

## **LEASE OF FIRE STATION 6**

THIS LEASE OF FIRE STATION 6 (“Lease”) is by and between **THE CITY OF SEATTLE** (“City”), a city of the first class of the State of Washington, acting by and through its Department of Finance and Administrative Services and its Director (“Director”), and Africatown Community Land Trust (“Lessee”) a non-profit corporation organized under the laws of the State of Washington.

### **RECITALS**

The City owns real property located in Seattle’s Central District that includes a historic building formerly known as Fire Station 6 that is not in use and is surplus to the City’s needs.

The cost of rent and economic challenges have resulted in displacement challenges for a number of businesses in the Central District, and Africatown Community Land Trust’s mission is to acquire, steward, and develop land assets necessary for the African diaspora community to grow and thrive in its historic place in Seattle’s Central District.

Separate from this Lease, Africatown was selected for a City grant, subject to final agreement, to create the William Grose Center for Cultural Innovation, a catalyst to support the Black community’s rich history of innovation and entrepreneurship that has been negatively impacted by local, state, and federal government policies and private sector practices. The William Grose Center’s activities will provide a means to help repair some of the harm that past policies/practices and current growth has created and to advance community self-determination.

Pursuant to City of Seattle Resolution 31856 and that certain 2019 *Memorandum of Agreement Implementing Criteria for Initiating Transfer of Mutually Offsetting Facilities to Tenants* (“*Transfer MOA*”), the City has established criteria for transferring certain City properties to tenants who meet the transfer criteria established by the City for transferring property to tenants.

The City and Africatown Community Land Trust mutually desire to activate Fire Station 6 and develop it into the William Grose Center through a long-term lease of the property while working toward the criteria established in the Transfer MOA for a transfer of the property.

### **AGREEMENT**

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

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

1.1 **Premises.** The improved real property commonly known as former Fire Station 6, located at 101 23<sup>rd</sup> Ave South, Seattle, King County, Washington and legally described on Exhibit A, which is attached and made a part of this Lease (hereinafter “**Premises**”). The Premises includes an existing building and associated parking as generally depicted on the Property Map which is attached and made a part of this Lease as Exhibit B.

1.2 Commencement Date. The date when signed by an authorized representative of each party following an authorizing ordinance of City Council.

1.3 Expiration Date. Ninety-nine years following the Commencement Date, unless terminated earlier under the terms and conditions of this Lease.

1.4 Initial Tenant Improvements. The improvements described on Exhibit C.

1.5 Rent. The community services, property caretaking functions and public benefits more particularly described in Section 4.

1.6 Additional Charges. Any monetary sum payable by Lessee to the City under this Lease.

1.7 Security Deposit. Reserved.

1.8 Notice Addresses. The initial representatives and contact information for notice are designated in this Section 1.8 and are subject to change under Section 26.

If to the City:                   Nonila Masmela  
  The City of Seattle  
  Property Management  
  Finance and Administrative Services  
  PO Box 98469  
  Seattle, WA 98124-4689  
  Phone: 206-733-9406

For notices required under Section:  
ARTS Registrar (Sandy Esene)  
[Sandy.esene@seattle.gov](mailto:Sandy.esene@seattle.gov)  
206-233-3930  
PO Box 94748  
Seattle, WA 98124-4748

If to Lessee:                   Africatown Community Land Trust  
  K. Wyking Garrett  
  Andrea Caupain  
  Margo Jones  
  1437 S Jackson St, Seattle WA 98144  
  PO box 22328 Seattle WA 98122  
  Phone: 206 596 -2896

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

- Exhibit A - Legal Description
- Exhibit B – Property Map
- Exhibit C – Initial Tenant Improvements

Exhibit D – Floor Plan  
Exhibit E – Mutual and Offsetting Benefit Transfer Criteria

2. **Premises.**

2.1 **Grant.** City hereby leases to Lessee and Lessee hereby leases from City the Premises.

2.2 **Condition.** City's willingness to lease the Premises is conditioned, in part, on Lessee's acceptance of the Premises in their "**as is**" condition with all faults, including possible encroachment, building code issues, current land use and zoning requirements. Lessee acknowledges the Premises are subject to the following:

ORDINANCE NO. 122462 OF THE CITY OF SEATTLE RELATING TO HISTORIC PRESERVATION AND LANDMARK DESIGNATION, INCLUDING THE TERMS AND PROVISIONS THEREOF: RECORDED: AUGUST 29, 2007 RECORDING NUMBER: 20070829001760.

MATTERS DISCLOSED BY SURVEY RECORDED UNDER RECORDING NUMBER 20060728900001, AS FOLLOWS: FENCE NOT CONFORMING TO WESTERLY BOUNDARY. POSSIBLE RIGHTS OF OTHERS BY REASON THEREOF.

City hereby disclaims all representations, statements, and warranties, expressed or implied, with respect to the condition or suitability of the Premises for Lessee's Permitted Use under this Lease. By executing this Lease, Lessee accepts the Premises in their "**as-is**" condition and releases City from any claims, liabilities, fines, or damages arising from the condition of the Premises.

2.3 **Initial Use and Occupancy Limitations.** Lessee's use and occupancy shall be initially limited to a portion of the first floor of the Premises depicted on the floor plan attached as Exhibit D, excluding the apparatus room and dorm space. Lessee shall not expand its use and occupancy to any other portion of the Premises until all required building and land use code requirements are met, provided the parking lot may be used for temporary events as defined by any required special event permit and subject to the following conditions: (1) any event must be for purposes consistent with required uses under Section 4, and (2) the event must be in compliance with all building and land use codes.

