

**CONCESSION AGREEMENT**  
**between**  
**THE CITY OF SEATTLE**  
**Department of Parks and Recreation**  
**and**  
**EarthCorps**

THIS AGREEMENT is made and entered into as of \_\_\_\_\_, 2017 (the “Effective Date”) by and between THE CITY OF SEATTLE, a municipal corporation (“the City”), acting by and through its Department of Parks and Recreation and its Superintendent (“DPR” and “Superintendent”, respectively), and EARTHCORPS, a Washington not-for-profit corporation (“Concessionaire”).

**RECITALS**

WHEREAS, the City owns certain land totaling 93.1 acres, obtained from the United States of America (hereinafter referred to as the “USA”), as surplus property, known as Naval Station Puget Sound, Sand Point / Warren G. Magnuson Park (“Magnuson Park”), and conveyed to the City on March 17, 1999 by quitclaim deed recorded by the King County Recorder’s Office under recording number 9905041194 (the “USA Deed”) a copy of which is attached as Exhibit D; and

WHEREAS, condition No. 3 of the USA Deed provides that “[t]he property shall not be sold, leased, assigned, or otherwise disposed of, except to another eligible governmental agency...However, nothing in this provision shall preclude the Grantee from providing recreational facilities and services compatible with the approved application, through concession agreements entered into with third parties, provided prior concurrence to such agreements is obtained in writing from the Secretary of the Interior;” and

WHEREAS, the Secretary of the Interior’s delegated representative, the National Parks Service (“NPS”), has concurred; and

WHEREAS, Concessionaire has used space at Magnuson Park since 2000; and

WHEREAS, DPR and Concessionaire have similar missions to restore parks and natural areas and strengthen community through hands-on environmental service; and

WHEREAS, DPR and Concessionaire have a history of working together to restore City parks using and training volunteers of all ages and abilities; and

WHEREAS, Concessionaire broadens DPR’s mission by working to build a global community of leaders through environmental service; and

WHEREAS, it is in the best interests of both DPR and Concessionaire to enter into a long-term Agreement to headquarter Concessionaire’s program in Building 30 in Magnuson Park;

NOW, THEREFORE, in consideration of the mutual promises, terms, conditions and performances described herein, the parties hereby agree as follows:

## **1. PREMISES AND ADJACENT AREA**

### **1.1 Premises Description, Right to Use, and Condition**

As used in this Agreement, “Premises” means portions of the building commonly referred to as Building 30 located on the land legally described on Exhibit A-5, in Magnuson Park, Seattle, Washington. The Premises are depicted on the floor plans attached as Exhibits A-1 and A-2 and described in Exhibit A-4, and comprise approximately 7,114 square feet. The City grants Concessionaire the right to use and occupy the Premises for the Permitted Use as described below, subject to the terms and conditions herein. Concessionaire accepts the Premises in their AS IS condition.

### **1.2 Adjacent Area**

**1.2.1 License to Use.** In addition to use and occupancy of the Premises, the City grants Concessionaire an exclusive and revocable license to install and maintain storage facilities, including a fuel shed, in the location depicted on Exhibit A-3 as “Adjacent Area”. Fuel storage is limited to the area marked as “Fuel Storage” on Exhibit A-3, and Concessionaire may store therein the quantity of fuel allowed by Concessionaire’s fuel storage permit, but not to exceed sixty (60) gallons of gasoline. All terms and conditions of this Agreement that are applicable to the Premises shall also be applicable to the Adjacent Area unless otherwise expressly provided herein. Concessionaire’s right to use the Adjacent Area is limited to the purposes described in this Subsection unless otherwise approved in writing by DPR. The City makes no guarantee that the Adjacent Area is code compliant, and Concessionaire accepts the Adjacent Area in its AS IS condition.

**1.2.2 Termination of License.** The City reserves the right to terminate the Concessionaire’s license to use the Adjacent Area, without reduction in Concession Fee or liability of any kind, if the Superintendent determines, in his or her discretion, that the Adjacent Area is needed for another City purpose. To terminate the license, the City shall provide Concessionaire written notice of not less than seventy-five (75) days before the effective termination date. In such event, the City may, but is not obligated to, offer the Concessionaire an alternative area. If the City does not offer a replacement area, or if the offered replacement area is not acceptable to the Concessionaire, the Concessionaire shall have the right to terminate this Agreement, without liability to either party, upon written notice of not less than seventy-five (75) days to the City. The City does not represent or guarantee that the Adjacent Area will remain available for use by the Concessionaire throughout the Term of this Agreement.

## **2. MAGNUSON PARK COMMON AREAS; PARKING AND LOADING ZONE**

### **2.1 Magnuson Park Common Areas**

Concessionaire may use those areas of Magnuson Park designated by the Superintendent for public use (the "Common Areas"), including the parking areas, in common with members of the general public during normal Magnuson Park hours and subject to the Superintendent's rules and regulations. The City shall at all times have exclusive control and management of the Common Areas and no diminution thereof shall be deemed a constructive or actual eviction or entitle Concessionaire to compensation or a reduction or abatement of Concession Fee, provided such changes do not permanently and materially interfere with Concessionaire's access to the Premises for the Permitted Use.

## 2.2 General Parking

Except as set forth below, no exclusive parking rights are associated with this Agreement. Parking shall be available on a first come/first served, unreserved basis. Access to such public parking by Concessionaire and its employees and customers shall be governed by Magnuson Park rules as they may be amended from time to time by the Superintendent.

## 2.3 Service Vehicle Parking

The City acknowledges that Concessionaire needs designated loading zones to allow access to its storage sheds and that Concessionaire has a number of service vehicles associated with its daily operation of service. The City hereby agrees to establish loading zones by appropriate signage in the area designated as "Reserved Fleet Parking/Loading Zone" on Exhibit A-3 (the "Parking/Loading Zone"). Additionally, Concessionaire is hereby granted the right to park its service vehicles in the Parking/Loading Zone. Upon request by the City and upon reasonable notice, Concessionaire shall temporarily move its service vehicles from the Parking/Loading Zone to another designated location within Magnuson Park. The City agrees to give Concessionaire as much notice as is reasonably possible under the circumstances but in any event, not less than three (3) business days' notice, unless an unanticipated emergency situation arises. Additionally, the City agrees that it will not request that Concessionaire's vehicles be moved more than five (5) times during any calendar month. The City reserves the right to take full possession of all or any portion of the Parking/Loading Zone for any length of time deemed necessary with sixty (60) days' prior notice should the City require use thereof.

# 3. **TERM**

## 3.1 Initial Term.

This Agreement shall be for an initial term of ten (10) years (the "Initial Term"), beginning on the date when this Agreement is executed by an authorized representative of both parties (the "Commencement Date") following an authorizing ordinance of Seattle City Council. Once fully executed, this Agreement shall supersede any prior agreements between the parties regarding the use and occupancy of Building 30.

## 3.2 Extended Terms.

Concessionaire shall have the option to extend the Initial Term for up to two (2) successive individual extended terms of five (5) years (each, an “Extended Term”) on the same terms and conditions set forth herein, except for the Concession Fee which shall be as provided under Section 5.4. To exercise its option to extend, Concessionaire must give the City written notice of Concessionaire’s intention to extend at least ninety (90) days prior to the expiration of the then-current Term. As used in this Agreement, any reference to the “Term” means the Initial Term and any and all Extended Term(s) exercised by Concessionaire hereunder.

#### **4. PERMITTED USE**

##### **4.1 Permitted Use**

Concessionaire shall use the Premises for classrooms, meeting rooms, storage and administrative offices related to the general operations of Concessionaire as a nonprofit organization dedicated to local environmental restoration, including trail work and the training of staff and volunteers (the “Permitted Use”). Concessionaire shall not use the Premises for any other purpose or make any use of the Premises that is inconsistent with the Permitted Use without the Superintendent’s prior written consent.

