

CITY DRAFT: 8/06/09

GROUND LEASE AGREEMENT

between

The Park Board of the City of Spokane

and

Mobius Spokane

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GROUND LEASE AGREEMENT

between

The Park Board of the City of Spokane

and

Mobius Spokane

This GROUND LEASE AGREEMENT (this "Lease") is made and entered into this ___ day of _____, 2009, by and between THE PARK BOARD OF THE CITY OF SPOKANE, (the "Board" or "Landlord"), and MOBIUS SPOKANE, a Washington non-profit corporation previously known as the Inland Northwest Science and Technology Center ("Mobius" or "Tenant").

RECITALS

WHEREAS, the Board and Mobius entered into a Ground Lease Agreement dated of June 17, 2003, which was amended effective May 11, 2006 (collectively, the "Original Lease"), and

WHEREAS, that Original Lease is no longer in effect, and

WHEREAS, the Board and Mobius now desire to enter into a new Ground Lease which will supplant the Original Lease in its entirety --

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained in this Lease, the Parties agree as follows:

AGREEMENT

ARTICLE 1 DEFINITIONS

The following words and phrases, when capitalized and unless the context requires otherwise, shall have the meanings specified in this Section. The meanings specified in this Section shall apply throughout this Lease, including the Exhibits to this Lease, unless an Exhibit explicitly defines the word or phrase differently, in which case the different meaning shall only apply throughout such Exhibit. Whenever the singular of a word is defined below, the definition shall include the plural where appropriate, and *vice versa*; and the words of any gender shall include each other gender where appropriate. The words "herein," "hereof," and "hereunder" and other words of similar import refer to the relevant document as a whole and not to any particular part or subdivision thereof.

1.1 Article. "Article" means and refers to an article in this Lease. Generally, an Article is the largest type of subdivision in this Lease and is numbered with a single numeral, for example, "2".

1.2 Business Plan. "Business Plan" means a plan first submitted by Tenant to the Department within one year of the Effective Date of this Lease. Tenant may not rely on any Business Plan submitted to Landlord under the Original Lease, but must formulate a new business plan tailored to the terms contained in this new Ground Lease. The Business Plan shall contain: (1) a detailed description of Tenant's proposed development and operation plan for the Center, including projected income and expenses; (2) proposed commercial, office and retail uses of that portion of the Premises not necessary for

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the development of the Center, together with projected income from such uses; (3) a timeline for construction and occupancy of the Center and the proposed commercial, office and retail uses; (4) a detailed description of Tenant's proposed financing of the Center and Center Improvements, including a schedule of proposed fundraising activities (if available) and expenditures; provided that, Tenant shall not disclose to the Department or any other person donors or potential donors without their express written consent; (5) whether Tenant will or will not include an IMAX theater as part of the Center; and (6) such other information that may reasonably be requested by the Department in order to allow it to properly review and determine the viability of the construction and operation of the Center. Tenant must provide to Landlord a reasonably detailed update to the Business Plan not later than thirty (30) days prior to the date Tenant intends to substantially commence construction.

In addition, the Business Plan will define Center operational performance targets, including, but not limited to, reasonable ranges for: days open to the public per year, days open to the public per week, hours open to the public per day, attendance expectations per year and per month, timing for rotations of exhibits, and other real measures that (1) define a financially viable and otherwise publicly attractive Science Center consistent with Article 5, (2) establish guidelines that may be used for ongoing evaluation of the Center per 3.2, and (3) establish performance criteria within which the Tenant may be found in default due to failure to meet operational expectations defined in the Business Plan.

1.3 Center. "Center" is defined in Article 5.

1.4 Center Improvements. The term "Center Improvements" is defined in Article 6.

1.5 Board. "Board" means the Park Board of the City of Spokane.

1.6 Commencement Date. "Commencement Date" means the date the Center initially opens for business following completion of construction of the Center Improvements.

1.7 CPI. "CPI" is defined as the Consumer Price Index, Pacific Cities and U.S. Average, All Items, 1982-84 = 100, published by the Bureau of Labor Statistics, U.S. Department of Labor, subject to modifications, amplifications and changes of methods in making and computing the same as shall be or may be made from time to time. If the base year of said CPI is changed from the base year used at the inception of this Lease (i.e., 1982-84=100), then the CPI figure used herein shall be converted from any subject base to the base used at the inception of this Lease by such conversion factor as shall be supplied by the Bureau of Labor Statistics upon request. In the event that the CPI reporting system is changed during the term of this Lease or any extensions or renewals thereof whereby the percent of increase or decrease from the period ending in the adjustment month or year is not published, then the most current CPI published and available prior to the effective date of the applicable adjustment shall be used. In the event during the term of this Lease, the CPI is no longer published, the parties shall use a reasonably comparable source or index as is available.

1.8 Department. "Department" means the Spokane Parks and Recreation Department.

1.9 Director. "Director" means the Director of the Spokane Parks and Recreation Department.

1.10 Effective Date. "Effective Date" means the date that this Lease was made and entered into, as written above in the first Subsection of this Lease.

1.11 Initial Term. "Initial Term" is defined in Article 3.

1.12 Lease. "Lease" means this Ground Lease, including Exhibits hereto, between Landlord and Tenant.

1.13 Material Default. "Material Default" by Tenant means a default by Tenant under this Lease that amounts to a significant failure of consideration hereunder.

1.14 Option Term. "Option Term" is defined in Article 3.

1.15 Original Condition. "Original Condition" means the condition or state of the Premises on the Effective Date. Any condition or state of the Premises that results from any change or changes made to the Premises by Landlord after the Effective Date and not at the request of Tenant shall be considered part of the Original Condition.

1.16 Party. "Party" means Landlord or Tenant. "Parties" means both Landlord and Tenant.

1.17 Premises. "Premises" means all of the property depicted on the attached Exhibit A and legally described on Exhibit B, which are hereby incorporated by reference. The Premises includes parcels adjacent to Cataldo Street that are sometimes referred to herein as Lots A, B, C and D, and a portion of Lot F on the upper shelf of the existing basalt wall. "Premises" includes all real property and fixed assets.

1.18 Section. "Section" means and refers to a section of this Lease. Generally, a Section is the second largest type of subdivision in this Lease and is numbered with a double numeral, for example, "2.2".

1.19 Subsection. "Subsection" means and refers to a Subsection in this Lease. Generally, but not always, a Subsection is the most specific type of subdivision in this Lease and is numbered with a letter, for example, "B" but referred to as a double numeral and letter, for example, "2.2.A".

1.20 Tenant. "Tenant" means MOBIUS SPOKANE, a Washington non-profit corporation previously known as the Inland Northwest Science and Technology Center.

ARTICLE 2 LEASE

Subject to the terms and conditions set forth herein, Landlord hereby leases the Premises defined below to Tenant, and Tenant leases the Premises from Landlord. Upon mutual execution hereof, the Original Lease shall automatically deemed terminated and of no further force and effect.

ARTICLE 3 TERM

3.1 Initial Term. The initial term of this Lease shall be fifty (50) years commencing on the Commencement Date and ending at midnight on the last day of the calendar month in which the fiftieth (50th) anniversary of the Commencement Date occurs (the "Initial Term"), unless sooner terminated as provided herein.

3.2 Option Term. At the beginning of the 47th year of the Term, Landlord and Tenant will evaluate the performance of the Center and mutually determine whether to renew the Term of the Lease for an additional 50 years (the "Option Term") under the terms of this Lease or mutually agreed

modifications thereto. The Option Term is subject to the prior agreement of both parties. In its evaluation of the prospects for renewal, Landlord shall not be unreasonable, arbitrary or capricious. Landlord shall evaluate whether Tenant's performance is satisfactory and viable, and is providing a community service consistent with Tenant's original intent to advance the general interests of science, and community values as perceived by third parties such as Spokane area school districts and general citizen/patrons of the science center. To avoid unexpected, capricious, or unreasonable non-renewal by the Landlord, the Landlord and Tenant agree to evaluate Tenant's performance at every five (5) year anniversary of operation. At each of the five-year anniversaries, Tenant shall report to Landlord its financial performance, attendance track record, upcoming operational goals, and other matters pertinent to its continued viability. Ideally the categories of evaluation will be consistent from one reporting period to the next for continuity and comparison of results. Landlord shall assess these factors and report back to Tenant any concerns it has, and note concerns that, if not addressed and corrected, may rise to a threshold of causing Landlord to consider non-renewal at the end of the Initial Term. Any such concerns of Landlord shall be reasonable, and articulated clearly enough so that Tenant can adopt, if necessary, remedial strategies for the next five year reporting--with the ultimate goal of avoiding non-renewal due to acceptable corrective action (where reasonably necessary) by Tenant at the end of the Initial Term.

ARTICLE 4 CONDITIONS PRECEDENT TO LEASE

Notwithstanding anything to the contrary contained herein, either Party, unless otherwise indicated below in this Article, shall have the unilateral right to terminate this Lease, and thereby cause the Lease to be null and void and of no further force and effect, if one of the following conditions precedent has not been met. A Party's decision to terminate this Lease under the provisions of this Article shall not be effective until the non-terminating Party receives notice from the terminating Party of the terminating Party's decision to terminate the Lease. If the condition on which the terminating Party was basing its decision to terminate the Lease is met prior to reception of the terminating Party's notice, the terminating Party's decision to terminate shall be of no effect and this Lease shall continue in full effect.

4.1 Approval of Business Plan. Landlord shall have approved the Business Plan within 30 days after such plan has been initially submitted to Landlord; provided that, such approval shall not be unreasonably withheld. In the event Landlord reasonably rejects the Business Plan, either Party shall have the right to terminate this Lease by written notice to the other Party, whereupon Tenant shall immediately surrender the Premises to Landlord in accordance with Article 25 hereof. Landlord may not terminate this Lease if the rejection of the Business Plan is unreasonable as described above.

4.2 Fundraising Goal. On or before the fifth anniversary of the signing of this Lease, Tenant shall have established to Landlord's reasonable satisfaction that eighty percent (80%) of the total costs of the Project has been raised or pledged. The existence of the 80% raised or pledged must be independently audited or otherwise substantiated to Landlord before construction may commence. Failure to meet this goal constitutes default and termination of this Agreement in the sole discretion of the Landlord.

4.3 Project Feasibility. Tenant in good faith determines that the development of the Center is feasible, that sufficient funding is available, and has approved all other aspects of the proposed project, including without limitation Tenant's approval of an appropriate geotechnical survey at Tenant's cost of the Premises showing that such lots are suitable for construction, and Tenant's review, investigation, and approval of Hazardous Substance issues, the scope and expense of the Initial Remedial Work that may be required, and other environmental and site conditions at the Premises. In connection with Tenant's due diligence and feasibility analysis, the parties acknowledge that the vacation of Cataldo Street for vehicular traffic is a potentially important component of the project and could greatly affect design and development of the project. In particular, street vacation could substantially enhance development of the

proposed science center complex via inclusion of such amenities as a pedestrian walkway, bus access and/or turnaround area, etc. The parties therefore shall in good faith continue to jointly evaluate the costs and benefits of a potential street vacation in connection and coordination with the project. Landlord will not make any monetary commitment to pursuing street vacation.

4.4 Commencement of Construction. Tenant shall have obtained all necessary permits and substantially commenced construction of the Center Improvements on or before the fifth (5th) anniversary of the Effective Date hereof. If failure to meet this condition is the basis for the termination of this Lease, then Landlord may require Tenant to restore the Premises to their Original Condition. The entire Project must be complete, open to the public, and in full operation no later than two (2) years from the issuance of the building permit for the Science Center. If in-ground pollution remediation takes place during this construction period, the two (2)-year construction period will be extended by the amount of time needed for the remediation process to be completed.

