not be affected by any investigation by or on behalf of Lessor, or by any information which Lessor may have or obtain as a result of any such investigation.

18.11.2. The provisions of this Section 18 shall survive any termination of this Lease.

18.11.3. The provisions of Section 19 (Insurance) shall not limit in any way Lessee's obligations under this Section 18. If any governmental agency or department requires insurance or bonds with respect to any proposed or actual use, storage, treatment or disposal of Hazardous Substances by Lessee or any of Lessee's Agents, Lessee shall be responsible for such insurance and bonds and shall pay all premiums and charges connected therewith; provided, however, that this provision shall not be deemed to modify the requirements of the Section 19.

19. **Insurance.**

19.1. **Required Insurance**. At all times during the Term and at its sole cost and expense, Lessee shall obtain and keep in force for the benefit of Lessee and Lessor the following insurance:

19.1.1. Property Insurance. Commercial property insurance covering the building, fixtures, equipment, tenant improvements (unless separately insured by Subtenants) and betterments, with coverage at least as broad as the ISO special causes of loss form and specifically including the perils of earthquake, flood and terrorism. The amount of such insurance (other than earthquake, flood and terrorism coverage) shall be the Full Replacement Value. The amount and terms of earthquake, flood and terrorism coverage shall be as close to Full Replacement Value as is available at commercially reasonable rates given market deductibles and coverage limits and comparable to that carried by similar commercial properties in the greater Seattle area. Lessor shall be named as a loss payee on Lessee's property insurance. Lessee's property insurance shall be primary and non-contributory to any insurance or self-insurance maintained by Lessor.

19.1.1.1. **"Full Replacement Value"** means 100% of the actual costs to replace the Improvements (without deduction for depreciation but with standard exclusions such as foundations, excavations, paving and landscaping, as applicable to specific perils), including the costs of demolition and debris removal and including materials and equipment not in place but in transit to or delivered to the Premises. The Full Replacement Value initially shall be determined at Lessee's expense by an appraiser or an insurer, selected by Lessee and reasonably acceptable to Lessor. Lessee shall notify Lessor of the determination of the Full Replacement Value by such appraiser or insurer. Lessor or Lessee may at any time, but not more frequently than once in any twelve (12) month period, by written notice to the other, require the Full Replacement Value to be redetermined, at Lessee's expense, by an appraiser or insurer selected by Lessee and reasonably acceptable to Lessor. Lessee shall not cause the Full Replacement Value to be redetermined except in accordance with the preceding sentence. Lessee shall maintain coverage at the current Full Replacement Value throughout the Term, subject to reasonable deductibles approved in writing by Lessor.

19.1.1.2. **Rental and Business Interruption Insurance**. Property insurance shall include business interruption and extra expense coverage insurance in an amount sufficient to insure payment of Rent for a period of not less than six (6) months during any interruption of Lessee's business by reason of the Premises being damaged by perils covered under the policy.

19.1.2. Equipment Breakdown/Boiler and Machinery Insurance. Equipment breakdown insurance covering the building, fixtures, equipment, tenant improvements and betterments for the value as determined by Lessee from loss or damage caused by the electrical, mechanical or boiler failure. This coverage may be provided under the commercial property insurance policy or through a separate commercial "boiler and machinery" property insurance policy.

19.1.3. Worker's Compensation. Worker's Compensation Insurance in the amounts and coverages required in accordance with Applicable Laws, if applicable.

19.1.4. Employer's Liability Insurance. Employer's liability insurance in an amount not less than $5,000,000 each accident or per employee for bodily injury or from disease, if applicable.

19.1.5. Commercial General Liability Insurance. Commercial general and if necessary umbrella liability insurance covering the use and occupancy of the Premises and insuring against claims for bodily injury, property damage and other covered loss (however occasioned) occurring on the Premises during the policy term. Such coverage shall be written on an "occurrence" form, with such limits as may be reasonably required by Lessor from time to time, but in any event not less than $25,000,000 in the aggregate for the Premises, which Lessee shall increase as necessary during the Term to maintain adequate coverage over time that is comparable to the requirements in effect as of the execution of this Lease.

19.1.5.1. Such insurance shall (A) delete any employee exclusion on personal injury coverage; (B) provide blanket contractual coverage, including liability assumed by and the obligations of Lessee under Section 20 for bodily injury, death and/or property damage; (C) provide Products and Completed Operations and Independent Contractors coverage and Broad Form Property Damage liability coverage without exclusions for collapse, explosion, demolition, underground coverage and excavating, including blasting; (D) provide liability coverage on all mobile equipment used by Lessee; and (E) include a cross liability endorsement (or provision) permitting recovery with respect to claims of one insured against another.

19.1.5.2. If commercial general liability insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

19.1.5.3. In the event that Lessee or any Subtenant of Lessee is in the business of selling or serving alcoholic beverages, unless such insurance is separately provided by such Subtenant, Lessee shall procure liquor liability insurance coverage (unless such insurance is separately provided by such Subtenant), in an amount not less than $1,000,000 per occurrence and $2,000,000) in the aggregate.

19.1.6. Commercial Auto Liability. Automobile and, if necessary, umbrella liability insurance including coverage for owned, non-owned, leased or hired vehicles, written on an insurance industry standard form or equivalent, with limits of not less than $5,000,000 each accident.

19.1.7. Other. All other insurance that Lessee is required to maintain under Applicable Laws, and any other form or forms of insurance that Lessor may reasonably require from time to time in amounts and for insurable risks against which a prudent tenant would protect itself to the extent landlords of comparable buildings in the vicinity of the Premises require their tenants to carry such other form(s) of insurance.

19.2. **Policy Form and General**.

19.2.1. Policies. All of the insurance policies required under this Lease, including without limitation, under the provisions of Section 11 and this Section 19, and all renewals thereof shall be issued by one or more companies of recognized responsibility, authorized to do business in Washington, with a financial rating reasonably acceptable to Lessor. The proceeds of all property damage and builder's risk policies of insurance shall be payable to Lessee for application in accordance with this Lease, and Lessor shall be named as an additional insured, as its interest may appear. All liability insurance shall name as additional insureds Lessor, the Lessor Parties, and such other parties as Lessor reasonably may request, as their interest may appear. Any deductibles or self-insurance retention for any of the foregoing insurance must be agreeable to Lessor, in its reasonable discretion. All deductibles and self-insurance retention shall be paid by Lessee. All insurance of Lessee shall be primary coverage to Lessor and the Lessor Parties. Any insurance or self-insurance maintained by Lessor shall be excess of Lessee's insurance and shall not contribute to it.

19.2.2. Proof of Insurance; Renewals. Copies of Lessee's certificates of insurance shall be delivered to Lessor within ten (10) days prior to the delivery of possession of the Premises to Lessee and thereafter within five (5) days prior to the expiration of the term of each such policy. As often as any policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Lessee in like manner and to like extent. Lessee will give to Lessor thirty (30) days' notice in writing in advance of any cancellation or lapse or of the effective date of any reduction in the amounts of insurance. Lessor reserves the right to require complete certified copies of all required insurance policies, including endorsements affecting the coverage required by the specifications at any time.

19.2.3. Increased Coverage. If either Party shall at any time deem the limits of any of the insurance described in this Lease then carried or required to be carried to be either excessive or insufficient, the parties shall endeavor to agree upon the proper and reasonable limits for such insurance then to be carried and such insurance to the extent available at commercially reasonable rates, shall thereafter be carried with the limits thus agreed upon until further change pursuant to the provisions of this subsection. If the parties shall be unable to agree on the proper and reasonable limits for such insurance, then either Party may submit the matter to arbitration pursuant to the then-current Expedited Procedures under the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association.

19.2.4. No Representation. No approval by Lessor of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by Lessor of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible, and Lessee assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers.

19.2.5. Lessor Rights. If Lessee fails to take out and keep in force each insurance policy required under this Section 19, or if such insurance is not be reasonably approved by Lessor and Lessee does not rectify the situation within five (5) Business Days after written notice from Lessor to Lessee, Lessor shall have the right, without assuming any obligation in connection therewith, to purchase such insurance at the sole cost of Lessee, and all costs incurred by Lessor shall be payable to Lessor by Lessee within thirty (30) days after demand without prejudice to any other rights and remedies of Lessor under this Lease.

19.2.6. Waiver of Recovery. Notwithstanding anything to the contrary contained herein, to the extent of property insurance proceeds received (or which would have been received had Lessee carried the insurance required by this Lease) with respect to the loss, Lessee hereby waives any right of recovery against Lessor and any other party maintaining a policy of property insurance with respect to the Premises or any portion thereof, or the contents of the Premises or the Improvements for any loss or damage sustained by Lessee with respect to the Premises, the Improvements, or any portion thereof, or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of Lessor. Lessee shall notify Lessor if the policy of insurance carried by it does not permit the foregoing waiver.

20. Indemnity And Release

20.1. **Indemnity**. To the greatest extent allowed by Applicable Laws, unless otherwise provided herein, Lessee and its successors and assigns shall indemnify, protect, defend and save and hold harmless Lessor and the Lessor Parties (hereinafter collectively referred to as the "**Lessor Indemnitees**") from and against, and shall reimburse Lessor and the Lessor Parties for, any and all claims, demands, losses, damages, costs, liabilities, penalties, causes of action and expenses, including, without limitation, reasonable attorneys' fees and expenses (collectively, "**Claims**"), incurred in any way in connection with or arising from, in whole or in part, the following: (a) any default by Lessee in the observance or performance of any of the terms, covenants or conditions of this Lease on Lessee's part to be observed or performed; (b) the use, occupancy or manner of use or occupancy of the Premises by Lessee, any of Lessee's Agents, or any other person or entity claiming by, through or under Lessee; (c) the conduct or management of any work or thing done in or on the Premises by Lessee, any of Lessee's Agents, or any other person or entity claiming by, through or under Lessee; (d) the design (including actual or alleged design defects), construction (including actual or alleged construction defects), removal, financing, maintenance, or condition of any Improvements during the Term; (e) the condition of the Premises during the Term; (f) any actual or alleged acts, omissions, or negligence of Lessee or Lessee's Agents in, on or about the Premises; (g) any Lessee Environmental Activity during the Term; (h) any accident or other occurrence on the Premises, but not including the Community Center, from any cause whatsoever during the Term; or (i) Lessee's operation or management of the Premises. This indemnification will also inure to the successors and assigns of the Lessor Indemnitees and will also be binding upon the successors and assigns of Lessee, and this indemnification will survive the expiration or termination of this Lease. In case any claim, action or proceeding is brought, made or initiated against a Lessor Indemnitee relating to any of the above described events, acts, omissions, occurrences, or conditions, Lessee, upon notice from Lessor or such Lessor Party, shall at its sole cost and expense, resist or defend such claim, action or proceeding by attorneys reasonably approved by Lessor or such Lessor Party. Notwithstanding the foregoing, Lessee's indemnity obligations described herein shall not apply to the extent a Claim arises or results from Lessor's breach of its obligations under this Lease or the Community Center Sublease; the gross negligence or willful misconduct of Lessor, Lessor's Agents, Subtenants, or invitees; Lessor's use, occupancy, or manner of use or occupancy of the Community Center by Lessor, any of Lessor's Agents, or any other person or entity claiming by, through or under the Community Center Sublease; any accident or other occurrence at the Community Center from any cause whatsoever; and, Lessor's operation or management of the Community Center. 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 Lessor with a full and complete indemnity from claims made by Lessee and its employees, to the extent provided herein.

20.2. **Indemnification by Lessor**. To the greatest extent allowed by Applicable Laws, unless otherwise provided herein, Lessor and its successors and assigns shall indemnify, protect, defend and save and hold harmless Lessee and all of its trustees, officers, employees, directors, agents, and consultants (hereinafter collectively referred to as the "**Lessee Indemnitees**") from and against, and shall reimburse the Lessee Indemnitees for, any and all Claims incurred in any way in connection with or arising from, in whole or in part, the following (i) any actual or alleged acts, omissions, or negligence of the Lessor, its agents or employees, or others working at the direction of the Lessor or on its behalf, in, on or about the Premises; (ii) any default by Lessor in the observance or performance of any of the terms, covenants or conditions of this Lease or the Community Center Sublease on Lessor's part to be observed or performed; and (iii) any violation of Governmental Regulations by Lessor or such other Persons. The indemnification obligations of Lessor and its successors and assigns as provided herein shall be in addition to any indemnification obligations required of Lessor under the Community Center Sublease. This indemnification will also inure to the successors and assigns of the Lessee Indemnitees and will also be binding upon the successors and assigns of Lessee, and this indemnification will survive the expiration or termination of this Lease. In case any claim, action or proceeding is brought, made or initiated against a Lessee Indemnitee relating to any of the above described events, acts, omissions, occurrences, or conditions, Lessor, upon notice from such Lessee Indemnitee , shall at its sole cost and expense, resist or defend such claim, action or proceeding by attorneys reasonably approved by such Lessee Indemnitee. Notwithstanding the foregoing, Lessor's indemnity obligations described herein shall not apply to the extent a Claim arises or results from the gross negligence or willful misconduct of Lessee, its agents or employees, or others working at the direction of the Lessee at the Premises, or claims exclusively between the undersigned parties arising from the terms or regarding the interpretation of this Lease.

20.3. **Lessee's Assumption of Risk and Waiver**. As a material part of the consideration to Lessor for entering into this Lease, except as otherwise provided herein, Lessee agrees that neither Lessor nor any Lessor Party shall be liable to Lessee for, and Lessee expressly assumes the risk of and waives, releases and discharges Lessor and all Lessor Parties from any and all claims, damages, liabilities, costs and expenses of any kind or nature relating in any manner, directly or indirectly, in whole or in part, to the Premises (but not including the Community Center) or this Lease, whether resulting from any act or omission of Lessor or from any other cause whatsoever, including without limitation: (a) the performance of any public or quasi-public works on or near the Premises; (b) any loss or theft of, or damage to, any Improvements or personal property; (c) any act or omission of any person accessing the Premises pursuant to an easement or right of entry reserved under this Lease or implied by Applicable Law; and (d) any past, present or future aspect, feature, characteristic, circumstance or condition arising out of or in connection with the Premises; provided, however, that this assumption of risk and waiver and release shall not apply to the negligence or willful misconduct of Lessor, or failure by Lessor to comply with any of its express obligations under this Lease or the Community Center Sublease, or with respect to any indemnity obligations of Lessor hereunder. Without limiting the generality of the foregoing provisions of this Section 20.3, and notwithstanding anything to the contrary elsewhere in this Lease, neither Lessee or Lessor shall under any circumstances whatsoever be liable to the other for consequential damages or interference with light or other incorporeal hereditaments. The provisions of this Section 20.3 shall survive the expiration or earlier termination of this Lease.

21. **Condemnation, Damage or Destruction**

21.1. **Condemnation.** The following terms and conditions shall apply in the event of a Condemnation.