##### **4.2 Conditions in USA Deed**

This Agreement and the obligations of the parties hereto are subject to the terms and conditions set forth in the USA Deed and the current program of utilization which governs the use of the Premises. Concessionaire shall use the Premises in strict accordance with all the terms and conditions imposed by the USA as set forth in the USA Deed that pertain to the use of the Premises, including but not limited to the terms and conditions regarding hazardous materials, lead-based paints, asbestos, and historic resources contained in provisions in paragraphs 8, 9, 10, 11, 12 and 13 of the USA Deed. In the event of any conflict between the terms and conditions of the USA Deed and any provisions of this Agreement, the terms of the USA Deed shall control. Violations of said terms and conditions of the USA Deed may be grounds for termination of this Agreement and reversion of the Premises to the USA, in the discretion of the USA. Concessionaire-owned personal and real property improvements associated with the Premises, may be subject to seizure, without compensation, by the USA.

#### **5. CONCESSION FEE**

##### **5.1 Concession Fee**

Beginning on the Commencement Date, Concessionaire shall pay the City an annual fee (the “Concession Fee”) at an initial rate of ~~\$18.7515.00~~ per square foot for the Premises (7,114 SF), which as of the Commencement Date is an annual amount of ~~\$133,387.50~~~~106,710~~. The square footage used for calculating the Concession Fee is based on a measurement of the Premises with adjustments for certain unusable area as set forth in Exhibit A-4. Concessionaire acknowledges that it has had the opportunity to measure the Premises and that the square footage amount is mutually agreed upon for

purposes of calculating the Concession Fee and is not subject to re-measurement. As a result, the Concession Fee shall not be subject to any adjustment during the Term based on the square footage of the Premises, including any change resulting from tenant improvements. The Concession Fee shall be paid in twelve (12) equal monthly installments (initially \$~~11,115.638,892.50~~ each month), subject to any offsets under Section 5.6, together with any applicable leasehold excise tax ("LET") which may become due under Section 12.4.

## 5.2 Time and Manner of Payment

Concessionaire shall pay the annual Concession Fee in twelve equal monthly installments, along with any LET, in advance, on or before the first day of each month during the Term. All payments shall be by check or money order, and made payable to the City. All payments shall be delivered to:

The City of Seattle  
Department of Parks and Recreation  
6310 NE 74<sup>th</sup> St., Suite 109E  
Seattle, WA 98115  
ATTN: Manager

or to such other address as DPR may hereafter designate, in writing, or by electronic fund transfer or such other manner of payment as DPR may approve, which approval shall not be unreasonably withheld, conditioned or delayed.

## 5.3 Adjustments to Concession Fee.

Beginning on the first anniversary of the Commencement Date and annually thereafter during the Initial Term, the Concession Fee shall be adjusted upward by \$1.00 per square foot annually.

## 5.4 Concession Fee during Extended Term(s)

5.4.1 Market Rate Concession Fee. Effective on the first day of each Extended Term, if any, the Concession Fee shall be adjusted to "fair market rate" as determined in this Section 5.4. As used in this Agreement, "fair market rate" shall mean the rate per square foot that a willing concessionaire would pay in an arms-length transaction for use and occupancy and concession rights in comparable space in Building 30 and in comparable buildings in comparable locations pursuant to a comparable agreement. Notwithstanding the foregoing, the fair market rate adjustment shall not result in an increase of more than ten percent (10%) of the Concession Fee payable by Concessionaire in the last year of the immediately preceding Term. Within forty-five (45) days of City's receipt of Concessionaire's notice of its intention to extend the Term, the City shall propose to Concessionaire the fair market rate for the Extended Term. Concessionaire shall notify the City in writing within forty-five (45) days if Concessionaire disagrees with the City's determination of the fair market rate, and shall provide Concessionaire's determination of fair market rate. Thereafter, the parties shall attempt to agree upon the fair market rate, but if they are unable to agree within thirty (30)

business days, either party may initiate arbitration to determine the fair market rate using the process in Section 5.4.2. After the first year of each Extended Term, the Concession Fee shall be adjusted annually as provided under Section 5.3.

5.4.2 Arbitration of Fair Market Rate. After the expiration of the negotiation of fair market rate in Section 5.4.1, either party may initiate arbitration by giving the other party written notice of initiation of arbitration and designation of the initiating party's proposed arbitrator. Within ten (10) business days, the other party will also designate an arbitrator. Any arbitrator appointed under this Agreement must be a real estate broker licensed in the State of Washington who has been regularly engaged in the business of commercial leasing in the Puget Sound region for at least ten (10) years immediately preceding the appointment under this Agreement. If either party fails to select an arbitrator, the fair market rate will be determined by the arbitrator selected by the other party. Each arbitrator will independently make her or his determination of the fair market rate within twenty (20) days after the appointment of the second arbitrator. If the two arbitrators' determinations are not the same, but the higher of such two values is not more than one hundred five percent (105%) of the lower of them, then the fair market rate will be deemed to be the average of the two values. If the higher of such two values is more than one hundred five percent (105%) of the lower of them, then the two arbitrators will jointly appoint a third arbitrator within ten (10) days after the second of the two determinations described above has been rendered. The third arbitrator will independently make her or his determination of the fair market rate within twenty (20) days after her or his appointment. The highest and the lowest determinations of value among the three arbitrators will be disregarded and the remaining determination will be deemed to be the fair market rate. Within thirty (30) days after the fair market rate Concession Fee is determined, the parties will execute an amendment to this Agreement setting forth the adjusted Concession Fee, which shall be effective as of the first day of the applicable Extended Term. Thereafter, the Concession Fee shall be adjusted annually as provided under Section 5.3.

#### 5.5 Late and Refused Payments

Concessionaire acknowledges that late payment to the City of any sum due the City hereunder will cause DPR to incur costs not contemplated by this Agreement including but not limited to processing and accounting charges and the cost of administering and enforcing this Agreement, the exact amount of which would be extremely difficult and impractical to ascertain. Therefore, if Concessionaire fails to pay any sum when such amount is due to the City, Concessionaire shall pay to the City a late charge of Fifty Dollars (\$50.00). In addition, Concessionaire shall pay the City a Twenty-Five Dollar (\$25.00) charge (or such larger amount as may be hereafter established by ordinance) for each check refused payment for insufficient funds or any other reason. Interest on late payments shall accrue at the rate of twelve percent (12%) per annum from the date due to the date paid.

#### 5.6 Offsets

5.6.1 Concessionaire Improvement Allowance. The City will allow Concessionaire a one-time improvement allowance for improvements actually made to the Premises up to a maximum of \$485,000.00 (the "Allowance"). The Allowance will be in the form of an offset against the Concession Fee in an amount equal to actual costs associated with Concessionaire's improvements which are pre-approved using the process in Section 5.6.2 and which are completed in compliance with Section 8. The Allowance shall only be available to offset the cost of improvements actually made under the terms and conditions of this Section 5.6 and Section 8, and Concessionaire shall not be entitled to any refund or Concession Fee offset for unused portions of the Allowance. Only payments expended for the categories of costs described in Exhibit C are eligible to be applied by Concessionaire towards its Allowance.

5.6.2 Superintendent's Approval of Improvement Allowance. In order for improvements to qualify for an offset against the Concession Fee, Concessionaire shall identify which improvements it intends to include in its Allowance at the time Concessionaire seeks the Superintendent's approval to make the improvements under Section 8.1, and Concessionaire shall also include its proposed budget. Within thirty (30) days after Concessionaire's submission, the Superintendent shall provide Concessionaire a statement of the total amount of budgeted construction costs that are potentially eligible for credit against the Concession Fee under the Allowance. If the Superintendent disallows any proposed offset, the Superintendent will provide the reasons.

