

## AMENDING AGREEMENT

THIS AGREEMENT dated as of the            day of September, 2011.

B E T W E E N:

**T E CITY OF SPO ANE**, a First-Class City, duly incorporated under the laws of the State of Washington, U.S.A. (hereinafter "CLIENT")

- and -

**IMAX CORPORATION**, formerly, Imax Entertainment Limited, a company incorporated under the laws of Canada, ("IMAX")

**W EREAS** CLIENT and IMAX entered into a Lease Agreement dated the 12<sup>th</sup> day of May, 1977, as amended and supplemented (collectively, the "Lease Agreement"), whereby IMAX leased to CLIENT one (1) IMAX® Projection System (the "System") for installation at the IMAX® Theatre located in Riverfront Park, Spokane, Washington (the "Theatre");

**AND W EREAS** IMAX and CLIENT have agreed to extend the term of the Lease Agreement for a further one (1) year period, on the terms originally contained in the Lease Agreement, except as expressly amended herein;

IN CONSIDERATION of the premises and the mutual agreements contained in the Lease Agreement and this amending agreement, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

All capitalized terms used but not defined in this amending agreement ("Agreement") shall have the meanings ascribed thereto in the Lease Agreement.

### **A. Extension of the Lease**

The term of the Lease Agreement, excluding Paragraph 8, shall be extended for a one (1) year period commencing January 1, 2012 and ending December 31, 2012 (the "Extension Term").

### **B. Automatic Renewal**

The parties agree that the Lease Agreement shall automatically renew for a further one (1) year period commencing January 1, 2013 and ending December 31, 2013 unless Client provides formal written notice to IMAX of its desire not to extend the term of the Lease Agreement by no later than September 30, 2012.

### **C. Minimum Rent**

Subsection 3(a) and Subsection 3(d) of the Lease Agreement shall be amended by deleting both paragraphs in their entirety and replacing them with the following:

"(a) The minimum annual rent of US\$25,000 herein provided for shall, at the commencement of the Extension Term, be increased or decreased for such renewal term by multiplying the minimum annual rent of US\$25,000 by the percentage increase or decrease in the Consumer Price Index (the "Index") applicable to the Spokane, Washington area as established by the Federal Government of the U.S.A. (or the then recognized statistical branch) from that for the month ended December, 2011, to the month ended immediately prior to the commencement of the Extension Term. In the event the Index is not available on the first day of any such Extension Term, rent shall continue to be paid as previously paid and shall be adjusted between the parties when the Index is available."

**D. Maintenance Fee**

In consideration of the services to be provided by IMAX to Client pursuant to Paragraph 12(b) of the Lease Agreement, during the Extension Term, Client shall pay to IMAX an annual maintenance fee in the amount of US\$20,000 ("Annual Maintenance Fee"), payable in equal quarterly installments in advance.

**E. Early Termination**

Either party may terminate this Agreement without penalty for any reason, prior to the expiry of the Extension Term, upon providing sixty (60) days written notice to the other party hereto. All amounts payable by CLIENT shall be forthwith paid to IMAX upon any such termination.

**F. Confidentiality**

The parties shall keep in strict confidence all information relating to this Agreement. Neither party shall issue any form of public notice with respect to either the Lease Agreement or this Agreement, without the prior written consent of the other party. Neither party shall use or disclose any confidential or proprietary information without the prior written consent of the other party. Both parties shall take all necessary steps with their respective officers, directors, employees, representatives and agents to preserve the confidentiality of this Agreement, and in the event of any wrongful disclosure of the terms of this Agreement to a third party, the non-disclosing party shall be entitled to any remedies listed in the Lease Agreement, including but not limited to, damages and injunctive relief. CLIENT shall attempt to preserve the confidentiality of the terms of this Agreement only to the extent allowable under the public disclosure laws of the State of Washington.

**G. Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein and may not be modified or amended except in writing.

**. Headings**

The headings contained in this Agreement are for reference only and shall not affect the meaning or construction of this Agreement.

**I. Enurement**

This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**Counterparts**

This Agreement may be executed in any number of counterparts each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.

IN WITNESS WHEREOF the parties here executed this Agreement as of the date first above written.

**IMAX CORPORATION**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

We have the authority to bind the corporation.

**T E CITY OF SPO ANE Par s and Recreation Department**

\_\_\_\_\_  
Leroy Eadie, Director of Parks and Recreation

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney  
I have the authority to bind the corporation.



## Business Planning for Riverfront Park IMAX® Theatre – “Phase 1-B”

### **D-Cinema Feasibility Update Report**

Report submitted to: Mr. Craig Butz, Spokane Parks & Recreation Department

Date: June 23, 2011

1. PHASE 1-B GOAL: To help the Client decide whether or not a pro forma business case can be made for replacing the existing IMAX film projection system with a digital projection system.
2. CONSULTANT’S WORK PLAN: In order to develop an opinion about the feasibility of the business case for replacing the existing IMAX film projector, Consultant;
  - a. Reviewed and analyzed operating results of the Riverfront Park IMAX Theatre (“RPIT”) for the entire 2010 year, and 2011 year-to date, as of 05/31/11.
  - b. Spoke with senior distribution executives at three (3) Hollywood studios (Paramount, 20th Century Fox, and Warner Bros.), and Imax Corporation, to determine if the Client will be reasonably likely to acquire digital 2D and 3D Hollywood feature films on a “Delayed-Release” basis, for both IMAX DMR and regular releases. (Delayed-Release means starting a relatively new film a number of weeks *after* its initial theatrical release - approximately 3-4 weeks later for most, or up to 6-8 weeks for some very popular films.)
  - c. Produced an updated pro forma forecast of potential attendance, revenues and operating net income, assuming two scenarios: (1) IMAX digital projection with IMAX DMR digital films; (2) DCI-complaint, non-IMAX digital projection with conventional digital 2D/3D films.
  - d. Reviewed and updated the estimated capital costs for acquiring (i) an IMAX Digital system and (ii) a non-IMAX, but DCI-compliant digital projection systems.