21.1.1. Total Taking. If all of the Premises or any substantial part of the Premises (as shall in the reasonable discretion of Lessee make it economically unfeasible to continue to operate the remaining portion of the Premises) shall be taken as a result of a Condemnation ("**Total Taking**"), this Lease shall terminate as of the date of taking or as of the date of final judgment, whichever is earlier. All Awards with respect to Lessee's interests with respect to such Total Taking shall be distributed as follows: (1) first to the Leasehold Mortgagee in an amount equal to the principal, accrued interest and other amounts due and payable under the Leasehold Mortgage; and (2) the remaining balance of the Award shall be paid to the Lessor.

21.1.2. Partial Taking. Upon any Condemnation which is not a Total Taking ("**Partial Taking**"), (i) this Lease shall terminate as to the portion of the Premises subject to the Partial Taking; and (ii) this Lease shall be terminated in its entirety if the Premises cannot be restored to an economically viable whole capable of operation in accordance with this Lease, and capable of generating sufficient revenues to pay the indebtedness under the Leasehold Mortgage, as and when due. If this Lease is terminated due to a Partial Taking as set forth above, the Award shall be distributed as set forth in Section 21.1.1 above. If a Partial Taking occurs, and this Lease is not terminated pursuant to and in accordance with this Section 21.1.2, this Lease shall be deemed amended, effective as of the effective date of such Condemnation, such that the definition of the "Premises" shall include only that portion of the Premises that is not subject to such Condemnation, and the Award for such Partial Taking shall be distributed to the Leasehold Mortgagee, and used to repair and restore the Premises, as set forth in Section 21.1.4 below.

21.1.3. Effect of Condemnation. No Condemnation shall, except as otherwise provided herein, operate to terminate this Lease. In no event shall Lessee be entitled to any proration or refund of Rent paid hereunder. Unless this Lease is terminated pursuant to and in accordance with this Section 21.1, no such Condemnation shall relieve or discharge Lessee from the payment of Rent, or from the performance and observance of any of the agreements, covenants and conditions herein contained on the part of Lessee to be performed and observed.

21.1.4. Repair and Restoration. If a Partial Taking occurs, and the Premises can be restored to an economically viable whole capable of operation in accordance with this Lease, and capable of generating sufficient revenues to pay the indebtedness under the Leasehold Mortgage, as and when due, Lessee, as promptly as practicable and with all due diligence, shall cause the repair or reconstruction of or the making of Alterations to the Improvements as necessary to restore the Premises. All repairs and restoration shall be performed in accordance with the provisions of Section 11 of this Lease (as applicable). Except as otherwise provided herein, all Awards received by or payable to either Party with respect to the repairs needed to repair the Premises following a partial Condemnation, less actual costs and expenses incurred in connection with the collection thereof, shall be applied to the costs of repair and restoration of the Premises and the Improvements in accordance with the provisions of this Section 21.1.4 and in compliance with Section 11 (as applicable). Lessee's obligation to restore the Premises is subject to Lessee's allocation of the Award being sufficient to restore the Premises in accordance with the terms of this Lease.

21.1.5. Allocation of Award. The amount of the Award due to Lessor and Lessee as a result of Condemnation shall be separately determined by the court having jurisdiction over such proceedings based on the following: Lessor shall be entitled to that portion of the Award attributable to the value of its interest in the Premises (or portion thereof subject to Condemnation, in case of a Partial Taking) subject to this Lease, as determined by the court; Lessee shall be entitled to that portion of the Award attributable to the value of Lessee's leasehold interest in the Premises (or portion thereof subject to Condemnation, in case of a Partial Taking), as determined by the court.

21.1.6. Excess Award. If the total Award made in connection with any Condemnation for Lessee's interests, and for severance damages to both Lessee's and Lessor's interests, exceeds the amount necessary to repair, restore, reconstruct or demolish Alterations as required under Section 21.1.4 in a case where this Lease is not terminated, upon receipt by Lessor of satisfactory evidence that the work of repair, restoration, reconstruction or demolition required under Section 21.1.4 has been fully completed and paid for in accordance with the provisions of Section 11 and that the last day for filing any mechanic's or materialmen's liens has passed without the filing of any, or if filed, any such lien has been released, such excess Award (which is attributable to Lessee's leasehold interest in the Premises) shall first be paid to the holders of Leasehold Mortgages as their interests may appear, and to the extent required thereunder, and second be paid to the Lessor.

21.1.7. Temporary Taking. If the whole or any part of the Premises or of Lessee's interest in this Lease shall be taken in condemnation proceedings or by any right or eminent domain for a temporary use or occupancy, the Term shall not be reduced or affected in any way and Lessee shall continue to pay in full the Rent due hereunder. Except only to the extent that Lessee is prevented from so doing pursuant to the terms of the order of the condemning authority, Lessee shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease as though such taking had not occurred. Lessee shall be entitled to receive the entire amount of any award made for such temporary taking whether such award is paid by way of damages, rent or otherwise, unless such period of temporary use or occupancy shall extend beyond the Expiration date of the Term, in which case such award, after payment to Lessor therefrom of the estimated cost of restoration of the Premises, to the extent that any such award is intended to compensate for damage to the Premises, shall be apportioned by Lessor and Lessee as of such date of expiration in the same ratio that the part of the entire period for such compensation is made falling before the date of expiration and that part falling after, the Expiration Date, bear to the entire period.

21.1.8. Participation in Settlement. Lessor and Lessee shall both have the right to participate in the settlement or compromise of any Awards.

21.2. **Damage or Destruction**. No loss or damage by fire or other cause resulting in either partial or total destruction of the Premises, the Improvements or any other property on the Premises shall, except as otherwise provided herein, operate to terminate this Lease. The following terms and conditions shall apply in the event of damage to or destruction of the Premises.

21.2.1. No Effect on Rent. Except as expressly provided herein, no such loss or damage shall affect or relieve Lessee from Lessee's obligation to pay Rent, and in no event shall Lessee be entitled to any proration or refund of Rent paid hereunder. Unless this Lease is terminated pursuant to and in accordance with this Section 21.2, no such loss or damage shall relieve or discharge Lessee from the payment of Rent, or from the performance and observance of any of the agreements, covenants and conditions herein contained on the part of Lessee to be performed and observed.

21.2.2. Determination of Damage. Upon the occurrence of any event of damage or destruction to the Premises or the Improvements or any portion thereof, Lessee shall promptly undertake to determine the extent of the same and the estimated cost and time to repair and restore the Improvements in accordance with the provisions of this Lease. Lessee shall notify Lessor of its estimation of such cost and time not later than one hundred twenty (120) days after the occurrence of the damage or destruction.

21.2.3. Repair and Restoration. If the Premises or the Improvements, or any portion thereof, are damaged or destroyed at any time during the Term and this Lease is not terminated by either Party pursuant to and in accordance with this Section 21.2, Lessee, as promptly as practicable and with all due diligence (given the time required to obtain insurance proceeds and to obtain construction permits), shall cause the repair, reconstruction and replacement of the Improvements as nearly as possible given the circumstances and then-Applicable Law to their condition immediately prior to such damage or destruction and, except as otherwise approved in writing by Lessor or precluded by then-Applicable Law, to their same general appearance.

21.2.4. Insurance Proceeds. All repairs and restoration shall be performed in accordance with the provisions of Section 11 of this Lease (as applicable). Except as otherwise provided herein due to a termination of this Lease, all insurance proceeds received by or payable to any Party with respect to any casualty, less actual costs and expenses incurred in connection with the collection thereof, shall be applied to the costs of repair and restoration of the Premises and the Improvements in accordance with the provisions of Section 21.2.7 and in compliance with Section 11 (as applicable). All such insurance proceeds shall be held by the Leasehold Mortgagee and made available to Lessee in monthly draws during the repair of the Premises, which shall be available upon submission by Lessee of written request accompanied by reasonably detailed invoices and customary lien releases from Lessee's contractor, and as otherwise required under the terms of the Leasehold Mortgage. Lessee shall pay any amount by which the insurance proceeds received as a result of such damage, less the costs and expenses incurred in connection with the collection thereof, are insufficient to pay the entire cost of such repair and restoration.

21.2.5. End of Term Damage. In the event of any damage to or destruction of the Premises or the Improvements or any portion thereof occurs during the last three (3) years of the Term and (i) the cost to repair and restore the same to substantially the same condition as existed immediately prior to such occurrence is reasonably estimated to exceed twenty percent (20%) of full replacement cost of all Improvements on the Premises, and (ii) the insurance proceeds available to Lessee (or which would be available if Lessee had maintained any required insurance that Lessee has failed to maintain) plus the amount of any deductible, is not sufficient to complete the required repair and restoration, then Lessee shall have the option to terminate this Lease, exercisable as provided below. In such event the insurance proceeds shall be distributed as set forth in Section 21.2.7 below.

21.2.6. Option to Terminate. In the event of Catastrophic Damage, Lessee may exercise its option to terminate this Lease pursuant to this Section 21.2, by giving written notice to Lessor within sixty (60) days after the occurrence of the event of damage or destruction. If Lessee elects to terminate this Lease pursuant to this Section 21.2, Lessee shall surrender the Premises to Lessor in accordance with the provisions of Section 27, except to the extent the damage or destruction prevents Lessee from so doing. Lessee's obligations under this Section 21.2 shall survive the termination of this Lease. All proceeds of insurance payable with respect to damage to, or destruction of the Improvements and other property located on the Premises, after payment of costs and expenses of collection thereof, shall first be applied to pay all amounts due under the Leasehold Mortgage in full; second, applied to the costs of demolition, removal, restoration, and remediation, as appropriate, depending on the extent of the damage or destruction, with the balance, if any, of such insurance proceeds, to be distributed as provided in subsection 21.2.7.

21.2.7. Insurance Proceeds. If there are proceeds of insurance in excess of that required to repair, restore, reconstruct or demolish the Premises and the Improvements as required under this Section 21.2, or Section 27, upon receipt by Lessor of satisfactory evidence that the work of repair, restoration, reconstruction or demolition required under this Section 21.2, has been fully completed and paid for in accordance with the provisions of Section 11 and that the last day for filing any mechanic's or materialmen's liens has passed without the filing of any, or if filed, any such lien has been released, the holders of Leasehold Mortgages shall receive payment from any remaining insurance proceeds up to the amount necessary to repay the loans secured by the Leasehold Mortgages in full, and any insurance proceeds that remain after such payment shall be the paid to Lessor.

21.2.8. Participation in Settlement. Lessor shall have the right to participate in the settlement or compromise of any insurance proceeds.

21.2.9. Emergency Repairs. If a casualty occurs there is a substantial possibility that immediate emergency repairs will be required to eliminate defective or dangerous conditions and to comply with Applicable Laws pending settlement of insurance claims and prior to procuring bids for performance of restoration work. Notwithstanding any provision of this Section 21.2, to the contrary, Lessee shall promptly undertake such emergency repair work after a casualty as is necessary or appropriate under the circumstances to eliminate defective or dangerous conditions and to comply with Applicable Laws and any proceeds of insurance shall first be applied to reimburse Lessee for the cost of such emergency repair work.

22. **Assignment; Subletting**

22.1. Except as otherwise specifically provided in this Lease, Lessee shall not directly or indirectly, in whole or in part, voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer its interest in or rights with respect to the leasehold estate created by this Lease (any of the foregoing being herein referred to as a **"Transfer"**) without the prior written consent of the Lessor, which consent may not be unreasonably withheld. Any sale or other transfer of voting stock, partnership interests or membership interests, or any consolidation, merger or reorganization that is more than 50% of the voting stock, partnership interests, or membership interests of the Lessee entity and results in a change in control of Lessee or TeamCo, or any sale or transfer that results in a change in control of Lessee or TeamCo, shall be deemed a Transfer hereunder. In connection with any assignment of Lessee under this section and prior to or at the time of assignment, the assignee shall provide the City with a written assumption of obligations of Lessee under this Agreement.

Notwithstanding the foregoing, in the event of a sale of the Franchise to a third party purchaser which has been approved by the NHL, and provided Lessor has received from such purchaser the written assumption of obligations of Lessee under this Lease together with a replacement guarantor reasonably satisfactory to Lessor, which guarantor executes a guaranty substantially similar to the Guaranty, Lessor shall consent to such assignment.

22.2. Subletting; Subleases. So long as Lessee complies with the terms of this Section, Lessee shall be entitled to sublease space within the Improvements to be constructed by Lessee on the Premises, including the Restaurant (as defined in the Agreement to Lease) and locker spaces (each a "**Subleased Space**"), to third parties (each, a "**Subtenant**") without Lessor's prior consent or approval.

22.2.1. Lessor Rights and Obligations. In the event Lessee fails or refuses to pay Rent when due or is otherwise in Default of this Lease, Lessor shall be entitled to direct Subtenant to pay all rental and other payments under the sublease directly to Lessor by written notice to such sublessee and without liability to the original Lessee, provided, that, (i) such amounts received will be applied to amounts owed by Lessee hereunder, with any surplus paid to Lessee, and (ii) Lessor shall only exercise such right if any permitted Leasehold Mortgagee has not elected to exercise its remedies as provided herein within the time periods provided therein. If any Subtenant of Lessee provides written notice to Lessor that it has entered into a sublease for Subleased Space at the Premises and provides a notice address for Subtenant and a copy of the sublease (which the Subtenant may redact to remove economic terms to prevent them becoming public records), then Lessor agrees to provide such Subtenant with notice of a default by Lessee hereunder. In the event Lessor elects to terminate the Lease due to a Default by Lessee, any Sublease shall automatically become a direct lease between Lessor and the Subtenant, subject to all terms and conditions of such sublease and the terms of this Lease as properly applicable to such Subtenant, without further action by any Party.

22.3. Paramount Title of Lessor. Notwithstanding any provision of this Lease, and notwithstanding any consent or approval which Lessor may give to any assignment, sublease, encumbrance or other transfer, all such interests shall be subordinate to Lessor's paramount fee simple title to the Premises, and all such interests shall be subject to extinguishment by Lessor's exercise of any termination rights accorded to Lessor under this Lease or expiration of this Lease.

23. **[Intentionally Deleted.]**

24. **Leasehold and Improvements Mortgages**

24.1. **Improvements Mortgage**.

24.1.1. Right to Encumber the Improvements. Lessee shall have the right at any time and from time to time to encumber the Improvements by a mortgage, deed of trust or other security instrument (any such mortgage, deed of trust or other security instrument that satisfies the requirements of this Section 24.1 being herein referred to as an "**Improvements Mortgage**") to secure repayment of Lessee's loan for the ~~purchase~~purpose of financing the design, development construction, maintenance and repair of any Improvements made pursuant to the terms of this Lease or for the long-term financing of any such Improvements, provided that the indebtedness secured by an Improvements Mortgage shall (A) not exceed $65,000,000.00 and (B) be payable over not more than the remaining portion of the Term.