5.6.2.1 Required Tenant Improvement: Concessionaire shall make replacement of the exterior windows of the Premises the first priority for use of the Allowance, and no other improvements shall be eligible for the Allowance unless the window replacement is completed. If window replacement may be completed within the amount of the Allowance, any remaining balance may be used for improvements approved under Section 5.6.2. If the cost of total window replacement exceeds the Allowance, Concessionaire shall complete that portion which may be completed for the Allowance but shall not be required to expend more than the Allowance on the window replacement. However consistent with Concessionaire's acceptance of the Premises in AS-IS condition, City shall have no responsibility for replacing any windows or completing any improvements to the Premises. Prior to installation the Concessionaire must submit design and operation specifications for the intended windows for approval by the Superintendent, whose approval will be granted, conditioned or withheld within that official's reasonable discretion. As a condition of including the cost of window replacement in the Allowance, Tenant shall complete the installation of the windows (or, if the cost of total window replacement exceeds the Allowance, the installation of windows which may be completed within the Allowance) within one year of the Commencement Date, provided that if there is any delay beyond Concessionaire's reasonable control (including without limitation delays due to the unavailability of contractors to complete the work within such time period or delay in the Superintendent's approval unrelated to Tenant's design submissions), the Superintendent shall extend the time period by the amount of such delay. Once installed according to the approved plans, and subject to inspection and acceptance by DPR, the windows shall become the property of the City

and Concessionaire shall assign all warranties to the City. Thereafter, the City shall assume responsibility for maintenance, operation and routine repairs of windows.

5.6.2.2 Periodic Offsets of Allowance: So long as Concessionaire has commenced installation of the windows, then beginning on the first day of the sixth month following the Commencement Date Concessionaire may provide DPR an accounting of expenses actually paid to date which are eligible for the Allowance, together with any supporting documentation the Superintendent may reasonably require. Within thirty (30) days of receipt of the accounting, DPR shall notify Concessionaire in writing of the amount of the approved offset. Thereafter, Concessionaire may apply the approved offset by stating in its monthly Concession Fee payment the amount of Concession Fee being offset; provided that the offset shall not exceed forty-five percent (45%) of the Concession Fee due in any single month. Thereafter, Concessionaire may continue to submit accountings of costs eligible for the Allowance from time to time, but no more frequently than monthly.

5.6.2.3 Final Accounting. Not later than six (6) months after Concessionaire completes the improvements which the Superintendent approved for the Allowance, Concessionaire shall provide the Superintendent with a final accounting of Concessionaire's actual costs associated with such capital improvements together with such supporting documentation as the Superintendent may reasonably request. The Superintendent shall approve the final amount of costs expended by Concessionaire in connection with such improvements and this amount shall constitute the amount of the eligible Concession Fee offset up to the full Allowance (less any portion of the Allowance previously applied pursuant to Section 5.6.2.2). Concessionaire shall remain solely responsible for all costs that exceed the Allowance and for all costs that are not approved by the Superintendent. Once the Superintendent approves the final amount of the Allowance, Concessionaire may apply the approved offset by stating in its monthly Concession Fee payment the amount of Concession Fee being offset; provided that the offset shall not exceed forty-five percent (45%) of the Concession Fee due in any single month. For example, if the monthly installment of the Concession Fee due is ~~\$11,1168,893.00~~, then the maximum offset amount is ~~\$4\$5,002~~.

5.6.3 Prevailing Wage. As a condition of any costs for construction, alterations, or improvements to the Premises or surrounding areas being eligible for the Allowance as an offset against Concession Fee, Concessionaire shall require its contractor to pay prevailing wages in accordance with Washington's Prevailing Wage Statute, RCW 39.12.

5.6.4 Improvements to become the City's Property. Unless otherwise provided in the Superintendent's approval, upon expiration or termination of this Agreement, title to all capital improvements to the Premises shall automatically transfer to the City. All improvements to the Premises shall be completed as required under Section 8. Nothing in this Section shall be construed to limit Concessionaire's general obligations to care for the Premises as provided under Section 7.

5.6.5 Public Benefit Offsets. In addition to offset of the Allowance against the Concession Fee, Concessionaire may offset up to **517.91%** of the annual Concession

Fee through the “Public Benefit Offset”. As used in this Agreement, “Public Benefit Offset” means the value of Concessionaire’s delivery of programming and services to DPR or the public, as approved by the Superintendent according to the process in this Section 5.6.5. Examples of the types of programming and services which are generally eligible for inclusion in the Public Benefit Offset are described on Exhibit B-1 ~~and Exhibit B-2~~.

5.6.5.1 Annual Public Benefit Plan. In order to obtain the Public Benefit Offset, within thirty days after the Commencement Date and thereafter on or before November 1<sup>st</sup> of each year during the Term, Concessionaire shall submit to the Superintendent (or its designee if so notified by the Superintendent) a proposal of public programming with measurable performance objectives it intends to provide during the coming calendar year. The proposal shall include an estimate of the value based on factors such as the estimated cost to Concessionaire of the labor and materials provided, the value of the public services to be provided, or other reasonable factors demonstrating the dollar value. The Superintendent will respond to the proposal within sixty (60) calendar days, approving or disapproving in whole or in part. If the Superintendent disallows any proposed public benefit or the estimated value, the Superintendent will provide the reasons. After receiving the Superintendent’s approval of the proposal for the coming year, Concessionaire may apply the offset in twelve (12) equal installments against the monthly amount of the Concession Fee for the applicable year.

5.6.5.2 Annual Public Benefit Report. Within thirty (30) days after the end of each calendar year, Concessionaire shall submit to the Superintendent a Public Benefit Offset report outlining the pre-approved programs, benefits and services actually delivered in the prior year and including an itemized statement of time, labor rates, materials and other information supporting the dollar value of Concessionaire’s Public Benefit Offset applied to the Concession Fee in the prior year. The Superintendent will respond within sixty (60) days, and may request more information, deny the request, or approve the request. If the Superintendent determines that the value of Public Benefit Offset actually provided is less than the amount applied against the Concession Fee in the prior calendar year, Concessionaire shall pay the deficiency in cash within thirty (30) days. Concessionaire shall not be entitled to a Public Benefit Offset that exceeds ~~five~~ seventeen and ninety-one hundredths percent (517.91%) of the Concession Fee, even if the actual value of public benefit programming exceeds that amount. Concessionaire shall not be entitled to carry forward any excess public benefits provided, nor shall Concessionaire be entitled to any refund. Final approval of Public Benefit Offsets is at the sole discretion of the Superintendent. The following is an illustration of the Public Benefit Offset:

Space Type	Square Footage	Concession Fee Rate/SF	Total

Annual Concession Fee for the Premises	7,114. ft.	<del>\$18.75</del> <u>15.00</u>	<del>\$106,710.00</del> <u>133,388</u>
Possible Public Benefit Offset ( <u>517.91%</u> )		<del>(\$0.75)</del> <u>3.36</u>	<del>(\$5,335.50)</del> <u>23,903</u>
Annual Concession Fee less Public Benefit Offset		<del>\$14.25</del> <u>15.39</u>	<del>\$101,374.50</del> <u>109,485.</u>

## 6. UTILITIES

### 6.1 General.

So long as Concessionaire is not in default under this Agreement after notice and the passage of any applicable cure period, the City shall furnish and pay for electric, water, sewer, and garbage collection services to the Premises. Concessionaire may, at Concessionaire's sole expense, elect to install natural gas service to the Premises. DPR shall cooperate with Concessionaire, at no cost to DPR, in applying for and obtaining all necessary permits and approvals associated with activation of such natural gas service; provided that Concessionaire shall remain responsible for obtaining all necessary permits. Additionally, DPR will cooperate in obtaining and recording any easements that may be required by the utility provider, subject to any required approvals from the National Park Service or Seattle City Council. Concessionaire shall be responsible for the cost of any telecommunications utilities or any other services necessary for Concessionaire's Permitted Use of the Premises. Concessionaire shall obtain the Superintendent's prior written consent before installing lights or equipment in the Premises that exceed the Premises' standard mechanical loads. The Superintendent may refuse to grant consent unless Concessionaire agrees to pay (1) the costs incurred by the City for installation of supplementary air conditioning capacity or electrical systems as necessitated by Concessionaire's equipment or lights and (2) in advance, on the first day of each month during the Term, the amount estimated by the Superintendent as the excess cost of furnishing electricity or utility service for the operation of equipment or lights above normal Building 30 levels.