ARTICLE 5 USES

Tenant shall use the Premises for the primary purpose of constructing, maintaining, and operating a science center, and which may also include other uses and programmatic elements such as a children's museum, a 3-D IMAX theatre, indoor and outdoor gathering spaces, and all necessary, desirable, or incidental structures or buildings related thereto (including Center Improvements) (collectively referred to herein as the "Center"). It is Tenant's initial intention to construct surface parking on Lots A, B and C and to construct the main science center building on Lot D. As part of such primary purpose, Tenant shall have the right to use the Center for programming and events that are consistent with the mission of Tenant, and for other temporary or interim uses Tenant reasonably deems appropriate, for the retail sale of paraphernalia, memorabilia, novelties, and other products consistent with the mission and programming of Tenant, and for the operation of food service consistent with that mission. The Center shall be operated by Tenant, at a minimum, at a state or regional quality level for such facilities, which quality level the Parties acknowledge as of the Effective Date hereof is exemplified by the Pacific Science Center located in Seattle, Washington. Consistent with Article 23, Tenant may sublease portions of the Premises for any other commercial, office or retail use that is approved by Landlord, which approval shall be timely given and not unreasonably withheld. Tenant shall not use, and the Department shall not permit Tenant to use, any real property currently in Riverfront Park for permanent commercial purposes. Tenant further agrees to give Landlord at least 90 days' notice prior to Tenant's operation of a 3D-IMAX Theater. Landlord agrees to terminate the operation of its current 3D-IMAX theatre situated in Riverfront Park within 90 days from the date Landlord receives said notice from Tenant.

In addition to uses exemplified by the Pacific Science Center of Seattle, as cited above, the Business Plan shall define, to the greatest extent possible, the Center mission and specific uses to which the Center may be put consistent with that mission. This definition shall serve as a benchmark for ongoing evaluation of Center performance over the term of the Lease. Any substantial deviation from this mission and specific uses related thereto shall be cause for default by the Tenant under terms of this Lease, unless otherwise agreed to by Landlord.

ARTICLE 6 TITLE TO CENTER AND CENTER IMPROVEMENTS

During the term of this Lease and subject to the provisions contained herein, Tenant shall maintain and hold title to the Center and Center Improvements. "Center Improvements" includes but shall not be limited to any and all fixtures, furnishings, equipment, landscaping, and other items of personal

property that are used or generally necessary to operate the Center and any discrete systems and elements of the foregoing (e.g., HVAC, electrical, water, sewer, humidity controls, elevators, security, telephones, fire alarms, sprinklers and fire suppression devices, security, public address systems, ticket booths, signage, auditoriums and restaurants). Notwithstanding the foregoing, except with regard to Tenant's maintenance obligations under Article 16, Center Improvements shall only include those items that Tenant owns. Furthermore, except for those displays, exhibits, or interactive devices that were originally designed as an intrinsic structural part of the Center, Center Improvements shall not include any displays, exhibits, interactive devices, artifacts, or other items that provide the content of the Center's programming.

Ownership. For the duration of this Lease, title to the Center as well as any and all additions to or alterations of the Center, shall remain in Tenant. Upon the expiration or earlier termination of this Lease, the Center Improvements shall become at once a part of the realty and shall become the property of Landlord.

**ARTICLE 7
POSSESSION AND OCCUPANCY**

Upon satisfaction or waiver of all conditions precedent set forth in Article 4 hereof by both parties, Tenant shall have possession and full control of the Premises and may construct the Center on the Premises, subject to the rights reserved by Landlord and the other terms and conditions set forth herein; provided, that the Center shall not be occupied for general public use until a Certificate of Occupancy has been obtained by Tenant, unless otherwise agreed to by the parties. During the time between the Effective Date and the date that all conditions precedent set forth in Article 4 have been satisfied or waived, Landlord shall (1) permit Tenant reasonable access to the Premises to prepare for the design, construction and management of the Center and Center Improvements; and (2) not use the Premises or allow a third-party to use the Premises in a manner that increases Tenant's design and construction costs of the Center and Center Improvements by, for example, constructing permanent structures thereon that must be demolished, but which shall not prohibit the use of the Premises as a farmers market.

**ARTICLE 8
CONSIDERATION**

For the benefit of the City of Spokane and its citizens, Tenant, a nonprofit corporation, shall design, construct, manage, and coordinate funding for a multi-million dollar science and technology center that may also include a children's museum, 3-D IMAX theatre, beautiful and park-like grounds, and other uses meeting the standards included in Article 5 above. For and in consideration of the foregoing and the mutual covenants of both parties contained herein, and for annual rent payable by Tenant to Landlord equal to \$1 per year during the Initial Term, the receipt and sufficiency of which are hereby acknowledged, the parties have entered into this Lease.

**ARTICLE 9
PARKING REVENUE SHARING**

Tenant shall make an annual payment of \$12,500 to Landlord in quarterly installments commencing the date parking at the Premises first opens for public use (the "Parking Fee"). The Parking Fee shall be adjusted effective every five (5) years during the Initial Term from the Commencement Date, by the percentage change in the CPI during the previous five (5) year period. Should mutually-approved commercial or other development occur on those portions of the Premises known as Lots A, B or C (as

more fully described in Section 23.4), Tenant shall pay to Landlord either (but not both) the Parking Fee or Landlord's Sublease Share (as defined in Section 23.4), whichever is greater.

ARTICLE 10 CONSTRUCTION OF IMPROVEMENTS ON THE PREMISES

10.1 Duty to Construct. Tenant shall construct, or cause to be constructed, the Center on the Premises subject to, the provisions of Article 4. Said construction shall be at Tenant's sole cost and expense, except as otherwise provided in this Article. As part of Tenant's construction obligations, Tenant shall be required, at its sole cost, to demolish any and all existing improvements on the Premises. All of the construction shall be performed and completed in the manner and according to the terms and conditions set forth in this Lease. Tenant agrees to give Landlord at least 90 days' notice of Tenant's projected date for breaking ground for the construction of the Center Improvements. Tenant agrees that commencement of construction of the Center shall occur no later than five (5) years following the Effective Date and that completion of the construction of the Center shall occur no later than 24 months after building permits are issued; except that the foregoing 24-month period may be extended as reasonably required to the extent hazardous material clean-up, remediation, and/or removal activities at the Premises require additional time.

10.2 Center Design. Prior to construction of the Center and Center Improvements, Tenant shall timely provide Landlord with the opportunity to review and comment upon all designs, plans, and specifications for the Center or portions of the Center. Further, Tenant shall provide Landlord with a thirty (30) calendar day period of time within which to review and comment upon all designs, plans, and specifications for the Center or portions of the Center that Tenant plans to submit to Landlord for the purpose of seeking land use and building permits for the Center or portions of the Center. The parties acknowledge that, as currently contemplated, the proposed science center building will contain approximately 45,000 square feet ("SF"); the proposed IMAX theater will contain approximately 11,310 SF (if included in the final design of the Center Improvements); and there will be approximately 186 parking spaces of surface parking on the lots north of Cataldo Street. The size of the science center building may vary by a factor of 25% (i.e., from 33,750 SF to 56,250 SF) from the above-mentioned figure, in Tenant's sole discretion; Landlord's reasonable prior approval shall be required for a science center building of any other overall size. Landlord may agree to a reduction in the size of the Center below the minimum 33,750 SF only with a *pro rata* reduction in the amount of land leased to Tenant.

Except as otherwise set forth herein, Tenant shall not be required to obtain Landlord's approval of designs, plans, or specifications, but shall give good faith consideration to Landlord's comments on the designs, plans, and specifications; provided, however, that material changes in the Conceptual Design of the Center and the final design (particularly with respect to the south-facing façade) will be subject to the approval of the Landlord, which approval shall be timely given and shall not be unreasonably withheld. Tenant shall permit Landlord's representation and involvement during the design process to gather ongoing input, to keep Landlord apprised of incremental design progress, to avoid unreasonable, arbitrary and capricious rejection of the design by Landlord, and to avoid last-minute disapproval of the final design. Tenant is not obligated to obtain Landlord's approval throughout the design process, but is encouraged to make progress reports to Landlord during the course of the design and solicit feedback accordingly. Also, Landlord shall consider in good faith Tenant's input on the design of any future development of Lot F (the north bank lot below the basalt wall). Landlord acknowledges Tenant's desire that Landlord not obstruct Tenant's view of Riverfront Park from Lot D, and not to obstruct public view of the proposed science center from Riverfront Park; however, Landlord cedes no authority or control over the development of the remainder of Lot F included within the "Premises" to Tenant.

10.3 Environmental Review. Landlord shall be the lead agency for the Center proposal under the State Environmental Policy Act, RCW 43.21C. Tenant shall pay all costs of preparing all environmental documents for the Center, except that Landlord shall be responsible for such costs relating to the completion by Landlord of the Initial Remedial Work in accordance with Subsection 31.4 hereof.

10.4 Compliance with Law and Quality of Work. Tenant, at Tenant's sole cost and expense, shall cause all construction to be performed by or on behalf of Tenant under this Lease to be approved by all appropriate governmental agencies and all applicable permits and authorizations shall be obtained by Tenant as and when required. The Center Improvements shall be constructed and all work performed shall be in accordance with all valid laws, ordinances, regulations, and orders of all federal, state, county, or local governmental agencies or entities having jurisdiction over the Premises. All work performed or authorized by this Lease, shall be done in a good workmanlike manner and only with new or recycled materials of good quality.

10.5 Liens; Indemnification of Landlord. Tenant shall keep the Premises and the Center free and clear from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant. If Tenant, in Tenant's discretion and in good faith, determines that any such lien should be contested, Tenant shall, at Tenant's sole cost and expense, procure and record a lien release bond, in an amount equal to one and one-half (1.5) times the amount of the claim of lien, issued by an insurance company acceptable to Landlord that is authorized to do business in the State of Washington. The bond shall provide for the payment of any sum that the claimant may recover on the claim (together with costs of suit, if any recovered in the action). Tenant's failure to procure and record such lien release bond within thirty (30) calendar days after demand by the Board shall be deemed a default by Tenant under the terms of this Lease. Tenant agrees to hold Landlord, the Premises and the Center Improvements free and harmless of, and to indemnify Landlord against, all liability from any and all such liens, claims or demands, together with costs and expenses, including but not limited to reasonable attorney's fees, and other costs incurred by Landlord in connection therewith or arising out of Tenant's failure to comply with the requirements of this Section, which indemnity obligation shall survive the termination of this Lease in accordance with Subsection 15.2.4 hereof. Tenant shall pay to Landlord within thirty (30) calendar days after written demand, all such costs and expenses incurred by Landlord.

10.6 Ownership of Plans and Specifications. All plans and specifications for the Center shall be the sole property of the Tenant, subject to any rights of the architect, except that the same shall become the property of Landlord upon the expiration or earlier termination of the Initial Term or any Option Term, as applicable.

10.7 Ownership. For the duration of this Lease, title to the Center as well as any and all additions to or alterations of the Center, shall remain in Tenant. Upon the expiration or earlier termination of this Lease, the Center Improvements shall become at once a part of the realty and shall become the property of Landlord.