24.1.2. Subordination. Lessor hereby subordinates to the lien of any Improvements Mortgage, any lien of Lessor in the Leasehold Improvements and personalty of Lessee, if any, (but not the Land) provided for in this Lease. Lessor hereby consents to any Improvements Mortgagee entering the Premises for the purpose of exercising its rights and remedies under any Improvements Mortgage, including, without limitation, removing equipment, trade fixtures and other personal property from the Premises.

24.2. **Leasehold Mortgage**.

24.2.1. Right to Encumber the Land. Notwithstanding the provisions of Section 22 regarding Transfers of this Lease, but subject to the provisions of this Section 24, Lessee shall have the right at any time and from time to time to encumber the entire (but not less than the entire) leasehold estate created by this Lease and Lessee's interest in the Premises by a mortgage, deed of trust or other security instrument (any such mortgage, deed of trust, or other security instrument that satisfies the requirements of this Section 24.2 being herein referred to as a "**Leasehold Mortgage**") to secure repayment of Lessee's loan for the purpose of financing the design, development, construction, maintenance and repair of any Improvements made pursuant to the terms of this Lease or for the long-term financing of any such Improvements, provided that the indebtedness secured by a Leasehold Mortgage shall (A) not exceed $65,000,000.00 and (B) be payable over not more than the remaining portion of the Term. Copies of all such ~~documents~~recordable instruments evidencing and/or securing the Leasehold Mortgage shall be provided to and shall be approved by Lessor which approval shall not be unreasonably withheld, delayed or conditioned.

24.2.2. No Subordination of Fee. In no event shall Lessor's fee interest in the Land be subject or subordinate to any lien or encumbrance of any mortgage, deed of trust or other security instrument.

24.3. **Notice to Lessor**.

24.3.1. Required Notice. Each time Lessee enters into a Leasehold Mortgage, Lessee shall require the holder of such Leasehold Mortgage to provide Lessor with notice of such Leasehold Mortgage, together with a true copy of such Leasehold Mortgage and the name and address of the Leasehold Mortgagee. The provisions of this Section 24 shall apply in respect to such Leasehold Mortgage. In the event of any assignment of a Leasehold Mortgage or in the event of a change of address of a Leasehold Mortgagee or of an assignee of such Leasehold Mortgagee, notice of the new name and address shall be provided to Lessor. Lessee shall thereafter with reasonable promptness also provide Lessor from time to time with a copy of each material amendment, modification or supplement to such ~~instruments~~Leasehold Mortgage.

24.4. **Protection of Leasehold Mortgagees**. If Lessee shall mortgage Lessee's interest in the Improvements under this Lease in compliance with the provisions of Sections 24.2 and 24.3, then so long as any such Leasehold Mortgage shall remain unsatisfied of record, the following provisions shall apply:

24.4.1. Consent. No cancellation, surrender or modification of this Lease shall be effective as to any Leasehold Mortgagee unless consented to in writing by such Leasehold Mortgagee.

24.4.2. Notice of Default. Lessor, upon providing Lessee any notice of (a) any default under this Lease, (b) a termination of this Lease, or (c) a matter on which Lessor may predicate or claim a default, shall at the same time provide a copy of such notice to every Leasehold Mortgagee of which Lessor has been provided notice in accordance with Section 24.3 hereof. Lessor shall have no liability for the failure to give any such notice, except that no such notice by Lessor to Lessee shall be deemed to have been duly given unless and until a copy thereof has been so provided to every Leasehold Mortgagee of which Lessor has been provided notice in accordance with Section 24.3 hereof. From and after the date such notice has been given to a Leasehold Mortgagee, such Leasehold Mortgagee shall have the same period, after the giving of such notice upon it, for remedying any default or acts or omissions which are the subject matter of such notice, or causing the same to be remedied, as is given Lessee after the giving of such notice to Lessee, plus in each instance, the additional periods of time specified in Sections 24.4 and 24.5 hereof to remedy, commence remedying or cause to be remedied, the defaults or acts or omissions which are specified in such notice. Lessor shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Lessee. Lessee authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option and does hereby authorize entry upon the Premises by the

Leasehold Mortgagee for such purpose.

24.4.3. Second Notice to Leasehold Mortgagee. Anything contained in this Lease to the contrary notwithstanding, if any Event of Default shall occur which entitles Lessor to terminate this Lease, Lessor shall have no right to terminate this Lease unless, following the expiration of the period of time given Lessee to cure such Event of Default or the act or omission which gave rise to such Event of Default, Lessor shall notify every Leasehold Mortgagee of Lessor's intent to so terminate at least one hundred eighty (180) days in advance of the proposed effective date of such termination. The provisions of Section 24.5 hereof shall apply only if, ~~during~~on or before the expiration of such one hundred eighty (180) day termination notice period, any Leasehold Mortgagee shall:

24.4.3.1. Notify Lessor of such Leasehold Mortgagee's desire to nullify such Notice; and

24.4.3.2. Pay or cause to be paid all Rent and other payments (i) then due and in arrears as specified in the termination notice to such Leasehold Mortgagee and (ii) any of the same which became due during such one hundred eighty (180) day period and are in arrears or which thereafter become due during such one hundred eighty (180) day period as and when they become due; and

24.4.3.3. Comply or in good faith, with reasonable diligence and continuity, commence to comply with all non-monetary requirements of this Lease then in default and reasonably susceptible of being complied with by such Leasehold Mortgagee; provided, however, that such Leasehold Mortgagee shall not be required during such one hundred eighty (180) day period to cure or commence to cure any Event of Default consisting of (i) Lessee's failure to satisfy and discharge any lien, charge or encumbrance against Lessee's interest in this Lease or the Premises junior in priority to the lien of the mortgage held by such Leasehold Mortgagee, or (ii) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee, such as, by way of example only, the bankruptcy of Lessee or a court-ordered stay or injunction. If such Leasehold Mortgagee has not completed the cure within three hundred sixty five (365) days after the later to occur of (A) the receipt of Lessor's termination notice or (B) three hundred sixty five (365) days after the date that any court with jurisdiction over Lessee or the Premises releases any stay, order or injunction, Lessor shall have the right to terminate this Lease upon written notice to Lessee and such Leasehold Mortgagee. Notwithstanding any such termination of the Lease by Lessor pursuant to this Section 24.4.3.3, the provisions of Section 24.6 below shall still apply.

24.4.3.4. If more than one Leasehold Mortgagee notifies Lessor of such Leasehold Mortgagee's desire to nullify such notice, the Leasehold Mortgagee whose Leasehold Mortgage is prior in lien (as determined in accordance with Section 24.6) shall have the right to nullify such notice and Lessor without liability to Lessee or any Leasehold Mortgage with a subordinate lien shall accept the cure tendered by the Leasehold Mortgagee whose Leasehold Mortgage is prior in lien.

24.5. **Procedure on Default**.

24.5.1. Cure of Default. If Lessor shall elect to terminate this Lease by reason of any Event of Default, and a Leasehold Mortgagee shall have proceeded in the manner provided for by Section 24.4.3, this Lease shall not be deemed terminated so long as such Leasehold Mortgagee shall:

24.5.1.1. Pay or cause to be paid the Rent and other monetary obligations of Lessee under this Lease as the same become due, and continue its good faith efforts to perform all of Lessee's other obligations under this Lease excepting (A) obligations of Lessee to satisfy or otherwise discharge any lien, charge or encumbrance against Lessee's interest in this Lease or the Premises junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee, and (B) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Leasehold Mortgagee, such as, by way of example only, the bankruptcy of Lessee; and

24.5.1.2. If not enjoined or stayed, take steps to acquire or sell Lessee's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same with due diligence within the time period described in Section 24.4.3.3. Nothing in this Section 24.5.1.2, however, shall be construed to extend this Lease beyond the original Term hereof, nor to require a Leasehold Mortgagee to continue such foreclosure proceedings after the Event of Default has been cured or to continue such foreclosure proceedings as a condition to obtaining a New Lease. If the Event of Default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Lessee had not defaulted under this Lease.

24.5.2. Lease Remains in Effect. If a Leasehold Mortgagee is complying with Section ~~24.5.(a),~~24.5.1, then upon the acquisition of the Premises herein by such Leasehold Mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise~~ and the discharge of any lien, charge or encumbrance against Lessee's interest in this Lease or the Premises which is junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee and which Lessee is obligated to satisfy and discharge by reason of the terms of this Lease~~, this Lease shall continue in full force and effect as if Lessee had not defaulted under this Lease.

24.5.3. Assumption of Lease. The making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of Lessee's interest under this Lease or the leasehold estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of Lessee's interest under this Lease or of the leasehold estate hereby created so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Lessee to be performed hereunder. Notwithstanding the foregoing, the purchaser at any sale of Lessee's interest under this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignee or transferee of the Lessee's rights under this Lease and of the leasehold estate hereby created under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage, including, without limitation, a Leasehold Mortgagee, shall be deemed to be an assignee or transferee within the meaning of this Section 24.5 and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Lessee to be performed hereunder from and after the date of such purchase and assignment only for as long as such purchaser or assignee is the holder of this leasehold estate.

24.6. **New Lease**. In the event of the termination of this Lease as a result of an Event of Default that has not been cured by either Lessee or the Leasehold Mortgagee, Lessor shall promptly, within a reasonable time, provide each Leasehold Mortgagee with written notice that the Lease has been terminated (the "**New Lease Notice**"), together with a statement of all sums which would at that time be due under this Lease but for such termination and of all other defaults, if any, then known to Lessor. Lessor agrees to enter into a new lease (the "**New Lease**") of the Premises with such Leasehold Mortgagee or its affiliated designee for the remainder of the Term of this Lease, effective as of the date of termination, at the same Rent and upon the terms, covenants and conditions of this Lease; provided:

24.6.1. Such Leasehold Mortgagee shall make written request upon Lessor for such New Lease within sixty (60) days after the date such Leasehold Mortgagee receives Lessor's New Lease Notice given pursuant to this Section 24.6.

24.6.2. Such Leasehold Mortgagee or such affiliated designee shall agree to remedy any of Lessee's defaults of which such Leasehold Mortgagee was notified by Lessor's New Lease Notice and which are reasonably capable of being so cured by Leasehold Mortgagee or such designee at the time of execution and delivery of the New Lease.

24.6.3. Any New Lease made pursuant to this Section 24.6 shall have the same priority with respect to any mortgage or other lien, charge or encumbrance on the Premises as this Lease, and the tenant under such New Lease shall have the same right, title and interest in and to the Premises and the Leasehold Improvements as Lessee had under this Lease as of the date of the New Lease.

24.7. **Conflicting Priorities**. If more than one Leasehold Mortgagee shall seek to nullify a notice in accordance with Section 24.4.3.3 above or request a New Lease pursuant to Section 24.6, the Leasehold Mortgagee whose Leasehold Mortgage is prior in lien, or ~~with~~ the designee of such Leasehold Mortgagee, shall have the right to nullify such notice or obtain such New Lease. Lessor, without liability to Lessee or any Leasehold Mortgagee with an adverse claim, may rely upon a mortgagee title insurance policy issued by a responsible title insurance company doing business in the state where the Premises is located as the basis for determining the appropriate Leasehold Mortgagee who is entitled to nullify such notice or obtain the New Lease.

24.8. **Certain Defaults**. Nothing herein contained shall require any Leasehold Mortgagee or its designee as a condition to its exercise of rights hereunder to cure any Event of Default which by its terms is not reasonably susceptible of being cured by such Leasehold Mortgagee or such designee in order to comply with the provisions of Sections 24.4 or 24.5. The financial condition of any Leasehold Mortgagee or successor to Lessee's interest under this Lease or a new lease entered into pursuant to Section 24.15.2 shall not be a consideration in the determination of the reasonable susceptibility of cure of such Event of Default. No Event of Default, the cure of which, and no obligation of Lessee, the performance of which, requires possession of the Premises shall be deemed reasonably susceptible of cure or performance by any Leasehold Mortgagee or successor to Lessee's interest under this Lease not in possession of the Premises, provided such holder is, upon obtaining possession, complying with the requirements described in Section 24.5.1 hereof and, ~~upon obtaining possession,~~ promptly proceeds and thereafter diligently prosecutes to cure any such Event of Default then reasonably susceptible of cure by such Leasehold Mortgagee or successor. No Leasehold Mortgagee shall be required to cure the bankruptcy, insolvency or any related or similar condition of Lessee.

24.9. **Eminent Domain**. Lessee's share, as provided in Section 21 of this Lease, of the proceeds arising from an exercise of the power of eminent domain shall, subject to the provisions of Section 21, be disposed of as provided for by any Leasehold Mortgage.

24.10. **Insurance**. A standard mortgagee clause naming each Leasehold Mortgagee as "loss payee" shall be added to any and all insurance policies required to be carried by Lessee hereunder. Any such insurance proceeds shall, subject to the provisions of Section 21, be disposed of as provided for by any Leasehold Mortgage.

24.11. **Legal Proceedings**. Lessor shall give each Leasehold Mortgagee of which Lessor has written notice prompt notice of any dispute resolution or legal proceedings between Lessor and Lessee involving obligations under this Lease. Each such Leasehold Mortgagee shall have the right to intervene, within sixty (60) days after receipt of such notice of dispute resolution or legal proceedings, in any such proceedings and be made a party to such proceedings, and the parties hereto do hereby consent to such intervention. Any intervening Leasehold Mortgagee shall be bound by the outcome of such proceedings. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, Lessor shall give the Leasehold Mortgagee notice of, and a copy of any award or decision made in any such proceedings, which shall be binding on all Leasehold Mortgagees not intervening after receipt of Notice of such proceedings.

24.12. **No Merger**. So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Premises and the leasehold estate of Lessee therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Lessor or by Lessee or by a third party, by purchase or otherwise.

24.13. **Notices**. Notices from Lessor to the Leasehold Mortgagee shall be mailed to the address furnished Lessor pursuant to Section 24.4 and those from the Leasehold Mortgagee to Lessor shall be mailed to the address designated pursuant to the provisions of Section 32 hereof, as the same may be amended from time to time. All notices from any Leasehold Mortgagee or Lessor shall be given in the manner described in Section 32 and shall in all respects be governed by the provisions of that section.

24.14. **Erroneous Payments**. No payment made to Lessor by a Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and any Leasehold Mortgagee having made any payment to Lessor pursuant to Lessor's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof provided the Leasehold Mortgagee shall have made demand therefor not later than twelve (12) months after the date of its payment.