2.4 **Future Use and Occupancy.** Both parties intend for the entire Premises to be fully activated and utilized for uses consistent with Section 4 and within the timelines described in Section 3 and in a manner consistent with all required environmental reviews, historic designation requirements and applicable laws and regulatory requirements.

2.5 Permitted Uses. Lessee shall use the Premises for the purposes described in Section 4 and for no other purposes without the City’s prior written approval (the “Permitted Uses”). Lessee acknowledges that as of the Commencement Date, certain uses are not allowed under the applicable land use and building codes and other ordinances and regulations. Until all regulatory and legal requirements are met, Lessee shall limit the use of the Premises to those Permitted Uses that are consistent with all regulatory and legal requirements.

2.6 Artwork on Premises. The Premises include a work of art known as “Lightning Bolts” that is part of City’s public art collection, which the City shall maintain at its expense. Lessee shall refrain from any alterations or other activity that would result in viewing obstructions, damage to or removal of the artwork. Lessee shall report any maintenance needs or damage to the artwork or any existing artwork plaque as promptly as reasonable, but in any case within no less than thirty (30) days. The City reserves the right to deaccession the artwork from the City’s collection and remove it from the Premises at any time.

3. Lease Term.

3.1 Initial Term. This Lease shall be for a term (“Lease Term” or “Term”) beginning on the Commencement Date specified in Subsection 1.2 and ending on the Expiration Date specified in Subsection 1.3, unless the Lease Term is terminated earlier in accordance with the provisions of this Lease. Lessee shall have the right of use and possession of the Premises from the Commencement Date.

3.2 Early Termination. In addition to City’s right to terminate this Lease under Section 18 (Destruction) and Section 20 (Default), the City shall have the right to terminate this Lease upon thirty (30) days written notice to Lessee in the following circumstances:

3.2.1 If Lessee fails to complete additional tenant improvements necessary to activate the full Premises for the Phase 1 Required Use within two years of the Commencement Date.

3.2.2 If Lessee fails to satisfy one of the two conditions in this Section 3.2.2 within ten (10) years of the Commencement Date:

Condition 1. Satisfy the Mutual and Offsetting Benefit Transfer Criteria attached as Exhibit D, in which case the Director and Lessee will negotiate documents to submit to City Council for the transfer the Premises to ACLT with deed restrictions to ensure public benefits are provided and to ensure future development includes affordable housing, in which case, conditioned upon City Council authorization, this Lease will terminate at closing of the transfer of title to the Premises to Lessee.

OR

Condition 2. Fully activate and use the entire Premises for community center uses and public benefits as described in Phase 2 Required Use (Section 4.1.2 below),

subject to all regulatory limitations and approvals, including but not limited to environmental review, zoning, and land use code requirements.

Notwithstanding the foregoing, if Lessee is diligently and in good faith making progress to meeting the conditions in Sections 3.2.1 and 3.2.2 but is delayed as a result of permit delays or other Force Majeure condition (as defined below), the deadline for Lessee to meet the obligations shall be extended by a time equivalent to the delay.

4. **Rent.** Initially, Lessee's consideration for use and occupancy of the Premises shall be Lessee's management and operation of the William Grose Center for Cultural Innovation (the "Center"), which shall provide culturally responsive community spaces that are not operated for profit and that provide public benefits. Additional consideration shall be Lessee's development and use of the entire Premises as further described in the Phase 1 Required Use under Section 4.1.1 and Lessee's future activation of the entire Premises for the benefit of the community for the Phase 2 Required Use (Section 4.1.2). Throughout the Term, Lessee's consideration shall include the caretaking functions and maintenance obligations in the Lease, which shall be at Lessee's expense, and Lessee's covenant that any future expansion shall include affordable housing.

4.1.1 **Phase 1 Required Use.** Lessee shall complete any additional tenant improvements that are required to redevelop the entire Premises from a former fire station and to expand the operations of the Center and continually operate it as a community center (the "Community Center") and to provide COVID-19 pandemic relief (collectively, the "Phase 1 Required Use"). The Community Center shall offer robust programming and activation, which may include business consulting services, outdoor entrepreneur events (small groups year-round, summer pop-up events, Umoja Fest, Design Weekend), business incubation support, and small entrepreneur trainings.

Additionally, Lessee shall use the Premises for pandemic relief programming to address disproportionate impact of COVID-19 disease on African American entrepreneurs. Programming is to be focused on creating solutions for microenterprise and small businesses that have been impacted, which may include creating a model for shared retail/culinary space, exploring co-ops as a strategy to build economic stability and increase economic resiliency among moderate and low-income entrepreneurs and unemployed workers, and creating a hub for increased online activation for businesses.

4.1.2 **Phase 2 Required Use.** Within ten (10) years of the Commencement Date, Lessee shall activate and use the entire Premises ("Phase 2 Required Use") expanding the Community Center programs and functions to a level comparable to other community centers and consistent with the Phase 1 Required Uses and any other uses approved by the City that provide public benefits.

4.1.3 **Development of Affordable Housing.** While the Phase 2 Required Use does not obligate Lessee to provide affordable housing, the City's willingness to lease the Premises to Lessee this is conditioned, in part, upon the limitations in this Section 4.1.3. To the extent there is any future development of the Premises that expands the existing footprint of the

building above or below grade or that creates any new facility or structure on the Premises, Lessee covenants that the development shall include creation and maintenance of affordable housing units with a mix of unit sizes which are affordable to and serve households with income levels up to 80% of area median income (“AMI”), and with a majority of units serving households with incomes up to 60% of AMI.