10.8 Easements and Dedications. The parties hereto acknowledge that in order to provide for the orderly development of the Premises, it may be necessary, desirable or required that street, water, sewer, drainage, gas, power line, and other easements and dedications, and similar rights be granted or dedicated over or within portions of the Premises or other portions of Board property. In addition, certain canopies, awnings or other overhangs attached to the Center Improvements may be suspended over portions of adjacent streets, and the Landlord agrees to cooperate with Tenant in obtaining the necessary street use permits for such overhangs. Landlord shall, upon request of Tenant, join with Tenant in executing and delivering such documents, from time to time, and throughout the Lease term, as may be appropriate, convenient, necessary, or required by the governmental agencies, public utilities, and companies for the purpose of granting such easements and dedications; *provided*, however, that such documents must be

acceptable to Landlord in its reasonable discretion. Any expenses associated with this paragraph shall be borne exclusively by Tenant.

10.9 Zoning. Landlord agrees, from time to time upon request of Tenant, to execute such documents, petitions, applications, and authorizations as may be required by governmental authorities in order to permit construction of the Center Improvements; *provided*, however, that such documents, petitions, applications and authorizations must be consistent with the plans and specifications previously reviewed by the Landlord. Any expenses associated with this paragraph shall be borne exclusively by Tenant.

10.10 Covenants. At the request of Tenant, Landlord shall, from time to time, under terms and conditions acceptable to Landlord in its reasonable discretion, execute and deliver or join in the execution and delivery of such documents as are appropriate, necessary, or required to permit the orderly development of the Premises. Any expenses associated with this paragraph shall be borne exclusively by Tenant.

10.11 Alterations. From and after completion of the initial construction of the Center and Center Improvements, any material exterior alterations or modifications of, or additions to, the Center Improvements shall be subject to the prior approval of Landlord in accordance with the procedure set forth in Subsection 10.2 hereof, and shall be completed in accordance with the requirements set forth in Subsections 10.4 and 10.5 hereof, as well as other provisions contained herein concerning construction of improvements on the Premises.

ARTICLE 11 PROJECT MANAGEMENT AND COORDINATION

11.1 Designation of Project Manager. Immediately after Tenant employs a project manager, Tenant shall notify Landlord, in writing, of the name and business and home telephone numbers of the individual who shall serve as Tenant's project manager for the purpose of liaison between Landlord and Tenant regarding any and all matters related to the construction of the Center, and Landlord shall so notify Tenant of the identity of Landlord's project manager. In the event either such person is replaced, then not later than the effective date of such replacement the Party making such change in personnel shall notify the other of the change, indicating the effective date of the replacement, and the name and business and home telephone numbers of the replacement

11.2 Coordination Meetings. Tenant's project manager shall schedule and hold on a reasonably regular basis project construction meetings with Landlord's project manager, and shall keep Landlord's project manager informed of the time and place of each regularly scheduled meeting between Tenant's project manager and general contractor to enable Landlord's project manager to attend, become informed about the status of the construction, and participate in discussions.

ARTICLE 12 GENERAL REQUIREMENTS FOR CONSTRUCTION ACTIVITY

12.1 Waste Disposal. Tenant shall secure and provide on-site containers for the collection of waste materials, debris and rubbish associated with the construction of the Center Improvements. Tenant shall keep the work site and all adjacent property free from the accumulation of waste materials, rubbish and windblown debris associated with the construction of the Center Improvements and shall dispose of

all flammable, hazardous and toxic materials generated by or otherwise associated with the work. Storage and disposal shall be in accordance with Title 40 CFR, WAC Ch. 173-303 and Title 49 CFR and state and local fire codes and regulations. All waste materials, debris and rubbish generated by or otherwise associated with the construction of the Center Improvements shall be disposed of legally at disposal areas away from the Premises. Upon the completion of the Center Improvements, Tenant shall ensure that the Premises and the roadways and walkways immediately surrounding the Premises are cleaned to the reasonable satisfaction of Landlord, and that all tools, equipment and surplus materials, and waste materials, debris and rubbish have been removed from the Premises. The obligations of Tenant set forth in this Section are expressly made subject to the allocation of responsibility and liability for environmental conditions set forth in Article 31 below.

12.2 Indemnification from Claims for Unpaid Wages. Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all claims for unpaid wages due to any laborer who has worked on the Center Improvements, whether such claim is made directly by any such laborer or any governmental entity on such laborer's behalf, together with any claims for interest and penalties associated with such unpaid wages. The indemnification provided hereunder shall survive the termination of this Lease. Tenant shall also comply, at its sole cost and expense, with all prevailing wage or public contracting requirements, to the extent the same are applicable to the construction of the Center Improvements by Tenant.

ARTICLE 13 TAXES, UTILITIES AND SERVICES

13.1 Taxes. To the extent required by law, Tenant shall pay, before delinquency, all taxes, levies, and assessments arising from its activities or any improvements on, or its occupancy of, the Premises.

13.2 Utility Charges. Tenant, at its sole expense, shall install meters for water, sewer, electricity, gas (if available), steam and/or condensate, and other utilities or infrastructure, as necessary, and shall pay before delinquency all costs for utilities and other services provided on or to the Premises or the Center Improvements, including but not limited to, elevator service, electricity, gas, water, steam, telephone, sewer and sanitation, garbage, heat, janitorial, security, and refuse collection and removal.

13.3 The Tenant's Right to Contest. Tenant shall have the right to contest or review by legal proceedings or in such other manner as may be legal, any tax, assessment, utility charge, or other governmental imposition and to pay such items under protest; *provided*, that nothing in this Section shall be construed to restrain the exercise of any remedy by any City utility for nonpayment, and *provided further* that, notwithstanding any protest or challenge, Tenant shall timely pay such amounts as are necessary to avoid interruption in service, including any interruption that would occur from application of the normal policy or procedure of any Landlord utility.

ARTICLE 14 INSURANCE

14.1 Insurance to Be Procured by Tenant. Tenant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to person or damages to property which may arise from or in connection with Tenant's operation and use of the Premises. The cost of such insurance shall be borne by Tenant. Landlord shall be named as an additional insured party.

14.1.1 Minimum Scope of Insurance. Coverage shall be at least as broad as:

(a) Insurance Services Office form number GL 0002 (current edition) covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).

(b) "Stop Gap" or Employer's Contingent Liability Insurance.

14.1.2 Minimum Limits of Insurance. Tenant shall maintain limits no less than:

(a) Comprehensive General Liability: \$1,000,000.00 combined single limit per occurrence for bodily injury, personal injury and property damage and "Stop Gap" coverage. The same aggregate limit is acceptable. This amount may be adjusted from time to time during the life of the Lease by Landlord to mirror contemporary increases in comprehensive general liability insurance coverage amounts for similar contracts.

14.1.3 Deductibles and Self-Insured Retentions. Any deductibles or self insured retentions must be declared. If requested by Landlord, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Landlord, its officials, agents, volunteers, and employees; or Tenant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

14.1.4 Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

(a) General Liability Coverages.

(i) Landlord, its officials, employees, agents and volunteers are to be covered as additional insured as respects liability arising out of the Premises. The coverage shall contain no special limitations on the scope of protection afforded to Landlord, its officials, employees, agents, or volunteers.

(ii) Tenant's insurance coverage shall be primary insurance as respects Landlord, its officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by Landlord, its officials, agents, employees, and volunteers shall be excess of Tenant's insurance and shall not contribute with it.

(b) All Coverages. Each insurance policy required by this Section shall be endorsed to state that coverage shall not be canceled, nonrenewed or materially reduced in coverage except after thirty (30) days prior written notice has been given to Landlord.

14.1.5 Acceptability of Insurers. Insurance is to be placed with an insurer with a Bests' rating of no less than A:VII, unless otherwise approved by Landlord.

14.1.6 Verification of Coverage. Tenant shall furnish Landlord with a certificate of insurance and with original endorsements evidencing coverage required by this Section prior to occupancy. Landlord reserves the right to require complete, certified copies of all required policies, at any time.

14.1.7 Insurance Binder. Pending receipt of the required certificates and signed endorsements, Landlord will accept a binder, on the appropriate ACORD form, acknowledging the required provisions set forth above. It is recognized that a binder may be issued for a period not to exceed ninety (90) days and subsequent binders issued must be approved by the State Insurance Commissioner. Landlord

assumes that said permission has been obtained, if the certificate and endorsements cannot be received within ninety (90) days.

14.1.8 Approval. Any modification or variance of the requirements of this Section requested by Tenant shall be made only by Landlord's Risk Manager or Legal Department, whose decision shall be final. Such action will not require a formal contract or lease amendment, but may be made by administrative act. The insurance coverage requirements set forth herein shall be reasonably amended from time to time by mutual agreement of Landlord and Tenant to be consistent with the insurance requirements for other similar projects.

ARTICLE 15 LEGAL LIABILITY

15.1 Limits on Liability.

15.1.1 Disclaimer by Board. This Lease is made upon the express condition that, except as specifically set forth herein, Landlord is to be free from and Tenant assumes the risk of all liability and claims for damage, loss, cost, or expense by reason of any injury, loss, or theft of any property in or from the Premises or the Center Improvements or by reason of any injury to any person or persons, including Tenant, or any property of any kind whatsoever and to whomsoever belonging, including Tenant, from any cause or causes whatsoever, in, upon or in any manner connected with the Premises or the Center Improvements, during the term of this Lease or any extension or renewal thereof or any occupancy hereunder. Without limiting the generality of the foregoing, Landlord and Landlord's agents and employees shall not be liable for any such loss or damage to persons or property resulting from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any cause (except to the extent such liability arises out of any sublease by Landlord of any portion of the Center Improvements from Tenant). Nothing in this Subsection 15.1.1 shall be construed to limit Landlord's liability under Subsection 15.2.2.

15.1.2 Obligation of Tenant Limited to Corporation. Any and all obligations of the Tenant under this Lease are enforceable only against the Tenant, and are not enforceable against nor do they impose any formal liability upon Tenant's officers, directors, trustees, or employees or any other individual or entity, public or private.

15.2 Indemnification.

15.2.1 Tenant Indemnification. Except as set forth in Subsections 15.2.2 and 31.12.2 hereof, Tenant shall indemnify, defend, and hold Landlord, its officers, employees and agents, harmless against and from any and all losses, claims, actions, damages, costs and expenses (including reasonable attorney's fees) arising out of or relating to any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, arising out of or relating to any breach of any representation or warranty made by Tenant under this Lease, or arising out of or in any way relating to the Premises or the Center, or any activities thereon.

15.2.2 City Indemnification. Landlord shall indemnify, defend and hold Tenant and its directors, trustees, officers, employees and agents harmless from any and all losses, claims, actions, damages, costs and expenses (including reasonable attorneys' fees) arising out of or relating to any breach or default in the performance of any obligation on Landlord's part to be performed under the terms of this Lease, arising out of or relating to any breach of any representation or warranty made by Landlord under

this Lease, or arising out of or relating to any actual or alleged negligent act or omission or any willful misconduct of Landlord or any of its officers, employees or agents.

15.2.3 Waiver of Immunity. Solely with respect to claims for indemnification under this Lease, Landlord and Tenant waive, as to the other only and expressly not for the benefit of their employees or third parties, their immunity under Title 51 RCW, the Industrial Insurance Act, and acknowledge that this waiver has been mutually negotiated by the parties hereto.

15.2.4 Survival of Indemnification Obligations. Any liability of the parties hereto for acts or omissions occurring during the term of this Lease, or arising under any indemnity provision of this Lease, shall survive termination and surrender (whether or not any claim giving rise to such liability shall have accrued).