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

24.15.1. Rejection of Lease by Lessee. If this Lease is rejected in connection with a bankruptcy proceeding by Lessee or a trustee in bankruptcy for Lessee, such rejection shall be deemed an assignment by Lessee to the Leasehold Mortgagee (or if there is more than one Leasehold Mortgagee, to the one highest in priority) of the leasehold estate and all of Lessee's interest under this Lease, in the nature of an assignment in lieu of foreclosure, and this Lease shall not terminate, unless such Leasehold Mortgagee shall reject such deemed assignment by notice in writing to Lessor within thirty (30) days following the later of (i) rejection of the Lease by Lessee or Lessee's trustee in bankruptcy or (ii) approval of such rejection by the bankruptcy court. If any court of competent jurisdiction shall determine that this Lease shall have been terminated notwithstanding the terms of the preceding sentence as a result of rejection by Lessee or the trustee in connection with any such proceeding, the rights of any Leasehold Mortgagee to a new lease from Lessor pursuant to Section 24.6 hereof shall not be affected thereby.

24.15.2. Termination of Lease by Lessor. If this Lease is rejected or otherwise terminated in connection with a bankruptcy proceeding by Lessor or by Lessor's trustee in bankruptcy:

24.15.2.1. Lessee shall not have the right to treat this Lease as terminated except with the prior written consent of all Leasehold Mortgagees and the right to treat this Lease as terminated in such event shall be deemed assigned to each and every Leasehold Mortgagee, whether or not specifically set forth in any such Leasehold Mortgage, so that the concurrence in writing of Lessee and each Leasehold Mortgagee shall be required as a condition to treating this Lease as terminated in connection with such proceeding.

24.15.2.2. Unless this Lease is treated as terminated in accordance with Section 24.15.1, this Lease shall continue in effect upon all the terms and conditions set forth herein, including Rent, but excluding requirements that are not then applicable or pertinent to the remainder of the Term. The lien of any Leasehold Mortgage then in effect shall extend to the continuing possessory rights of Lessee following such rejection or other termination with the same priority as it would have enjoyed had such rejection or other termination not taken place.

24.15.3. If, in any bankruptcy or similar proceeding in which Lessor is the debtor, the Premises are sold or proposed to be sold free and clear of the interests of Lessee under this Lease, each of Lessee and any Leasehold Mortgagee shall be entitled to: (i) receive prior written notice of such proposed sale not less than ten (10) Business Days prior to the earliest date such sale or proposed sale is to or could occur; (ii) contest such sale or proposed sale; and (iii) petition for and receive adequate protection of their respective interests under this Lease, it being acknowledged and agreed that monetary damages are not, and will not be, adequate protection thereof.

24.16. **Rights Against Lessee**. The rights of a Leasehold Mortgagee hereunder shall not diminish any right or claim of Lessor against Lessee for damages or other monetary relief under this Lease; provided, however, such rights and claims of Lessor against Lessee shall, subject to the terms of this Lease, be subordinated to Leasehold Mortgagee's rights and claims against Lessee under the Leasehold Mortgage.

24.17. **Lease Amendments or Recognition Agreement Requested by Leasehold Mortgagee**. In the event a Leasehold Mortgagee desires amendments to this Section 24 or desires to enter into a recognition agreement with Lessor, then Lessor agrees to negotiate in good faith any commercially reasonable amendment or recognition agreement; provided that the form and content of such amendment or recognition agreement is not unreasonable and that such proposed amendment or recognition agreement does not reduce the Rent hereunder or otherwise adversely affect the rights of Lessor hereunder or its interest in the Premises, as determined by Lessor in its reasonable discretion. All reasonable expenses incurred by Lessor in connection with any such amendment or recognition agreement shall be paid by Lessee.

24.18. **Lessor Purchase Right in the Event of Foreclosure.**

In the event a Leasehold Mortgagee desires to transfer the leasehold interest in the Premises by foreclosure sale, accept a deed in lieu of foreclosure, or acquire Lessee's interest in this Lease by other means, the Leasehold Mortgagee shall provide Lessor no less than thirty (30) days prior written notice of its intention to exercise such right and Lessor shall have the right exercisable within thirty (30) days after receipt of such written notice to elect to acquire the entire interest in the loan and the Leasehold Mortgage for a price equal to the outstanding unpaid balance of principal and interest and prepayment premium, if any, of the indebtedness secured by the Leasehold Mortgage, ~~sum of the outstanding unpaid balance of the indebtedness secured by the Leasehold Mortgage,~~ together with any other amounts due and unpaid under the Leasehold Mortgage, including without limitation any default interest, protective advances, enforcement costs and legal fees incurred by Leasehold Mortgagee in connection therewith (collectively the "**Purchase Costs**"). The closing shall occur within thirty (30) days after the date of the election through escrow at a title company selected by Lessor and reasonably acceptable to Leasehold Mortgagee. At the closing, Lessor shall deliver to the Leasehold Mortgagee through escrow the ~~purchase price equal to the outstanding unpaid balance of principal and interest and premium, if any, of the indebtedness secured by the Leasehold Mortgage~~Purchase Costs, and Leasehold Mortgagee shall assign to Lessor all of its right, title and interest in the loan and the Leasehold Mortgage pursuant to documentation reasonably satisfactory to Lessor and the Leasehold Mortgagee. If Lessor fails to deliver into escrow the required funds ~~with~~within said thirty (30) day period with instructions to deliver said funds to Leasehold Mortgagee conditioned only upon receipt of the documentation necessary to enable the title company to insure Lessor as the sole beneficiary of the Leasehold Mortgage, the Leasehold Mortgagee shall be entitled to pursue its rights to acquire or transfer the leasehold estate pursuant to this Lease and the Leasehold Mortgage. If Lessor delivers said funds as required herein, the Leasehold Mortgagee's rights under this Lease and the Leasehold Mortgage shall terminate and be of no further force and effect.

24.19. **Estoppel Certificate.**

Upon the written request of any Leasehold Mortgagee, Lessor shall deliver an estoppel certificate to Leasehold Mortgagee as provided in Section 38.19 herein.

25. **Events of Default and Remedies**

25.1. **Events of Default**. The occurrence of any of the following shall be an **"Event of Default"** on the part of Lessee hereunder:

25.1.1. Failure to pay Rent or any other sums of money that Lessee is required to pay hereunder at the times or in the manner herein provided, when such failure shall continue for a period of fifteen (15) Business Days after written notice thereof from Lessor to Lessee. No such notice shall be deemed a forfeiture or a termination of this Lease.

25.1.2. Failure to perform any nonmonetary provision of this Lease when, except in the case of any provision which by its terms provides for no grace period, such failure shall continue for a period of thirty (30) days, or such other period as is expressly set forth herein, after written notice thereof from Lessor to Lessee; provided that if the nature of the default is such that more than thirty (30) days are reasonably required for its cure, then an Event of Default shall not be deemed to have occurred if Lessee shall commence such cure within said thirty (30) day period and thereafter diligently and continuously prosecute such cure to completion. No such notice shall be deemed a forfeiture or a termination of this Lease unless Lessor expressly so elects in such notice.

25.1.3. The abandonment of the Premises by reason of a course of conduct by Lessee that reasonably evidences an interest to permanently relinquish its rights under this Lease.

25.1.4. Lessee shall admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation under any law or statute of any government or any subdivision thereof either now or hereafter in effect, make an assignment for the benefit of its creditors, consent to or acquiesce in the appointment of a receiver of itself or of the whole or any substantial part of the Premises.

25.1.5. A court of competent jurisdiction shall enter an order, judgment or decree appointing a receiver of Lessee or of the whole or any substantial part of the Premises and such order, judgment or decree shall not be vacated, set aside or stayed within sixty (60) days after the date of entry of such order, judgment, or decree, or a stay thereof shall be thereafter set aside and the receivership not thereafter vacated or set aside within sixty (60) days of the set aside of the stay.

25.1.6. A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Lessee under any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation law or statute of the Federal government or any state government or any subdivision of either now or hereafter in effect, and such order, judgment or decree shall not be vacated, set aside or stayed within sixty (60) days from the date of entry of such order, judgment or decree, or a stay thereof shall be thereafter set aside.

25.2. **Lessor's Remedies**. Upon the occurrence of an Event of Default, Lessor shall have the following rights and remedies, subject to the rights of a Leasehold Mortgagee as set forth in Section 24 above:

25.2.1. The right to terminate this Lease, in which event Lessee shall immediately surrender possession of the Premises in accordance with Section 27. In the event Lessee fails to surrender possession, Lessor shall have the right to terminate Lessee's right to possession by any lawful means. In such event Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of Lessee's default, including without limitation thereto, the following: (i) the worth at the time of award of any unpaid Rent that had been earned at the time of such termination; plus (ii) the worth at the time of award of the amount by which the unpaid Rent that would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided; plus (iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; plus (iv) any other amount necessary to compensate Lessor for all damages proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom, including, without limitation, (A) the unamortized portion of any brokerage or real estate agent's commissions paid in connection with the execution of this Lease, (B) any direct costs or expenses incurred by Lessor in recovering possession of the Premises, maintaining or preserving the Premises after such default, including Lessor's Administrative Fees, (C) preparing the Premises for marketing to a new lessee, (D) any repairs or alterations to the Premises for such marketing, (E) leasing commissions, architect's fees and any other costs necessary or appropriate either to relet the Premises or, if reasonably necessary in order to relet the Premises, to adapt them to another beneficial use by Lessor and (F) such amounts in addition to or in lieu of the foregoing as may be permitted from time to time by Applicable Law to the extent that such payment would not result in a duplicative recovery. As used in (i) above, the "worth at the time of award" is computed by allowing interest at the Interest Rate.

25.2.2. The right to maintain this Lease in full force and effect and recover the Rent, and other monetary charges as they become due, without terminating Lessee's right to possession irrespective of whether Lessee shall have abandoned the Premises. In the event Lessor elects not to terminate this Lease, Lessor shall use commercially reasonable efforts to relet the Premises at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the Premises as Lessor deems reasonable and necessary without being deemed to have elected to terminate this Lease, including removal of all persons and property from the Premises. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Lessee. If Lessor relets the Premises or any portion thereof, such reletting shall not relieve Lessee of any obligation hereunder, except that Lessor shall apply the rent or other proceeds actually collected by it as a result of such reletting against any amounts due from Lessee hereunder, less any expenses incurred by Lessor in collecting such rents and arranging for or providing such services or fulfilling such obligations.

25.2.3. The right and power, as attorney-in-fact for Lessee, to enter and to sublet the Premises upon any vacancy while an Event of Default is outstanding, and Lessor is hereby authorized on behalf of Lessee, but shall have absolutely no obligation, to provide such services and fulfill such obligations and to incur all such expenses and costs as Lessor deems necessary in connection therewith. Lessee shall be liable immediately to Lessor for all costs and expenses Lessor incurs in collecting such rents and arranging for or providing such services or fulfilling such obligations. Lessor is hereby authorized, but not obligated, to relet the Premises or any part thereof on behalf of Lessee, to incur such expenses as may be necessary to effect a relet and make said relet for such term or terms, upon such conditions and at such rental as Lessor in its sole discretion may deem proper. Lessee shall be liable immediately to Lessor for all reasonable costs Lessor incurs in reletting the Premises including, without limitation, brokers' commissions, expenses of remodeling the Premises required by the reletting, and other costs. If Lessor relets the Premises or any portion thereof, such reletting shall not relieve Lessee of any obligation hereunder, except that Lessor shall apply the rent or other proceeds actually collected by it as a result of such reletting against any amounts due from Lessee hereunder to the extent that such rent or other proceeds compensate Lessor for the nonperformance of any obligation of Lessee hereunder. Such payments by Lessee shall be due at such times as are provided elsewhere in this Lease, and Lessor need not wait until the termination of this Lease, by expiration of the Term hereof or otherwise, to recover them by legal action or in any other manner. Lessor may execute any lease made pursuant hereto in its own name, and the lessee thereunder shall be under no obligation to see to the application by Lessor of any rent or other proceeds, nor shall Lessee have any right to collect any such rent or other proceeds. Lessor shall not by any reentry or other act be deemed to have accepted any surrender by Lessee of the Premises or Lessee's interest therein, or be deemed to have otherwise terminated this Lease, or to have relieved Lessee of any obligation hereunder, unless Lessor shall have given Lessee express written notice of Lessor's election to do so as set forth herein.

25.2.4. The right to have a receiver appointed upon application by Lessor to take possession of the Premises and to collect the rents or profits therefrom and to exercise all other rights and remedies pursuant to Section 25.2.3.

25.2.5. The right to enjoin, and any other remedy or right now or hereafter available to a lessor against a defaulting lessee under the laws of the State of Washington or the equitable powers of its courts, and not otherwise specifically reserved herein.

25.2.6. Whether or not this Lease is terminated, the right to recover actual damages incurred by Lessor arising out of the Event of Default, or due to Lessee's failure to indemnify Lessor pursuant to Section 20.1.

25.2.7. In the event of Lessee's failure to surrender possession of the Premises as of the Termination Date, and in addition to the Claims described in Section 20.1, the right to collect Rent during any holdover period in the amount of one hundred ten percent (110%) of the fair market rental value of the Premises as of the Termination Date.

25.3. **Rights Cumulative**. The various rights and remedies reserved to Lessor herein, including those not specifically described herein, shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity and the exercise of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity shall not preclude the simultaneous or later exercise by Lessor of any or all other rights and remedies.

25.4. **Lessor's Default**. Lessor shall be in default under this Lease if Lessor fails to cure any breach of its obligations under this Lease within thirty (30) days after receipt of written notice from Lessee specifying in reasonable detail the nature of Lessor's breach; provided, however, that if the nature of Lessor's breach is such that more than thirty (30) days are required for performance, then Lessor shall not be in default if Lessor commences the cure of such breach within such thirty (30) day period and thereafter diligently prosecutes the same to completion. Lessee shall be entitled to actual (but not consequential) damages in the event of an uncured default by Lessor, but shall not have any right to terminate this Lease as a result of any Lessor default.

25.5. **No Recourse to Lessor**. In no event shall Lessor or any Lessor Parties have any personal liability to Lessee under this Lease, and Lessee shall look solely to the equity of Lessor in the Premises at the time of any breach or default for the satisfaction of any claim Lessee may have against Lessor. This exculpation of personal liability shall be absolute and without any exception whatsoever.

26. Lessor's Right to Cure Defaults

If Lessee shall fail or neglect to do or perform any act or thing herein provided by it to be done or performed and such failure shall not be cured within any applicable grace period provided in Section 25, then Lessor shall have the right, but shall have no obligation, to pay any amounts payable by Lessee to third parties hereunder, discharge any lien, take out, pay for and maintain any insurance required under Section 19, or do or perform or cause to be done or performed any such other act or thing (entering upon the Premises for such purposes, if Lessor shall so elect), and Lessor shall not be or be held liable or in any way responsible for any loss, disturbance, inconvenience, annoyance or damage resulting to Lessee on account thereof (except to the extent of Lessor's gross negligence or willful misconduct), and Lessee shall repay to Lessor upon demand the entire cost and expense thereof, including, without limitation, Lessor's Administrative Fees. Lessor may act upon shorter notice or no notice at all if necessary in Lessor's judgment to meet an emergency situation or governmental or municipal time limitation. Lessor shall not be required to inquire into the correctness of the amount or validity of any payable or lien that may be paid by Lessor, and Lessor shall be duly protected in paying the amount of any such payable or lien claimed, and, in such event, Lessor shall also have the full authority, in Lessor's sole judgment and discretion and without prior notice to or approval by Lessee, to settle or compromise any such lien or payable. Any act or thing done by Lessor pursuant to the provisions of this Section 26 shall not be or be construed as a waiver of any default by Lessee, or as a waiver of any term, covenant, agreement or condition herein contained or of the performance thereof. Except in the case of an emergency situation or governmental or municipal time limitation, Lessor shall not exercise its rights hereunder until Lessor has given Lessee written notice of such default, and Lessee has failed to cure such default with thirty (30) days following the date of such notice from Lessor.