### 3. SUMMARY OF CONCLUSIONS & INDICATED ACTIONS:

- a. A business case can be made for adding a digital projection system now. The RPIT has a reasonable chance at returning to at least a break-even level of attendance and revenue, but only if it can bring Hollywood features back on the program (with close to first-run, premium ticket prices), and only with the installation of a digital projection system.
- b. Based on conversations with distribution executives at several Hollywood studios and Imax Corp, it appears likely that RPIT will be able to book Hollywood films on a delayed-release basis, whether the new system installed is IMAX digital, or another, DCI-compliant digital system.
- c. The Delayed-Release programming strategy for Hollywood films is recommended because it is the key to gaining studio cooperation. Compared to booking films on their initial release date, Delayed-Release offers benefits of lower license fees, and programming flexibility (i.e. not as many shows required; the advantage of hindsight avoids booking new films that 'bomb').
- d. Please see the recommended show schedule on page 9 of this report. Of note, the Hollywood films should be programmed, at a minimum, in the evenings (2 shows per night), 7 days a week, plus extra matinee shows on weekends.
- e. Client should seek detailed proposals from d-cinema integrators for retrofitting the RPIT with a DCI-compliant d-cinema system which will create a high-quality, giant-screen theater experience. Although Imax Corp has already offered a proposal for their digital system, (at the highest cost), Client should attempt to negotiate a better package price with Imax Corp for its IMAX Digital system. (Of note, Consultant asked Imax, on Client's behalf, to amend their proposal from Imax's standard 10-year lease term, to 5 years, with no increase in the first five year's payments; Imax Corp's SVP & General Manager for the Americas agreed to this).
- f. In preparation for licensing digital films from the studios, Client should renew its relationship with them now by licensing print versions of Hollywood IMAX DMR films, on a Delayed-Release basis (to the extent prints are available).
- g. Continuing through the transition to digital, the 40-minute documentaries should remain on the RPIT schedule. There is a solid base of business with this genre and running time. The G-rated, 'edu-tainment' quality of the 40-minute documentaries is an excellent strategic fit with the Park's overall attraction mix.

#### 4. ANALYSIS OF RPIT'S MOST RECENT RESULTS

Results from 2010 and through May of this year continued the trend to softer attendance and net operating losses that began in the fourth quarter of 2009 when the RPIT lost its access to first-run Hollywood movies, and the nearby AMC River Park 20 added its IMAX Digital screen. (Until 2008, the IMAX Theater maintained a modest, positive contribution to the Park's overall financial results, assuming the inclusion of gross margin from RPIT concessions.)

RPIT attendance and revenues dropped sharply in 2010, and stabilized at the new, lower plateau through May of this year. In addition to the loss of attendance to Hollywood feature films, and the higher-priced admission revenue, concession revenue at the RPIT plunged on a per head basis, since the concession buying habit is greatly diminished with shorter films. The number of shows offered was also reduced, contributing to some of the lost attendance.

Conclusion: The last 17 months' results reinforce that the economic viability of this theater depends on gaining access once again to Hollywood feature films. The only way to do this most economically is to transition to a digital projection system with 3D capability, either from Imax Corporation or an established d-cinema equipment integrator.

#### 5. DISCUSSIONS ABOUT HOLLYWOOD FEATURES WITH DISTRIBUTION EXECUTIVES

Consultant called film distribution executives at three Hollywood studios, plus the head of distribution at Imax Corporation, to ask this key question, which is fundamental to the future feasibility of this theater: *If RPIT replaced its film projection system with a new, 3D-equipped, DCI-complaint digital projection system, whether IMAX digital or non-IMAX digital, could the RPIT reasonably count on access to studio films on a 'delayed-release' basis?*

Overall, the answer from every senior manager was "yes". The following conditions and other important comments were also mentioned:

- The Delayed-Release scenario, whereby RPI T would be able to obtain most new films within 4 weeks from its initial release, was generally agreed as doable. In the IMAX Digital film case, with 20+ IMAX DMR films released per year, a wait of no more than 3-4 weeks for RPIT to get new films was characterized as a reasonable expectation by Imax Corp's head of distribution.

- Two of the distributors reiterated that AMC is generally known for not “clearing”\*\* its booking zones with studio distributors. One studio (Fox) said they would call AMC to check this before proceeding with new licensing agreements with RPIT. Another studio (Paramount) sounded a similarly careful note. (\*\*note: If a zone is “cleared” by an exhibitor, it means that it has to be completely done with a film before it can move over to another screen in close proximity. As such, a very popular film might be held at the primary theater for 6 – 8 weeks or more after its initial release before other theaters in the zone can show it.)
- Warner Bros., which is the only Hollywood studio so far that has collaborated with Imax Corporation on 40-minute 3D documentaries (e.g. 2011’s *Born to Be Wild*), and which will be releasing upcoming MacGillivray Freeman Films titles (e.g. *To The Arctic*, due for release in 2012), made it clear that it will not release its 40 documentaries to non-IMAX theaters. On the other hand, Warner said that a non-multiplex theater like RPIT or a museum that has an IMAX screen is likely to gain an “exclusive” on their 40-minute IMAX documentaries, since the multiplex operators, such as AMC, don’t have an appetite for these shorter films.
- On the issue concerning whether a digitally-equipped RPIT would have earlier or later access to digital films if IMAX Digital equipment is installed, Imax Corporation suggested a non-IMAX equipped RPIT would have to wait longer for films. One studio executive had no comment (at Paramount), and another (at Fox) believed the RPIT’s advantage would actually be with non-IMAX equipment, because RPIT would be viewed as slightly less a direct competitor to AMC River Park Square’s IMAX screen.
- Further, it is most likely that an IMAX-equipped theater would attract higher film license fees, since the studios try to pass on at least some of the 12.5% fee they must pay Imax Corp for re-mastering Hollywood films for the IMAX platform.

6. POTENTIAL RPIT RESULTS WITH NEW DIGITAL-CINEMA SYSTEM & HOLLYWOOD FEATURE FILMS BACK ON THE PROGRAM.

Consultant constructed three potential P&L scenarios, assuming non-IMAX digital projection systems, and an IMAX digital system. Within the non-IMAX digital system option, two sub-options are imagined – one based on a 2-projector system, the other assumes a single projector.

Please see the pro forma schedule on the next page, which illustrates these scenarios, along with a summary of 2009 and 2010 actual results, and 2011 budget figures. (Of note, 2011 year-to-date results through end of May are on track to meet budget).

Since the Client directed that longer term Park-wide re-development planning limits the RPIT's immediate planning horizon to no more than five years, and for conservatism any new cap/ex (for the digital systems) must be amortized within five years.

Most of the key assumptions behind the pro forma scenarios are displayed on page 8. The show schedule assumption is illustrated on page 9. The rough-order-of magnitude cap/ex assumptions for the projection system are detailed on page 10. (see Footnote (a) next page).

Based on the included assumptions, and projecting from recent actual results, the breakeven level of attendance and total operating revenue, after factoring in the new cap/ex and all operating costs, are as follows:

	IMAX Digital 2-projector system	Other Digital 2-projector system	Other Digital 1-projector system
Breakeven level of Attendance (000's)	93	83	78
(% change vs 2008*)	15%	2%	-3%
Breakeven level of Gross Operating Revenue	\$ 1,061	\$ 833	\$ 793
(% change vs 2008*)	30%	2%	-3%

*Note:* 2008 was the last full year that RPIT had regular access to (2D) IMAX DMR films. Attendance that year was 81K, and gross operating revenues (including concessions) were \$815K.