ARTICLE 16 REPAIRS AND MAINTENANCE

Tenant shall, at Tenant's sole cost and expense, keep and maintain the Center and any and all other facilities now or hereafter appurtenant to the Premises, including but not limited to the exterior grounds/landscaping, all exterior walls, roofs, interiors, windows, doors, glass, plumbing, heating, air conditioning, ventilation, electrical and lighting facilities, and equipment, in good order and repair and in a safe and clean condition, ordinary wear and tear excepted.

ARTICLE 17 COMPLIANCE WITH LAW

17.1 General Requirements. This Lease shall be construed under and governed by, and the Tenant, at its sole cost and expense, shall comply with, all applicable laws of the United States of America and the State of Washington, and with the Charter and ordinances of the City of Spokane, as well as all codes, rules and regulations of any governmental entity, including current land use plans, as now or hereafter enacted or promulgated. Whenever Tenant is informed of any violation of any such law, ordinance, rule, regulation license, permit or authorization committed by it or any of its officers, employees, contractors, agents or invitees, or any of its contractor's subcontractors, Tenant shall desist as soon as reasonably possible from and/or prevent or correct such violation.

17.2 Licenses and Similar Authorizations. Tenant, at no cost to Landlord, shall secure and maintain in full force and effect during the term of this Lease, all necessary licenses, permits, regulatory approvals and similar legal authorizations required for the operation, use and development of the Premises and shall comply with all requirements thereof. Nothing herein shall be construed as assurance that any such legal authorization required from Landlord will be granted or that the Board, as Landlord, will grant consents, approvals or modifications hereunder for the purpose of compliance with the conditions of any permit, approval or license sought or obtained by Tenant.

17.3 Nondiscrimination and Affirmative Action. Tenant, at no cost to Landlord, shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and The City of Spokane; and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

17.4 Americans with Disabilities Act Compliance. Tenant, at no cost to the Board, shall comply with all requirements of the Americans with Disabilities Act, as now or hereafter amended, and all rules and regulations implementing the same.

17.5 Safety. Tenant shall contractually require its contractors, subtenants, and licensees to comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction over the safety of persons or property, or over protection of same from damage, injury or loss, and to erect and maintain all necessary safeguards for such safety and protection. Nothing contained in this Lease shall be construed as imposing any duty upon Landlord with regard to, or as constituting any express or implied assumption by Landlord of control or responsibility over, safety at or on the Premises or the Center Improvements.

ARTICLE 18 ACCEPTANCE OF PREMISES

Except as otherwise provided herein, by entry hereunder, Tenant accepts the Premises in the condition existing as of the Effective Date of this Lease and acknowledges Tenant has examined the Premises, has had a reasonable opportunity to obtain inspections and reports of professionals regarding the same, and has determined, after such examination, the Premises are suitable for the construction and completion of the Center Improvements contemplated herein and for its subsequent use and occupancy by Tenant.

ARTICLE 19 DAMAGE AND DESTRUCTION DURING TERM OF LEASE

19.1 Repairs, Alterations and Further Improvements. In the event of damage to or destruction of any or all of the Center (excluding therefrom ordinary wear and tear requiring maintenance and routine repairs) during the term of this Lease, this Article 19 shall apply.

19.2 Minor Damage or Destruction. If the cost of repairing or reconstructing the Center to the condition and form prior to such damage or destruction does not exceed \$250,000 ("Minor Damage"), Tenant shall promptly commence and thereafter diligently complete such repair and reconstruction of the portion of the Center so damaged or destroyed to substantially its condition prior to the occurrence of such Minor Damage with such alterations as Tenant shall reasonably determine prudent or valuable under the circumstances (subject to obtaining Landlord's prior approval of the same in accordance with Subsection 10.11 hereof), including any changes required to comply with applicable law and with the then prevailing construction practices and together with such other changes that Tenant may request, provided such other changes are approved by Landlord acting reasonably. Landlord and Tenant agree that the proceeds derived from insurance maintained pursuant to Article 14 shall be made available to effect such repair.

19.3 Major Damage or Destruction. If the cost of repairing or reconstructing the Center to the condition and form prior to such damage or destruction exceeds \$250,000 ("Major Damage"), then within ninety (90) days after the casualty event giving rise to such Major Damage, Tenant shall notify Landlord of Tenant's election either to repair such Major Damage and reconstruct the Center in accordance with Section 19.4 below or to terminate this Lease and restore the Premises to their Original Condition in accordance with Section 19.5 below.

19.4 Repair and Reconstruction of Major Damage. If Tenant elects to repair Major Damage and reconstruct the Center pursuant to Section 19.3 above, Tenant shall promptly after such election and diligently thereafter effect such repair and reconstruction of the portion of the Center so damaged or destroyed to substantially its condition prior to the occurrence of such Major Damage with such alterations as Tenant shall reasonably determine prudent or valuable under the circumstances (subject to obtaining Landlord's prior approval of the same in accordance with Subsection 10.11 hereof), including any changes required to comply with applicable law and with the then prevailing construction practices

and together with such other changes that Tenant may request, provided such other changes are approved by Landlord acting reasonably. Landlord and Tenant agree that the proceeds derived from insurance maintained pursuant to Article 14 shall be made available to effect such repair.

19.5 Termination of Lease Following Major Damage. If Tenant elects not to repair Major Damage, and, instead, elects to terminate this Lease, unless the parties otherwise agree, such termination of this Lease shall take effect ninety (90) days following Tenant's notice to Landlord of its election to terminate the Lease. In such case Landlord may require Tenant to restore the Premises to their Original Condition and Landlord and Tenant agree that the funds derived from insurance maintained pursuant to Article 14 shall be made available to effect such restoration of the Premises and upon completion and payment of such restoration work, the remaining balance, if any, of insurance proceeds shall be disbursed to Tenant. If the insurance proceeds are not adequate to cover the estimated cost of restoring the Premises to their Original Condition, Tenant shall be responsible for paying any shortfalls. Alternatively, Landlord may elect not to have Tenant restore the Premises to their Original Condition, in which event Landlord and Tenant agree that all insurance proceeds related to the Center and Center Improvements shall be disbursed to Landlord, except for those insurance proceeds required by the terms of any obligation(s) secured by the Center to be paid to the holder(s) of such obligation(s), in which event any balance of insurance proceeds remaining after payment to such holder(s) shall be disbursed to Landlord.

ARTICLE 20 CONDEMNATION

20.1 Definitions.

A. "Eminent domain" is the right of the people or government to take private property for public use. As used in this Article 20 the words "condemned" and "condemnation" are coextensive with such right, and a voluntary conveyance by Landlord to the condemnor under threat of a taking under the power of eminent domain in lieu or after commencement of formal proceedings shall be deemed a taking within the meaning of this Article 20.

B. "Total condemnation" and "total taking" mean the taking of the entire Premises under the power of eminent domain or a taking of so much of the Premises under such power as to prevent or substantially impair the conduct of Tenant's business thereon.

C. "Partial condemnation" and "partial taking" mean any condemnation of the Premises other than a total taking as defined above.

20.2 Effect of Total Condemnation. In the event that there shall be a total taking of the Premises during the term of this Lease, or any renewal or extension thereof, under the power of eminent domain as defined in this Article, the leasehold estate hereby created in the Premises shall cease and terminate as of the date title to the Premises is taken by the condemnor. On termination of this Lease by a total taking of the Premises under the power of eminent domain, all other charges payable by either Party to or on behalf of the other under the provisions of this Lease shall be paid up to the date on which actual physical possession of the Premises shall be taken by the condemnor, and the parties hereto shall thereafter be released from all further liability in relation thereto arising from and after the date of such termination.

20.3 Effect of Partial Condemnation. In the event that there shall be a partial taking of the Premises during the term of this Lease, or any renewal or extension thereof, under the power of eminent domain as defined in this Article, this Lease shall terminate as to the portion of the Premises so taken on the date title is taken by the condemnor or at the time the condemnor is authorized to take possession of said real property as stated in the order for possession, whichever is earlier. This Lease shall also

terminate on such date as to the balance of the Premises once more than ten percent (10%) of the ground area (including the common area) or five percent (5%) of the floor area of the Center Improvements have been taken and Tenant gives written notice of termination to Landlord within thirty (30) calendar days after Landlord shall have given Tenant written notice of said taking, or in the absence of said notice, within ten (10) calendar days after the condemnor is authorized to take possession as stated in the order for possession. If less than such percentage of ground area or floor area is taken or Tenant fails to timely elect to terminate, this Lease shall continue in full force and effect as to the remainder of the Premises not so taken.

20.4 Award. Any compensation or damages awarded or payable because of the taking of all or any portion of the Premises by eminent domain shall be allocated between Landlord and Tenant as follows:

A. Landlord shall receive the present value of the reversion upon expiration of this Lease, as of the time of taking; the remainder of the award shall be payable to the Tenant. The values of Landlord's and Tenant's respective interests in the Premises, the Center and the other improvements on the Premises shall be established by the same court of law or other trier of fact that establishes the amount of the condemnation award, but if there is no court of law available or willing to determine Landlord's and Tenant's respective interests, those interests shall be determined in accordance with the procedures set forth in Article 35. The foregoing shall not limit Tenant's right to separately pursue compensation or damages for lost revenues, business interruption, and moving expenses, provided that such awards do not reduce any award to Landlord, and Tenant shall be solely entitled to any such compensation or damages free and clear of any claim by Landlord.

B. Any severance damages awarded or payable because only a portion of the Premises is taken by eminent domain shall be the sole and separate property of Landlord.

C. The term "time of taking" as used in this subsection shall mean 12:01 a.m. of whichever shall occur first, the date title or the date physical possession of the Premises or any portion thereof is taken by the agency or entity exercising the eminent domain power.

20.5 Temporary Taking. If the whole or any part of the Premises or of the Tenant's interest under this Lease be taken or condemned by any competent authority for its temporary use or occupancy, and Tenant shall continue to pay, in the manner and at the times herein specified, all charges payable by Tenant hereunder, then this Lease shall continue and, except only to the extent that Tenant may be prevented from so doing pursuant to the terms of the order of the condemning authority, Tenant shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of Tenant to be performed and observed, as though such taking or condemnation had not occurred. In the event of any such temporary taking, or condemnation Tenant shall be entitled to receive the entire amount of any award made for such taking, whether paid by way of damages or otherwise, unless such period of temporary use or occupancy shall extend to or beyond the expiration date of the term of this Lease, in which case such award shall be apportioned between Landlord and Tenant as of such date of expiration of the term of this Lease.

ARTICLE 21 BANKRUPTCY OR INSOLVENCY

In the event Tenant voluntarily or involuntarily files for an order for relief under the bankruptcy code, or similar provisions of succeeding law or makes an assignment for the benefit of creditors, or if a receiver is appointed over all or any portion of Tenant's assets located upon the Premises, and such

receivership continues for a period of 120 calendar days, or if an attachment or execution or process of court issuing upon or against all or any portion of Tenant's property located upon the Premises remains unreleased for a period of 120 calendar days, such event shall constitute, at the option of Landlord, an Event of Default (as defined in Article 22 below) and Landlord shall thereafter have all of the remedies for such Event of Default set forth in Article 22 below (including the right to terminate this Lease).