27. Surrender of The Premises

27.1. **Surrender**. Upon the termination of this Lease, whether at the expiration of the Term or prior thereto, Lessee shall surrender the Premises to Lessor in the condition in which the Premises is required to be maintained pursuant to the terms of this Lease, free and clear of all letting and occupancies other than any subleases Lessor has elected to recognize after such termination, and free and clear of all Liens or any other encumbrances, other than Liens Lessor has placed on the Premises.

27.2. **Extinguishment of the Lessee's Rights**. Upon the Expiration Date or earlier termination of this Lease (excluding as a result of Lessor's exercise of the Option to Purchase as set forth in Section 5.2 and 37), ("**Termination Date**"), all rights and interests of the Lessee in and to the Premises, and all persons whomsoever claiming by, through, or under the Lessee, shall immediately cease and terminate, and the Premises, including all improvements, engines, machinery, generators, boilers, furnaces, elevators, fire escapes, and all lifting, lighting, heating, cooling, refrigerating, air conditioning, ventilating, gas, electric and plumbing apparatus, appliances and fixtures, as well as other fixtures attached to or within the Premises, and all personal property located thereon, shall thence forward constitute and belong to and be the absolute property of the Lessor, without further act or conveyance, and without liability to make such compensation to the Lessee or to anyone whomsoever, and free and discharged from all and every lien, encumbrance, claim and charge of any character created or attempted to be created by the Lessee at any time. Lessee agrees, at the termination of this Lease, to surrender unto Lessor, the Premises, including the Improvements located thereon, in the same condition as when the construction of the Improvements were completed, only natural and normal wear and tear excepted. Upon or at any time after the Expiration Date, if requested by Lessor, Lessee shall, without charge to Lessor, promptly execute, acknowledge and deliver to Lessor a good and sufficient quitclaim deed of all of Lessee's right, title, and interest in and to the Premises, and in any contracts relating to the operation, management, maintenance or leasing of the Premises or any part thereof, and shall deliver to Lessor all such other instruments, records and documents relating to the operation, management, maintenance or leasing of the Premises or any part thereof, including but not limited to all leases, lease files, plans and specifications, records, registers, permits, and all other papers and documents which may be necessary or appropriate for the proper operation and management of the Premises. Following such termination of the Lease, Lessee hereby irrevocably appoints Lessor as its lawful attorney-in-fact to execute and deliver for, on behalf of and in the name of Lessee, any such deed, assignment or other instrument referred to in this Section 27 or otherwise, required to document the transfer or reversion to Lessor of such interests of Lessee, and Lessee and Lessor agree that such power of attorney shall be a power coupled with an interest. Lessee agrees to indemnify, protect, defend, and hold harmless Lessor from and against any and all losses, costs, damages, claims, liabilities and expenses arising directly or indirectly, in whole or in part, out of any obligations or liabilities incurred by Lessee prior to the Termination Date with respect to any such items so assigned to Lessor. Any contracts, agreements or other obligations of Lessee relating to the Premises not designated by Lessor and assigned by Lessee to Lessor pursuant to this Section 27 shall immediately terminate and be of no further force or effect as of the Termination Date.

27.3. **Personal Property**. Any personal property of Lessee that remains on the Premises after the Termination Date may, at the option of Lessor, be deemed to have been abandoned by Lessee and may either be retained by Lessor as its property or disposed of, without accountability and at Lessee's expense, in such manner as Lessor may determine in its sole discretion.

27.4. **Holding Over**. Lessee shall have no right to remain in possession of the Premises after the Termination Date. If Lessee remains in possession of all or any part of the Premises after the Termination Date with Lessor's prior written consent: (i) Lessee's occupancy of the Premises shall be deemed a month-to-month tenancy (not a renewal or extension of the Term), terminable by either Party upon 30 days' written notice to the other; (ii) tenant shall be liable Rent and all other expenses, obligations and payments at rates in effect for the immediately preceding year of the Term of this Lease; and (iii) Lessee's occupancy of the Premises otherwise shall be subject to all applicable terms and conditions of this Lease as if the Term had not expired or this Lease had not been terminated, as the case may be. Nothing in this Section 27.4 shall be deemed or construed as a consent by Lessor to any holding over by Lessee.

28. **Signs; Naming Policy**

28.1. Signage. All signage, including any corporate signage, shall be at Lessee's sole cost and expense and subject to Lessor's approval, which shall not be unreasonably withheld, conditioned or delayed. Interior signs that are visible from the exterior of the Premises shall be subject to Lessor's written approval, which shall not be unreasonably withheld, conditioned or delayed. All signage must comply with Lessor's signage criteria, as the same may be changed from time to time with notice to Lessee and which may be different than as may be required under municipal ordinance; provided that any Lessee signage that pre-existed Lessor's modified criteria may remain affixed to the Premises during the Term of this Agreement. Lessor's signage criteria is set forth in Schedule 1 attached hereto and incorporated herein. Notwithstanding anything to the contrary set forth herein, Lessee shall have the right to install signage that is illuminated and contains digital and/or motion effects subject to Lessor's signage criteria. In deciding whether to grant or deny its consent, Lessor may consider, without limitation, the size, location, design, color and lighting of any proposed exterior sign. Any exterior sign must comply with all Applicable Laws and covenants whether recorded or unrecorded. Upon expiration or earlier termination of this Agreement, upon the Lessor's request, Lessee shall remove all such signage and repair all damage caused by such removal at Lessee's expense.

28.2. Naming. Lessee shall place the (1) name of the Restaurant, (2) the Franchise name and/or logo of the "Kraken" and (3) at the option of Lessee, the name and logo of the PWHL franchise team, on the exterior of the Facility for the Term. In addition, Lessee shall have the right to place the name of corporate sponsors on the exterior of the Premises during the Term, subject to Lessor's consent, such consent not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Lessor shall be deemed to be acting reasonably in withholding its consent to a sponsor which has a material presence in certain specified industries as separately identified to by Lessor on the Commencement Date. Lessor shall have the right to use the name of the Facility, together with reference to the Kraken, and any Facility logo(s) incorporating the name in non-commercial Lessor communications, (b) Lessor publications, and (c) for other Lessor uses, subject to the provisions of a royalty-free license granted by Lessee or naming sponsor, whichever owns the intellectual property rights in the name and/or Facility logo(s), to effectuate this right. Lessor shall have the right to have signage on the exterior of the Facility with respect to the Community Center; provided that any external signage for the Community Center shall be secondary in scope to the naming rights signage and may be proposed by either Party and reasonably approved by the non-proposing Party. Nothing in this Lease limits the right of Lessee to designate names, whether commercial, commemorative or otherwise, for any discrete and limited portion of the Premises (other than the name of the Facility) in its sole discretion during the Term, subject to this Section 28.2. Upon termination of this Lease, Lessee's rights under this Section 28.2 shall terminate immediately upon Lessor's express written request delivered to Lessee.

29. **Representations And Warranties**

29.1. **Lessee's Representations and Warranties**. Lessee hereby represents and warrants to Lessor as follows:

29.1.1. Lessee is a limited liability company duly formed and validly existing under the laws of the State of Delaware. Lessee has full limited liability power and authority to enter into and perform its obligations under this Lease and to Develop, construct and operate the Premises as contemplated by this Lease.

29.1.2. Lessee has taken all necessary action to authorize the execution, delivery and performance of this Lease and this Lease constitutes the legal, valid, and binding obligation of Lessee.

29.1.3. Lessee has the right, power, legal capacity and authority to enter into and perform its obligations under this Lease and no approvals or consents of any person are required in connection with the execution and performance of this Lease. The execution and performance of this Lease will not result in or constitute any default or event that with notice or the lapse of time or both, would be a default, breach or violation of the organizational instruments governing Lessee or any agreement or any order or decree of any court or other governmental authority to which Lessee is a party or to which it is subject.

29.1.4. There are no defaults by Lessee or any circumstances which, with the giving of notice or the passage of time, would constitute a default by Lessee, under any agreement, contract, lease, loan, or other commitment to which Lessee is a party.

29.1.5. There are no claims, demands, litigation, proceedings or governmental investigations pending or threatened against Lessee.

29.1.6. The execution and delivery of the Lease, and the consummation of the transactions contemplated by the Lease, by Lessee do not violate any provision of Applicable Law.

29.2. **Lessor's Representations and Warranties**. Lessor hereby represents and warrants to Lessee as follows:

29.2.1. Lessor is municipal corporation.

29.2.2. Lessor has taken all necessary action to authorize the execution, delivery and performance of this Lease and this Lease constitutes the legal, valid, and binding obligation of Lessor.

29.2.3. Lessor has the right, power, legal capacity and authority to enter into and perform its obligations under this Lease and no approvals or consents of any person are required in connection with the execution and performance of this Lease. The execution and performance of this Lease will not result in or constitute any default or event that with notice or the lapse of time or both, would be a default, breach or violation of the organizational instruments governing Lessor or any agreement or any order or decree of any court or other governmental authority to which Lessor is a party or to which it is subject.

29.2.4. The execution and delivery of the Lease, and the consummation of the transactions contemplated by the Lease, by Lessor do not violate any provision of Applicable Law.

30. **No Waiver by Lessor**

No failure by Lessor to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Lease or to exercise any right or remedy upon a breach thereof, and no acceptance by Lessor of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such term, covenant, agreement, provision, condition or limitation. No term, covenant, agreement, provision, condition or limitation of this Lease and no breach thereof may be waived, altered or modified except by a written instrument executed by Lessor. No waiver of any breach shall affect or alter this Lease but each and every term, covenant, agreement, provision, condition and limitation of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach.

31. **No Dedication**

This Lease shall not be, nor be deemed or construed to be, a dedication to the public of the Premises, the areas in which the Premises are located or the Improvements, or any portion thereof.

32. **Notices**

Any notice, consent or other communication required or permitted under this Lease shall be in writing and shall be delivered by hand, sent by expedited courier, sent by prepaid registered or certified mail with return receipt requested, or sent by electronic mail, and shall be deemed to have been given on the earliest of (a) receipt or refusal of receipt; (b) one (1) Business Day after delivery to an air courier for overnight expedited delivery service; (c) five (5) Business Days after the date deposited in the United States mail, registered or certified, with postage prepaid and return receipt requested (provided that such return receipt must indicate receipt at the address specified); or (d) on the day of its transmission by electronic mail if transmitted during the business hours of the place of receipt, otherwise on the next Business Day, provided that a copy of such notice, consent or other communication is also delivered pursuant to clause (b) or (c) above. All notices shall be addressed as appropriate to the addresses given in the Basic Lease Information (or to such other or further addresses as the parties may designate by notice given in accordance with this Section).

33. **Nondiscrimination**

Lessee will not discriminate in employment on the basis of race, age, creed, color, national origin, religion, sex, national origin, veteran or military status, marital status, families with children status, sexual orientation or the presences of any sensory, mental or physical disability in regard to any position for which the employee is qualified, in compliance with (a) Presidential Executive Order 11246, as amended, including the Equal Opportunity Clause contained therein; (b) Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans Readjustment Act of 1974, as amended, and the Affirmative Action Clauses contained therein; (c) the Americans with Disabilities Act of 1990, as amended; (d) the Seattle Municipal Code; and (e) all other Applicable Laws. In its selection of tenants for the Premises, Lessee shall not discriminate on the basis of race, age, creed, color, national origin, religion, sex, veteran or military status, marital status, families with children status, sexual orientation or the presence of any sensory, mental or physical disability. Lessee will not maintain facilities which are segregated on the basis of race, color, religion, or national origin in compliance with Presidential Executive Order 11246, as amended, and will comply with the Americans with Disabilities Act of 1990, as amended, regarding its programs, services, activities and employment practices.

34. **Memorandum of Lease**

This Lease shall not be recorded. However, the parties hereto shall execute and acknowledge a memorandum hereof in the form attached to the Agreement to Lease, which shall be recorded concurrently with the execution of this Lease.

35. **Nature of Relationship**

The relationship between Lessor and Lessee shall be solely that of landlord and tenant. Nothing contained in this Lease shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership between Lessor and Lessee. Lessor shall not in any way be responsible or liable for the debts, losses, obligations or duties of Lessee with respect to the Premises or otherwise by reason of this Lease. All obligations to pay Rent, and to Develop, operate, manage, maintain and repair the Premises shall be the sole responsibility of Lessee.

36. **Lessee Not a Blocked Person**

Lessee represents and warrants that neither Lessee nor any person or entity owning any direct or indirect membership interest or other equity ownership interest in Lessee is now, or ever has been, named on (or now is or ever has been acting directly or indirectly for or on behalf of any person or entity named on) the list of "Specially Designated Nationals and Blocked Persons" published by the Office of Foreign Assets Control of the United States Department of the Treasury or any similar list maintained by the United States government or any other government (any person so named, a "**Blocked Person**"). If Lessee, or any person or entity owning any direct or indirect membership interest or other equity ownership interest in Lessee, at any time becomes a Blocked Person or acts directly or indirectly for or on behalf of any Blocked Person, such event shall constitute an Event of Default under this Lease, unless, within thirty (30) days after Lessee becomes aware of such Blocked Person or aware of actions taken directly or indirectly for or on behalf of such Blocked Person, Lessee initiates and diligently pursues steps to cause such Blocked Person to be removed from owning a direct or indirect membership or other equity ownership interest in Lessee or removed from the list of "Specially Designated Nationals and Blocked Persons."

37. **Lessor's Purchase Right.**

Lessee, for additional good and valuable consideration, the receipt and sufficiency of which is hereby confirmed, hereby grants to Lessor an option to purchase the Improvements as provided in this Section 37 (the "**Option to Purchase**"). Commencing on that date on which Final Completion occurs, and throughout the term of this Lease, the Lessor shall have the right and option to purchase the Lessee's right, title, and interest in and to the Premises, including the Improvements.

37.1.1. **Notice**. Lessor shall give Lessee and Leasehold Mortgagee not less than ninety (90) days prior written notice of Lessor's exercise of its purchase right under this Section 37 ("**Exercise Notice Date**").