4.1.4 Regulatory and Funding Requirements. All future use and redevelopment of the Premises shall be conditioned upon completion of environmental review and satisfaction of all building, land use, and historic landmark board approvals necessary for the redevelopment. Lessee acknowledges that this Lease does not convey any regulatory approvals or commit the City to any future action. Additionally, this Lease does not commit the City to future funding of any development or tenant improvements on the Property. All future improvements shall be subject to City’s review and approval under Section 10.2.

4.1.5 Inclusion and Non-discrimination in Services. In addition to the general nondiscrimination obligations under Section 7.2, Lessee shall not deny an otherwise qualified individual any services or other benefits provided under this Section 4 on the grounds of race, color, sex, religion, national origin, creed, marital status, age, sexual orientation, gender identity, political ideology, ancestry, or the presence of any sensory, mental or physical handicap. Lessee shall ensure that the community services and public benefits provided under this Lease are inclusive of BIPOC and LGBTQ+ community members.

4.1.6 Reporting. Beginning March 31 of the year following the Commencement Date, and thereafter annually, Lessee shall submit to the City a report documenting Lessee’s public benefit services in a form reasonably approved by the City that, at a minimum, includes relevant metrics, including but not limited to, the types of services provided, and the number of clients served and the demographics of individuals served.

4.1.7 Funding. The City will collaborate with Lessee from time to time to identify other sources of funds, which may include City grant funds obtained through other competitive processes, but there is no obligation under this Lease for the City to provide any additional public funds for initial tenant improvements, future development of the Premises, or programming.

5. **Late Charge; Interest.** If Lessee shall fail to pay the City any Additional Charge within ten (10) days of the due date under this Lease, the balance shall accrue interest at a rate of 1% per month from the due date until the date when paid in full, which amount may be prorated on a daily basis.

6. **Security Deposit.** N/A

7. **Lessee 's Operations.**

7.1 **Use of Premises.** Lessee shall use the Premises only for the Permitted Uses. As City's willingness to enter into this Lease with Lessee was predicated, in part, on the nature of Lessee 's use, Lessee shall not use or permit the use of the Premises for any other business, or purpose, or under any other name, without City's prior written consent. Lessee shall maintain the Premises in a clean, orderly, safe, and neat fashion and shall neither commit waste nor permit any waste of the Premises. Lessee shall not permit any accumulation of trash on or about the Premises. Lessee shall not create or contribute to the creation of a nuisance in the Premises.

7.2 **Compliance with Laws; Nondiscrimination.**

7.2.1 **General Obligation.** Lessee shall not use or permit the Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, ordinance or regulation, or for any purpose offensive to the standards of the community in which the Premises are located. Lessee shall promptly comply, at its sole cost and expense, with all laws, ordinances, and regulations now in force or hereafter adopted relating to or affecting the condition, use or occupancy of the Premises.

7.2.2 **Nondiscrimination.** Without limiting the generality of Subsection 7.2.1, Lessee agrees to and shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and The City of Seattle, including but not limited to Chapters 14.04, 14.10 and 20.42 of the Seattle Municipal Code, as they may be amended from time to time, and rules, regulations, orders and directives of the associated administrative agencies and their officers.

7.3 **Liens and Encumbrances.** Lessee shall keep the Premises free and clear of, and shall indemnify, defend and hold City harmless from, any and all, liens and encumbrances arising or growing out of any act or omission, or breach of this Lease or its use, improvement or occupancy of the Premises by Lessee or any of its principals, officers, employees or agents or subtenants. If any lien is so filed against the Premises Lessee shall either cause the same to be fully discharged and released of record within ten (10) days after City's written demand therefor or, within such period, provide City with cash or other security acceptable to City in an amount equal to one and one-half (1½) times the amount of the claimed lien as security for its prompt removal. City shall have the right to disburse such security to cause the removal of the lien if City deems such necessary, in City's sole discretion.

7.4 **Hazardous Substances.** Lessee shall not, without City's prior written consent, keep on or about the Premises any substance designated as, or containing any component now or hereafter designated as hazardous, dangerous, toxic or harmful and/or subject to regulation under any federal, state or local law, regulation or ordinance ("Hazardous Substances"), except customary office, kitchen, cleaning and other related supplies in normal quantities handled in compliance with applicable laws. With respect to any Hazardous Substances stored with City's consent, Lessee shall promptly, timely and completely comply with all governmental requirements for reporting and record keeping; submit to City true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities; within five (5) days after City's request

therefor, provide evidence satisfactory to City of Lessee's compliance with all applicable governmental rules, regulations and requirements; and comply with all governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment and disposal of Hazardous Substances. Any and all costs incurred by City and associated with City's inspections of the Premises and City's monitoring of Lessee's compliance with this Subsection 7.4, including City's attorneys' fees and costs, shall be Additional Charges and shall be due and payable to City within ten (10) days after City's demand therefor, if Lessee's violation of this Subsection 7.4 is discovered as a result of such inspection or monitoring. Lessee shall be fully and completely liable to City for any and all cleanup costs and expenses and any and all other charges, expenses, fees, fines, penalties (both, civil and criminal) and costs imposed with respect to Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances in or about the Premises. In addition to the general indemnification obligation under this Lease, Lessee shall indemnify, defend and hold City harmless from any and all of the costs, fees, penalties, charges and expenses assessed against, or imposed, upon City (as well as City's attorneys' fees and costs) as a result of Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances on or about the Premises. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Lease.

## 8. Utilities.

8.1 General. Lessee shall arrange for accounts with utility providers to be in Lessee's name and Lessee shall pay when due to the appropriate providers, all charges for utilities for the Premises, including but not limited to, electricity, water and sewer services and data and telecommunications services.