### 6.2. 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. The City shall perform periodic preventative maintenance on all electrical, plumbing, fire suppression, mechanical and enclosure systems of Building 30, and the elevator in service on the south end of Building 30, and

maintain them in good operating condition. 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 Concessionaire or to relieve Concessionaire from any of Concessionaire's obligations hereunder or to give Concessionaire a right of action against City for damages, so long as the City takes steps reasonable under the circumstances to cure such interruption or failure of such services. Concessionaire 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 Concessionaire's use of the Premises. City shall provide Concessionaire with not less than forty-eight (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 Concessionaire. 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 Concessionaire. If utilities are interrupted at the Premises so as to render the Premises unfit for Concessionaire's Permitted Use for a period of more than forty-eight (48) hours, then the Concession Fee for the year shall be abated for the duration of the disruption in the proportion that the number of days of the disruption bears to the number of days of the year.

## **7. CARE OF PREMISES**

### **7.1 General Obligation; Routine Maintenance.**

Concessionaire shall take good care of the Premises and shall repair or reimburse City for all damage done to the Premises that results from any act or omission of Concessionaire or any of Concessionaire's officers, contractors, agents, invitees, licensees or employees, including, but not limited to, cracking or breaking of glass, reasonable wear and tear and damage not caused by Concessionaire and existing prior to the Commencement Date excepted. Concessionaire shall be responsible for all maintenance of Concessionaire's fixtures and shall be responsible for all routine maintenance of the Premises, except to the extent to be performed by the City pursuant to Section 7.3.

### **7.2 Custodial Service for Premises.**

Concessionaire shall at its own expense, at all times, keep the Premises and Adjacent Area in a neat, clean, safe, and sanitary condition; and keep the glass of all interior windows and doors serving the Premises clean and presentable. Concessionaire shall provide all janitorial services and furnish all cleaning supplies and materials needed to maintain the Premises in the manner prescribed in this Agreement. Concessionaire shall be responsible for keeping the areas immediately adjacent to the perimeter of the Premises free of litter and clean of spills resulting from Concessionaire's operations.

### **7.3 City Maintenance.**

All industry standard repairs and regular preventative maintenance necessary to maintain the structural and exterior components of Building 30 and the Premises, the Common Areas, and the heating, ventilation, utility, electric, sprinkler, elevator and plumbing and other systems and equipment serving Building 30 and the Premises in a reasonably good operating condition, as reasonably determined by City, shall be performed by City at its expense, including washing of all exterior windows and regular maintenance and janitorial service for the Common Areas. The foregoing sentence does not extend to maintenance occasioned by an act or omission of Concessionaire or its officers, agents, employees, or contractors. Except in the event of City's gross negligence or intentional misconduct, there shall be no abatement or reduction of the Concession Fee arising by reason of City's making of repairs, alterations or improvements.

#### 7.4 Refuse Collection; Recycling of Waste Materials.

Concessionaire shall provide all necessary housekeeping and janitorial services for the Premises to a level consistent with other similar DPR facilities and operations and to the Superintendent's reasonable satisfaction. Concessionaire shall be responsible for proper storage and removal of trash, litter pickup and recycling consistent with City standards.

#### 7.5 Joint Annual Inspection of Premises; Remedial Action Obligation

Each year throughout the Term, Concessionaire shall participate in an annual inspection of the Premises with an DPR representative, and Concessionaire shall take any and all action that DPR may reasonably require to maintain and repair the Premises in accordance with the requirements of Section 7.1 and 7.2 of this Agreement. Likewise, the City shall take any and all action that the City is required to take in accordance with its maintenance and repair responsibilities as set forth in Section 7.3 of this Agreement.

#### 7.6 City Remedy upon Concessionaire's Failure to Maintain Premises

If Concessionaire fails to maintain the Premises in a neat, clean and sanitary condition as required by this Agreement, DPR shall notify Concessionaire to undertake such work as is reasonably required to so maintain them. If Concessionaire fails to commence such work within fifteen (15) days after Concessionaire's receipt of the City's notice and to diligently prosecute it to completion, then DPR shall have the right, at its option and in addition to all other remedies, to undertake such work and to invoice Concessionaire for the costs incurred by the City in connection therewith. The City shall have the right to enter the Premises for such purposes, and the City shall have no liability to Concessionaire for any damage, inconvenience, or interference with Concessionaire's use of the Premises as a result of the City's performing any such work, except to the extent resulting from the negligence or willful misconduct of City or its agents, employees or contractors. Nothing in this Section shall be deemed to obligate the City to undertake repair or maintenance that is the obligation of Concessionaire under this Agreement.

7.7 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. Concessionaire shall not install on or integrate into, or permit any other person or entity to install on or integrate into, the Premises any such work of visual art without City’s prior, express, written consent. City's consent to the installation of any such art work may be granted, granted upon one or more conditions, or withheld in City's discretion.

7.8 Concessionaire’s Indemnification of City against Liability under Visual Artists Rights Act of 1990.

In addition to all indemnification obligations under Section 9, Concessionaire 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 any of the following by Concessionaire or any of its officers, employees or agents: (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 violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended. 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 Agreement.

**8. IMPROVEMENTS BY CONCESSIONAIRE**

8.1 Improvements. All approvals required by the Superintendent under this Section will be granted, conditioned or withheld in that official’s reasonable discretion. Concessionaire shall not make any alterations, additions or improvements in or to the Premises that change the structural or mechanical systems of Building 30 or adjacent areas, or that impact the historic features of Building 30, or that exceed \$25,000 in cost without first submitting to DPR professionally-prepared plans and specifications for such work and obtaining the Superintendent’s prior written approval thereof. Concessionaire covenants that it will cause all alterations, additions and improvements to the Premises to be completed at Concessionaire’s sole cost and expense by a contractor approved by the Superintendent and in a manner that (a) is consistent with the City-approved plans and specifications and any conditions imposed by City in connection therewith; (b) is in conformity with high quality commercial standards; (c) includes acceptable insurance coverage for City's benefit; (d) does not affect the structural integrity of the Premises or Building 30 or any of the Premises’ or Building’s systems; (e) does not disrupt the business or operations of any other occupant of Building 30; and (f) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Premises or Building 30. Concessionaire shall secure all governmental permits and

approvals required for the work; shall comply with all other applicable governmental requirements and restrictions; and shall reimburse City for any and all expenses incurred by the City in connection therewith. Concessionaire shall complete design and construction of all improvements and alterations within the Premises in compliance with all applicable building codes and permitting and legal requirements, including but not limited to compliance with applicable building codes and with the Americans with Disabilities Act (ADA). Concessionaire expressly acknowledges that the provisions of the ADA applicable to facilities in public buildings may exceed requirements contained in building codes and other regulations and that such instances, the ADA requirements shall control. Except to the extent caused by the City's negligence or intentional acts or omissions, Concessionaire 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 Concessionaire's performance of such alterations, additions and improvements, including, but not limited to, all which arise from or out of Concessionaire's breach of its obligations under terms of this Section 8. All alterations, additions and improvements (expressly including all light fixtures; heating and ventilation units; floor, window and wall coverings; and electrical wiring), except Concessionaire'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 Agreement without any obligation on its part to pay for any of the same. At City's request, Concessionaire shall execute a deed or bill of sale in favor of City with respect to such alterations and/or improvements. Notwithstanding the foregoing, at the termination or expiration of this Agreement, Concessionaire shall remove all its moveable trade fixtures, appliances and equipment, data services wires and equipment, and any other improvements identified for removal by the Superintendent at the time of approval under this Section, and leave the Premises in a broom clean condition on the expiration or termination of this Agreement. Within ninety (90) days after the completion of any alteration, addition or improvement to the Premises for which the Superintendent's approval is required under this Section, Concessionaire shall deliver to City a full set of "as-built" plans of the Premises showing the details of all alterations, additions and improvements made to the Premises by Concessionaire.

8.2 Additional Improvements. The City disclaims any representation or warranty that Building 30, the services to Building 30, the Common Areas or any other areas in or around the Premises are suitable for Concessionaire's intended improvements and use of the Premises. Subject to the Allowance in Section 5.6, Concessionaire shall be solely responsible for any costs necessary to make improvements to areas in, around, or outside the Premises as may be required for a permit and in order to complete Concessionaire's improvements or in order for Concessionaire to use the Premises for the Permitted Use. Any changes or improvements to Building 30 exterior must be submitted for historic review and approved by Landmarks Board.

