

**AMENDMENT NO. 1
TO THE
FACILITY USE AGREEMENT BETWEEN
THE CITY OF SEATTLE
AND
FORCE 10 HOOPS, LLC
FOR THE USE OF KEYARENA
FOR PROFESSIONAL WOMEN’S BASKETBALL**

This First Amendment to the Facility Use Agreement (“Amendment No. 1”) is made and entered into by and between THE CITY OF SEATTLE (“City”), a Washington municipal corporation, acting by and through its Seattle Center Director (“Director”), and FORCE 10 HOOPS (“F10H”), a Washington limited liability company. The City and F10H are sometimes referred to individually as a “Party” and collectively as “the Parties”.

WHEREAS, F10H is the owner and operator of the Women’s National Basketball Association team the “Storm”; and

WHEREAS, City is the owner and operator of the Seattle Center, which includes a civic arena formerly known as KeyArena; and

WHEREAS, on July 18, 2017, as authorized by Ordinance No. 125323, the City and F10H executed the Facility Use Agreement for the Use of KeyArena for Professional Women’s Basketball (the “Agreement”) providing for the use and occupancy of portions of KeyArena for the presentation and broadcasting of all Storm home basketball games; and

WHEREAS, as acknowledged in the recitals of the Agreement, the Parties entered into the Agreement with a mutual desire to provide for the continuation of sustainable, local ownership of the Storm and for the maximum use of KeyArena both now and in the future while providing sufficient flexibility to allow the City to redevelop KeyArena and implement its Century 21 Plan; and

WHEREAS, as acknowledged in the Agreement, both Parties anticipate redevelopment of KeyArena to be beneficial to both Parties in the long term, and both Parties share the goal of the successful long-term presence of F10H at Seattle Center; and

WHEREAS, on September 25, 2018, as authorized by Ordinance No. 125669, the City entered into a Development Agreement, Lease Agreement and Seattle Center Integration Agreement (the “Transaction Documents”), with Seattle Arena Company (“ArenaCo”) for the design, renovation, lease and operation of KeyArena as the new Arena at Seattle Center (“Arena”); and

WHEREAS, the Transaction Documents affirm the value and importance of maintaining the presence of a WNBA team in the Seattle region, and accordingly include provisions to provide for F10H's future use of the new Arena for Storm home games; and

WHEREAS, the City has exercised the right under Section XXVII.D of the Agreement to close KeyArena and require the Storm to play home games at another venue, and as a result F10H shall be entitled receive relocation payments for lost revenue and additional costs; and

WHEREAS, the Parties desire to modify the structure of relocation payments to encourage and incentivize the Storm to play home games at venues located in Seattle, to the maximum extent possible;

NOW, THEREFORE, in consideration of the covenants, promises and performance hereinafter described, the City and the F10H covenant and agree as follows:

- A. Effective Date. This Amendment No. 1 is effective upon execution by both the City and F10H.

- B. Subsection XXVII D.3 of the Agreement is deleted in its entirety and replaced with the following:

3. Relocation for the 2019 and 2020 Seasons

F10H acknowledges that the City provided timely notice that the Premises will be unavailable for the 2019 and 2020 WNBA Seasons due to Redevelopment of KeyArena. The City is working collaboratively with F10H to help secure an alternative venue(s) for the Home Game dates in 2019 and 2020 for which KeyArena will be unavailable. For the 2019 and 2020 WNBA seasons the City shall pay F10H the following amounts:

a) Per Season: One hundred percent (100%) of F10H's Additional Costs (if any), and one hundred percent (100%) of Lost Revenue (if any), up to a total combined amount of One Million Three Hundred Fifty Thousand Dollars (\$1,350,000), plus seventy-five percent (75%) of F10H's Additional Costs and seventy-five percent (75%) of F10H's Lost Revenue which exceed the total combined amount of One Million Three Hundred Fifty Thousand Dollars (\$1,350,000) (if any) up to a maximum total payment Two Million Six Hundred Thousand Dollars (\$2,600,000) per season; and

b) Per Playoff Home Game: In addition to the per season relocation payment, Fifty Thousand Dollars (\$50,000) per playoff Home Game played during rounds 1 and 2 and Sixty Thousand Dollars (\$60,000) per playoff Home Game played during rounds 3 and 4.

c) Supplemental Payments for Playoff Home Games: In the event there is one or more playoff Homes Game(s) in any season for which the maximum total relocation payment of