8.2 Refuse Collection; Recycling of Waste Materials. Lessee shall provide all necessary housekeeping and janitorial services for the Premises at a level consistent with other similar community facilities and operations and to the Director's reasonable satisfaction. Lessee shall be responsible for proper storage and removal of trash, litter pickup and recycling consistent with City standards.

8.3 Interruption. City shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption or failure of services due to any cause whatsoever, including, but not limited to, electrical surges, or from failure to make any repairs or perform any maintenance. No temporary interruption or failure of such services incident to the making of repairs, alterations or improvements or due to accident, strike or conditions or events beyond City's reasonable control shall be deemed an eviction of Lessee or to relieve Lessee from any of Lessee's obligations hereunder or to give Lessee a right of action against City for damages. Lessee acknowledges its understanding that there may be City-planned utility outages affecting the Premises and that such outages may interfere, from time to time, with Lessee's use of the Premises. City shall provide Lessee with not less than 48 hours' prior written notice of any City-planned electricity outage in the Premises. City has no obligation to provide emergency or backup power to Lessee. The provision of emergency or backup power to the Premises or to enable the equipment therein to properly function shall be the sole responsibility of Lessee. If utilities are interrupted at the Premises so as to render it impossible for Lessee to use the Premises to provide the services contemplated under Section 4, Lessee's obligation to provide the services shall be suspended for

the duration of the disruption and Lessee shall promptly resume services upon restoration of utility service.

9. **Licenses and Taxes.**

9.1 Unless Lessee provides the City with evidence of exemption, Lessee shall leasehold excise tax at the applicable rate, which as of the Effective Date is 12.84% of contract rent as defined under RCW Chapter 82.29A and which is subject to change. If the State of Washington makes any demand upon the City for any leasehold or other tax created by Lessee's interest in this Lease, Lessee shall remit the sums due to City within thirty (30) days of written invoice from City. Without any deduction or offset whatsoever, Lessee shall be liable for, and shall pay prior to delinquency, all other taxes, license and excise fees and occupation taxes covering the business conducted on the Premises and all personal property taxes and other impositions levied with respect to all personal property located at the Premises; Lessee shall be responsible for, and shall pay prior to delinquency, all fees, charges, or costs, for any governmental inspections or examinations relating to Lessee's use and occupancy of the Premises.

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

10. **Alterations by Lessee.**

10.1 **Initial Tenant Improvements.** Lessee shall design and construct the Initial Tenant Improvements in compliance with the requirements of Section 10.2. The City will collaborate with Lessee to identify sources of funds for the Initial Tenant Improvements, which may include City grant funds obtained through other competitive processes such as the City's Economic Development Initiative grant program and Community Development Block Grant program, but there is no obligation under this Lease for the City to provide any public funds for Initial Tenant Improvements or future development and alterations. Additionally, this Lease does not substitute for or provide any regulatory approvals and any review of plans or specifications required by this Lease is for the City's benefit in its capacity as property owner only.

10.2 **General Requirements Regarding Alterations.** Other than the Initial Tenant Improvements described on Exhibit C, Lessee shall not make any alterations, additions, or improvements in or to the Premises without first submitting to City professionally-prepared plans and specifications for such work and obtaining the Director's prior written approval thereof. As a condition of approval, the Director may require Lessee to demonstrate to the Director's reasonable satisfaction that Lessee has adequate funding to complete the proposed alterations. Lessee shall complete design of all improvements and alterations to the Premises in compliance with all permitting and legal requirements, including but not limited to compliance with permits and applicable building codes, and laws, including the Americans with Disabilities Act (ADA) taking into consideration Title II and III. In cases where the Title II and III standards differ, the design shall

comply with the standard that provides the highest degree of access to individuals with disabilities. Additionally, Lessee expressly acknowledges that the provisions of the ADA may exceed requirements contained in building codes and other regulations and that in such instances, the ADA requirements shall control. Lessee shall cause all alterations, additions and improvements to the Premises to be completed at Lessee's sole cost and expense by a contractor approved by the Director, which shall not be unreasonably withheld, and in a manner that (a) is consistent with the Director-approved plans and specifications and any conditions imposed by the Director in connection therewith; (b) is in conformity with first-class, commercial standards; (c) includes acceptable insurance coverage for City's benefit; (d) does not affect the structural integrity of the Premises or any of the Premises' systems; and (e) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Premises. Lessee shall secure all governmental permits and approvals required for the work; shall comply with all other applicable governmental requirements and restrictions, including any certificate of approval or other historic landmark requirements; and shall reimburse City for any and all expenses incurred in connection therewith.

10.3 Indemnity. Except as provided in Section 14 with regard to concurrent negligence, Lessee shall indemnify, defend and hold City harmless from and against all losses, liabilities, damages, liens, costs, penalties and expenses (including attorneys' fees, but without waiver of the duty to hold harmless) arising from or out of Lessee's performance of such alterations, additions and improvements, including, but not limited to, all which arise from or out of Lessee's breach of its obligations under terms of this Section 10.

10.4 Surrender of Improvements. All alterations, additions and improvements (expressly including all light fixtures; heating and ventilation units; floor, window and wall coverings; and electrical wiring), except Lessee's moveable trade fixtures and appliances and equipment not affixed to the Premises (including without limitation furniture, computers, point of sale systems and registers) shall become the property of City at the expiration or termination of this Lease without any obligation on its part to pay for any of the same. At City's request, Lessee shall execute a deed or bill of sale in favor of City with respect to such alterations and/or improvements. Notwithstanding the foregoing, Lessee shall remove all or any portion of such alterations and/or improvements on the expiration or termination of this Lease if City specifically so directs, in writing, at the time of City's issuance of its approval thereof. Within ninety (90) days after the completion of any alteration, addition or improvement to the Premises, Lessee shall deliver to City a full set of "as-built" plans of the Premises showing the details of all alterations, additions and improvements as well as the warranty information/cut sheets specifications for installed unmovable equipment, wall covering and flooring made to the Premises by Lessee.