## **9. INDEMNIFICATION**

### 9.1 Indemnification

To the fullest extent provided by law and except as otherwise provided in this Section 9, Concessionaire shall indemnify, defend and hold the City harmless from and against any liability, claim, damage, cost or expense (including reasonable attorneys' fees) 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 from or relating to: (i) Concessionaire's improvement, use and occupancy of the Premises and any portion thereof, or any use by Concessionaire's officers, employees, agents, contractors, volunteers, or invitees; or (ii) any act or omission of Concessionaire or any of its officers, employees, agents, contractors, volunteers, or other third parties for whose acts Concessionaire is liable pursuant to Washington law on or about the Premises; or (iii) any breach of this Agreement. In furtherance of Concessionaire's indemnification obligations, Concessionaire hereby waives any immunity Concessionaire may have or any limitations on the amounts or types of damages under any industrial insurance, worker's compensation, disability, employee benefit or similar law, but such waiver shall apply only as to the City and to the extent necessary to fulfill Concessionaire's obligations under this Section 9. The City and Concessionaire acknowledge that the foregoing waiver of immunity was mutually negotiated. The foregoing notwithstanding, the Concessionaire shall not be obligated to indemnify, defend or hold the City harmless with respect to claims, damages, costs or expenses to the extent arising out of the City's negligence or intentional acts or omissions, and the City shall indemnify, defend and hold the Concessionaire harmless with respect to claims, damages, costs and expenses to the extent arising out of the City's negligence or intentional acts or omissions or that of its employees. The City's obligation under this Section 9.1 is not intended to and shall not be deemed a waiver of the City's immunity under RCW 4.24.210 as now existing or hereafter amended.

### 9.2 Survival of Indemnification Obligations

The provisions of Section 9.1 shall survive the expiration or earlier termination of this Agreement.

### 9.3 Assumption of Risk

The placement and storage of personal property in or on the Premises shall be at the sole risk of Concessionaire, provided that this assumption of risk shall not operate as a waiver of the Concessionaire's right to assert a claim against the City for damages caused by the City's negligence or intentional acts or omissions.

## **10. CITY'S CONTROL OF MAGNUSON PARK & VICINITY**

All Common Areas and other facilities provided by the City in the vicinity of the Premises, including parking areas, are subject to the City's exclusive control and management. Accordingly, the City may do any and all of the following (among other activities in support of DPR or other municipal objectives):

10.1 Change of Vicinity: Increase, reduce, or change in any manner whatsoever the number, dimensions and locations of the walks, buildings, and parking areas in the vicinity of the Premises so long as such changes do not violate the express terms of this Agreement or materially and permanently render the Premises unfit for the Permitted Use;

10.2 Traffic Regulation: Regulate all traffic within and adjacent to the Premises, including the operation and parking of Concessionaire's vehicles and those of its invitees, employees, and patrons;

10.3 Display of Promotional Materials: Erect, display and remove promotional exhibits and materials and permit special events on property adjacent to the Premises;

10.4 Promulgation of Rules: Promulgate, from time to time, reasonable rules and regulations of general applicability to the use and occupancy of any DPR property including but not limited to the Premises;

10.5 Change of Businesses: Change the size, number, and type and identity of concessions, stores, businesses, and operations being conducted or undertaken in the vicinity of the Premises.

## **11. DAMAGE OR DESTRUCTION**

If the Premises are destroyed or damaged by fire, earthquake, or other casualty, Concessionaire shall promptly notify the Superintendent of the extent of such destruction or damage and the extent of the Premises that remain usable, if any, for Concessionaire's purposes. 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) City shall repair the Premises with due diligence. However, City retains the sole option to not repair or replace Building 30 or Premises for any reason, in which case the City may elect to terminate this Agreement upon sixty (60) days written notice. The Concession Fee shall be abated in the proportion that the un-tenantable portion of the Premises bears to the whole thereof, as the Superintendent reasonably determines, for the period from the date of the casualty to the completion of the repairs. If the damage to the Premises is uninsured or cannot be repaired within twenty-four (24) months from the date of the occurrence, either City or Concessionaire may terminate this Agreement upon sixty (60) days' written notice to the other. If thirty percent (30%) or more of Building 30 is destroyed or damaged or the Premises are not damaged but damage or destruction to Building 30 materially and adversely impacts the Permitted Use and the damage is not insured or cannot be repaired within twenty-four (24) months, then regardless of whether the Premises are damaged or not, Concessionaire may elect to terminate this Agreement upon sixty (60) days written notice to City. In the event of damage by casualty, Concessionaire shall, at its sole cost and expense, be responsible for repair of damage to its own personal property and the City shall not be required to repair or restore any damage or injury or to replace any equipment, inventory, fixture, or other personal property of Concessionaire or others located on the Premises. Neither

City nor Concessionaire shall be liable in damages to the other for terminating this Agreement in accordance with the provisions of this section.

## **12. COMPLIANCE WITH LAWS**

### **12.1 General Requirements**

Concessionaire shall not use or permit the Premises or any part thereof to be used for any purpose in violation of the environmental and usage controls set forth in the USA Deed or any municipal, county, state or federal law, ordinance or regulation. Concessionaire shall promptly comply, at its sole cost and expense, with all laws, ordinances and regulations now in force or hereafter adopted applicable to Concessionaire's business operations or relating to or affecting the condition, use or occupancy of the Premises.

### **12.2 Licenses and Other Authorizations**

Concessionaire, at no cost to the City, shall secure and maintain in full force and effect during the Term, all required licenses, permits and similar legal authorizations, and comply with all requirements thereof, and shall submit to DPR evidence of Concessionaire's satisfaction of all such requirements upon request. Concessionaire shall pay all fees and charges incurred in obtaining any required permits or other governmental approvals.

### **12.3 Nondiscrimination and Equal Employment Opportunity**

Without limiting the generality of Section 12.1, Concessionaire shall comply with all applicable equal employment opportunity and nondiscrimination laws of the USA, 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.

### **12.4 Taxes, Assessments and Other Governmental Impositions**

Together with the Concession Fee required under Subsection 5.1, Concessionaire shall pay to the City whatever leasehold excise tax is assessed pursuant to RCW Ch. 82.29A as a consequence of Concessionaire's use and occupancy of the Premises under this Agreement. Concessionaire shall also remit to the appropriate taxing authority all other taxes, assessments, levies, and other impositions that may be due and payable with respect to property owned by Concessionaire on the Premises, Concessionaire's activities, and Concessionaire's interest in this Agreement, before the same become delinquent.

## **13. ENVIRONMENTAL STANDARDS**

### 13.1 Definitions

As used in this Agreement, “Environmental Law” means any environmentally related local, state or federal law or regulation, ordinance or order, now or hereafter amended including, but not limited to: the Federal Clean Air Act; the Federal Clean Water Act; the Federal Safe Drinking Water Act; the Federal Comprehensive Environmental Response Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Federal Resource Conservation and Recovery Act, as amended by the Solid and Hazardous Waste Amendments of 1984; the Federal Occupational Safety and Health Act; the Federal Emergency Planning and Right-to-Know Act of 1986; the Federal Hazardous Materials Transportation Control Act of 1980; the Federal Waste Management Recovery and Recycling Act; the Federal Toxic Substances Control Act; the Washington Hazardous Waste Management Act; Washington Model Toxics Control Act; the Washington Water Pollution Control Act; the Washington Underground Petroleum Storage Tanks Act; the Washington Industrial Safety and Health Act; the Washington Worker and Community Right to Know Act; the Washington Oil and Hazardous Substance Spill Prevention and Response Act; and any regulations promulgated thereunder from time to time. As used in this Agreement, “Hazardous Substance” means any substance designated as, or containing any component designated as, hazardous, toxic, harmful or subject to regulation under any Environmental Law.