ARTICLE 22 TENANT DEFAULT AND LANDLORD'S REMEDIES

22.1 Tenant Default/Cure Periods. The following shall constitute Events of Tenant Default:

A. Subject to Force Majeure Events, as provided in Article 47 below, Tenant's failure to comply with any term or provisions of this Lease if such default shall continue, after written notice from Landlord specifically identifying the nature of the default, for a period of sixty (60) days, or such longer or shorter period as may be (1) specified by another applicable Section of this Lease; or (2) may be reasonably required to cure the default, provided Tenant commences the cure within said sixty (60) days after Landlord's written notice of default and covenants to diligently complete the cure within such reasonable period; or

B. There shall have been three (3) or more discrete and distinct defaults within the previous two-year period, of which notice shall have been given to Tenant (whether or not such defaults shall have been cured); or

C. The insolvency or bankruptcy of Tenant, as described in Article 21 above; or

D. Tenant abandons the Premises in violation of Article 29.

22.2 Landlord's Remedies upon an Event of Tenant Default. Upon the occurrence of an Event of Tenant Default, Landlord may exercise anyone or more of the following remedies as Landlord in its sole discretion shall determine:

A. Terminate this Lease upon at least ninety (90) days' advance written notice and further subject to and in accordance with Section 22.3.

B. Seek specific performance or other injunctive relief.

C. Recover monetary damages (but specifically excluding consequential or special damages).

D. Undertake payment and performance of Tenant's obligations under this Lease and, in such case Tenant shall reimburse Landlord on demand for all sums Landlord pays pursuant to this Subsection 22.2.D and for all costs and expenses Landlord incurs in connection with the performance of any act authorized by this Subsection 22.2.D. together with interest on the foregoing amounts accruing from the date of such expenditures by the Board at the rate of twelve percent (12%) per annum.

E. Exercise any other rights and remedies available to Landlord under this Lease, subject, however, to the limitation on the right to terminate set forth in Section 22.3 below.

22.3 Termination upon an Event of Tenant Default. The parties recognize and agree that, except for termination in accordance with Article 4, termination of this Lease is a drastic and severe remedy.

Accordingly, Landlord shall only have the right to exercise its right to terminate this Lease for an Event of Tenant Default, if:

A. The Event of Tenant Default is of the nature described in Subsections 22.1.C. or 22.1.D. above; or

B. The Event of Tenant Default is of the nature described in Subsections 22.1.A or 22.1.B, the underlying default(s) are Material Defaults, and Landlord is not likely to be made whole through pursuit of any other commercially-reasonable remedies available to Landlord under this Lease for such a Tenant Event of Default.

On the date that the termination of this Lease pursuant to this Article 22 takes effect, all right, title, and interest of Tenant in, to, and under this Lease shall terminate, except to the extent otherwise directed by Landlord in its sole discretion. In addition, on the date of such termination, Tenant shall immediately surrender to Landlord the Premises and the Center, as more fully set forth in Article 25.

22.4 Remedies Cumulative. Each right and remedy of Landlord hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at law or in equity or by statute; subject, however, to the limitation on the right to terminate set forth in Section 22.3 above. The exercise or beginning of the exercise by Landlord of anyone or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by Landlord of any or all other such rights or remedies.

ARTICLE 23

SUBLEASES AND ASSIGNMENTS

23.1 No Assignment of Lease. Except as otherwise provided in this Article 23 or in Article 24, Tenant shall not voluntarily, involuntarily, or by operation of law, assign or in any manner transfer this Lease, any interest in this Lease, any option that may be contained in this Lease, or any title to all or any portion of Tenant's interest in the Center to a third party without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld, delayed, or conditioned. Except as otherwise provided in this Lease, any assignment, license, mortgage, sublease, hypothecation, transfer, or occupancy of the Premises or the Center in violation of this Subsection shall be null and void and of no force and effect and shall further constitute a breach of this Lease by Tenant.

23.2 Subletting, Renting, and Licensing. Notwithstanding the restrictions set forth in Section 23.1, as long as Tenant is not in default under any of the terms of this Lease, it is agreed that, subject only to this Section 23.2, Tenant shall have the unrestricted right to sublease, sublet, rent, or license any part of the Premises or the Center for any time or times during the Initial and Option Terms (if any). The terms and conditions of any such sublease, rental agreement, or license agreement shall not violate the terms and conditions of this Lease or of Tenant's Business Plan, shall not relieve Tenant of its obligations under this Lease, and shall be usual and customary for such agreements. No sublease, rental, or license of any part of Lot D or Lot F, or any improvements on Lot D or Lot F may be for any use other than for a science center, 3-D IMAX, or children's museum without the express written approval of Landlord. From time to time, and upon Landlord's request, Tenant shall provide to Landlord a listing of all then-effective subleases, concession, and rental agreements at the Premises. Furthermore, nothing in this Section or any other Article or Section of this Lease shall be construed as prohibiting Tenant from, or requiring Tenant to seek Landlord's approval prior to, entering into a management contract with an entity for the purpose of hiring that entity to exercise complete management over the Center.

23.4 Third-Party Subleases on Lots A, B, & C. Tenant's initial intent is to develop Lots A, B, and C of the Premises only for parking uses. Landlord's prior reasonable approval is required if Tenant desires in the future to grant subleases, licenses agreements, concession agreements or the like on such lots for uses other than those directly related to science center purposes (e.g., office or retail uses that are not directly related to or in support of the operation of the science center) (collectively, "Third Party Subleases"). Except as otherwise provided in Article 9 above, any audited net revenues from such Third Party Subleases shall be shared between the parties as follows: fifteen percent (15%) to Landlord ("Landlord's Sublease Share"); and the remaining eighty-five percent (85%) to Tenant.

ARTICLE 24 ENCUMBRANCE OR LEASEHOLD ESTATE

Tenant may not encumber by deed of trust, mortgage, or other security instrument, any interest under this Lease or any leasehold estate created in Tenant by this Lease. Notwithstanding the foregoing, Tenant may apply for funding for the Center Improvements by utilizing New Market Tax Credit Financing as a source of federal funding.

ARTICLE 25 SURRENDER

Tenant agrees that on the last day of the Term or the sooner termination of this Lease, Tenant will surrender the Premises and the Center to Landlord in good condition, reasonable use and wear and tear of the Center excepted. Upon termination of this Lease, Tenant shall have no further interest in the Center or the Premises. If so requested by Landlord, Tenant shall convey to Landlord by special warranty deed and/or by bill of sale, all Center facilities and Improvements, subject only to such encumbrances and leases as shall have been specifically approved in writing by Landlord. On or before such termination date Tenant shall deliver to Landlord (a) all keys to any structures, fixtures, or personal property on the Premises; and (b) all plans, blueprints, surveys, diagrams, leases, contracts, and documents relating to the Premises or the Center. Upon the termination or expiration of this Lease, Tenant shall have the right and shall be given a reasonable opportunity not to exceed 90 days, provided Tenant is not then in default, to remove from the Premises any furnishings, equipment, and other personal property not constituting Center Improvements as defined in Article 1. Tenant shall, at Tenant's sole cost and expense, immediately repair all damage done or occasioned by reason of the removal of any such furnishings, equipment, and personal property. All property not removed by the Tenant within 90 days of termination shall be deemed to have been abandoned by Tenant and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord without notice to the Tenant and without obligation to account therefor. If the Lease shall be terminated as to a portion of the Premises, then this Article shall apply to such portion and all improvements thereon, together with all related personal property.

ARTICLE 26 HOLDING OVER

If Tenant shall, with the acknowledgment and consent of Landlord, continue to remain in possession of the Premises after the expiration of the term of this Lease or any extension or renewal hereof, such holding over shall be on a month-to-month basis and shall not constitute a reletting or releasing of the Premises unless the Parties enter into a new lease agreement. Said tenancy from month-to-month shall be upon the same terms and conditions herein specified and shall continue to be such until 30 calendar days after Tenant shall have given to Landlord or the Board shall have given to Tenant a written notice of termination of such monthly tenancy. Nothing contained herein shall be construed as a consent by Landlord to the occupancy or possession of the Premises by Tenant after the expiration of the term hereof.

ARTICLE 27
WARRANTIES BY LANDLORD

Landlord, represents, warrants, and covenants that:

A. The title to the Premises is vested in Landlord, subject to no defects or encumbrances except as set forth on Exhibit C attached hereto and incorporated herein by this reference.

B. Landlord shall not, after the date hereof, agree to or create any liens or encumbrances on the Premises, except for any encumbrances agreed to by Tenant, and Landlord shall, at or prior to the commencement of the Term, cause the Premises to be free of all liens and encumbrances except as shown on Exhibit C.

C. Landlord has the authority to enter into this Lease and its execution and delivery by Landlord has been duly authorized.

D. Landlord shall not voluntarily, involuntarily, or by operation of law, assign, license, mortgage, hypothecate, sublet, sell, or in any manner transfer this Lease, any interest herein, any option that may be contained herein to all or any portion of the Premises, or any title or interest in all or any portion of Landlord's interest in the Premises without first obtaining the written consent of Tenant. Any assignment, license, mortgage, sublease, hypothecation, transfer, or sale of the Premises in violation of this Subsection shall be null and void and of no force and effect and shall further constitute a breach of this Lease by Landlord.

E. Landlord covenants and agrees that Tenant shall peacefully and quietly hold and enjoy the Premises during the term hereof or any extension or renewal hereof, without interference or hindrance from Landlord or any person or persons holding or claiming under Landlord in any manner whatsoever.

ARTICLE 28
DEFAULT BY LANDLORD

28.1 Landlord Default/Cure Periods. The following shall constitute Events of Landlord Default:

A. Subject to Force Majeure Events, as provided in Article 47 below, Landlord's failure to comply with any term or provisions of this Lease, if such default shall continue, after written notice from Tenant specifically identifying the nature of the default, for a period of sixty (60) days, or such longer period as may be (1) specified by another applicable Section of this Lease or (2) may be reasonably required to cure the default, provided Landlord commences the cure within said sixty (60) days after Tenant's written notice of default and covenants to diligently complete the cure within such reasonable period;

B. There shall have been three (3) or more discrete and distinct defaults of a similar nature within the previous one-year period, of which notice shall have been given to Landlord (whether or not such defaults shall have been cured).

28.2 Tenant Remedies upon an Event of Landlord Default. Upon the occurrence of an Event of Landlord Default, Tenant may exercise anyone or more of the following remedies as Tenant in its sole discretion shall determine:

A. Terminate this Lease upon at least ninety (90) days' advance written notice.

- B. Seek specific performance or other injunctive relief.
- C. Recover monetary damages (but specifically excluding consequential or special damages).
- D. Exercise any other rights and remedies available to Tenant under this Lease.

28.3 Remedies Cumulative. Each right and remedy of Tenant hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at law or in equity or by statute. The exercise or beginning of the exercise by Tenant of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by Tenant of any or all other such rights or remedies.

ARTICLE 29 ABANDONMENT OF PREMISES

Tenant shall not abandon the Premises at any time during the term of this Lease, or any extension or renewal thereof. If Tenant abandons the Premises in violation of this Article 29 or be dispossessed by process of law, any personal property belonging to Tenant and left on the Premises shall be deemed abandoned at the option of Landlord and shall be disposed of in the manner provided in Article 25. The absence of Tenant from the Premises for a period of thirty (30) consecutive days shall be considered an abandonment thereof, unless such absence is due to damage or destruction governed by Article 19 above or due to a Force Majeure Event governed by Article 47 below. If Tenant ceases operation of the Center for a period of greater than thirty (30) consecutive days, Tenant shall be considered to have abandoned the Premises under this Article.

ARTICLE 30 SIGNS

Tenant shall have the unrestricted right to design and install permanent exterior signage on the Premises subject, however, to any consent or approval required from the City's Building Department and compliance with any applicable City ordinances regarding signs. Tenant shall further have the unrestricted right to design and install temporary, exterior, event signage subject to the following criteria:

- A. All signs must correctly identify any facilities referenced in the Tenant signage;
- B. Signs must be reasonably relevant to activities taking place at the Center; and
- C. Signs shall be consistent with the Tenant mission and programs and programming.