10.5 Effect of Director's Approval. The Director's review and approval in Section 10.1 is for the City's benefit in its capacity as landlord and to ensure the delivery of consideration for this Lease. The approvals under Section 10.1 shall not substitute for any regulatory approvals required by law, nor shall such approval be the basis for any liability of the City. Alterations shall be completed at Lessee's sole cost and risk with respect to cost overruns, delays, damage, and any other liability.

## 11. Care of Premises.

11.1 General Obligation. Lessee shall take good care of the Premises and shall reimburse City for all damage done to the Premises that results from any act or omission of Lessee or any of Lessee's officers, contractors, agents, invitees, licensees or employees, including, but not limited to, cracking or breaking of glass. Lessee shall at its own expense, at all times, keep the Premises and areas immediately adjacent thereto in a neat, clean, safe, and sanitary condition; and keep the glass of all windows and doors serving such areas clean and presentable. Lessee shall furnish all cleaning supplies and materials needed to operate such areas and maintain them in the manner prescribed in this Lease. If Lessee fails to comply with this Section after City provides written notice to Lessee of specifying the failure and a reasonable time for cure, City may, at its option, perform the work at Lessee's cost. Upon receipt of written statements from City, Lessee shall pay the City for the entire actual and reasonable cost of the work as an Additional Charge within thirty (30) days of invoice. City shall have the right to enter the Premises for such purposes. City shall not be liable for interference with light, air, or view.

11.2 Routine and Major Maintenance. Except as provided under Section 11.3, the City shall have no maintenance or repair obligations with respect to the Premises. Lessee shall, at its sole expense, be responsible for all routine and major maintenance and capital improvements necessary to maintain the Premises (including the structural aspects and exterior of the building on the Premises) and the heating, ventilation, utility, electric and plumbing and other systems and equipment serving the Premises in a reasonably good operating condition that allows for the Permitted Uses and allows for the Permitted Uses. If Lessee fails to comply with this Section after City provides written notice to Lessee of specifying the failure and a reasonable time for cure, City may, at its option, perform the work at Lessee's cost. Upon receipt of written statements from City, Lessee shall pay the City for the entire actual and reasonable cost of the work as an Additional Charge within thirty (30) days of invoice. City shall have the right to enter the Premises for such purposes. City shall not be liable for interference with light, air or view associated with the work.

11.3 Maintenance of Public Art. City shall maintain, at its sole expense, the public artwork "Lightning Bolts" located on the Premises. The City reserves the right to access the Premises during normal business hours to perform the maintenance, or at such other time as the parties may mutually agree.

11.4 Prohibition Against Installation or Integration of Any Work of Visual Art on Premises Without City's Consent. City reserves to and for itself the right to approve or disapprove of the installation or integration on or in the Premises of any "work of visual art," as that term is defined in the Visual Artists Rights Act of 1990, as now existing or as later amended, and to approve or disapprove of each and every agreement regarding any such installation or integration. Lessee shall not install on or integrate into or permit any other person or entity to install on or integrate into, the Premises any work of visual art that cannot be removed without damage to the work of visual art without City's prior, express, written consent. City's consent to the installation of any such artwork may be granted, granted upon one or more conditions, or withheld in City's reasonable discretion. As a condition of any consent, City may require Lessee to obtain a written waiver from the artist that allows removal of the work of visual art at the end of the Term.

11.5 Lessee's Indemnification of City Against Liability under Visual Artists Rights Act of 1990. Lessee shall protect, defend, and hold City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising

as a consequence of (a) the installation or integration of any work of visual art on or into the Premises; or (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any breach of Subsection 11.4 of this Lease; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by Lessee or any of its officers, employees or agents. This indemnification obligation shall exist regardless of whether City or any other person employed by City has knowledge of such installation, integration, or removal or has consented to any such action or is not required to give prior consent to any such action. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Lease.

12. **Signs and Recognition.**

12.1 **Signs, Generally.** Lessee shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster, or any advertising matter whatsoever anywhere in or about the Premises, without the Director's prior written consent and without first obtaining any approval required by the Landmarks Board or other historic resources officer. Lessee shall remove all signage at the expiration or earlier termination of this Lease and repair any damage or injury to the Premises.

12.2 **On-Premises Signs.** Reserved.

13. **Surrender of Premises.**

13.1 **General Matters.** At the expiration or sooner termination of the Lease Term, Lessee shall return the Premises to City in the same condition in which received on the Commencement Date (or, if altered, then the Premises shall be returned in such altered condition unless otherwise directed by City pursuant to Section 10), reasonable wear and tear, casualty and condemnation damages not resulting from or contributed to by negligence of Lessee, excepted. Prior to such return, Lessee shall remove its moveable trade fixtures and appliances and equipment that have not been attached to the Premises and shall repair any damage resulting from their removal. In no event shall Lessee remove floor coverings; heating or ventilating equipment; lighting equipment or fixtures; or floor, window or wall coverings unless otherwise specifically directed by City in writing at the time when City's approval of their installation is issued. Lessee's obligations under this Section 13 shall survive the expiration or termination of this Lease. Lessee shall indemnify City for all damages and losses suffered because of Lessee's failure to remove voice and data cables, wiring and communication lines and moveable trade fixtures and appliances and to redeliver the Premises on a timely basis.