Client will have to judge the risk associated with achieving these breakeven levels of attendance and revenues, and its appetite for risk. Overall, Consultant views the risks as 'moderate'. (On the particular IMAX option, Consultant views its upside potential as strongest, but with 'elevated risk' that forecasts won't be achieved).

Client will also have to take into account its ability to fund the upfront cap/ex to acquire the new digital projection system. One funding source is third-party lease financing. There are several lease financing companies that will finance 100% of the equipment and installation costs associated with such systems, over 5-year terms.

A conclusive judgment about whether to actually proceed with the purchase and installation of a new digital projection system should be based on a RFP phase with non-IMAX integrators, negotiations with Imax Corp in an attempt to improve their offer, an analysis of all the technical options presented, confirmation that project funding for the upfront capital expenses can be secured, and a comprehensive, 5-year business plan for the Theater.

*Footnote (a):* A single-projector solution is shown for illustration, to provide a low cost option. However, a single-projector solution would produce less light on screen in 3D mode than any 2-projector options, and a technical analysis of a 1-projector recommendation would have to assure Client that enough light was being produced to meet industry-accepted (including Hollywood studio) standards for image brightness. (One 3D vendor has a technology to boost light significantly with a single projector, closing the gap versus two projectors). This is an issue for non-IMAX digital 3D presentations only; DCI-compliance requires that only one projector at a time can be used when in 2D mode, although IMAX has designed a way to use both projectors when in 2D mode. Of the 2-projector options, the IMAX digital system, while most expensive, also delivers the most amount of light, by a significant margin, to the viewers' eyes, in both 2D and 3D modes.

See also Footnote (b) on page

**Pro forma scenarios with comparisons to current year's budget and recent years' results:**

	PRO FORMA SCENARIOS THAT PRODUCE FINANCIAL BREAK-EVEN OVER 5 YEARS		CURRENT YEAR - 2011		RECENT YEARS' ACTUAL RESULTS	
	IMAX Digital 2D/3D (2-projector solution)	Other Digital 2D/3D (1-projector solution)	IMAX Film (2D) 2011 Budget	IMAX Film (2D) 2010 Actual	IMAX Film (2D) 2009 Actual	
<b>Breakeven Annual Attendance</b>	93,049	82,749	55,000	51,000	68,091	
40-minute documentaries	46,524	41,374	55,000	51,000	33,361	
Hollywood features	46,524	41,374	0	0	34,730	
Average ticket (net)	8.87	7.72	5.70	5.81	6.91	
Concessions per cap	1.50	1.50	0.73	0.82	1.47	
<b>GROSS OPERATING REVENUE</b>						
Admissions (net)	825,732	638,521	313,500	296,377	470,175	
Private Screenings & Facility Rentals	40,000	30,000	6,500	6,500		
Sponsorship/ Contributions/ Donations	25,000	20,000	-	2,500	3,244	
Ticketing convenience charges	30,706	20,687				
Concessions	139,573	124,123	40,000	42,000	99,792	
Gross Operating Revenue	1,061,011	833,331	360,000	347,377	573,210	
<b>COST OF GOODS SOLD</b>						
Projection system royalties	50,000	-	40,000	31,200	23,509	
F&B concessions	34,893	31,031	10,000	10,500	24,948	
Film rentals & prints	342,392	264,764	143,000	108,400	259,555	
TOTAL COGS	427,285	295,795	193,000	150,100	308,012	
<b>GROSS MARGIN</b>	633,726	537,536	167,000	197,277	265,198	
<b>OPERATING EXPENSES</b>						
Marketing (Printing & Advertising)	110,000	110,000	97,097	72,694	75,572	
Personnel	184,337	184,337	148,121	140,050	152,032	
Utilities	83,000	83,000	68,200	58,148	65,570	
Supplies	10,000	10,000	7,061	8,734	7,343	
Repairs & Maintenance	58,889	33,799	23,000	22,569	20,719	
Other contracts	7,000	7,000	4,000	9,700		
Other Taxes, Fees, & Charges	8,000	8,000	7,524	5,031	7,248	
Interfund Charges	12,500	12,500	12,363	9,820	10,704	
<b>TOTAL OPERATING EXPENSES</b>	473,726	448,636	367,366	326,746	339,188	
Amortization of new projection system CAPEX over 5 years	160,000	88,900	n/a	n/a	n/a	
<b>NET OPERATING INCOME*</b>	(0)	(0)	(200,366)	(129,469)	(73,990)	

\* NOI in 2009 - 11 columns reconciles to the City's reporting approach for this Theater if concessions are excluded from, and other year's contingencies are added to the above.

Riverfront Park (IMAX) Theater, Spokane, WA

**ASSUMPTIONS for Pro Forma Income Statements**

<b>Presentation Technology</b>	<b>IMAX Digital 2D/3D</b>		<b>Other Digital 2D/3D</b>		
		\$	other units	\$	other units
Breakeven level of annual Attendance			<b>93,049</b>		<b>82,749</b>
Breakeven level of annual Attendance (1-projector solution only)					<b>78,354</b>
% 3D attendance			50%		50%
% 2D attendance			50%		50%
% Box Office Revenue (BOR) for Hollywood Features			64%		64%
% BOR for 40-minute Documentaries			36%		36%
% attendance for Hollywood Features (" <b>Delayed Release Basis</b> ")			50%		50%
% attendance for 40-minute Documentaries			50%		50%
Average Ticket (net) -- Hollywood Features (assume discount of \$1.00 vs AMC, each ticket class)	\$	11.31		\$	9.48
Average Ticket (net) -- 40-minute Documentaries	\$	6.44		\$	5.96
Weighted Average (net) Average Ticket Price	\$	<b>8.87</b>		\$	<b>7.72</b>
Concession per cap revenue (Hollywood features)	\$	2.20		\$	2.20
Concession per cap revenue (40-min. docs)	\$	0.80		\$	0.80
Weighted Average concessions per cap	\$	1.50		\$	1.50
Concessions Cost of Goods Sold			25%		25%
# Private Screenings & Facility Rentals per year			6		6
Average PS&FR revenue (net of costs)	\$	3,500			
Sponsorship per year	\$	25,000		\$	20,000
Percentage reserved tickets sold (e.g. online)			33%		25%
Convenience charge per reserved ticket	\$	1.00		\$	1.00
Film Rental - Hollywood Features (Delayed-Release basis)			48.0%		45.0%
Film Rental - 40-minute Documentaries			30.0%		28.0%
Weighted average Film Cost as % of net BOR			41.5%		38.8%
Avg. number of shows per week (see Show Schedule, Appendix 1b)			57		57
Incremental temporary/seasonal wages for expanded show schedule	\$	29,484			
System Royalty - % of BOR - Hollywood Features			3.0%		0.0%
System Royalty - % of BOR - 40-minute Documentaries			5.0%		0.0%
3D Glasses cost per use	\$	0.04		\$	0.04
3D Glasses cost per year	\$	1,745		\$	1,655
System Maintenance	\$	40,000		\$	15,000
Lamp cost	\$	14,144		\$	14,144
Lamp cost (1-projector solution only)				\$	9,429

**NOTICE:** The costs and projections in the above and other schedules are based on the included assumptions and formulas. The actual results will vary from pro forma results, and the variance may be material. The pro forma capital expenses of a new digital cinema system are "rough order of magnitude" estimates only - more precise figures could be obtained after soliciting detailed proposals from, and/or after negotiating with vendors, which activities are outside the scope of this assignment. These pro forma schedules are provided by Blaze Digital Cinema Works LLC, on the understanding that Blaze is not engaged in rendering accounting or other financial services.