ARTICLE 31 ENVIRONMENTAL PROTECTION

31.1 Definitions. For the purpose of this Article, the following terms shall be defined as provided below unless the context clearly requires a different meaning:

A. "Environmental or Safety Law" means the Federal Water Pollution Control Act, the Clean Air Act, the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Superfund Amendment and Reauthorization Act, the Toxic Substances Control Act ("TSCA"), the Occupational Safety and Health Act, the Hazardous Materials Transportation Act, the Hazardous Materials Transportation Uniform Safety

Act, the Oil Pollution Act of 1990, the Washington Water Pollution Control Act, the Clean Air Washington Act, the Washington Hazardous Waste Management Act ("HWMA"), the Washington Model Toxics Control Act ("MTCA"), the Washington Industrial Safety and Health Act, the Washington Worker and Community Right to Know Act, and the Washington Oil and Hazardous Substance Spill Prevention and Response Act, together with all regulations promulgated under any such authority, and any and all other federal, state, regional, local or international statutes, regulations, rules, ordinances, orders, court or regulatory agency directives, permits, licenses, governmental authorizations and common law causes of action that apply to (1) any hazardous substance or material regulated or restricted under CERCLA, RCRA, TSCA, MTCA, or the HWMA; (2) any other pollutant, contaminant, or waste; (3) the health or safety of persons; or (4) the protection of the environment or land use. "Environmental or Safety Law" includes past and future amendments and supplements.

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

C. "Existing Hazardous Substances" means those Hazardous Substances identified or referred to in that certain letter to the Department from the State of Washington Department of Ecology, dated August 10, 1999, a copy of which is attached hereto as Exhibit E and incorporated herein by this reference, together with such other Hazardous Substances that are specifically identified by a qualified environmental professional prior to commencement of excavation or grading of the Premises by Tenant as existing on, in, or under the Premises on the Effective Date of this Lease. Existing Hazardous Substances are not intended to include Hazardous Substances incorporated into building materials in existing buildings and improvements located on the Premises as of the Effective Date hereof.

31.2 Restrictions on Tenant Activities. Except as necessary for ordinary construction activities, routine maintenance of the Premises, or operation of the Center, but at all times in compliance with all Environmental and Safety Laws, Tenant and its employees, agents and contractors shall not cause to occur upon the Premises or the Center or permit the same to be used to generate, produce, manufacture, refine, transport, treat, store, handle, dispose, transfer, or process Hazardous Substances without Landlord's express written authorization. Tenant shall provide Landlord with Tenant's or its contractor's USEPA Waste Generator Number (if any) and shall make available for inspection at Tenant's place of business upon reasonable request, all Material Safety Data Sheets, Generator Annual Dangerous Waste Reports, environmentally related regulatory permits or approvals (including revisions or renewals) and any correspondence that Tenant or Tenant's contractor receives from, or provides to, any governmental unit or agency in connection with the handling of Hazardous Substances or the presence, or possible presence, of any Hazardous Substance on the Premises or in the Center Improvements.

31.3 Remediation of Hazardous Substances. Except for the remediation of Existing Hazardous Substances by Landlord in accordance with Subsection 31.4 hereof, throughout the term of this Lease, Tenant shall be responsible for and shall bear all costs and expenses of remedying any and all environmental contamination by a Hazardous Substance in, on, or under the Premises (including without limitation existing Hazardous Substances incorporated in any existing buildings or improvements which Tenant is to demolish and remove as part of its construction obligations hereunder). In the event of such a discovery, Tenant shall immediately notify Landlord. Designated representatives of Tenant and Landlord shall immediately meet and confer concerning the appropriate cleanup approach. Tenant's designated representative for this purpose shall be its President, or, in the alternative, its Vice President. Landlord's designated representative for this purpose shall be the Director, or, in the alternative, the Assistant Director of the Department. The designated representatives shall confer and agree on an appropriate remedial approach. Tenant may proceed with Remedial Work only when an oral agreement has been reached. The agreement shall then be memorialized within fifteen (15) days as a Remedial Work Agreement. In the event that Tenant and Landlord disagree about the substance or form of the written

Remedial Work Agreement, the designated representatives shall immediately meet and shall reach agreement before Remedial Work or construction that may affect Remedial Work may continue. Landlord and Tenant shall sign the memorialized Remedial Work Agreement. Tenant shall proceed with Remedial Work and construction only in compliance with the Remedial Work Agreement. The Remedial Work Agreement may be amended by the written agreement of Tenant and Landlord, and each reference to the Remedial Work Agreement includes any such amendments. The Remedial Work Agreement shall specify the use of the services of an environmental consultant acceptable to Landlord.

The Board reserves the right to undertake investigation or remediation of contamination existing off the Premises, and Tenant agrees to allow Landlord all necessary access for such purpose and not to interfere with, hinder, or delay such activity. The parties shall work together in good faith to resolve matters regarding contamination with a minimum of delay to Tenant's construction. Tenant shall, as required by and in compliance with all Environmental or Safety Laws, notify all appropriate governmental authorities of the nature and extent of the hazard presented. Landlord shall at all times during the Remedial Work be given prompt access to the environmental professional(s) chosen by Tenant and performing the Remedial Work, and to the data, records, and reports generated by the environmental professional(s) for the Remedial Work. Tenant shall use its best efforts to minimize the costs of Remedial Work, and shall keep Landlord apprised of the progress of the Remedial Work and its costs.

Tenant shall ensure that all Hazardous Substances are removed from the site to a cleanup standard consistent with applicable Environmental or Safety Laws and are properly disposed of off site. Tenant shall demonstrate removal and remediation to Landlord's reasonable satisfaction, which shall include, but is not limited to, attaining MTCA cleanup levels and applying for and obtaining from the Washington Department of Ecology ("DOE") a final No Further Action letter pursuant to the Voluntary Clean-Up Program ("Final NFA Letter"). A No Further Action letter shall not be considered "final" for the purposes of this Lease if the letter describes institutional controls or other conditions, unless the Party not performing the Remedial Work has agreed to such institutional controls or conditions in lieu of further Remedial Work. Landlord may, at Landlord's sole option, notify Tenant that a lesser degree of remediation fulfills Tenant's remediation obligations stated in Article 31. Tenant shall make available for inspection at Tenant's place of business, upon reasonable request by Landlord, all records pertaining to remediation and disposal, and shall not destroy any such records without prior Board approval.

31.4 Board's Remediation of Existing Hazardous Substances. The foregoing notwithstanding and subject to the limitation set forth in Subsection 31.5 immediately below, Landlord shall complete, at its sole cost and expense, all Remedial Work with respect to the Existing Hazardous Substances (the "Initial Remedial Work") pursuant to the timing and sequencing outlined in Subsection 31.13 in order to obtain a Final NFA Letter for soil and groundwater, Agreed Order, Consent Decree, or other acknowledgement from DOE that no further remediation of such Existing Hazardous Substances is required (the "DOE Approval"). Upon completion of the Initial Remedial Work and receipt of the DOE Approval, the Board and the Department shall thereupon be released from any and all further obligation or liability with respect to Hazardous Substances on the Premises, including Existing Hazardous Substances, and the same shall thereafter be the sole responsibility of Tenant during the term of this Lease.

31.5 Maximum Amount. Anything to the contrary contained in Subsection 31.4 hereof notwithstanding, Landlord's obligation to complete the Initial Remedial Work shall be limited to a total expenditure not to exceed \$250,000 (the "Maximum Amount"). If, in the opinion of Landlord, the costs of the Initial Remedial Work are reasonably anticipated to exceed the Maximum Amount, as substantiated and documented by the written opinion of a qualified environmental professional and detailed cost estimates approved by such professional ("Documentation"), Landlord may notify Tenant in writing of its intention to terminate this Lease at the end of thirty (30) days, providing the Documentation to Tenant with the notice. Landlord shall arrange a meeting of the parties within ten (10) days after providing actual

notice, and the parties shall meet and in good faith discuss options for resolution that would allow the Lease to continue and the construction of the Center to proceed. If, prior to the expiration of the thirty (30) day period, (i) Tenant gives written notice Landlord that Tenant agrees to accept a lesser degree of remediation in fulfillment of Landlord's remediation obligations for Existing Hazardous Substances stated in Subsection 31.4 hereof that can be completed within the Maximum Amount, (ii) Tenant agrees to pay the excess cost to complete the Initial Remedial Work over and above the Maximum Amount, or (iii) Tenant and Landlord reach another written agreement to continue the Lease, then the Lease shall not terminate pursuant to this Section. In the event no such agreement or other arrangement satisfactory to both Parties is reached, either Party shall have the right to terminate this Lease. In the event of termination, Tenant shall thereafter have no further obligation to construct the Center, and the Board shall have no further obligation to complete the Initial Remedial Work, in which case each Party will bear the costs it has expended through the date of termination relating to the Lease and the development of the Center to the date of termination.

31.6 Remedial Work. As used in this Article, the term "Remedial Work" means all activities which are performed by or on behalf of Tenant or Landlord in connection with the identification, investigation, assessment, cleanup, removal, mitigation, monitoring or containment of Hazardous Substances to meet the requirements of any law, regulation or ordinance or which are ordered by any court or any other governmental agency. "Remedial Work" includes all activities reasonably necessary to prepare and review any Remedial Work Agreement and/or to comply with any Remedial Work Agreement and/or with cleanup standards under the Washington Model Toxics Control Act, RCW 70.105D, in connection with the presence, suspected presence, release or suspected release of a Hazardous Substance in or into the air, soil, ground water, surface water or soil vapor at, on, or within the Premises, including, but not limited to, the removal of any underground storage tank. The term "Remedial Work" includes Landlord's observing or monitoring of Remedial Work in compliance with the Remedial Work Agreement and includes negotiations with DOE or its employees or consultants relating to the activities described in this Section or the Voluntary Clean-Up Program, but does not include work performed by attorneys or employed staff of Tenant or Landlord, other than Board project managers or Board temporary employees not regularly assigned to the Tenant project.

31.7 Further Notification Procedures. In addition to the notification required by Subsection 31.3, whenever Remedial Work is being performed, Tenant shall promptly provide Landlord in writing with the identity of the contractor who has done or will do the Remedial Work, the scope of the Remedial Work, a copy of any contract or agreement for services, and the estimated costs of Remedial Work ("Remedial Work Notice"). Any Remedial Work Notice shall be consistent with the Remedial Work Agreement. Tenant shall permit Landlord and its agents, consultants and contractors prompt and reasonable access to the Premises to confirm that the Remedial Work is being or has been appropriately conducted or is required. Every Remedial Work Agreement shall specify use of the services of an environmental consultant acceptable to Landlord. Tenant is solely responsible for compliance with all applicable Environmental or Safety Laws. Nothing in this Lease, including Landlord's receipt, review or approval of any request for authorization, data, record, report, or plan shall relieve Tenant of any legal obligation, including but not limited to the obligation to provide a safe and healthful working environment or to comply with all Environmental and Safety Laws.