13.2 **Cable and Wiring.** Notwithstanding any provision to the contrary in this Lease and if the City so directs, on or by the Expiration Date, or if this Lease is terminated before the Expiration Date, within fifteen (15) days after the effective termination date, whichever is earlier, Lessee shall remove all voice and data communication and transmission cables and wiring installed by or for Lessee to serve any telephone, computer or other equipment located in that portion of the Premises, which wiring and cabling shall include all of the same located within the interior and exterior walls and through or above the ceiling or through or below the floor of such portion of the Premises, vertical or horizontal riser, raceway, conduit, channel, or opening connecting to the portion of the

Premises to be vacated and surrendered to City as of such Expiration Date or earlier termination date. Lessee shall leave the mud rings, face plates and floor boxes in place.

14. **Waiver; Indemnification.**

14.1 **Lessee's Indemnification.** Except as otherwise provided in this section, Lessee shall indemnify, defend (using legal counsel reasonably acceptable to City) and save City, City's officers, agents, employees and contractors harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable personnel and overhead costs and attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to, any property arising out of or in connection with (i) Lessee's occupation, use or improvement of the Premises, or that of any of its employees, agents or contractors, (ii) Lessee's breach of its obligations hereunder, or (iii) any act or omission of Lessee or any subtenant, licensee, assignee, invitee or concessionaire of Lessee, or of any officer, agent, employee, guest or invitee of any of the same in or about the Premises. Lessee agrees that the foregoing indemnity specifically covers actions brought by its own employees. This indemnity with respect to acts or omissions during the Lease Term shall survive termination or expiration of this Lease. The foregoing indemnity is specifically and expressly intended to, constitute a waiver of Lessee's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the extent necessary to provide City with a full and complete indemnity from claims made by Lessee and its employees, to the extent of their negligence. Lessee shall promptly notify City of casualties or accidents occurring in or about the Premises. **CITY AND LESSEE ACKNOWLEDGE THAT THEY SPECIFICALLY NEGOTIATED AND AGREED UPON THE INDEMNIFICATION PROVISIONS OF THIS SECTION 14.**

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

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

14.4 City's Release of Claims. City hereby fully and completely waives and releases all claims against Lessee to the extent a loss or damage is caused by City's negligence, willful misconduct, or breach of this Lease.

15. **Insurance.**

15.1 Minimum Insurance to be Secured and Maintained. Prior to the Commencement Date, Lessee shall secure and shall thereafter maintain (or cause its Subtenant(s) to secure and maintain) in full force and effect, at no expense to City, and throughout the entire Lease Term, insurance as specified below:

15.1.1 Commercial General Liability Insurance including:

Premises/Operations Liability  
Products/Completed Operations Liability  
Personal/Advertising Liability  
Contractual Liability  
Stop Gap/Employers Contingent Liability  
Independent Contractors Liability  
Liquor Liability/Host Liquor Liability  
Fire Damage Legal Liability

Such policy(ies) must be endorsed as provided in Subsection 15.3.1.2 hereof and provide the following minimum limits:

\$2,000,000 each Occurrence Combined Single Limit Bodily Injury and Property Damage

\$2,000,000 each Offense Personal and Advertising Injury

\$ 100,000 each Occurrence Fire Legal Liability

\$1,000,000 each Accident/ Disease - Each Employee Stop Gap

15.1.2 **Business Automobile Liability** including coverage for owned, non-owned, leased or hired vehicles with a minimum limit of \$2,000,000 each Occurrence Combined Single Limit Bodily Injury and Property Damage

15.1.3 **Workers' Compensation** securing Lessee's liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington; provided, that if Lessee is qualified as a self-insurer in accordance with Chapter 51.14 of the Revised Code of Washington, Lessee shall certify that qualification by a letter that is signed by a corporate officer of Lessee and delivered to City that sets forth the limits of any policy of excess insurance covering its employees; and

15.1.4 **Property Insurance** under which the Premises, the existing building, furniture, fixtures, equipment and inventory and all alterations, additions and improvements that Lessee makes to the building and Premises, are insured throughout the Lease Term in an amount

equal to the replacement cost value thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss, not less broad than provided by the insurance industry standard "Causes of Loss - Special Form (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises; (iv) loss from business interruption or extra expense, with sufficient coverage to provide for the continued payment of fixed costs during any interruption of Lessee's business; (v) earth movement (including earthquake), for full replacement cost value of the property/improvements/content. City shall be named as a loss payee as respects property insurance covering alterations, additions, and improvements under such policy.

#### 15.2 General Requirements Regarding Lessee's Insurance.

15.2.1 The insurance required by Subsections 15.1.1 and 15.1.2 shall be endorsed to include the City of Seattle and its officers, elected officials, employees, agents and volunteers as additional insureds. The insurance required by Subsections 15.1.1 and 15.1.2 shall be primary as respects City; shall provide that any other insurance maintained by City shall be excess and not contributing insurance with Lessee's insurance; and shall provide that such coverage shall not be reduced or canceled without forty-five (45) days' prior written notice to City, except ten (10) days prior written notice to City with respect to non-payment of premium, at its address as specified in Subsection 1.9 hereof.

15.2.2 All insurance policies required hereunder shall be subject to reasonable approval by City's Risk Manager as to company, form, and coverage. All policies shall be issued by a company rated A-VII or higher in the then-current A. M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus line by a Washington surplus lines broker.

15.2.3 Any deductible or self-insured retention in excess of \$10,000 must be disclosed to, and shall be subject to reasonable approval by, City's Risk Manager. The cost of any claim payments falling within the deductible shall be the responsibility of Lessee.