37.1.2. **Purchase Price**. If Lessor exercises its Option to Purchase, the purchase price ("**Purchase Price**") of the Lessee's right, title, and interest in and to the Improvements shall be equal to the Cost of Construction as determined in accordance with Section 11.10 herein. Lessor shall purchase the Improvements with a combination of tax-exempt and taxable bond financing (the "**Bond Financing**"), which Bond Financing Lessor will endeavor to be tax-exempt to the maximum extent the Improvements are used for a public purpose. Lessor will strive in good faith to include the following components as tax-exempt bonds: the Community Center, all infrastructure supporting the Community Center, the lobby, restrooms, and a proportional share of any common elements. Lessor and Lessee shall use commercially reasonable efforts to agree upon the Cost of Construction during the period which is thirty (30) days following the Exercise Notice Date ("**Negotiation Period**"). In the event Applicable Law requires that the lease payments made pursuant to the Community Center Sublease be credited against the Purchase Price, the parties shall cause the total compensation paid to Lessee either pursuant to this Section 37.1.2 or other means (excluding the payments made pursuant to the Community Center Sublease) to equal the Cost of Construction.

37.1.3. **Arbitration**. If any disagreement or dispute regarding the Cost of Construction shall hereafter arise or occur (~~"~~a "**Dispute**") and if such Dispute has not been resolved after reasonable attempts by either Party to do so, including without limitation expiration of the Negotiation Period, upon the written request of either Party, each of the parties will appoint a designated representative, whose task it will be to meet for the purpose of endeavoring to resolve such Dispute. The designated representatives shall discuss the problem and negotiate in good faith in an effort to resolve the Dispute without the necessity of any formal proceeding relating thereto. During the course of such negotiation, all reasonable requests made by one Party to the other for information will be honored in order that each of the parties may be fully advised regarding the Dispute.

37.1.4. If the designated representatives are unable to resolve the Dispute, either with respect to one or more specific items, or the Cost of Construction as a whole, within 15 days after the initial response to negotiate, then the Dispute, shall be settled by arbitration to be held in King County, Washington in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except that: (i) there shall be one arbitrator; (ii) neither Party may submit more than 20 interrogatories, including subparts; (iii) neither Party shall be entitled to take more than two depositions and no deposition shall last more than two hours; (iv) all discovery shall be concluded within 60 days of serving of the notice of arbitration; (v) the arbitration proceeding shall be held within 90 days of serving the notice of arbitration; and (vi) payment of the expenses of the arbitration, including legal fees for both parties and the fee of the arbitrator, shall be assessed by the arbitrator based on the extent to which each Party prevails. In determining the Cost of Construction, the arbitrator shall follow the laws of the State of Washington, and the arbitrator shall have authority to grant only those remedies that would be available if the action were commenced in a court of competent jurisdiction in the State of Washington. The award of the arbitrator shall be binding, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

37.1.5. **Liens**. Upon full payment of the Purchase Price, Lessee shall satisfy all monetary liens and encumbrances on the Premises.

37.1.6. **Closing**. The closing of the acquisition of Lessor's bonds to finance the Purchase Price of the Improvements, and the conveyance of the Improvements to Lessor (together, the "**Closing**") shall occur within ninety (90) days after the date of the election through escrow at a title company selected by Lessor and reasonably acceptable to Leasehold Mortgagee. At the Closing, Lessor shall deliver to the escrow agent, the Purchase Price, and the parties shall enter into the following documents:

37.1.7. **Ground Lease Termination**. Upon request by Lessor, Lessee shall execute and deliver without additional charge such documents as may be reasonably requested by Lessor to evidence and confirm the termination of this Lease and Lessee's leasehold interest hereunder and the termination of all liens and encumbrances on the Premises, including but not limited to, a termination of lease and full reconveyance of the Leasehold Mortgage or other security interests, each of which shall be executed in recordable form and such other documentation as may be necessary to evidence and confirm the termination of all property management contracts and other contracts affecting the Premises effective as of the date of termination.

37.1.8. **Deed**. At the Closing, the Improvements shall be conveyed to Lessor by Bargain and Sale Deed, subject only to those exceptions approved by Lessor.

37.1.9. **General Assignment**. At the Closing, Lessee and Lessor shall execute a general assignment whereby Lessee will assign to Lessor, and Lessor shall assume, all of Lessee's interest in the plans and specifications, including all warranties, and all architectural and general contractor agreements, relating to the Improvements.

37.1.10. **Bill of Sale**. At the Closing, Lessee shall convey to Lessor the personal property related to the Community Center, and the parties shall execute a bill of sale.

37.1.11. **Excise Tax and Escrow Fees**. At the Closing, Lessee shall be responsible for payment of all real estate excise tax associated with the conveyance of the Premises, including the Improvements, to Lessor. Lessor and Lessee shall share equally the closing fee charged by the escrow agent.

37.1.12. **Prorations**. Real property taxes and assessments shall be prorated as of the date of Closing. Lessee shall be responsible for any and all deferred or abated taxes and related interest and charges, any past due taxes and assessments through the closing date and shall cause such to be paid and removed at or before Closing. The current year's taxes shall be prorated between the parties as of the date of Closing. In addition, insurance, interest, water and other utilities that are not separately metered constituting liens shall be prorated as of the date of Closing.

37.1.13. **Operating Lease**. At the Closing, Lessee and Lessor shall enter into the Facility Operations and Lease Agreement attached as Exhibit E attached hereto, whereby Lessor will lease to Lessee or an Affiliate the Skating Facility and the Restaurant (as each term is defined in the Agreement to Lease), and Lessee or an Affiliate, as tenant under the Operating Lease, will make payments to Lessor, as landlord, for thirty (30) years not to exceed 135% of the City's annual debt service on the portion of the Bond Financing allocable to the Skating Facility and the Restaurant, plus contributions to a major maintenance fund, and then plus annual payments at the same repayment rate for an additional four (4) years, all as provided in and in accordance with the Facility Operations and Lease Agreement; provided, that the present value of such payments will not exceed the present value of the rights to use the Skating Facility and the Restaurant.

38. General Provisions

38.1. **Confidentiality.** Except for those matters that must be disclosed to perform the commitments of Lessee and Lessor under this Lease, and except as otherwise provided by Applicable Law, including but not limited to public record and public meeting laws, Lessee and Lessor agree that the provisions of this Lease are confidential business of Lessee and Lessor. Notwithstanding the foregoing, the provisions of this Section 38.1 shall not be applicable with respect to information that becomes public through parties other than Lessee, including information that may become public through information requests directed at Lessor and information that may become public as part of Lessor's internal approval and ongoing reporting processes.

Notwithstanding the foregoing, nothing contained hereby shall be deemed to prohibit Lessor or Lessee from disclosing the terms and provisions of this Lease: (i) in connection with the enforcement of the terms of this Lease; (ii) to the extent required by any subpoena or court order or requested by any governmental entity; (iii) to their advisors and Affiliates and, in the case of Lessee, to any actual or proposed

Leasehold Mortgagee or lender to its Affiliate; (iv) to the extent required by the requirements of any applicable securities exchange; provided, however, in the case of any disclosure pursuant to clauses (iii), the disclosing Party shall notify the recipient of such information of the obligation to keep such information confidential; or (v) pursuant to Applicable Law. Lessee shall also be permitted to disclose the terms and provisions of this Lease to the NHL.

38.2. **Broker's Commissions**. Lessor and Lessee have used no broker or finder in connection with this transaction. Each Party represents to the other Party that the representing Party has incurred no liability for any brokerage commission or finder's fee arising from or relating to the negotiation or execution of this Lease, other than as set forth in this Section 38.2. Each Party hereby indemnifies and agrees to protect, defend and hold harmless the other Party from and against all liability, cost, damage or expense (including, without limitation, attorneys' fees and costs incurred in connection therewith) on account of any brokerage commission or finder's fee which the indemnifying Party has agreed to pay or which is claimed to be due as a result of the actions of the indemnifying Party. This Section 38.2 is intended to be solely for the benefit of the parties hereto and is not intended to benefit, nor may it be relied upon by, any person or entity not a party to this Lease.

38.3. **No Third-Party Beneficiaries.** This Lease shall not confer nor be deemed nor construed to confer upon any person or entity, other than the parties hereto, any right or interest, including, without limiting the generality of the foregoing, any third party beneficiary status or any right to enforce any provision of this Lease, other than any Leasehold Mortgagee.

38.4. **Severability**. In case any one or more of the provisions of this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, and this Lease shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

38.5. **Time of the Essence**. Time is hereby expressly declared to be of the essence of this Lease and of each and every term, covenant, agreement, condition and provision hereof.

38.6. **Headings**. Section and subsection headings in this Lease are for convenience only and are not to be construed as a part of this Lease or in any way limiting or amplifying the provisions hereof.

38.7. **Lease Construed as a Whole**. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Lessor or Lessee. The Parties acknowledge that each Party and its counsel have reviewed this Lease and participated in its drafting and therefore that the rule of construction that any ambiguities are to be resolved against the drafting Party shall not be employed nor applied in the interpretation of this Lease.

38.8. **Construction**. This Lease and each provision herein shall be given a fair and reasonable construction in accordance with the intention of the parties. This Lease was drafted as a mutual effort by the parties and shall not be interpreted against any single drafter.

38.9. **Meaning of Terms**. Whenever the context so requires, the neuter gender shall include the masculine and the feminine, and the singular shall include the plural, and vice versa.

38.10. **Attorneys' Fees**. In the event of any action or proceeding at law or in equity between Lessor and Lessee to enforce or interpret any provision of this Lease or to protect or establish any right or remedy of either Party hereunder, the Party not prevailing in such action or proceeding shall pay to the prevailing Party all costs and expenses, including without limitation, reasonable attorneys' fees and expenses (including reasonable attorneys' fees and expenses of in-house attorneys), incurred therein by such prevailing party and if such prevailing Party shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees shall be included in and as a part of such judgment.

38.11. **Choice of Law**. The interpretation, construction and enforcement of this Lease, and all matters relating hereto, including applicability and interpretation of conflict of laws, shall be governed by the laws of the State of Washington. Any judicial proceeding brought by either of the Parties against the other Party or any dispute arising out of this Lease, the Closing, the Project or the Premises, or any matter relating thereto, be brought in the Superior Court of the State of Washington (in King County), or in the United States District Court for the Western District of Washington. In that regard, each Party hereby waives any defense of inconvenient forum and any bond or other security that might otherwise be required of the other Party with respect to such choice of judicial forum.

38.12. **Binding Agreement**. Subject to the provisions of Sections 22 and 24 of this Lease, the terms, covenants and agreements contained in this Lease shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

38.13. **Entire Agreement**. This instrument, together with the exhibits hereto, all of which are incorporated herein by reference, constitutes the entire agreement between Lessor and Lessee with respect to the subject matter hereof and supersedes all prior offers, negotiations, oral and written. This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Lessor and Lessee.

38.14. **Quiet Enjoyment**. Lessee, upon paying the Rent and all other sums due hereunder and upon keeping and observing all of the covenants, agreements and provisions of this Lease on its part to be observed and kept, shall lawfully and quietly hold, occupy and enjoy the Premises during the Term without hindrance by anyone claiming by, through, or under Lessor.

38.15. **Termination Not Merger**. The voluntary sale or other surrender of this Lease by Lessee to Lessor, or a mutual cancellation thereof, or the termination thereof by Lessor pursuant to any provision contained herein, shall not work a merger, but at the option of Lessor shall either terminate any or all existing subleases or subtenancies hereunder, or operate as an assignment to Lessor of any or all of such subleases or subtenancies.

38.16. **Modification of Lease**. In the event of any ruling or threat by the Internal Revenue Service, or opinion of counsel, that all or part of the Rent paid or to be paid to Lessor under this Lease will be subject to the income tax on unrelated business taxable income, Lessee agrees to modify this Lease to in order to carry out the intent that this Lease shall not be subject to such tax; provided that such modifications will not result in any increase in Rent, or any increased obligations of Lessee under this Lease. Lessor will pay all Lessee's reasonable costs incurred in reviewing and negotiating any such lease modification, including reasonable attorneys' and accountants' fees.

38.17. **Lessor Consents and Amendments**. If Lessee requests Lessor's consent with respect to any item or issue under this Lease, or requests that Lessor agree to amend or modify this Lease in any respect, then whether or not expressly provided in this Lease, Lessee agrees to pay Lessor's Administrative Fees for the reasonable time spent by Lessor's staff, and to reimburse Lessor for any reasonable attorneys' and/or professionals' fees incurred by Lessor in connection with the request. Any Administrative Fees due from Lessee shall be paid within ten (10) days of demand, and/or Lessor may require the payment of the same as a condition to its granting any consent or entering into any amendment or modification of this Lease. Except as otherwise set forth in this Lease, Lessor may withhold its consent to any request by Lessee under this Lease in its sole discretion. Except as otherwise provided in this Lease, in the event that Lessor shall fail to approve or deny any consent request within the applicable time period set forth in this Lease, Lessor shall be deemed to have disapproved such request.

38.18. **Survival**. The obligations of this Lease shall survive the expiration or earlier termination of this Lease to the extent necessary to implement any requirement for the performance of obligations or forbearance of an act by either Party which has not been completed prior to the termination of this Lease. Such survival shall be to the extent reasonably necessary to fulfill the intent thereof, or if specified, to the extent of such specification, as same is reasonably necessary to perform the obligations and/or forbearance of an act set forth in such term, covenant or condition. Notwithstanding the foregoing, in the event a specific term, covenant or condition is expressly provided for in such a clear fashion as to indicate that such performance of an obligation or forbearance of an act is no longer required, then the specific shall govern over the general provisions of this Lease.

38.19. **Estoppel Certificates**. Either Party, at any time and from time to time within ten (~~20~~10) Business Days after receipt of written notice from the other Party, shall execute, acknowledge and deliver to the requesting Party a certificate stating (to the responding Party's best knowledge where applicable): (a) that Lessee has accepted the Premises (if true); (b) the Commencement Date and Expiration Date of this Lease; (c) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that same is in full force and effect as modified and stating the modifications); (d) whether or not there are then existing any defenses against the enforcement of any of the obligations of Lessee under this Lease (and, if so, specifying same); (e) whether or not there are then existing any defaults by the parties in the performance of their obligations under this Lease (and, if so, specifying same); and (f) any other factual information relating to the rights and obligations under this Lease that may reasonably be required by requesting Party. Lessee shall pay Lessor's Administrative Fees in connection with any request for an estoppel certificate from Lessor.

38.20. **Minority and Women Owned Business Requirements**. Lessor encourages Lessee to provide for the maximum practicable opportunity for increased participation by minority and women-owned and controlled businesses (MWBE) in the design, Development and construction of the Project. The Washington State Office of Minority and Women's Business Enterprises (OMWBE) certifies firms that are owned and controlled by minorities or women, and can provide information regarding the certification process. Information about the certification status of a particular firm is available at the following OMWBE website address: http://www.omwbe.wa.gov/biznetwas/ or by contacting OMWBE at (360) 753-9693, 406 South Water, P.O. Box 41160, Olympia, Washington 98504-4611.