### 13.2 Concessionaire’s General Obligations

Concessionaire shall not keep any Hazardous Substance on or about the Premises, nor shall Concessionaire permit the Premises to be used to generate, produce, manufacture, refine, transport, treat, store, handle, dispose, transfer, or process Hazardous Substances, without the Superintendent’s prior, written consent, except fuel storage as permitted under Section 1.2, and customary office and cleaning supplies in reasonable, normal quantities handled in compliance with applicable law and safety guidelines. With respect to the fuel storage and any other Hazardous Substance the Superintendent has approved for use or storage on the Premises, Concessionaire shall provide the City with Concessionaire’s USEPA Waste Generator Number, and with copies of all Material Safety Data Sheets, Generator Annual Dangerous Waste Reports, environmentally related regulatory permits or approvals (including revisions or renewals) and any correspondence Concessionaire receives from, or provides to, any governmental unit or agency in connection with Concessionaire’s handling of any Hazardous Substance or the presence, or possible presence, of any Hazardous Substance on the Premises.

### 13.3 Environmental Testing

The City shall have access to the Premises upon reasonable notice to conduct environmental inspections. In addition, Concessionaire shall permit the City access to the Premises at any time upon reasonable notice for the purpose of conducting environmental testing at the City’s expense, provided the City makes reasonable efforts not to interfere with Concessionaire’s Permitted Use of the Premises. Concessionaire

shall not conduct or permit others to conduct environmental testing on the Premises without first obtaining the Superintendent's written consent. Concessionaire shall promptly inform DPR of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Premises whenever the same becomes known to Concessionaire, and Concessionaire shall provide a copy of each of the same to DPR immediately following Concessionaire's receipt of the same.

#### 13.4 Concessionaire's Obligation to Remove Hazardous Substances

Prior to Concessionaire vacating the Premises, in addition to all other requirements under this Agreement, Concessionaire shall remove any Hazardous Substance stored or released on the Premises by Concessionaire or its agents or employees during the Term, and shall dispose of such Hazardous Substances in compliance with all applicable Environmental Laws. Concessionaire shall provide copies to the City of all required paperwork related to the characterization, transportation and disposal of Hazardous Substances from the Premises, within thirty (30) days after disposal of such Hazardous Substances.

#### 13.5 Concessionaire's Obligations upon Violation of Environmental Standards; City's Remedial Rights

If Concessionaire violates any of the terms of this Article 13 concerning the presence or use of Hazardous Substances or the handling or storing of hazardous wastes, Concessionaire shall within ten (10) days after notice from the City commence to take such action as is necessary to mitigate and correct the violation as required by Environmental Laws. If Concessionaire does not act within ten (10) days after notice from the City to commence to correct such violation, the City reserves the right, but not the obligation, to come onto the Premises and to take such action as the Superintendent deems necessary to ensure compliance or to mitigate the violation; provided that the City may take such action immediately and without prior notice to the Concessionaire if the City has a reasonable belief that Concessionaire is in violation of any law or regulation and that such violation presents an imminent threat of damage to the Premises or imminent risk to the public. All costs and expenses incurred by the City in connection with any such actions shall become due and payable by Concessionaire within ten (10) days after the City's presentation of an invoice therefor.

#### 13.6 Additional City Remedies for Concessionaire's Violation of Environmental Standards

No remedy provided herein shall be deemed exclusive. In addition to any remedy provided above, the City shall be entitled to full reimbursement from Concessionaire whenever the City incurs any costs resulting from Concessionaire's violation of the terms of this Section 13, including, but not limited to, remedial action costs, fines, penalties assessed directly against the City, injuries to third persons or other properties, and loss of revenues resulting from an inability to allow other persons or entities to use or occupy the Premises due to its environmental condition as the result of

Concessionaire's violation of the terms of this Agreement (even if such loss of revenue occurs after the expiration or earlier termination of this Agreement).

### 13.7 Concessionaire's Environmental Indemnification Obligation

In addition to all other indemnities provided in this Agreement, Concessionaire shall defend, indemnify and hold the City free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, and expenses, including without limitation cleanup and other remedial action costs (including attorneys' fees, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation) (collectively, "Claims), arising from the Concessionaire's use, release or disposal of any Hazardous Substance on the Premises during the term of this Agreement, or the migration of any Hazardous Substance released by Concessionaire, its agents or employees during the term of this Agreement from the Premises to other properties or into the surrounding environment, whether (i) made, commenced or incurred during the Term of this Agreement, or (ii) made, commenced or incurred after the expiration or termination of this Agreement if arising out of Concessionaire's, or its employees, agents, contractors, licensees, or invitee's acts, omissions, or breach of this Agreement during the Term. Nothing contained in this Section 13 shall require Concessionaire to indemnify City for any such Claims resulting from the presence of Hazardous Substances that have come to be located on the Premises or in the soil or ground water prior to the Effective Date or resulting from Hazardous Substances released or disposed of by persons other than Concessionaire, its agents, employees, or other persons under the reasonable control of the Concessionaire, unless Concessionaire negligently exacerbates or contributes to the migration or continued release of such Hazardous Substances.

### 13.8 Survival of Environmental Obligations

The provisions of this Section 13 shall survive the expiration or earlier termination of this Agreement.

## **14. LIENS AND ENCUMBRANCES**

Concessionaire shall keep the Premises free and clear of any liens and encumbrances arising or growing out of its improvement, use and occupancy of the Premises. At the City's request, Concessionaire shall furnish the City written proof of payment of any item that would or might constitute the basis for such a lien on the Premises if not paid.

## **15. INSURANCE**

### 15.1 Concessionaire's Insurance Coverages and Limits

Concessionaire shall, at its sole cost and expense, maintain, and cause its Subtenant(s), if any, to maintain in full force and effect the following minimum limits of insurance throughout the entire Term:

15.1.1 **Commercial General Liability (CGL)** written on an occurrence form at least as broad as ISO CG 00 01, with Minimum Limits of Liability:

\$1,000,000 per Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal/Advertising Injury Liability  
\$1,000,000 Damage to Premises Rented to You

Employers Liability / Washington Stop  
\$1,000,000 Each Accident / Each Disease / Policy Limit

Alternatively, may be evidenced as Employer's Liability insurance under Part B of a Workers Compensation insurance policy.

Coverage shall include: Premises and Operations; Broad Form Property Damage (Including Completed Operations); Liability assumed under an Insured Contract (including tort liability of another assumed in a business contract); Personal Injury and Advertising Liability; Independent Contractors; Severability of Interest Clause; Waiver of Subrogation endorsement in favor of Owner as required by contract; General Aggregate Limits of Insurance shall apply separately; "Claims Made" and "Modified Occurrence" policy forms are not acceptable.

The limits of liability described above are minimum limits of liability only. Regardless of provisions to the contrary under the terms of any insurance policy maintained by Concessionaire, the specification of any such minimum limits shall neither be (1) intended to establish a maximum limit of liability to be maintained by Concessionaire as respects this Agreement, nor (2) construed as limiting the liability of any of Concessionaire's insurers, which must continue to be governed by the stated limits of liability of the relevant insurance policies.

15.1.2 **Automobile Liability insurance** at least as broad as ISO CA 00 01 including coverage for owned, non-owned, leased or hired vehicles as applicable, with a minimum limit of \$1,000,000 each accident for bodily injury and property damage.

15.1.3 **Workers' Compensation** insurance securing Concessionaire's liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington.

15.1.4 **Umbrella or Excess Liability** insurance if and as necessary to maintain total CGL and Automobile Liability insurance limits of \$5,000,000 Each Occurrence and be no less broad than coverages described above.

15.1.5 **Property Insurance** under which the Concessionaire's furniture, trade fixtures, equipment and inventory ("Business Personal Property") and all alterations, additions and improvements that Concessionaire makes to the Premises are insured throughout the Term in an amount not less than the replacement cost new thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss (excluding earthquake), 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, or above-ground 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 payment of the Concession Fee and other fixed costs during any interruption of Concessionaire's business. City shall be named as a loss payee as respects property insurance covering the alterations, additions and improvements under such policy.

15.1.6 **Pollution Legal Liability** is required if the Concessionaire will be using or storing hazardous materials or regulated substances, such as fuel. It is acceptable to add ISO endorsement CG 24 15 Limited Pollution Liability Extension or its equivalent to the CGL policy or obtain a separate pollution legal liability policy.