15.2.4 Coverage and/or limits may be reasonably altered or increased as necessary to reflect type of or exposure to risk. City shall have the right to periodically review the appropriateness of such coverage and limits in view of inflation and/or changing industry conditions and to require an increase in such coverage or limits upon ninety (90) days' prior written notice.

15.3 Evidence of Insurance. Before occupying the Premises, the following documents must be delivered to City at its address as specified in or pursuant to Subsection 1.9., as evidence of the insurance coverage secured and maintained by Lessee:

15.3.1 On or before the Commencement Date, and thereafter, not later than five (5) days prior to the expiration or renewal date of each such policy:

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

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

15.3.1.3 A copy of an endorsement stating that the coverages provided by such policy to City or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to City, except ten (10) days prior written notice to City with respect to non-payment of premium, at its address as specified in or provided pursuant to Subsection 1.9; and

15.3.1.4 For the Commercial General liability and Business Automobile insurance to be secured and maintained pursuant to Subsection 15.1.1 and 15.1.2 hereof, a copy of the "Separation of Insureds" or "Severability of Interests" clause in such policy.

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

15.4 No Limitation of Liability. Insurance coverage and limits of liability as specified herein are minimum coverage and limit of liability requirements only; they shall not be construed to limit the liability of Lessee or any insurer for any claim required to be covered hereunder. Moreover, the City shall be an additional insured, where additional insured status is required, for the full available limits of liability maintained by the tenant, whether those limits are primary, excess, contingent or otherwise. Tenant expressly understands and agrees that this provision shall override any limitation of liability or similar provision in any agreement.

15.5 Reconstruction Following Loss. Lessee shall proceed with reasonable diligence as soon as sufficient funds are available therefor, to prepare plans and specifications for, and thereafter to carry out, all work necessary to repair and restore the alterations, additions and improvements that Lessee made to the Premises that is at least equivalent to, or more suitable than, the alterations, additions and improvements that were damaged or destroyed.

15.6 Waiver of Subrogation. City and City's insurer(s) shall waive subrogation for damage to or destruction of the Building, Premises and City's furniture, fixtures, equipment and inventory in favor of Lessee except with respect to losses of City's aforesaid property of up to \$100,000 that are attributable to Lessee's negligence and to which Lessee's Fire Legal Liability insurance responds; however, in the event of a loss to City's aforesaid property attributable to Lessee's negligence, Lessee agrees to reimburse City for the amount of its property insurance deductible up to \$10,000.00. Lessee and Lessee's insurer(s) shall waive subrogation for damage to or destruction of Lessee's alterations, additions and improvements, furniture, fixtures, equipment

and inventory in favor of City; however, in the event of a loss to Lessee's aforesaid property attributable to City's negligence, City agrees to reimburse Lessee for the amount of its property insurance deductible up to \$100,000.

15.7 **Assumption of Risk.** The placement and storage of its personal property in the Premises shall be the responsibility, and at the sole risk, of Lessee.

16. **Assignment or Sublease.** Lessee shall not sublet or encumber the whole or any part of the Premises, nor shall this Lease or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court or otherwise without the prior written consent of City, whose consent shall not be unreasonably withheld in its sole discretion. The granting of consent to a given transfer shall not constitute a waiver of the consent requirement as to future transfers. Any assignment or sublease without City's prior written consent except to an affiliate entity managed or controlled by Lessee, at City's option, shall be void. No assignment or sublease shall release Lessee from primary liability hereunder. Each assignment and sublease shall be by an instrument in writing in form satisfactory to City.

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

18. **Destruction.**

18.1 **Damage and Repair.** If the Premises are rendered partially or totally untenable by fire or other casualty, and if the damage is repairable within twenty-four (24) months from the date of the occurrence, then if insurance proceeds or self-insurance coverages are available to pay the full cost of the repairs (except for the deductible amounts) Lessee shall repair the Premises with due diligence to as good a condition as existing prior to the damage or loss or such other condition approved by the Director. Lessee's performance of services under Section 4 shall be abated in the proportion that the untenable portion of the Premises bears to the whole thereof, as the City determines, for the period from the date of the casualty to the Lessee's completion of the repairs. If there is any loss or casualty to Lessee's personal property, Lessee shall, at its sole cost and expense, repair or replace its own personal property. Lessee shall promptly notify City of any loss or damage that results in interruption of the services under Section 4 and within thirty (30) days of the loss or damage shall advise the City of the anticipated timeline for repair.

18.2 **Termination.** If the damage to the Premises cannot be fully repaired within twenty-four (24) months from the date of the occurrence, or if the insurance proceeds are inadequate to effect complete repair, City or Lessee may terminate this Lease without liability upon sixty (60) days' written notice to the other, provided that Lessee's option to terminate this Lease without liability shall be conditioned upon Lessee having maintained the insurance required under this Lease and shall be further conditioned upon the loss not being attributable to Lessee's negligence. Following termination, the insurance proceeds shall be adjusted equitably taking into consideration

any tenant improvements or capital improvements made to the Premises, including the funding sources for such improvements and repairs.

19. **Eminent Domain.**

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

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

20. **Default by Lessee.**

20.1 **Definition.** Any of the following occurrences shall be a default under this Lease subject to the provisions of Section 20.2:

Lessee's failure to cure any violation of or failure to keep or perform any term, provision, covenant, or any obligation of this Lease after written notice from City; or

Lessee's failure to continuously operate the Premises and provide the benefits described under Section 4; or

If Lessee files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for Lessee's assets or if Lessee makes an assignment for the benefit of creditors, or if Lessee is adjudicated insolvent, or becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or liquidated, voluntarily or otherwise; or

If Lessee abandons the Premises; or

If Lessee fails to insure the Premises as required under this Lease.