Riverfront Park (IMAX) Theater, Spokane, WA

**Appendix 1b - Show Schedule Assumption**

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
10:00							
11:00							
12:00							
1:00							
2:00							
3:00							
4:00							
5:00							
7:00							
10:00							

<i>Legend</i>	<i># of shows/wk</i>
Special schools/groups optional shows - 40 min. documentaries	5
Public shows - 40 min. documentaries - constant schedule	29
Public shows - 40 min. documentaries - peak schedule	18
Public shows - Hollywood features	16
Peak weeks	68
Average week	57

7. UPDATED ROUGH-ORDER-OF-MAGNITUDE CAP/EX BUDGETS

	PRO FORMA CAPITAL EXPENSES			
	IMAX® Digital (including <b>two</b> Christie 2k digital projectors, IMAX 3D)	Other Digital (including <b>two</b> Christie 4k digital projectors, with MasterImage 3D)	Other Digital (including <b>one</b> Christie 4k digital projectors, with MasterImage 3D)	
Screen size (same as current)	69' X 53'	69' X 53'	69' X 53'	
Image size (shorter than current)	65qx 34q	69qx 37q	69qx 37q	
Max. # of seats	396	396	396	
Type of Projection System Agreement	System Lease & Trademark License (5-year term)	Purchase Agreement	Purchase Agreement	
Projection System upfront payment (before other expenses and sales taxes)	\$ 750,000	\$ 399,500	\$ 282,000	
System equipment & services included:	Includes: One (1) IMAX® Digital Projection System (with (2) projectors) and Audio Upgrade; one (1) 3D Screen Sheet; one (1) Glasses Cleaning Machine; design consultation; installation supervision; run-in testing; and training for up to 4 projectionists at the time of installation	Includes:		
		Projector(s), server, related equipment, new port window glass	\$ 235,000	\$ 120,000
		Audio system (5.1)	65,000	65,000
		3D Screen system (frame, sheet, masking, rigging, etc.)	75,000	75,000
		Digital 3D system (MI3D) with glasses, cleaning machine, racks	16,000	16,000
		Design consultation, installation supervision, run-in testing, training	8,500	6,000
Additional System Costs (Shipping, installation labor, insurance, etc.)	\$ 50,000	\$ 45,000	\$ 35,000	
Ongoing Percentage Payment (Royalty)	(3%) of Net Theatre Admissions (NTA) for feature-length DMR films, (5%) of NTA for 40-minute documentaries; against a minimum of \$50,000 annually. Based on forecast attendance and revenues, \$50,000 is likely to be the annual royalty.	None	None	
(current value over a 5-year term (not discounted for time value of money); in practice will be paid like an operating expense)	\$ 250,000			
TOTAL CAP/EX	\$ 1,050,000	\$ 444,500	\$ 317,000	
up-front part of CAP/EX	\$ 800,000			

**Footnote (b):** The non-IMAX equipment would be supplied by a qualified d-cinema integrator. The above dollar figures assume an integrator’s margin is included. This is only an illustration: no integrators or vendors were contacted to supply data for the specific RPIT situation, and neither Christie projectors nor MasterImage 3D are being recommended at this time in preference to other options. The IMAX figures are based on Imax Corp’s proposal. No design/construction costs, nor expenses related to removing existing equipment, nor re-launch marketing expenses, have been estimated here. Further, a retrofit of the projection system is often a good time to replace and update a Theater’s seats, carpeting, wall treatments, lighting, concessions, and signage, which are not estimated within the scope of this assignment.

7b. RELATED OPERATING EXPENSES OF EACH CATEGORY OF PROJECTION SYSTEM

Riverfront Park (IMAX) Theater, Spokane, WA		
PRO FORMA ANNUAL OPERATING EXPENSES of a NEW D-CINEMA SYSTEM		
	IMAX® Digital (including two Christie digital projectors (IMAX 3D))	Other Digital *** (including two** Christie 2k projectors, with MasterImage 3D)
Screen size (same as current)	69' X 53'	69' X 53'
Image size (shorter than current for both, IMAX would also be slightly less wide) *	65qx 34q	69qx 37q
Max. # of seats	396	396
Type of Projection System Agreement	System Lease & Trademark License (5-year term)	Purchase Agreement
Ongoing Percentage Payment (Royalty)	(3% of Net Theatre Admissions (NTA) for feature-length DMR films, (5%) of NTA for 40-minute documentaries; against a minimum of \$50,000 annually. Based on forecast attendance and revenues, \$50,000 is likely to be the annual royalty. \$ 50,000	None \$ -
Maintenance Fee	\$ 40,000	\$ 15,000
3D Glasses:	IMAX 3D glasses	MasterImage 3D Glasses
Unit price: (recommended units on hand: 3.0x seat count)	\$7.50	\$4.00
Expected # uses per pair:	200	100
Effective cost per use:	\$0.04	\$0.04
Annual Cost of 3D Glasses (see Assumptions for % of annual attendance that's 3D)	\$ 1,745	\$ 1,654.98
Lamps:		
number X wattage	2 x 6 kw	2 x 6 kw (or 1 x 6kw)
cost per lamp hrs each	\$ 1,600 600	\$ 1,600 600
Annual Cost of Lamps (1-projector sol'n in brackets)	\$ 14,144	\$ 14,144 (9,429)
Utilities	\$ 83,000	\$ 83,000 (68,000)
TOTAL ANNUAL PROJECTION SYSTEM OPERATING EXPENSES (1-projector sol'n in brackets)	\$188,889	\$113,799 \$94,084
<b>footnotes:</b>		
* The digital images are always shorter because of digital's more rectangular aspect ratio. IMAX Digital is also not as wide because IMAX doesn't yet offer a short throw lens for its digital projector less than 0.85 (throw/width). In 2009 and earlier, IMAX DMR film-based images would have been approx. 69' x 37' at this theater.		
** 1-projector costs are lower only for lamps and utilities - see bracketed items		
*** Christie digital projectors and MasterImage 3D are used in this scenario for illustration purposes only. Consultant is not specifically recommending them in preference to their competitors.		