15.1.7 **Builder's Risk.** During such time as Concessionaire is engaged in the performance of tenant improvements or other renovation of the Premises, the Concessionaire shall maintain in full force and effect "All Risks" Builder's Risk Property insurance or equivalent for the portion of the Premises under renovation, including fire and flood, on a replacement cost new basis subject to a deductible of no more than \$50,000 each loss. It shall be Concessionaire's responsibility to properly coordinate with the City's Risk Management Division for the placement of Builder's Risk Property insurance prior to any new construction on, or structural alteration of, the Premises.

15.1.8 In the event that the City reasonably deems insurance to be inadequate to protect Concessionaire and the City, Concessionaire shall increase coverages and/or liability limits as the City shall deem reasonably adequate within sixty (60) days after the date of written notice.

## 15.2 City's Property Insurance Coverage and Limits

City will maintain at its expense Property Insurance or self-insurance under which the Premises, excluding Concessionaire's Business Personal Property and tenant improvements, are insured throughout the Term in an

amount not less than the replacement cost new 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, or above-ground oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises. Concessionaire shall be responsible to pay the deductible to the proportional extent to which the loss or damage is attributable to Concessionaire's negligent acts.

### 15.3 General Requirements for Concessionaire's Insurance

15.3.1 The CGL insurance and, in addition, Excess and/or Umbrella liability insurance, if any, shall include "The City of Seattle, its officers, officials, employees, agents and volunteers" as additional insureds. Concessionaire's insurance shall be primary and non-contributory to any insurance maintained by or available to the City. The term "insurance" in this paragraph shall include insurance, self-insurance (whether funded or unfunded), alternative risk transfer techniques, capital market solutions or any other form of risk financing.

15.3.2 Coverage shall not be cancelled without forty-five (45) day written notice of such cancellation, except ten (10) day written notice as respects cancellation for non-payment of premium, to the City at its notice address except as may otherwise be specified in Revised Code of Washington (RCW) 48.18.290 (Cancellation by insurer.). The City and the Concessionaire mutually agree that for the purpose of RCW 48.18.290 (1) (e), for both liability and property insurance the City is deemed to be a "mortgagee, pledge, or other person shown by (the required insurance policies) to have an interest in any loss which may occur thereunder."

15.3.3 Each insurance policy required hereunder shall be (1) subject to reasonable approval by City that it conforms with the requirements of this Section, and (2) be issued by an insurer 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 unless procured under the provisions of chapter 48.15 RCW (Unauthorized insurers).

15.3.4 Any deductible or self-insured retention ("S.I.R.") must be disclosed to, and shall be subject to reasonable approval by, the City. Concessionaire shall cooperate to provide such information as the City may reasonably deem to be necessary to assess the risk bearing capacity of the Concessionaire to sustain such deductible or S.I.R. The cost of any claim falling within a deductible or S.I.R. shall be the responsibility of Concessionaire. If a deductible or S.I.R. for CGL or equivalent insurance is not "fronted" by an insurer but is funded and/or administered by Concessionaire or a contracted third party claims administrator, Concessionaire agrees to defend and indemnify the City to the

same extent as the City would be protected as an additional insured for primary and non-contributory limits of liability as required herein by an insurer.

#### 15.4 Waiver of Subrogation

The City and Concessionaire waive all subrogation rights each may have against the other, or any subtenant, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Premises, or that would fall within the scope of a policy of property insurance or program of self-insurance for property loss that a party is required to maintain under this Agreement, whether or not the party suffering the loss actually maintained the insurance.

#### 15.5 Evidence of Insurance

On or before the Commencement Date, and thereafter not later than the last business day prior to the expiration date of each such policy, the following documents must be delivered to City at its notice address as evidence of the insurance coverage required to be maintained by Concessionaire:

15.5.1 Certificates of insurance documenting compliance with the coverage, minimum limits and general requirements specified herein; and

15.5.2 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;

15.5.3 A copy of the CGL insurance policy provision(s) documenting 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;

15.5.4 Pending receipt of the documentation specified in Section 15.5.3, Concessionaire may provide a copy of a current complete binder. An ACORD certificate of insurance will not be accepted in lieu thereof.

Original certificates of insurance shall be issued to:

The City of Seattle  
Department of Parks and Recreation  
6310 NE 74<sup>th</sup> St., Suite 109E  
Seattle, WA 98115  
ATTN: Manager

#### 15.6 Assumption of Property Risk

The placement and storage of Concessionaire's Business Personal Property in or about the Premises shall be the responsibility, and at the sole risk, of Concessionaire.

#### 15.7 Adjustments of Claims

The Concessionaire shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of the Concessionaire under this Agreement.

#### 15.8 Concessionaire's Responsibility

The procuring of the policies of insurance required by this Agreement shall not be construed to limit the Concessionaire's liability under this Agreement.

### **16. RECORDS, BOOKS & DOCUMENTS FOR CITY ACCESS AND AUDIT**

Concessionaire shall keep separate, accurate, complete and auditable records and receipts for each year, showing the programming offered at and from Magnuson Park. All such records shall be retained in King County, Washington, for at least six (6) years after the close of any fiscal year in which they were generated or issued.

Concessionaire's books and records shall be subject at all reasonable times to inspection, review, or audit in King County by personnel duly authorized by DPR, the City, the Office of the State Auditor, and other officials so authorized by law, rule, regulation, or contract. Concessionaire shall ensure that such inspection, audit and copying right of the City is a condition of any license, contract or other arrangement under which any other person who is not a Concessionaire employee or other entity is permitted to carry on a business or social service activity in, on or from the Premises.

### **17. ACCESS**

DPR and NPS shall have the right, at all reasonable times and with prior notice to Concessionaire, to enter the Premises for purposes of inspecting, cleaning, repairing, altering, or improving the Premises or Building 30 to the extent required or permitted under this Agreement; provided that the City may not alter or improve the Premises for any reason other than for safety or code compliance without the Concessionaire's consent, and nothing contained in this Section 17 shall be construed so as to impose any obligation on DPR to make any repair, alteration, or improvement. If the City's activities prevent the Concessionaire from using the Premises the Concessionaire shall be entitled to a reasonable abatement of the Concession Fee. Concessionaire shall not install any lock or bolt or other security device on any portion of the Premises without DPR's written consent. Concessionaire shall provide DPR with a key to each lock installed on any portion of the Premises (other than keys to safes, filing cabinets and the like).

### **18. SIGNS OR ADVERTISING**

## 18.1 Concessionaire's Signs

Concessionaire shall have the right upon prior written approval from DPR to install a sign on the Premises that identifies the same for Concessionaire's purposes. Any such sign shall be constructed in a style and size consistent with the City's sign code and DPR's then-current signage policy. DPR hereby approves Concessionaire's signage on the Premises existing as of the Commencement Date.

## 18.2 No Other Signage on Premises

Other than the signage permitted by Section 18.1, above, Concessionaire 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 first obtaining DPR's written consent thereto. Any such sign shall be constructed in a style and size consistent with the City's sign code and DPR's then-current signage policy. Any consent so obtained from DPR shall be with the understanding and agreement that Concessionaire will remove the same at the expiration or earlier termination of this Agreement and repair any damage or injury to the Premises caused thereby.

## **19. WASTEFUL AND DANGEROUS USE**

Concessionaire shall not commit or suffer any waste upon the Premises and will not do or permit to be done in or about the Premises anything that is inconsistent with this Agreement or the Parks Code (Chapter 18.12 of the Seattle Municipal Code) as now existing or hereafter amended or any activity that is inconsistent with the use authorized by this Agreement or that will be dangerous to life or limb, or that will increase any insurance rate upon the Premises.

## **20. DEFAULT; REMEDIES FOR DEFAULT; TERMINATION**

### 20.1 Concessionaire's Default; Definition

Each of the following shall, unless cured by Concessionaire within any applicable cure period set forth in Section 20.2 below, be an event of default ("Default") under this Agreement: (a) if Concessionaire violates, breaches, or fails to keep or perform any term, provision, covenant, or any obligation of this Agreement; (b) if Concessionaire abandons, deserts, vacates, or otherwise removes its operations from the Premises without the Superintendent's prior consent; or (c) if Concessionaire files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for Concessionaire's assets or if Concessionaire makes an assignment for the benefit of creditors, or if Concessionaire is adjudicated insolvent, or becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or liquidated, voluntarily or otherwise..