31.8 Completion of Remedial Work; Accounting. Once Tenant or Landlord has completed any Remedial Work, Tenant or Landlord shall provide to the other Party invoices and accounting of costs for the completed Remedial Work, including the Remedial Work Agreement and any subsequent Remedial Work Notice and documentation establishing the nature, extent, and cost of the work (the "Remedial Work Accounting"). Each Party shall endeavor to submit only one Remedial Work Accounting. Tenant's recoverable costs for Remedial Work are limited to incremental costs incurred after the Effective Date and over and above the ordinary and usual costs to Tenant for construction of the Center Improvements,

to the extent that such incremental costs are caused by the presence of Existing Hazardous Substances that Landlord is obligated to remediate in accordance with Subsection 31.4 hereof, and not by the presence or suspected presence of any other Hazardous Substances, including without limitation, any Existing Hazardous Substances that may remain following the DOE Approval; provided, however, that in the event the cost of the Initial Remedial Work completed by Landlord is less than the Maximum Amount, Tenant may recover from Landlord any remaining balance of the Maximum Amount for costs arising out of the presence of Hazardous Substances that were in, on, or under the Premises on the Effective Date of this Lease. Recoverable costs do not include costs, losses, or claims of any kind associated with delay or incidental or consequential damages to any entity. The Party receiving the Remedial Work Accounting shall have thirty (30) days to review the Remedial Work Accounting. If such Party disagrees with the accounting, such Party shall provide written notice of its disagreement within thirty (30) days. If the Party receiving notice of the accounting does not provide written notice of disagreement within thirty (30) days of actual receipt of a Remedial Work Accounting, the costs of the Remedial Work Accounting shall be deemed approved.

31.9 Dispute Resolution. At the request of Landlord or Tenant, the parties shall meet to discuss any disagreements and shall in good faith attempt to reach resolution without delay. If construction or renovation activity has been delayed because of the presence of Hazardous Substances, and Tenant and Landlord are unable to reach agreement between subordinate staff within thirty (30) days regarding an appropriate Remedial Work Agreement or the appropriateness or conduct of remediation work, then the matter shall immediately be referred to Landlord and the Tenant President, the remaining dispute resolution procedures set forth in Article 35 of this Lease shall be used, and both parties shall use best efforts to expedite resolution. If Tenant and Landlord are not able to reach agreement on cost of Remedial Work or Remedial Work Accounting, then Landlord and Tenant shall use the dispute resolution procedures set forth in Article 35 of this Lease. The parties shall attempt to resolve all Remedial Work Accounting disagreements through one dispute resolution process.

31.10 Compliance and Correction of Violations. With respect to the Premises and the Center, Tenant shall comply, and shall guarantee compliance by all of its employees, agents and contractors, with all Environmental or Safety Laws at all times during the term of this Lease. If Tenant or any of Tenant's employees, agents, or contractors violates any applicable Environmental or Safety Law or any of the terms of this Lease concerning the presence or use of Hazardous Substances or the handling or storing of Hazardous Substances, upon receipt of notice of such violation or the expiration of all challenges and appeals of such notice, whichever occurs later, Tenant shall promptly take such action as is necessary to mitigate and correct the violation. If Tenant does not act in a prudent and prompt manner, Landlord reserves the right, but not the obligation, upon reasonable prior notice to Tenant, to act in place of Tenant (for which purpose, only, Tenant hereby appoints Board as its agent), to come onto the Premises or the Center Improvements and to take such action as is necessary to ensure compliance or to mitigate the violation, all at Tenant's sole cost and expense. If Landlord has reason to believe that Tenant or Tenant's agent or contractor is in violation of any Environmental or Safety Law, or that Tenant's actions or omissions present a threat of violation or a threat of damage to the Premises or the Center, Landlord reserves the right, upon reasonable prior notice to Tenant, to enter onto the Premises or the Center and take such corrective or mitigating action as Landlord deems necessary. All reasonable costs and expenses incurred by Landlord directly attributable to any such action shall become immediately due and payable by Tenant upon presentation of an invoice therefor.

31.11 Removal of Hazardous Substances. In addition to all other requirements under this Lease, Tenant or Tenant's contractor shall promptly remove any and all Hazardous Substances released on the Premises or in the Center by Tenant or any of its employees, agents, or contractors during the term of this Lease. Upon the expiration or termination of this Lease, Tenant shall remove from the Premises and Center all Hazardous Substances stored on site as a result of any activities by or for Tenant or any

activities associated with the operation of the Center. Tenant shall demonstrate such removal and any necessary remediation to Landlord's reasonable satisfaction, which may include, but is not limited to, attaining MTCA cleanup levels and applying for and obtaining from the DOE a Final NFA Letter. Tenant shall make available for inspection at Tenant's place of business, upon reasonable request by Landlord, all records pertaining to remediation and disposal, and shall not destroy any such records without prior Board approval.

31.12 Release and Indemnification.

31.12.1 By Tenant. In addition to all other indemnification provided in this Lease, and notwithstanding the expiration or earlier termination of this Lease, Tenant shall release, defend, indemnify and hold Landlord free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, damages, consequential damages and expenses, including without limitation environmental cleanup or other remedial costs (and including the fees of consultants, contractors and attorneys, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), whether made, commenced or incurred during the term of this Lease or after the expiration or termination of this Lease if arising out of any of the following: (i) the presence on, in or under the Premises or Center during the term of this Lease, or the migration from the Premises or Center to other property or into the surrounding environment, of any Hazardous Substance (other than Existing Hazardous Substances that Landlord fails to remediate in accordance with Subsection 31.4 hereof or Hazardous Substances brought onto the Premises or the Center by the Board or by any of its employees, agents, or contractors during the term hereof), (ii) Tenant's breach of any provision of the Environmental Protection portion of this Lease (Article 31), or (iii) the acts or omissions of Tenant or any of Tenant's employees, agents, or contractors in remedying any environmental contamination discovered in preparation for or during any construction or renovation undertaken by or for Tenant.

31.12.2 By Board. In addition to all other indemnification provided in this Lease, Landlord shall release, defend, indemnify and hold Tenant free and harmless from any and all claims, causes of action, regulatory demands; liabilities, fines, penalties, losses, damages, consequential damages and expenses, including without limitation environmental cleanup or other remedial costs (and including the fees of consultants, contractors and attorneys, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), whether made, commenced or incurred during the term of this Lease or after the expiration or termination of this Lease if arising out of any of the following: (i) the presence on, in or under the Premises or Center, or the migration from the Premises or Center to other property or into the surrounding environment, of any Existing Hazardous Substance, but not the presence or migration of any Existing Hazardous Substance that is permitted by DOE to remain following the DOE Approval; (ii) a Hazardous Substance brought onto the Premises or the Center by Landlord or by any of its employees, agents, or contractors during the term hereof; (iii) Landlord's breach of any provision of the Environmental Protection portion of this Lease (Article 31); or (iv) the acts or omissions of Landlord or any of Landlord's employees, agents, or contractors in remedying any environmental contamination for which it is responsible in accordance with this Lease.

31.13 Coordination of Remediation Efforts

It is hereby acknowledged that remediation of soil and groundwater pollution (a Landlord obligation) and remediation of hazardous materials necessitated by building demolition (a Tenant obligation) may have to occur sequentially. That is, building(s) may have to be demolished to gain access to soil and ground water contamination (if any exists). This being the case, sequential coordination of remediation is necessary. Therefore, the Tenant's project schedule must take into account and include a reasonable time frame for soil and groundwater remediation by Landlord after

building demolition. Remediation shall take place as follows, consistent with other terms cited elsewhere in this Lease:

31.13.1 Demolition The Tenant may initiate demolition when eighty percent (80%) of all project costs are funded and full construction is underway per the terms of Article 4, above. The building(s) shall be demolished by the Tenant and the site made clear for remediation of soil and groundwater pollution remediation by Landlord. All building components (including foundations, footings, in-ground piping, tanks, etc.) shall be demolished, removed from the site, and legally disposed of by Tenant. After completion of remediation of soil and groundwater pollution by Landlord pursuant to the terms of this Lease, construction of the Center may commence.

31.13.2 Cost Accounting Cost accounting provisions of Subsection 31.8 shall apply. Tenant's demolition costs may be included as part of the calculation of eighty percent (80%) Fundraising Goal in Subsection 4.2, above.

31.13.3 Reimbursement of Building Demolition Costs in the Event of Lease Termination. In the event that Landlord's remediation costs exceed \$250,000, thereby entitling Landlord to terminate the lease pursuant to Subsection 31.5, then Landlord agrees to reimburse the Tenant for its costs of building demolition as accounted for pursuant to Subsection 31.8. This reimbursement provision acknowledges the Tenant's contribution to the added value of the site. In no event will Landlord's reimbursement obligation pursuant to this subsection exceed \$250,000.

ARTICLE 32 SECURITY

Tenant, at Tenant's sole expense, shall provide or cause to be provided all security services on the Premises and for the Center as are customary and appropriate for a facility of this type.

ARTICLE 33 RIGHTS CONFERRED UPON TENANT

33.1 No Competing Uses. Throughout the term of this Lease, Landlord covenants that Tenant shall be the only institution or venue on Board grounds whose primary focus and use is, in the reasonable opinion of Tenant, similar to Tenant's primary use of the Premises as a children's museum, science and technology center, and (so long as Tenant operates a 3-D IMAX theater), a 3-D IMAX theater, and Landlord shall not, during the term of this Lease, allow or permit any institution, including itself, or any other party or venue on property owned by Landlord or controlled by the Department ("Board Property") to engage in such use. The intent of this covenant is to ensure the continued status of Tenant as the sole institution on Board Property devoted to such use, and not to exclude festivals, seminars, concerts, traveling exhibitions, or any other type of "temporary" use. "Temporary use," for the purpose of this Lease, shall be defined as any such use on Board Property, not including the Premises, open to or available to the public for a period of 30 days or less. Notwithstanding the foregoing, Landlord may from time to time request that the Tenant waive enforcement of this covenant with respect to a particular festival, concert, or traveling exhibition other than a "temporary use," as defined above, which request for waiver Tenant shall consider in good faith. Any request for such waiver shall be in writing and such waiver, if granted, shall not be construed as a waiver or relinquishment by Tenant of its right to future enforcement of this covenant. The Department agrees that it will not develop a facility similar to the Center in Spokane during the term of the Lease without the express written consent of Tenant.

33.2 Exclusive Sales Rights. For the term of this Lease, Tenant shall have the exclusive rights to retail sales of any items possessing or containing Tenant logos, services marks, or trademarks. Landlord shall cooperate (at no cost to itself) with Tenant in enforcing such exclusive sales rights to the extent Landlord, in good faith, feels is reasonable and appropriate.

33.3 Tenant Control over Event Programming. Tenant shall have the unrestricted right to program Center facilities for regular and special events that are consistent with the Tenant mission and programs. This includes, but shall not be limited to, special exhibits, performances, concerts, and presentations.

ARTICLE 34 BOARD'S CONSENT OR APPROVAL

Whenever the consent of Landlord or Landlord to any act to be performed by the Tenant is required under this Lease (a) the Tenant must obtain the consent or approval in writing expressly for purposes of this Lease, regardless whether a consent or approval shall have been granted by Landlord in its regulatory, public utility, or other capacity; and (b) unless otherwise expressly stated herein, such consent or approval may be withheld in Landlord's sole discretion.

ARTICLE 35 MEDIATION OF DISPUTES

The parties shall make their best efforts to resolve disputes as expeditiously as possible through negotiations at the lowest possible decision-making level, and in the event such negotiations are unsuccessful, to participate in good faith in the mediation process described below.