**BLAZE**   
Digital Cinema Works  
1771 Post Road East, # 164  
Westport, CT 06890  
[www.blazedigitalcinema.com](http://www.blazedigitalcinema.com)  
(t) 203-292-5745 (f) 203-404-4998

Paul Fraser, President  
[paul@blazedigitalcinema.com](mailto:paul@blazedigitalcinema.com)

**GROUND LEASE AGREEMENT**

**Between**

**The Park Board of the City of Spokane**

**And**

**The Spokane Tribe of Indians**

## TABLE OF CONTENTS

### Page

Article 1 DEFINITIONS.....	1
1.1 Article.....	1
1.2 Business Plan .....	2
1.3 Center .....	2
1.4 Center Improvements .....	2
1.5 Board .....	<b>Error Boo mar not defined.</b>
1.6 Commencement Date .....	2
1.7 CPI.....	2
1.8 Department .....	3
1.9 Director .....	3
1.10 Effective Date .....	3
1.11 Initial Term .....	3
1.12 Lease .....	3
1.13 Material Default.....	3
1.14 Option Term.....	3
1.15 Original Condition .....	3
1.16 Party .....	3
1.17 Premises.....	3
1.18 Section.....	4
1.19 Subsection .....	4
1.20 Tenant.....	4
Article 2 LEASE.....	4
Article 3 TERM .....	4
3.1 Initial Term .....	4
3.2 Option Term.....	4
Article 4 CONDITIONS PRECEDENT TO LEASE .....	5
4.1 Approval of Business Plan .....	5
4.2 Fundraising Goal .....	5
4.3 Project Feasibility.....	5
4.4 Commencement of Construction .....	5
Article 5 USES .....	5
Article 6 TITLE TO CENTER AND CENTER IMPROVEMENTS.....	6
Article 7 POSSESSION AND OCCUPANCY .....	6
Article 8 CONSIDERATION .....	7
Article 9 PARKING REVENUE SHARING.....	7

Article 10 CONSTRUCTION OF IMPROVEMENTS ON THE PREMISES..... 7

10.1 Duty to Construct ..... 7

10.2 Center Design..... **Error Boo mar not defined.**

10.3 Environmental Review ..... 8

10.4 Compliance with Law and Quality of Work..... 8

10.5 Liens; Indemnification of Landlord ..... 8

10.6 Ownership of Plans and Specifications..... 8

10.7 Ownership..... 8

10.8 Easements and Dedications ..... 9

10.9 Zoning..... 9

10.10 Covenants ..... 9

10.11 Alterations ..... 9

Article 11 PROJECT MANAGEMENT AND COORDINATION..... 9

11.1 Designation of Project Manager..... 9

11.2 Coordination Meetings ..... 10

Article 12 GENERAL REQUIREMENTS FOR CONSTRUCTION ACTIVITY ..... 10

12.1 Waste Disposal..... 10

12.2 Indemnification from Claims for Unpaid Wages ..... 10

Article 13 TAXES, UTILITIES AND SERVICES ..... 11

13.1 Taxes..... 11

13.2 Utility Charges ..... 11

13.3 The Tenant’s Right to Contest ..... 11

Article 14 INSURANCE ..... 11

14.1 Insurance to Be Procured by Tenant ..... 11

Article 15 LEGAL LIABILITY ..... 13

15.1 Limits on Liability ..... 13

15.2 Indemnification..... 13

Article 16 REPAIRS AND MAINTENANCE ..... 14

Article 17 COMPLIANCE WITH LAW ..... 14

17.1 General Requirements..... 14

17.2 Licenses and Similar Authorizations ..... 14

17.3 Nondiscrimination and Affirmative Action..... 15

17.4 Americans with Disabilities Act Compliance ..... 15

17.5 Safety..... 15

Article 18 ACCEPTANCE OF PREMISES ..... 15

Article 19 DAMAGE AND DESTRUCTION DURING TERM OF LEASE..... 15

19.1 Repairs, Alterations and Further Improvements ..... 15

19.2 Minor Damage or Destruction ..... 16

	<u>Page</u>
19.3 Major Damage or Destruction .....	16
19.4 Repair and Reconstruction of Major Damage .....	16
19.5 Termination of Lease Following Major Damage.....	16
<b>Error Boo mar not defined.</b>	
Article 20 CONDEMNATION.....	17
20.1 Definitions .....	17
20.2 Effect of Total Condemnation .....	17
20.3 Effect of Partial Condemnation .....	17
20.4 Award.....	18
20.5 Temporary Taking.....	18
Article 21 BANKRUPTCY OR INSOLVENCY .....	19
Article 22 TENANT DEFAULT AND LANDLORD'S REMEDIES .....	19
22.1 Tenant Default/Cure Periods .....	19
22.2 Landlord's Remedies upon an Event of Tenant Default.....	20
22.3 Termination upon an Event of Tenant Default .....	20
22.4 Remedies Cumulative.....	21
Article 23 SUBLEASES AND ASSIGNMENTS .....	21
23.1 No Assignment of Lease.....	21
23.2 Subletting, Renting, and Licensing .....	21
<b>Error Boo mar not defined.</b>	
23.4 Third-Party Subleases on Lots A, B, & C... <b>Error Boo mar not defined.</b>	
Article 24 ENCUMBRANCE OR LEASEHOLD ESTATE.....	21
Article 25 SURRENDER.....	22
Article 26 HOLDING OVER.....	22
Article 27 WARRANTIES BY LANDLORD .....	22
Article 28 DEFAULT BY LANDLORD.....	23
28.1 Landlord Default/Cure Periods.....	23
28.2 Tenant Remedies upon an Event of Landlord Default .....	24
28.3 Remedies Cumulative.....	24
Article 29 ABANDONMENT OF PREMISES .....	24
Article 30 SIGNS .....	24
Article 31 ENVIRONMENTAL PROTECTION.....	25
31.1 Definitions .....	25
31.2 Restrictions on Tenant Activities..... <b>Error Boo mar not defined.</b>	
31.3 Remediation of Hazardous Substances..... <b>Error Boo mar not defined.</b>	
31.4 Board's Remediation of Existing Hazardous Substances <b>Error Boo mar not defined.</b>	