20.2 City Remedies. If the City provides written notice to Lessee that it has defaulted and such default continues or has not been remedied by Lessee to the reasonable satisfaction of the Director within thirty (30) days after written notice thereof has been provided to Lessee, then City shall have the following nonexclusive rights and remedies at its option: (i) to cure such default on Lessee's behalf and at Lessee's sole expense and to charge Lessee for all actual and reasonable costs and expenses incurred by City in effecting such cure as an Additional Charge; (2) to terminate this Lease. Notwithstanding the foregoing, if Lessee fails to insure the Premises as required under this Lease, the City shall have the right to terminate the Lease immediately, without a cure period. If the nature of Lessee's obligation (other than insurance obligations and other than vacation or abandonment of the Premises) is such that more than thirty (30) days is required for performance, then Lessee shall not be in default if it commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

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

20.4 Vacation or Abandonment. If Lessee vacates or abandons the Premises in their entirety and fails to reoccupy them within thirty (30) days after City (1) delivers a notice to Lessee's notice address set forth in Section 1.9 above demanding such reoccupancy and (2) mails by certified

or registered mail a copy of the notice to any forwarding address given by Lessee to City in writing, Lessee shall be in default under this Lease.

20.5 City's Non-exclusive Remedies upon Termination due to Default of Lessee.

Notwithstanding any reentry by City and anything to the contrary in this Lease, in the event of the termination of this Lease due to the Default of Lessee, the liability of Lessee for all sums due under this Lease provided herein shall not be extinguished for the balance of the Term of this Lease. Lessee shall also be liable to City for any other amount (excluding consequential or specific damages) necessary to compensate City for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any costs incurred in authorizing others the use and occupancy of the Premises and in preparing the Premises for such use and occupancy, and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington. The provisions of this Subsection 20.5 shall survive the expiration or earlier termination of this Lease.

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

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

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

24. Access by City. City and its agents shall have the right to enter the Premises at any reasonable time with prior written notice, to examine the same, and to show them to prospective purchasers, lenders, or within the last twenty-four months of the Term to prospective tenants. If Lessee is not personally present to permit entry and an entry is necessary in an emergency, City may enter the same by master key or may forcibly enter the same, without rendering City liable therefor, except in the event of City's gross negligence or intentional misconduct. Nothing contained herein shall be construed to impose upon City any duty or other

obligation not specifically stated in this Lease. Lessee shall change the locks to the Premises only through City and upon paying City for all actual and reasonable costs related thereto.

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

26. **Notices.** Any notice, demand or request required hereunder shall be given in writing to the party's address set forth in Subsection 1.9. hereof by any of the following means: (a) personal service; (b) commercial or legal courier; or (c) registered or certified, first class mail, postage prepaid, return receipt requested, or (d) to an email address if specified in Section 1.8 or mutually agreed upon in writing and if the recipient provides acknowledgement of receipt within twenty-four hours. Such addresses may be changed by notice to the other parties given in the same manner as above provided. Notices shall be deemed to have been given upon the earlier of actual receipt, as evidenced by the deliverer's affidavit, the recipient's acknowledgment of receipt, or the courier's receipt, except in the event of attempted delivery during the recipient's normal business hours at the proper address by an agent of a party or by commercial or legal courier or the U.S. Postal Service but refused acceptance, in which case notice shall be deemed to have been given upon the earlier of the day of attempted delivery, as evidenced by the messenger's affidavit of inability to deliver stating the time, date, place and manner in which such delivery was attempted and the manner in which such delivery was refused, or on the day immediately following deposit with such courier or, if sent pursuant to subsection (c), forty-eight (48) hours following deposit in the U.S. mail.

27. **Successors or Assigns.** All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon City, Lessee and, subject to the terms of Sections 16 and 17, their respective heirs, administrators, executors, successors and permitted assigns, and upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

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

29. **No Third-Party Beneficiaries.** This Lease is entered for purposes of the parties and is not intended to create any rights in third parties or to convey any third-party beneficiary status.

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

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

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

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

34. **Context.** Whenever appropriate from the context, the use of any gender shall include any other or all genders, and the singular shall include the plural, and the plural shall include the singular.

35. **Execution by City and Lessee; Effective Date.** Neither City nor Lessee shall be deemed to have made an offer to the other party by furnishing the other party with a copy of this Lease. No contractual or other rights shall exist or be created between City and Lessee until all parties hereto have executed this Lease and the appropriate legislative authority approves it. This Lease shall become effective on the date on which this Lease is executed by City and Lessee and approved by the Seattle City Council. City shall have no liability to Lessee and shall have the right to terminate this Lease upon written notice to Lessee if this Lease is legislatively disapproved.

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

37. **Continuous Operation.** For the duration of the Term, Lessee shall keep the Premises activated and continuously operated for the Permitted Uses. Lessee may, upon posting a written notice to the public not less than one (1) week, close the Premises or a portion thereof for a reasonable period for repairs or any approved remodeling.

38. **City's Role in Lease.** The City enters this Lease in its proprietary capacity as a property owner for the purposes stated herein. This Lease is not intended to and shall not in any limit, amend or supersede any regulatory or other authority of the City.

39. **Approvals.** Any approval or consent required of the Director under this Lease may be given by the Director's authorized designee.

40. **Miscellaneous.**

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

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

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

**CITY:**

**LESSEE:**

**THE CITY OF SEATTLE**

**AFRICATOWN COMMUNITY LAND TRUST,  
a Washington Non-Profit Corporation**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name/Title  
Department of Finance and Administrative Services

K. Wyking Garrett, President

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

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