35.1 Involvement of Mediator & Mediator's Consultants. In the event an issue cannot be resolved by negotiations between subordinate staff of Tenant and the Department, the matter shall be referred to the Director and Tenant's President. If those officials are unable to resolve the dispute within a period of 15 days after the matter has been formally referred to them for resolution, they shall meet during the immediately succeeding seven days to select a mediator to assist in the resolution of such dispute. If Landlord and Tenant cannot agree upon a mediator within such seven day period, either Party may apply to the American Arbitration Association or the Judicial Arbitration & Mediation Service for the appointment of a mediator according to the process that is established by such entity for such action. Tenant and Landlord shall share equally the cost charged for the mediation of any dispute. The mediator shall have the authority to engage one or more expert consultants with knowledge in the field(s) or area(s) involved in the matter(s) that are in dispute to assist the mediator and the parties to evaluate their respective claims and resolve their dispute.

35.2 Continuation of Efforts in Event of Dispute; No Litigation without Mediation. Notwithstanding the existence of any dispute between them, the parties shall continue to carry out, without unreasonable delay, all of their respective responsibilities under this Lease which are not affected by the dispute. Neither Party to this Lease shall commence any litigation against the other with respect to any claim or dispute arising hereunder without first participating, in good faith, in mediation as contemplated in this Article. This provision relating to mediation shall not be applicable to any decision made by Landlord to approve or disprove the Business Plan, unless Landlord's decision is unreasonable as described in Subsection 4.1 herein.

**ARTICLE 36
RELATIONSHIP OF PARTIES**

Nothing contained herein shall be construed as to make the Parties hereto partners, associates, joint venturers, or participants in any legal relationship other than that of lessor and lessee. Neither Party hereto shall have the power to contract or incur any obligation or liability in the name of the other Party.

**ARTICLE 37
AMENDMENTS**

The Parties hereto expressly reserve the right to renegotiate and change the provisions of this Lease from time to time as may be necessary. No alteration or modification of the terms or conditions of this Lease shall be valid and binding unless made in writing and signed by the authorized representatives of the Parties.

**ARTICLE 38
NO WAIVER OF DEFAULT**

No waiver of default by either Party of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other Party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants, and conditions of this Lease to be performed, kept, and observed by the other Party.

**ARTICLE 39
BINDING EFFECT**

This Lease shall be binding upon the successors and assigns of the parties hereto.

**ARTICLE 40
NEGOTIATED AGREEMENT**

The Parties hereto acknowledge that both Parties participated equally in the drafting of this Lease and that in the event of a dispute neither Party shall be ascribed as the author of this Lease nor have any ambiguity resolved against such Party on account thereof.

**ARTICLE 41
NOTICES**

All notices required to be given hereunder shall be given in writing and shall be personally delivered or deemed delivered if dispatched by certified or registered mail, return receipt requested, postage prepaid, addressed to the parties as set forth opposite their respective names below:

If to Landlord: The Park Board of the City of Spokane
 c/o Spokane Parks and Recreation Department
 808 West Spokane Falls Boulevard
 Spokane, Washington 99201-3317
 Attn: Director

If to Tenant: Mobius Spokane
2525 East 29th, Suite 10-B
MS359
Spokane, Washington 99223
Attn: President

The Parties, by notice given, may designate any further or different addresses to which subsequent notices or other communications shall be sent.

**ARTICLE 42
TIME**

Time is of the essence of this Lease.

**ARTICLE 43
RECORDATION**

The Parties agree that a memorandum of this Lease substantially in the form of Exhibit D, attached, shall be recorded in the office of the Spokane County Auditor following the Effective Date. In the event this Lease is thereafter terminated, Tenant shall execute and deliver such document(s) that are reasonably requested by Landlord to remove such memorandum from the public record.

**ARTICLE 44
ESTOPPEL**

44.1 Landlord's Estoppel. Landlord, within twenty (20) days after written request to Landlord from Tenant or any Lender, will furnish a written statement, duly acknowledged, as to the following items:

A. Whether or not this Lease is unmodified and in full force and effect (or, if there have been modifications, whether or not the same are in full force and effect as modified and identifying the modifications);

B. Whether or not to Landlord's actual knowledge Tenant is in default and specifying the nature of any such default; and

C. Such other matters as Tenant or the Lender may reasonably request and which relate to the actual knowledge of Landlord.

44.2 Tenant's Statement. Tenant, within twenty (20) days after written request of Landlord, will furnish a written statement, duly acknowledged, as to:

A. Whether this Lease is unmodified and in full force and effect (or, if there have been modifications, whether or not the same are in full force and effect as modified and identifying the modifications);

B. Whether there are any defaults thereunder on the part of Landlord to the actual knowledge of Tenant and specifying the nature of such defaults, if any; and

C. Such other matters as Landlord may reasonably request and which relate to the actual knowledge of Tenant.

44.3 Failure to Furnish. Upon the failure of Landlord or Tenant, as the case may be, to furnish such statements within the said twenty (20) day period, it shall be conclusively presumed that this Lease is in full force and effect and that there are no defaults thereunder by the other Party, except to the extent of facts actually known by the Party to whom such statement was to be directed.

ARTICLE 45 CAPTIONS

The table of contents and the headings to the Subsections of this Lease are not a part hereof and shall have no effect on the construction or interpretation of any of the terms and provisions contained herein.

ARTICLE 46 INVALIDITY OF PROVISIONS

Should any term, provision, condition, or other portion of this Lease be held to be inoperative, invalid, or void, the same shall not affect any other term, provision, condition, or other portion of this Lease, and the remainder of this Lease shall be effective as if such term, provision, condition, or portion were not a part hereof.

ARTICLE 47 FORCE MAJEURE

47.1 Definition of Force Majeure Event. "Force Majeure Event" shall mean any circumstance or act beyond the control of a Party, that such Party could not have reasonably anticipated or prevented and that has, or may reasonably be expected to have, a material adverse effect on the rights or obligations of such Party. Examples of Force Majeure Events shall include without limitation, an intervening act of God or public enemy, fire, storm, flood, tidal wave, earthquake, epidemic, explosion, volcanic eruption, lightning, nuclear radiation, earth slides, earth movement, quarantine restriction, freight embargo, riot or public discord, civil disturbance, work stoppages and labor strikes, terrorist act, or changes in law. Another example of a Force Majeure Event is a lawsuit filed challenging the validity of one or more permits, licenses, or other governmental approvals related to the development or operation of the Center, until such time as any such lawsuit is finally and ultimately resolved.

47.2 Effect of Force Majeure Event. If either Party is rendered wholly or partly unable to perform its material obligations (excluding, however, any monetary obligations) under this Lease within two (2) years from the first occurrence of a Force Majeure Event, then the Party whose performance is not so effected may elect to terminate this Lease and such termination shall take effect ninety (90) days following notice thereof. If either Party is rendered wholly or partly unable to perform its material obligations hereunder or to meet any deadline or milestone dates set forth in this Lease because of a Force Majeure Event for a period of less than three (3) years from the first occurrence of a Force Majeure Event, such Party's time to perform any obligation hereunder (excluding, however, any monetary obligations) affected by such Force Majeure Event, shall be equitably adjusted and the applicable deadline or milestone dates shall be revised accordingly.

**ARTICLE 48
APPLICABLE LAW**

This Lease shall be governed by and construed in accordance with the substantive laws of the State of Washington. Venue for any legal action under the Lease shall be Spokane County Superior Court.

**ARTICLE 49
AGREEMENT CONTENTS**

This Lease, including all exhibits and attachments hereto, embody the entire agreement and understanding between the Parties with respect to the lease of the Premises and supersede all other understandings or agreements, written or oral, between the Parties relating to the subject matter of this Lease. No representations, promises, conditions, or warranties with reference to the execution of this Lease have been made or entered into between the Parties other than as expressly provided in the aforementioned documents.

List of Exhibits:

- Exhibit "A" – Depiction of Premises
- Exhibit "B" – Legal Description of Premises
- Exhibit "C" – Encumbrances on Premises
- Exhibit "D" – Memorandum of Lease
- Exhibit "E" – Department of Ecology Letter

[SIGNATURES ON NEXT PAGE]

BOARD ACKNOWLEDGMENT

STATE OF WASHINGTON

COUNTY OF SPOKANE

ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the _____ of the Park Board of the City of Spokane, a Washington municipal corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 2009.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington, residing at

My appointment expires _____

MOBIUS SPOKANE ACKNOWLEDGEMENT

STATE OF WASHINGTON

COUNTY OF SPOKANE

ss.

I certify that I know or have satisfactory evidence that Neil K. Worrall is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the President of Mobius Spokane, a Washington non-profit corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 2009.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington, residing at

My appointment expires _____

EXHIBIT "A"
DEPICTION OF PREMISES

EXHIBIT "B"

LEGAL DESCRIPTION OF PREMISES

EXHIBIT "C"

ENCUMBRANCES ON PREMISES

EXHIBIT "D"

**RECORDED AT THE REQUEST OF
AND AFTER RECORDING RETURN TO:**

John A. Fandel
Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, Washington 98101

WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)

DOCUMENT TITLE(S) (or transactions contained therein):

Memorandum of Lease

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

 Additional reference #s on page n/a of document(s)

GRANTOR(S) (Last name first, then first name and initials)

The Park Board of the City of Spokane, a Washington municipal corporation

Additional names on page n/a of document

GRANTEE(S) (Last name first, then first name and initials)

Mobius Spokane, a Washington non-profit corporation

Additional names on page n/a of document

LEGAL DESCRIPTION (abbreviated: i.e., lot, block, plat or section, township or range)

**Portions of SW ¼ NE ¼ and NW ¼ SE ¼ 18-25-43, and portions of Blocks 6 and 8
KEYSTONE ADDITION**

Additional legal is on page A-1 of document

ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER

 Assessor Tax # not yet assigned

MEMORANDUM OF LEASE

KNOW ALL MEN BY THESE PRESENTS, that the PARK BOARD OF THE CITY OF SPOKANE, a municipal corporation of the State of Washington, a Washington municipal corporation ("Landlord"), and MOBIUS SPOKANE, a Washington non-profit corporation formerly known as INLAND NORTHWEST SCIENCE AND TECHNOLOGY CENTER ("Tenant"), entered into that certain Amended and Restated Ground Lease Agreement dated _____, 2009 (the "Lease"), whereby Landlord leased to Tenant, and Tenant leased from Landlord, on the terms and conditions set forth therein, that certain real property located in the City of Spokane, Spokane County, Washington, that is legally described on Exhibit A attached hereto and incorporated herein by this reference.

The Lease is for a term of approximately fifty (50) years, commencing on the Commencement Date therein defined, with an option to renew for an additional term of fifty (50) years under the terms and conditions set forth in the Lease, to which reference is made.

The parties hereto do by these presents intend that the Lease supersede in its entirety that certain Ground Lease dated June 17, 2003, as amended [, **a memorandum of which was recorded under Auditor's File No. _____, records of Spokane County, Washington**].

This Memorandum may be executed in as many counterparts as may be deemed necessary and convenient, and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease as of the date first above written.

THE PARK BOARD OF THE CITY OF SPOKANE

MOBIUS SPOKANE

By: _____
Signature

Its: _____

Date: _____

By: _____
Signature

Neil K. Worrall, President

Date: _____

BOARD ACKNOWLEDGMENT

STATE OF WASHINGTON

COUNTY OF SPOKANE

ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as _____ of the Park Board of the City of Spokane, a Washington municipal corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 2009.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington, residing at

My appointment expires _____

MOBIUS SPOKANE ACKNOWLEDGEMENT

STATE OF WASHINGTON

ss.

COUNTY OF SPOKANE

I certify that I know or have satisfactory evidence that Neil K. Worrall is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the President of Mobius Spokane, a Washington non-profit corporation, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 2009.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington, residing at

My appointment expires _____

EXHIBIT A

to

MEMORANDUM OF LEASE

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "E"

DEPARTMENT OF ECOLOGY LETTER