38.20.1.**Lessee's Undertakings**. Lessee is encouraged to:

38.20.1.1. Advertise opportunities for consultants, designers, contractors, subcontractors or suppliers in a manner reasonably designed to provide MWBEs capable of performing the work with timely notice of such opportunities, and all advertisements shall include a provision encouraging participation by MWBE firms. Advertising may be done through general advertisements (e.g., newspapers, journals, etc.) or by soliciting bids/proposals directly from MWBEs.

38.20.1.2. Provide MWBEs that express interest with adequate and timely information about plans, specifications, and requirements of a contract.

38.20.2. Lessee is encouraged to:

38.20.3.Break down total requirements into smaller tasks or quantities, where economically feasible, in order to permit maximum participation by MWBEs and other small businesses.

38.20.4.Establish delivery schedules, where the requirements of a contract permit, that encourage participation by MWBEs and other small businesses.

38.20.5. Utilize the services of available minority community organizations, minority contractor groups, local minority assistance offices and organizations that provide assistance in the recruitment and placement of MWBEs and other small businesses.

38.21. **<u>Counterparts</u>**. This Lease may be executed in any number of counterparts and each of the counterparts shall be considered an original and all counterparts shall constitute one and the same instrument.

38.22. **<u>Limitation of Liability</u>**. Notwithstanding anything herein to the contrary, the liability of the Lessee hereunder and each obligation of Lessee hereunder (including, but not limited to its indemnity obligations) under this Lease shall be "limited recourse obligations" and, accordingly, the Lessor's sole source of satisfaction of such obligations shall be limited to the Lessee's interest in this Lease, the Project, the rents, issues and surplus related thereto and the other assets of the Lessee, and the Lessor shall not seek to obtain payment from any person or entity comprising the Lessee or who is a member, officer, director, agent or employee of Lessee or its member, notwithstanding the survival of any obligation of the Lessee beyond the Term.

38.23. **<u>Arbitration</u>**. Any claim or dispute between the Parties relating to matters identified for resolution pursuant to this <u>Section 38.23</u> shall be submitted in writing by the Parties to a dispute resolution process as described below. Throughout the process, Lessor and Lessee shall proceed in a timely manner and in good faith to resolve such claims or disputes based on accurate and shared information and on a confidential basis.

38.23.1. <u>Pre-Arbitration</u>. The Parties shall make a good faith effort to resolve any dispute or claim by negotiation between representatives with decision-making power. If resolution does not result, Lessor and Lessee shall then attempt to resolve the dispute through a conference of the City Manager and Lessee Chief Executive Officer or President. The procedures utilized for the conference shall include the exchange of written claims and responses, with supporting information, at least seven (7) days prior to the conference or such shorter period as agreed to by the Parties. The positions expressed, responses and submitted information shall not be admissible as evidence in any subsequent arbitration or legal proceeding.

38.23.2. <u>Arbitration.</u> If the procedure required by <u>Section 38.23.1</u> does not result in resolution of the claim or dispute, then within ten (10) days after the last conference meeting or final exchange of written positions, either Party may initiate a binding arbitration in accordance with the following provisions and Chapter 7.04A RCW (or any successor provision thereto) or any other method of arbitration mutually agreed to by the Parties.

38.23.3. <u>Generally.</u> All such arbitration shall be conducted before a panel designated in the manner hereinafter provided (the "**Panel**"). Except as specifically provided for herein, all such arbitration shall be conducted in the City of Kirkland or Seattle in accordance with the rules of the American Arbitration Association, and the decision of each Panel shall be final and binding upon the Parties.

38.23.4. <u>Panel.</u> Each Panel shall consist of three (3) persons mutually selected by the Parties, including: (a) one attorney selected from a list of fifteen (15) attorneys licensed to practice law in the State, which list shall be furnished by the Seattle Chapter of the American Arbitration Association; and (b) two independent professionals with subject matter expertise in the issue being arbitrated (e.g., construction, economics, accounting, engineering, etc.), with each Party appointing one such expert, unless the number of persons on the Panel, or the qualifications of the individuals on the list, are otherwise mutually agreed to by the Parties. In the event that within fifteen (15) days after the submission of a dispute to arbitration, the Parties have been unable to agree on the attorney representative on the Panel, then representatives of the Parties shall meet promptly and the following procedures shall be applicable: Lessor shall strike the name of a person on the list. Within fifteen (15) minutes thereafter, Lessee shall strike a name from the list. At no more than fifteen (15) minute intervals thereafter, each Party shall strike a name from the list. If any Party fails to strike a name within the allotted time period, it shall forgo its turn to strike a name.

38.23.5. Joinder. Lessee or City may join any other Party to the arbitration who is needed for just adjudication. The standard for joinder of any other party shall be provided under Rule 19 of the Washington Rules of Civil Procedure.

38.23.6. Hearing Date. On appointment of the Panel as provided above, the Panel shall hold a hearing within twenty (20) days after the appointment of the Panel.

38.23.7. Pre-Hearing and Hearing. At least ten (10) days prior to the hearing, the Parties shall meet and exchange exhibits and pre-hearing statements and stipulate and agree on non-disputed facts. No exhibit shall be admitted unless listed on the pre-hearing statement and exchanged between the Parties. No witness may be presented unless indicated on the pre-hearing statement or unless produced for rebuttal purposes. Prior to or at the hearing, the Parties shall submit memoranda outlining the relevant issues for the Panel. At the hearing, the laws of evidence of the State shall apply, and the Panel shall allow each Party to present that Party's case, evidence and witnesses, and render their award.

38.23.8. Award. The Panel shall render its award in a written decision within thirty (30) days of the conclusion of the hearings. In rendering its award the Panel shall have full authority to interpret and apply the terms of this Lease, but shall have no authority to add to, or subtract from or otherwise modify or amend the terms of this Lease.

38.23.9. Judgment on Award. The award of the majority of the arbitrators shall be final and binding on the Parties and judgment may be entered on such award in the King County District Court.

38.23.10. Attorneys' Fees. Each Party will bear its own attorneys' fees and costs and shall not request an award of attorneys' fees or costs in the formal dispute resolution process under this Section.

38.24. **Community Center; Community Center Sublease.**

38.24.1. Construction of Community Center. Lessee shall construct, at Lessee's cost and expense, the Community Center Premises in accordance with the plans and specifications referenced in Exhibit F attached hereto.

38.24.2. Community Center Sublease. Upon substantial completion of the Community Center Premises, and in the event Lessor does not exercise the Option to Purchase the Improvements, Lessee will continue to own the Improvements, and Lessor and Lessee shall enter into the Community Center Sublease in the form set forth as Exhibit G attached hereto. Pursuant to the Community Center Sublease, Lessor shall sublease the Community Center from Lessee and shall make monthly payments to Lessee equal to the amount that Lessee's debt service payments of the permanent financing exceed the amount that Lessee would have paid in rent as described in Section 37.1.13 had Lessor issued the Bond Financing.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

Lessor and Lessee have executed this Lease as of the date first above written:

LESSOR:

City of Kirkland

By: ____________________
Its: ____________________

LESSEE:

____

Kirkland Ice Center LLC,
a Delaware limited liability company

By: ____________________
Its: ____________________

4913-4760-7728.5

GLOSSARY

As used in this Lease, the following terms shall have the following meanings, applicable, as appropriate, to both the singular and plural forms of the terms herein defined:

"Administrative Fees" means Lessor's reasonable in-house staff time and reasonable costs, and any reasonable consultants' fees, attorneys' fees, and other third-party costs incurred by Lessor in connection with Lessor's review and approval of matters within the scope of this Lease, and in connection with the enforcement of any remedies of Lessor under this Lease.

"Affiliate" means (a) the legal representative, successor or assignee of, or any trustee of a trust for the benefit of, Lessee; (b) any entity of which a majority of the voting or economic interest is owned, directly or indirectly, by Lessee or one or more of the persons referred to in the preceding clause; (c) any entity in which Lessee or a person referred to in the preceding clauses is a controlling stockholder, controlling partner or controlling member (directly or indirectly); (d) any person or entity which is an officer, director, trustee, controlling stockholder, controlling partner or controlling member (directly or indirectly) of Lessee or of any person or entity referred to in the preceding clauses; or I any person or entity directly or indirectly controlling, controlled by or under common control with, Lessee or any person or entity referred to in any of the preceding clauses. For purposes of this definition, "control" means owning directly or indirectly fifty percent (50%) or more of the beneficial interest in such entity or the direct or indirect power to control the management policies of such person or entity, whether through ownership, by contract or otherwise.

"Agreement to Lease" is defined in Recital F.

"Alterations" means any additional improvements, alterations, remodeling, or reconstruction of or to the Leasehold Improvements following Substantial Completion of the Project of the type for which the approval of Lessor is required in accordance with Section 11 of this Lease.

"Applicable Laws" means (a) all applicable laws, statutes, codes, ordinances, orders, resolutions, rules, regulations and requirements, including, without limitation, all Environmental Requirements, of all federal, state, county, municipal and other Governmental Authorities and the departments, commissions, boards, bureaus, instrumentalities, and officers thereof; (b) all judicial rulings, decrees and orders; and (c) the American Insurance Association (formerly the National Board of Fire Underwriters) or any other body exercising similar functions relating to or affecting the Premises, the Improvements now or hereafter located on the Premises or the use, operation or occupancy of the Premises for the purposes permitted hereunder. In each instance, Applicable Laws shall include those existing as of the Commencement Date and those hereafter enacted. State laws shall prevail over federal law only where preemption is recognized by federal law.

"Applicable Standard" means operating, maintaining, repairing, re-equipping and improving the Facility and each and all of the major systems and components thereof, in a (A) first class manner, in good order and safe condition and (B) in at least the condition as the Kraken Community Iceplex located in Seattle, Washington is maintained.

"Award" means the amount paid by the Condemning authority as a result of a Condemnation.

"Base Rent" is defined in Section 6.1.

"Basic Lease Information" means the information contained in Section 1.

"Blocked Person" is defined in Section 36

"Buildings" means the Leasehold Improvements and all other buildings located on the Land.

"Business Days" means Monday through Friday, excluding federal and State of Washington legal holidays. Any references to "days" that are not expressly designated to be business days shall mean calendar days.

"CapEx Expenses" is defined in Section 6.2.

"CapEx Fund" means that certain capital reserve fund to be created and funded as described in Section 6.2.2.1 to pay for CapEx Work.

"CapEx Work" is defined in Section 6.2.

"CapEx Work Plan" is defined in Section 8.6.

"Catastrophic Damage" means the (a) estimated cost of full restoration exceeds Three Million Dollars ($3,000,000), (b) the estimated time necessary to fully repair the damage or occurrence exceeds one hundred eighty (180) days, or (c) the damage or occurrence has an estimated cost that is more than the amount of expected available insurance proceeds, plus any amounts in the CapEx Fund.

"Claims" are defined in Section 20.1.

"Closing" is defined in Section 37.1.6.

"Code" is defined in the introductory paragraph.

"Commencement Date" is defined in the introductory paragraph.

"**Community Center**" shall have the meaning set forth in Recital C.

"**Community Center Premises**" shall mean the premises and improvements constructed in accordance with the plans and specifications referenced in Exhibit F.

"**Community Center Sublease**" shall mean that certain Community Center Sublease by and between Lessor and Lessee with respect to the Community Center.

"Condemnation" means any taking by exercise of right of condemnation (direct or inverse) or eminent domain, or requisitioning by military or other public authority for any purpose arising out of a temporary emergency or other temporary circumstance or sale under threat of condemnation.

"**Condemned**" means having been subject to such taking and "Condemning" means exercising such taking authority.

"Construction Commencement" means Lessee has obtained and closed on all necessary construction financing for the Project, and has commenced demolition of the Exiting Improvements for the purpose of constructing the Project.

“Construction Contract” means the contract with a general contractor for construction of the Project, which shall by its terms be fully assignable to Lessor.

“Construction Documents” are defined in the Agreement to Lease.

“CPI” means the Consumer Price Index for Urban Wage Earners and Clerical Workers determined by the U.S. Department of Labor, Bureau of Labor Statistics U.S. City Average; all items, not seasonally adjusted, 1982–1984=100 reference base, or if such index is no longer published, a successor or substitute index reasonably designated by Lessor, published by a governmental agency and reflecting changes in consumer prices in the Seattle Area.

“CPI Change” means, with respect to a particular dollar amount or matter which is to be adjusted by reference to the CPI pursuant to an express provision in this Lease, the percentage increase in the CPI, if any, for the ensuing Lease Year as determined by the CPI published at the end of the preceding October of the Lease Year being measured; in no event shall a CPI Change decrease any amount or rate calculated pursuant to this Lease.

“Damage” means any occurrence or casualty constituting an incident of Catastrophic Damage or non-Catastrophic Damage.

“**Design Development Documents”** is defined in the Agreement to Lease.

“Design Team” is defined in Section 11.1.3.

“**Development**” or “**Develop**” means any acts necessary and appropriate to (a) obtain any required land use, zoning, environmental, building or other approvals and permits for the Design, Construction, operation and use of the Project, (b) obtain any required extension of public and private utility services for the Project, (c) obtain any required vehicular or pedestrian rights of way and access from or to the Project (including such rights granted herein), and (d) satisfy the legal requirements and insurance requirements in connection with the Design or Construction of the Project.

“Environmental Claims” means all claims, demands, suits, actions (including, without limitation, notices of noncompliance, charges, directives, and requests for information), causes of action, orders, judgments, settlements, damages, losses, diminutions in value, penalties, fines, actions, proceedings, obligations, liabilities (including strict liability), encumbrances, liens, costs (including, without limitation, costs of investigation and defense of any claim (including, Lessor’s in-house counsel), whether or not such claim is ultimately defeated, and costs of any good faith settlement or judgment), and expenses of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys’ and consultants’ fees and disbursements, any of which are incurred at any time, arising out of or related to Environmental Requirements, including, without limitation:

(a) Damages for personal injury, or injury to property or natural resources occurring upon the Premises or off the Premises, foreseeable or unforeseeable, including, without limitation, consequential damages, lost profits, lost rents, the cost of demolition and rebuilding of any improvements on real property, interest and penalties;

(b) Claims brought by or on behalf of employees of Lessee;

(c) Fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of Releases of Hazardous Substances (whether or not performed voluntarily) or violation of Environmental Requirements, including, but not limited to, preparation of feasibility studies or reports, or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, reasonably necessary to restore full economic use of the Premises or any other property, or otherwise expended in connection with such conditions, and including without limitation any attorneys' fees, costs and expenses incurred in enforcing this Lease or collecting any sums due hereunder; and

(d) Liability to any third person or governmental agency to indemnify such person or agency for costs expended in connection with the items referenced above.