	<u>Page</u>
31.5 Maximum Amount.....	25
31.6 Remedial Work .....	26
31.7 Further Notification Procedures .....	26
31.8 Completion of Remedial Work; Accounting.....	27
31.9 Dispute Resolution.....	27
31.10 Compliance and Correction of Violations .....	28
31.11 Removal of Hazardous Substances .....	28
31.12 Release and Indemnification.....	28
Article 32 SECURITY .....	30
Article 33 RIGHTS CONFERRED UPON TENANT.....	31
33.1 No Competing Uses.....	31
33.2 Exclusive Sales Rights.....	31
33.3 Tenant Control over Event Programming.....	31
Article 34 BOARD'S CONSENT OR APPROVAL .....	32
Article 35 MEDIATION OF DISPUTES.....	32
35.1 Involvement of Mediator & Mediator's Consultants.....	33
35.2 Continuation of Efforts in Event of Dispute; No Litigation without Mediation.....	33
Article 36 RELATIONSHIP OF PARTIES.....	33
Article 37 AMENDMENTS.....	33
Article 38 NO WAIVER OF DEFAULT.....	33
Article 39 BINDING EFFECT .....	34
Article 40 NEGOTIATED AGREEMENT .....	34
Article 41 NOTICES .....	34
Article 42 TIME.....	34
Article 43 RECORDATION.....	35
Article 44 ESTOPPEL .....	35
44.1 Landlord's Estoppel .....	35
44.2 Tenant's Statement.....	35
44.3 Failure to Furnish.....	35
Article 45 CAPTIONS.....	36
Article 46 INVALIDITY OF PROVISIONS.....	36

	<u>Page</u>
Article 47 FORCE MAJEURE.....	36
47.1 Definition of Force Majeure Event.....	36
47.2 Effect of Force Majeure Event .....	36
Article 48 APPLICABLE LAW.....	37
Article 49 AGREEMENT CONTENTS .....	37

## **GROUND LEASE AGREEMENT**

**between**

**The Park Board of the City of Spokane**

**and**

**The Spokane Tribe**

This GROUND LEASE AGREEMENT (this "Lease") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2011, by and between THE PARK BOARD OF THE CITY OF SPOKANE, (the "Board" or "Landlord"), and The Spokane Tribe, ("Spokane Tribe" or "Tenant").

### **RECITALS**

WHEREAS, the Spokane Tribe of Indians desires to develop the Spokane Tribe Cultural Center upon lands currently managed by the Board, and

WHEREAS, the Board finds that the Spokane Tribe's Cultural Center will fit within their long-term plans for Park land subject to this Lease.

WHEREAS, the Board and the Spokane Tribe desire to enter into a Ground Lease for the property described in Exhibit A and B; and

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. 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 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; and 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 Cultural 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.

1.1 Project. "Project" means Tenant's proposed analysis, financing, development, construction, and operation of the Center.

1.19 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”.

1.20 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”.

1.21 Tenant. “Tenant” means the Spokane Tribe of Indians..

## **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.

### **TERM**

2.1 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 (50<sup>th</sup>) anniversary of the Commencement Date occurs (the “Initial Term”), unless sooner terminated as provided herein.

2.2 Option Term. At the beginning of the 47<sup>th</sup> 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 The Spokane Tribe Culture and tradition. 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 commencement date.

3.3 First Right of Refusal. The Landlord hereby gives the Lessee an irrevocable first right of refusal for the purchase of the property that is the subject of this Lease.

**ARTICLE 3**  
**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.

3.1 Approval of Business Plan. Landlord shall approve the Business Plan within 30 days after such plan has been initially submitted to Landlord; provided, 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.

3.2 Fundraising Goal. If the Tenant is unable to secure the funds to construct and operate the Center within three-(3) years of the effective date either party may terminate the lease.

3.3 Project Feasibility. If the Tenant in good faith determines that development of the Center is infeasible due to the Tenant's investigation of Hazardous Substance issues on the premises, Tenant may terminate the lease

3.4 Commencement of Construction. Tenant shall have obtained all necessary permits and substantially commenced construction of the Center Improvements on or before the fifth (5<sup>th</sup>) 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 Cultural 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 4**  
**USES**

The Tribe may develop upon the premises a mixed-use property that may hold a Tribal Cultural Center, gift shop, theatre, restaurant, Tribal administrative offices, general retail and office space and parking area.

**ARTICLE 5**  
**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, except all movable office equipment, personal property and other property of the Tenant that is not attached to the Premises.

**ARTICLE 6**  
**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; (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; and (3) not enter into negotiations with other parties for the Lease of the property that is the subject of this Lease.

**ARTICLE 7  
CONSIDERATION**

For the benefit of the City of Spokane and its citizens, Tenant, federally recognized Indian Tribe, shall design, construct, manage, and coordinate funding for a multi-million dollar cultural center as described in Article 5. 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 8  
PAR KING RE ENUE S ARING**

Tenant from the effective date of this Lease until the first day of the Spokane Tribe's Cultural Center operation shall pay the consideration as described in Article 8.

From the first day of the Cultural Center's operation, "opening date" until the termination or renewal of this Lease, which shall not be unreasonably withheld by Landlord, the Tenant shall pay the following consideration: an annual payment of X to the Landlord in quarterly installments and shall be described as the "parking fee."

Landlord shall be allowed with the express written permission of the Tenant, that shall not be unreasonably withheld, to continue to operate the current parking lot and collect all its revenue during all times from the effective date until the opening date when such parking operations will not interfere with Tenant's construction and remediation work.

Tenant shall not be required to make revenue payments to Landlord during the duration of tenant's construction and remediation work on the site.

**ARTICLE 9  
CONSTRUCTION OF IMPRO EMENTS ON T E PREMISES**

9.1 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.

9.2 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.

9.3 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.

9.4 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.

9.5 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.

9.6 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.

9.7 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. 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.

9.8 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.

9.9 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.

9.10 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 10 PROJECT MANAGEMENT AND COORDINATION**

10.1 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, who shall be hired and maintained at Landlord's

sole expense. 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

10.2 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 11 GENERAL REQUIREMENTS FOR CONSTRUCTION ACTIVITY**

11.1 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 under Tenant's control 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.

11.2 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 12  
TAXES, UTILITIES AND SERVICES**

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

12.2 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.

12.3 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 13  
INSURANCE**

13.1 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.

13.1.1 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.

13.1.2 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.

13.1.3 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.

13.1.4 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.

13.1.5 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.

13.1.6 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.

13.1.7 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.

13.1.8 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 14 LEGAL LIABILITY**

### 14.1 Limits on Liability.

14.1.1 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, except for acts of negligence by the Landlord or its agents. 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), except for acts of negligence by Landlord or its agents. Nothing in this Subsection 15.1.1 shall be construed to limit Landlord's liability under Subsection 15.2.2.

14.1.2 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.

### 14.2 Indemnification.

14.2.1 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.

14.2.2 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.

14.2.3 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.

14.2.4 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 15 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 16 COMPLIANCE WITH LAW**

16.1 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.