Two Million Six Hundred Thousand Dollars has not been reached, then in addition to the per game amount under Subsection XXVII.D.3(b), F10H shall be entitled to payment as follows: for rounds 1 and 2 playoff Home Games, One Hundred percent (100%) of F10H's Additional Costs and Lost Revenue compared to the Average Cost per Season and Lost Revenue per season each divided by the Average Number of Games per Season in excess of Fifty Thousand Dollars (\$50,000) up to a total of One Hundred Thirty Thousand Dollars (\$130,000) per playoff Home Game plus Seventy-Five percent (75%) of F10H's Additional Costs and Lost Revenue in excess of One Hundred Thirty Thousand Dollars (\$130,000) per playoff Home Game up to a total of Two Hundred Sixty Thousand (\$260,000) per playoff Home Game; for rounds 3 and 4 playoff games One Hundred percent (100%) of F10H's Additional Playoff Costs and Lost Playoff Revenue in excess of Sixty Thousand Dollars (\$60,000) and up to a total of One Hundred Forty (\$140,000) per playoff Home Game plus Seventy-Five percent (75%) of F10H's Additional Playoff Costs and Lost Playoff Revenue in excess of One Hundred Forty Thousand Dollars (\$140,000) per playoff Home Game up to a total of Two Hundred Sixty Thousand (\$260,000) per playoff Home Game. The Average Number of Games per Season shall be calculated by adding the number of regular season and post-season Home Games during the four immediately preceding seasons and dividing that amount by four; provided that any season before 2016 shall not be used for purposes of averaging, and the number of seasons included in calculating the Average Number of Games per Season shall be reduced as necessary to exclude seasons prior to 2016. When and if the maximum Two Million Six Hundred Thousand Dollars (\$2,600,000) per season is reached, payment of Additional Costs and Additional Playoff Costs and Lost Revenue and Lost Playoff Revenue for such season shall cease.

d) For purposes of this Subsection XXVII D. 3. only,

“Additional Playoff Costs” means the reasonable, necessary and actual Direct Costs incurred by F10H for playing third or fourth round playoff game(s) at a venue other than KeyArena minus the 2018 Average Playoff Cost incurred by F10H for playing third or fourth round playoff game(s) at KeyArena. “Direct Costs” include all license fees charges by the alternate venue; transportation costs for floor and team equipment; locker room and training facility set up costs; any other charges incurred at the alternate facility for services which are included in the License Fee for KeyArena, including but not limited to IT / Broadcast set-up fees; advertising to the public for change in venue; fees to create new signage, game graphics, seat maps or any other written material typically used for Home Games. Direct Costs shall not include F10H's general operating costs and costs which would reasonably be incurred regardless of the venue. The “Average Playoff Cost” of playoff games played at KeyArena shall be calculated on the 2018 season game basis with distinction between the third and fourth round playoff games as follows:

Average Playoff Cost per game: The average cost of a single KeyArena playoff Game for round three and four Playoff Games shall be calculated by adding F10H's total actual costs incurred respectively, for the three 2018 third round games and dividing that amount by

three for the third round games, and for the two 2018 fourth round playoff games and dividing that amount by two for the fourth round games.

“Lost Playoff Revenue” means the amount by which that portion of F10H’s average per Home Game Revenue received from the three 2018 third round playoff Home Games or the two 2018 fourth round playoff Home Games at KeyArena exceeds the amount of per Home Game Revenue received by F10H from playing the same round of playoff Home Game(s) at a venue other than KeyArena. Lost Playoff Revenue for the third and fourth round games shall be calculated on a per game basis by using the same averaging methodology used for calculating the Average Playoff Cost.

e) For purposes of calculating relocation payments in 2019 and 2020 only, this Subsection (e) supersedes Section XXVII.D.5. The sum of the City’s per season and supplemental play-off relocation payments to F10H under Subsections XXVII.D.3(a) and XXVII.D.3(c) of this Amendment No. 1 shall under no circumstances exceed Two Million Six Hundred Thousand Dollars (\$2,600,000.00) per season.

C. Unless otherwise defined in this Amendment No. 1, all capitalized terms shall have the same meaning as given in the Agreement. After the effective date of this Amendment No. 1, all references to the “Agreement” shall mean the Agreement and this Amendment No. 1. All provisions of the Agreement that have not been modified by this Amendment No. 1 shall remain in full force and effect. This Amendment No. 1 only applies to the calculation of relocation payments for the 2019 and 2020 WNBA seasons.

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

FORCE 10 HOOPS, LLC

THE CITY OF SEATTLE

By: _____
Ginny Gilder
Force 10 Hoops Owner

By: _____
Robert Nellams
Seattle Center Director

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

Acknowledgement for F10H

On this _____ day of _____, 2019, before me personally appeared Ginny Gilder, to me known to be the _____ of Force 10 Hoops, LLC, the limited liability company that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and further that said officer has the authority to sign on behalf of said corporation.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

(Signature)

(Print or type name)

NOTARY PUBLIC in and for the State of Washington, residing at _____.
My appointment expires _____.

STATE OF WASHINGTON)
)ss. Acknowledgement for the City of Seattle
COUNTY OF KING)

On this _____ day of _____, 2019, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Robert Nellams, to me known to be the Seattle Center Director, who executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of The City of Seattle, for the uses and purposes herein mentioned, and on oath stated that she authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

(Signature)

(Print or type name)

NOTARY PUBLIC in and for the State of Washington, residing at _____.
My appointment expires _____.