"Environmental Requirements" means all applicable present and future statutes, regulations, rules, ordinances, codes, common law, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, and all amendments thereto, of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, Washington, and political subdivisions thereof, and all applicable judicial, administrative and regulatory decrees, judgments, orders and written directives relating to the protection of human health, safety, wildlife or the environment, including, without limitation, (a) all requirements pertaining to reporting, licensing, permitting, investigation and/or remediation of emissions, discharges, Releases, or threatened Releases of Hazardous Substances, whether solid, liquid, or gaseous in nature, into the air, surface water, groundwater, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Substances; and (b) all requirements pertaining to occupational health, the health and safety of employees or the public, including, without limitation, as amended from time to time, the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq., Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., Federal Hazardous Materials Transportation Control Act, 49 U.S.C. Section 1801 et seq., Federal Clean Air Act, 42 U.S.C. Section 7401 et seq., Federal Water Pollution Control Act, Federal Water Act of 1977, 33 U.S.C. Section 1251 et seq., Federal Insecticide, Fungicide and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. Section 136 et seq., Federal Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., Federal Safe Drinking Water Act, 42 U.S.C. Section 300f et seq., Washington Water Pollution Control Act, RCW Chapter 90.48, Washington Clean Air Act, RCW Chapter 70.94, Washington Solid Waste Management Recovery and Recycling Act, RCW Chapter 70.95, Washington Hazardous Waste Management Act, RCW Chapter 70.105, Washington Hazardous Waste Fees Act, RCW Chapter 70.95E, Washington Model Toxics Control Act, RCW Chapter 70.105D, Washington Nuclear Energy and Radiation Act, RCW Chapter 70.98, Washington Radioactive Waste Storage and Transportation Act of 1980, RCW Chapter 70.99, Washington Underground Petroleum Storage Tanks Act, RCW Chapter 70.148, and any regulations promulgated thereunder.

"Event of Default" is defined in Section 25.1

"Existing Improvements" is defined in Recital A.

"Expiration Date" is stated in the Basic Lease Information.

"**Facility"** means the portion of the Project that is the two story Seattle Kraken branded, two (2) ice rink facility with rink seating and a restaurant, consisting of gross square footages of approximately (i) 62,500 square feet of ice rinks and seating, and (ii) no less than 2,300 square feet of restaurant space, developed in accordance with that certain Request for Qualifications issued by the Lessor entitled "Developer of Ice Skating Facilities, Restaurant and Community Center", Job #06-25-CMO, issue date February 24, 2025.

"Facility Assessment" means a comprehensive facility assessment as may be conducted from time to time pursuant to Section 8.6.7.

"**Final Completion**" means Substantial Completion has occurred, all punch list items have been performed and are completed and a final certificate of completion for the Project has been issued by the Lessor, as the issuing agency.

"**Franchise**" means the franchise granted to TeamCo by the National Hockey League ("**NHL**") commonly known as the "Seattle Kraken".

"Full Replacement Value" is defined in Section 19.1.1.1.

"**GAAP**" means those principles of accounting set forth in pronouncements of the Financial Accounting Standards Board and its predecessors or pronouncements of the American Institute of Certified Public Accountants or those principles of accounting that have other substantial authoritative support and are applicable in the circumstances as of the date of application, as such principles are from time to time supplemented and amended.

"**General Construction Contract**" that certain Construction Contract, dated as of ~~[_______________]~~May 13, 2026, between the Lessee and the General Contractor, with the Lessor as an intended third party beneficiary to the extent described therein, pursuant to which the General Contractor has agreed to Construct the Project for a Guaranteed Maximum Price, and any exhibits and plans and specifications attached thereto, and any modifications, amendments or supplements thereto in accordance with the terms thereof and the Agreement to Lease. Lessor acknowledges receipt of a copy of the General Construction Contract.

"**General Contractor**" means ~~[____________________]~~BNBuilders, Inc., as contractor under the terms and conditions of the Construction Contract, and its permitted successors and assigns.

"Governmental Authorities" means all governmental or quasi-governmental authorities with jurisdiction over the Premises.

"Hazardous Substance" means any substance, material or waste:

(a) the presence of which requires investigation or remediation under any Environmental Requirement;

(b) which is or becomes listed, regulated or defined as a "hazardous waste," "hazardous substance," "hazardous material", "toxic substance", "hazardous air pollutant", "pollutant," "infectious waste," "bio-hazardous waste", "medical waste", "radioactive waste", or "contaminant" under any Environmental Requirement;

(c) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous to human health, safety, wildlife or the environment and is or becomes regulated under any Environmental Requirement;

(d) the presence or Release of which at, on, under or from the Premises causes or threatens to cause a nuisance upon the Premises or to surrounding properties or poses or threatens to pose a hazard to the environment or the health or safety of persons on or about the Premises; or

(e) the presence of which on adjacent properties could constitute a trespass by Lessee.

Without limitation of the foregoing, Hazardous Substances shall include gasoline, diesel fuel and other petroleum hydrocarbons and the additives and constituents thereto, including MTBE; polychlorinated biphenals (PCBs); asbestos and asbestos-containing material; universal waste, lead; urea formaldehyde foam insulation; radon gas and microbial material (including mold).

"Improvements" means Leasehold Improvements and all Alterations, together with any and all buildings, structures, systems, facilities and fixtures to be located within the Land pursuant to this Lease.

"Improvements Mortgage" is defined in Section 24.1.

"**Improvements Mortgagee**" means the holder of an Improvements Mortgage.

"Interest Rate" means the rate of twelve percent (12%) per annum.

"Land" is defined in the introductory paragraph.

"Lease" is defined in the introductory paragraph.

"Lease Year" "Lease Year" means the twelve-month period commencing on January 1 and ending on December 31 of each year during the Term, provided that the first partial Lease Year shall commence on the Commencement Date and the last partial Lease Year shall end on the Termination Date.

"**Leasehold Improvements**" is defined in Section 11.

"Leasehold Mortgage" is defined in Section 24.2.

"**Leasehold Mortgagee**" means the holder of a Leasehold Mortgage.

"Lessee" is defined in the introductory paragraph.

"Lessee Environmental Activity" means any use, treatment, keeping, handling, storage, transport, sale or Release at, on, under or from the Premises of any Hazardous Substance during the Term that arises out of, is the result of, or is related to the acts or omissions of Lessee or Lessee's Agents on or about the Premises during the Term.

"Lessee Materials" are defined in Section 11.1.7.

"Lessee Parties" are defined in Section 18.10.2.

"Lessee's Agents" means Lessee's employees, agents, contractors, Subtenants and invitees.

"Lessor" is defined in the introductory paragraph.

"Lessor Parties" shall mean Lessor's employees, city council members and the City Manager.

"**Lessor's Agents**" means Lessor's employees and agents.

"Lessor's Authorized Representative" is defined in Section 11.1.2.

"**Lessor's Interest**" is defined in Section 11.1.2.

"Liens" are defined in Section 15.1.

"New Lease" is defined in Section 24.5.

"New Lease Notice" is defined in Section 24.6.

"Operating Expenses" shall mean all insurance premiums and deductibles, debt service, operating expenses, permit and license fees, costs of construction, utilities and services, maintenance, repair, replacement, rebuilding, restoration, management, marketing and leasing services, operations and other costs of any type whatsoever accruing at any time during the Term in connection with the ownership, marketing, leasing, operation, management, maintenance, repair, replacement, restoration, use, occupancy or enjoyment of the Skating Facility and the Restaurant on the Premises. Notwithstanding the foregoing, however, specific remodeling, rehabilitation or capital improvement cost items (collectively "**Capital Cost Items**") may be included in Operating Expenses provided that each such item is either specifically authorized under this Lease or shall have been submitted by Lessee to Lessor and approved in advance and in writing by Lessor. Submission by Lessee to Lessor of requests for approval of Capital Cost Items shall be in writing and in reasonable detail, and shall include, among other things, a statement or explanation of the need for or desirability thereof, detailed plans, cost estimates and proposed means of payment and such other information as may be required under this Lease; (c) Reserved; (d) marketing and advertising costs and expenses incurred for the benefit of the Premises or any portion thereof; (e) expenses incurred with respect to security and insurance premiums on policies of insurance required to be maintained pursuant to this Lease or the Leasehold Mortgage; (f) Reserved; (g) Taxes; and (h) Rent due to Lessor under this Lease. Operating Expenses shall not include any depreciation of the Premises or any equipment, personal property, furniture or fixtures of or located on the Premises or amortization in lieu thereof or any federal or state business and occupation or income taxes payable by Lessee, or any property manager, or any other similar taxes measured by income.

"Option" is defined in Section 5.2.

"**Option Term"** is defined in Section 5.2.

"Option to Purchase" is defined in Section 37.

"**Parking Area**" means the surface parking lot located to the north of the Land with [210] parking spaces. For purposes of clarification, the Parking Area is not located on the Land.

"Party" means either Lessor or Lessee and "**Parties**" means Lessor and Lessee collectively.

"Permits and Approvals" means permits, licenses and other approvals necessary for the operation, maintenance, repair, replacement, management and use of the Premises.

"Premises" is defined in Recital C. For purposes of clarification, the Premises do not include the Parking Area.

"Project Development Team" is defined in Section 11.1.3.

"Project Documents" is defined in Section 11.1.

"Release" with respect to Hazardous Substances, means any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing, or other movement of Hazardous Substances into the environment; provided that "Release" shall not include the migration, seepage or discharge on, over or across the Premises of any Hazardous Substance that originates off of the Premises.

"Rent" means the Lease Payment and Monthly CapEx Fund Payments.

"Restaurant" shall mean the restaurant located on the first floor of the Premises and generally depicted on Exhibit H. The Restaurant shall open for iceplex patrons as well as the general public. The Restaurant menu shall provide beer and wine, hot food prepared in a kitchen with a goal of providing options for baking, grilling, and deep-frying menu options. The Restaurant shall be not less than 2300 square feet in size.

"Substantial Completion" means the date that the Leasehold Improvements are complete (other than minor punch list items) in accordance with the Project Documents and a temporary certificate of occupancy for the Project has been issued by the Lessor, as the issuing agency, such that Lessee, and Lessee's Subtenants are permitted to and could, pursuant to such certificate of occupancy, physically occupy the Improvements for uses permitted hereunder.

"Taxes" are defined in Section 7.2.2.

"**TeamCo**" means Seattle Hockey Partners, LLC, a Delaware limited liability company.

"Term" is defined in Section 5.1.

"Termination Date" is defined in Section 27.2.

"Transfer" is defined in Section 22.1.

"Triggering Event" is defined in Section 18.9.

"Unavoidable Delay" means any delay due to war, insurrection, riots, civil disturbances, floods, fires, casualties, earthquakes, tsunamis, acts of God, acts of the public enemy, acts of terrorists, governmental embargo restrictions, inability to obtain materials through ordinary sources using commercially reasonable efforts (including the selection of alternative materials), bankruptcy, insolvency or dissolution of third party providers of services or capital to the Project, strikes, epidemics, quarantine restrictions, Unusually Severe Weather Conditions, unforeseen subterranean conditions that could not have otherwise been reasonable anticipated, any actions by any governmental authorities, or similar events or circumstances beyond Lessee's reasonable control, and provided (i) Lessee shall use commercially reasonable efforts to seek to minimize the effects of any Unavoidable Delay, and (ii) the total length of time a delay may constitute Unavoidable Delay with respect to a specific event or circumstance shall not exceed the length of time for the actual event or circumstance plus a period of time thereafter in the exercise of reasonable diligence necessary to address the consequences associated with such event or circumstance (which, by way of example, for a casualty would include the length of time of the casualty itself and the time thereafter in the exercise of reasonable diligence to seek and secure insurance proceeds and necessary permits and the time to conduct the actual repairs of such casualty).

"Unusually Severe Weather Conditions" means the occurrence of precipitation, low temperature, windstorms, or snow or ice which is reasonably unanticipated and causes construction projects in downtown Kirkland to cease work.

EXHIBIT A

Legal Description of the Land

~~{TO BE ADDED PRIOR TO EXECUTION}~~

PARCEL A:

LOTS 1 THROUGH 12, INCLUSIVE, BLOCK 5, CORMODE AND ADSIT'S FIRST ADDITION TO KIRKLAND, ACCORDING TO PLAT RECORDED IN VOLUME 6 OF PLATS, PAGE 44, RECORDS OF KING COUNTY, WASHINGTON, AS ACQUIRED BY JUDGMENT AND DECREE OF APPROPRIATION AS TO ITEM NO. 1 ON DECEMBER 23,1968, IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR KING COUNTY UNDER COURT CAUSE NO. 698317, AND WARRANTY DEED RECORDED MARCH 22, 1984, UNDER RECORDING NUMBER 8403220320, RECORDS OF SAID COUNTY.

PARCEL B:

NEW LOT 2, CITY OF KIRKLAND LOT LINE ALTERATION NO. LLA25-00295, RECORDED UNDER RECORDING NUMBER 20250730900001, RECORDS OF KING COUNTY, WASHINGTON

EXHIBIT B

Project Documents

{TO BE ADDED PRIOR TO EXECUTION}

EXHIBIT C

Design Team

{TO BE ADDED PRIOR TO EXECUTION}

EXHIBIT D

Form of Guaranty

{TO BE ADDED PRIOR TO EXECUTION}

{IDENTICAL TO FORM OF GUARANTY ATTACHED TO AGREEMENT TO LEASE}

EXHIBIT E

Form of Facility Operations and Lease Agreement

{TO BE ADDED PRIOR TO EXECUTION}

{IDENTICAL TO FACILITY AND OPERATIONS LEASE AGREEMENT ATTACHED TO AGREEMENT TO LEASE}

EXHIBIT F

Plans and Specifications relating to Community Center Premises

{TO BE ADDED PRIOR TO EXECUTION}

EXHIBIT G

Form of Community Center Sublease

{TO BE ADDED PRIOR TO EXECUTION}

{IDENTICAL TO COMMUNITY CENTER SUBLEASE ATTACHED TO AGREEMENT TO LEASE}

EXHIBIT H

Depiction of Restaurant

{TO BE ADDED PRIOR TO EXECUTION}

SCHEDULE 1

City's Signage Criteria

{TO BE ADDED PRIOR TO EXECUTION}

{SHOULD BE BASED ON THE DEVELOPMENT STANDARDS IN THE AGREEMENT TO LEASE}

Summary report: **Litera Compare for Word 11.15.0.58 Document comparison done on 7/2/2026 11:23:38 AM**	
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Intelligent Table Comparison: Active	
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Modified DMS: nd://4913-4760-7728/4/Ground Lease- City of Kirkland (7.1.26).docx	
Changes:	
Add	52
~~Delete~~	34
~~Move From~~	0
Move To	0
Table Insert	0
~~Table Delete~~	0
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	86