16.2 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.

16.3 Nondiscrimination and Affirmative Action. Tenant shall be free to utilize to the extent allowed under federal law tribal preference in employment matters, and it will, at no cost to the Landlord, where such application will not interfere with tribal preference, 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.

16.4 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.

16.5 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 17 ACCEPTANCE OF PREMISES**

Except as otherwise provided herein, in Section 4.3 and otherwise 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 18 DAMAGE AND DESTRUCTION DURING TERM OF LEASE**

18.1 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.

18.2 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 affect such repair.

18.3 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.

18.4 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.

18.5 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 19 CONDEMNATION**

### 19.1 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.

19.2 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.

19.3 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. The City of Spokane hereby waives all rights of eminent domain/condemnation it may have over the premises subject to this Lease for the entire Term of the Lease.

19.4 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. Out of the total Just Compensation, Landlord shall receive the present value of the reversion (assuming expiration at the end of the Option Term) as of the time of taking; the remainder thereof shall be payable to the Tenant. The foregoing allocation shall be established by the same court of law or other trier of fact that establishes the Just Compensation, using a qualified commercial real estate appraiser acceptable to the parties and who is experienced in the valuation of ground leasehold estates (the "Appraiser"), but if there is no court of law available, able, or willing to make such allocation, then Landlord and Tenant shall attempt to agree themselves on one Appraiser who shall determine the then-present value of the Landlord's reversion and make the appropriate allocation of the total Just Compensation. If the aforementioned court or trier of fact cannot or will not make the allocation, and if the parties cannot thereafter agree on one Appraiser who will be able to make such allocation within sixty (60) days after the amount of Just Compensation has been determined, the allocation 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.

19.5 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 20  
BAN RUPTCY OR INSOL ENCY**

20.1 . 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 Just Compensation 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 then-effective term of this Lease, in which case such Just Compensation shall be apportioned between Landlord and Tenant as of such date of expiration of the then-effective term of this Lease.

**ARTICLE 21  
TENANT DEFAULT AND LANDLORD S REMEDIES**

21.1 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
- D. Tenant abandons the Premises in violation of Article 29.

21.2 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.

21.3 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.

21.4 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 22 SUBLEASES AND ASSIGNMENTS**

22.1 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.

22.2 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.

## **ARTICLE 23 ENCUMBRANCE OR LEASE OLD 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, without the express written approval of the Landlord which shall not be unreasonably withheld. 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 24  
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 25  
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 26  
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 27 DEFAULT BY LANDLORD**

27.1 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).

27.2 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.

27.3 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 28 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 29 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 30 ENVIRONMENTAL PROTECTION**

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

\*Attorney review: May need better protection for Tribe for unknown environmental issues

30.2 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.

Anything to the contrary contained in Subsection 31.4 hereof notwithstanding, Landlord's obligation to complete the Initial Remedial Work as to the Premises shall be limited to a total expenditure not to exceed \$250,000 less the amount spent on the New

Environmental Reports and the Documentation (the “Maximum Amount”), which shall be funded from the Fund. 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 to 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.

30.3 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.

30.4 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.

30.5 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.

30.6 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.

30.7 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.

30.8 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.

30.9 Release and Indemnification.

30.9.1 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.

30.9.2 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; (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 (65%) 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 31 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.

31.5 Anything to the contrary contained in Subsection 31.4 hereof notwithstanding, Landlord's obligation to complete the Initial Remedial Work as to the Premises shall be limited to a total expenditure not to exceed \$250,000 less the amount spent on the New Environmental Reports and the Documentation (the "Maximum Amount"), which shall be funded from the Fund. 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 to 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.

## **ARTICLE 32 RIGHTS CONFERRED UPON TENANT**

32.1 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 Tribal Cultural Center), a Tribal Cultural Center, 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.

32.2 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.

32.3 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 33 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 reasonably withheld in Landlord's sole discretion.

33.1 Throughout the term of this Lease, Landlord covenants that Tenant shall be the only institution or venue on property owned by Landlord or controlled by the Board (all such Landlord-owned or Board-controlled property is collectively referred to herein as "Board Property") 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 Tribal Cultural Center), Tribal Cultural Center, and Landlord shall not, during the term of this Lease, allow or permit any institution, including itself, or any other party or venue on ~~("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. Landlord 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.

### **ARTICLE 34 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.

34.1 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 Chairperson or its designee. 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.

34.2 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 35 RELATIONS IP 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 36 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 37 NO WAI ER 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,



**ARTICLE 42  
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 43  
ESTOPPEL**

43.1 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.

43.2 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.

43.3 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 44  
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 45  
IN ALIDITY OF PRO ISIONS**

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 46  
FORCE MA EURE**

46.1 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.

46.2 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 47**  
**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 48**  
**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]

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

THE PARK BOARD OF THE CITY OF SPOKANE

By: \_\_\_\_\_  
*Signature*

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Spokane Tribe Cultural Center

By: \_\_\_\_\_  
*Signature*

Gregory J. Abrahamson,  
Chairman

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 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 \_\_\_\_\_, 2011.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

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

\_\_\_\_\_  
My appointment expires \_\_\_\_\_

Spokane Tribe Cultural Center 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 Spokane Tribe Cultural Center, 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 \_\_\_\_\_,  
2011.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

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

\_\_\_\_\_  
My appointment expires \_\_\_\_\_

**EX IBIT A**  
**DEPICTION OF PREMISES**

**EX IBIT B**  
**LEGAL DESCRIPTION OF PREMISES**

**EX IBIT 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 5.04**

**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 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)

**Spokane Tribe Cultural Center, 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 1/4 NE 1/4 and NW 1/4 SE 1/4 18-25-43, and portions of  
Block 8 and 8 EYSTONE ADDITION**

Additional legal is on page A-1 of document

**EXHIBIT D**

**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 Spokane Tribe Cultural Center, 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 Spo ane 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

Spokane Tribe Cultural Center

By: \_\_\_\_\_  
*Signature*

By: \_\_\_\_\_  
*Signature*

Gregory Abrahamson, Chairman

Its: \_\_\_\_\_

Date: \_\_\_\_\_

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 \_\_\_\_\_, 2011.

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Legibly Print or Stamp Name of Notary)

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

\_\_\_\_\_  
My appointment expires \_\_\_\_\_

SPOKANE TRIBE CULTURAL CENTER 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 Chairman of Spokane Tribal Business Council, 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 \_\_\_\_\_,  
2011.

\_\_\_\_\_  
(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**

**EX IBIT E**  
**DEPARTMENT OF ECOLOGY LETTER**



# AGENDA SHEET FOR PARK BOARD MEETING OF: October 13, 2011



Submitting Division  
Riverfront Park

Contact Person:  
Pamela McKinzie-Lewis

Phone No.  
625-4653

## COMMITTEE

- x Riverfront
- o Golf
- o Recreation
- o Land
- o Urban Forestry
- o North Bank Ad-Hoc
- o Finance

CLERK'S FILE  
RENEWS  
CROSS REF  
ENG  
BID  
REQUISITION

OPR 2011-0085

3760-10

CR 11942

## AGENDA WORDING:

Change Order No. 5 to Rob's Demolition, Inc's original contract for the demolition the former YMCA Building, 507 N. Howard Street, Spokane, WA 99201, to include additional stream work. The amount of the original contract was \$574,700.00. Amount of the change order is \$43,025.56, excluding tax.

## BACKGROUND:

(Attach additional sheet if necessary)

Rob's Demolition was granted the original contract on January 31, 2011. After the initial contract was granted, it was determined that the additional work was needed to install the walls and pipe for the stream.

**RECOMMENDATION:** Approve

### Fiscal Impact:

Expenditure: \$46,768.78  
Revenue: \$  
Budget neutral:

### Budget Account:

# 1950-54300-94000-56104

**ATTACHMENTS:** Include in Packets:  
On file for Review in Office of City Clerk:

## SIGNATURES:

  
Requestor

  
Parks Accounting

  
Legal Department

Director of Parks and Recreation

**DISTRIBUTION:** Parks, Judy Moss  
Risk Manager, Pam Schroeder  
Parks, Leroy Eadie

Parks, Pamela McKinzie-Lewis  
Taxes and Licenses

Accounting, John Salstrom  
Purchasing, Thea Bremer

## PARK BOARD ACTION:

**CITY OF SPOKANE  
PARKS AND RECREATION DEPARTMENT  
CHANGE ORDER NO. 5**

NAME OF CONTRACTOR: Rob's Demolition

PROJECT TITLE: Demolition of Former YMCA Building, Spokane, WA

CITY CLERK CONTRACT NUMBER: 2011-0085

=====

DESCRIPTION OF CHANGE: Installation of walls and pipe                      AMOUNT: \$43,025.56

=====

**TOTAL AMOUNT: \$43,025.56**


<b>CONTRACT SUM (EXCLUDE SALES TAX)</b>	
ORIGINAL CONTRACT SUM (INCLUDE ALTERNATES)	\$574,700.00
NET AMOUNT OF PREVIOUS CHANGE ORDERS	\$129,124.78
CURRENT CONTRACT AMOUNT	\$703,824.78
CURRENT CHANGE ORDER (EXCLUDES SALES TAX)	\$ 43,025.56
<b>REVISED CONTRACT SUM</b>	<b>\$746,850.34</b>

<b>CONTRACT COMPLETION DATE</b>	
ORIGINAL CONTRACT COMPLETION DATE	4/25/11
CURRENT COMPLETION DATE	6/15/11
<b>REVISED COMPLETION DATE</b>	<b>12/31/11</b>

Contractor's Acceptance:                       Date: 27 Sep 11

City Approval: \_\_\_\_\_                      Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
          City Clerk

Pre-Approved as to form: Barbara Burns, Assistant City Attorney 



8420 EAST WOODLAND PARK DRIVE  
SPOKANE, WA 99217-9235  
OFFICE (509) 928-0431  
(509) 534-2970  
FAX (509) 534-9404  
MOBILE (509) 993-1719

# ROB'S DEMOLITION

**BONDED, LICENSED AND INSURED**  
#ROBSD\*\*238DU

## INVOICE

September 23, 2011

**TO:**

Pamela McKinzie  
City of Spokane Parks Department  
Via Email: PMcKinzie@SpokaneCity.org

**RE: YMCA – City OPR # 2011-0085 – Your Change Order # \_\_\_\_\_  
Our Bill 11-10**

**DESCRIPTION**

**AMOUNT**

1. Bridge rental – 5/15/11 -10/15/11 – 5 months

- Subcontractor Charges
  - Coeur d'Alene Crane – 5 months @ 4,200.00 21,000.00
  - Overhead & profit – 8% 1,680.00
  - Subtotal subcontractor charges 22,680.00
- Bond – 1.75% of contractor & subcontractor charges 396.90

**Subtotal** 23,076.90  
**Sales Tax** 2,007.69  
**Total** **\$25,084.59**

Thank you,

Robin D. R. Carper



8420 EAST WOODLAND PARK DRIVE  
SPOKANE, WA 99217-9235  
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(509) 534-2970  
FAX (509) 534-9404  
MOBILE (509) 993-1719

## ROB'S DEMOLITION

**BONDED, LICENSED AND INSURED**  
#ROBSD\*\*238DU

### INVOICE

September 23, 2011

**TO:**

Pamela McKinzie  
City of Spokane Parks Department  
Via Email: PMcKinzie@SpokaneCity.org

**RE: YMCA – City OPR # 2011-0085 – Your Change Order # \_\_\_\_\_  
Our Bill 11-9**

### DESCRIPTION

### AMOUNT

1. Install walls & pipe for stream	
▪ Subcontractor Charges	
○ Bacon Concrete	18,153.30
○ Overhead & profit – 8%	<u>1,452.26</u>
○ Subtotal subcontractor charges	19,605.56
▪ Bond – 1.75% of contractor & subcontractor charges	343.10
	<b>Subtotal</b>
	19,948.66
	<b>Sales Tax</b>
	<u>1,735.53</u>
	<b>Total</b>
	<b>\$21,684.19</b>

Thank you,

---

Robin D. R. Carper

**BACON CONCRETE INC.**

513 E Silver Pines Ct  
 Colbert WA 99005  
 Cont. Reg # BACONCI072L9  
 Phone 924-3900 Fax 468-7243

**Invoice**

Date	Invoice #
7/11/2011	3916

<b>Bill To</b>
Rob's Demolition 8420 E. Woodland Park Dr. Spokane Wa 99217

P.O. No.	Terms	Project
YMCA	Net 30	

Quantity	Description	Rate	Amount
	Install Walls & Pipe for Small Stream Under YMCA in River Front Park	0.00	
1	Mob	450.00	450.00
124	Man Hours	64.80	8,035.20
24	Service truck	42.00	1,008.00
42	Feet of Supply Pipe	24.25	1,018.50
20	Yards Supply Gravel Over Pipe	56.00	1,120.00
6	Hours Equipment Mini Excavator	140.00	840.00
	Concrete Forms for Wall	2,600.00	2,600.00
	Concrete Pump	480.00	480.00
4	Yard of Concrete	105.00	420.00
14	Bars of Rebar	9.20	128.80
	Overhead	1,000.22	1,000.22
	Profit	1,052.58	1,052.58
	Wholesaling	0.00%	0.00
Thank you for your business.		<b>Total</b>	<b>\$18,153.30</b>