### 20.2 City Remedies in the Event of Concessionaire's Default

If Concessionaire Defaults and such Default continues or has not been remedied to the Superintendent's reasonable satisfaction within thirty (30) days after written notice of

Default has been provided to Concessionaire, then City shall have the nonexclusive rights and remedies that follow: (i) to cure the Default on Concessionaire's behalf and at Concessionaire's sole expense and to charge Concessionaire for all actual and reasonable costs and expenses incurred by City in effecting such cure as an additional charge; (ii) to terminate this Agreement by written notice to Concessionaire; and (iii) to re-enter said Premises and take possession thereof without liability to Concessionaire of any kind. Notwithstanding the foregoing, for any Default other than monetary Default, failure to maintain required insurance, or vacation or abandonment of the Premises, if the nature of Concessionaire's Default is such that more than thirty (30) days is required for remedy, then Concessionaire shall not be in Default if it commences the remedy within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

Concessionaire shall be liable and shall reimburse the City upon demand for all actual and reasonable costs and expenses of every kind and nature incurred in retaking possession of the Premises. If the City retakes the Premises, the City shall have the right, but not the obligation, to remove therefrom all or any part of the personal property located thereon and may exercise City's rights under Section 21. City's remedies under this Section 20.2 are cumulative and City does not waive its right to any remedy allowed at law or equity.

#### 20.3 Termination for Reasons beyond the Parties' Control

Either party may terminate this Agreement without recourse by the other party upon five (5) days' written notice if performance is rendered impossible or impracticable for reasons beyond the terminating party's reasonable control such as, but not limited to, acts of nature; war or warlike operations; civil commotion; riot; labor disputes including strikes, walkouts, or lockouts; sabotage; or superior governmental regulation or control.

#### 20.4 Termination for City's Convenience

Notwithstanding anything else in this Agreement to the contrary, City may, at any time and without liability of any kind to Concessionaire except as set forth in this Section 20.4, terminate this Agreement upon two hundred seventy (270) days' prior written notice to Concessionaire if the City determines that the Premises are required for a different public purpose. If City terminates for convenience, City will pay a Termination Fee to Concessionaire that is equal to the sum of (a) the dollar amount of the Concession Fees (excluding applicable offsets) Concessionaire actually paid to the City in the twelve (12) months prior to the termination date, and (b) the cost of capital improvements eligible for the Allowance pursuant to Section 5.6.2 to the extent not yet offset against the Concession Fee as of the termination date.

#### 20.5. City's Default

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 Concessionaire; 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, Concessionaire 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.

## **21. REMOVAL OF CONCESSIONAIRE'S PROPERTY FROM PREMISES**

Upon the expiration or earlier termination of this Agreement, all of Concessionaire's right, title and interest in and to the Premises, including fixtures installed therein pursuant to this Agreement (other than moveable trade fixtures and appliances and equipment not affixed to the Premises), shall vest in the City, without any action of either party hereto. At such time, Concessionaire shall return the Premises to DPR in good order and condition, except for normal wear and tear, pre-existing defects and repairs necessitated by the City's default or damage by fire or other casualty excepted, and shall have removed from the Premises all items of personal property located thereon. If such personal property is not removed, then DPR shall have the right, but not the obligation, to remove all such personal property from the Premises and may store the same in any place selected by DPR, including but not limited to a public warehouse, at the expense and risk of the owner(s) of such property, with the right to sell such stored property, without notice to Concessionaire 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 Concessionaire to the City. The balance, if any, shall be paid to Concessionaire.

## **22. NOTICES**

All notices given under this Agreement by either party to the other shall be in writing and shall be sufficiently given if either personally served upon the other party delivered by recognized overnight courier service or sent via the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed as follows, unless either party hereafter designates a different address by notice to the other:

If to Concessionaire:	Steve Dubiel, Executive Director EarthCorps 6310 NE 74 <sup>th</sup> St, Suite 201E Seattle, WA 98115
-----------------------	--

If to the City, DPR or the Superintendent:	Seattle Parks and Recreation Magnuson Park Attn: Manager 6310 NE 74 <sup>th</sup> Street #109E Seattle, WA 98115
--	---

Notices are effective as follows: if personally delivered, on the date when delivered, or if delivered by overnight courier service, one (1) business day after deposit with the courier

service, or if mailed, three (3) business days following the date of placement into U.S. Mail, postage pre-paid.

## **23. MISCELLANEOUS**

### **23.1 Assignment; Subletting**

Concessionaire may sublet or sublicense not more than ten percent (10%) of the area of the Premises for uses which are consistent with the Permitted Use and the USA Deed without prior written approval from the Superintendent. If Concessionaire charges a sublease or sublicense rent or use fee which exceeds the then-current per square foot Concession Fee rate under this Agreement, the excess shall be payable to DPR. Additionally, Concessionaire shall provide the Superintendent with written notice of any sublease or sublicense that Concessionaire enters into no later than thirty (30) days following the commencement of the subletting agreement, and the City shall have the right to review the agreement and any accounting of revenues received by Concessionaire for compliance with the terms of this Agreement. Except as expressly permitted in in this Section 23.1, Concessionaire shall not assign this Agreement or any interest therein, nor sublet all or any part of the Premises or any right or privilege appurtenant thereto, nor permit the occupancy or exclusive use of any part thereof by any other person without the prior written approval of the Superintendent. Any purported assignment, sublease or use without the approval of the Superintendent shall be grounds for termination of this Agreement by the City or possible reversion under the USA Deed in the discretion of the USA.

### **23.2 Captions**

The paragraph and section headings hereof are for convenience only and shall not be used to expand or interpret the meaning of any part of this Agreement.

### **23.3 Time**

Time is of the essence of this Agreement.

### **23.4 Partial Invalidity**

If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be found or held to be invalid or unenforceable, the remainder of this Agreement, and the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

### 23.5 Binding Effect

The provisions, covenants, and conditions contained in this Agreement are binding upon the parties hereto and their legal representatives, successors, assigns and subsidiaries.

### 23.6 Applicable Law

This Agreement shall be interpreted under the laws of the State of Washington.

### 23.7 Jurisdiction & Venue

The jurisdiction and venue for any litigation between the parties regarding this Agreement or any question, claim, loss, or injury arising hereunder shall be in the Superior Court of the State of Washington for King County.

### 23.8 No Partnership or Joint Venture Created

This Agreement does not make Concessionaire the agent or legal representative of the City, nor is any partnership or joint venture created hereby. Concessionaire is not granted any express or implied right or authority to incur any obligation or responsibility in the name of the City or to bind the City in any manner or thing whatsoever.

### 23.9 City's Remedies Cumulative

The City's rights under this Agreement are cumulative; the City's failure to exercise promptly any rights given hereunder shall not operate to forfeit any such rights. The City shall also have any other remedy given by law. The use of one remedy shall not be taken to exclude or waive the right to use another.

### 23.10 Amendments

No modification of this Agreement shall be binding upon the City or Concessionaire unless reduced to writing and signed by each of their authorized representatives.

### 23.11 Consumption of Alcoholic Beverages

Concessionaire shall not permit the consumption of any alcoholic beverages anywhere on the Premises except for Concessionaire-sponsored events that have obtained any required State of Washington Liquor Control Board permits.

### 23.12 No Third-Party Rights

No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation that is not a party hereto nor shall any person, firm, organization or corporation other than a party hereto have any right or cause of action hereunder.

### 23.13 No Waivers

No action other than a written document from the Superintendent specifically so stating shall constitute a waiver by the City of any particular breach or default by Concessionaire, nor shall such a document waive any failure by Concessionaire to fully comply with any other term or condition of this Agreement, irrespective of any knowledge any City officer or employee may have of such breach, default, or noncompliance. The City's failure to insist upon full performance of any provision of this Agreement shall not be deemed to constitute consent to or acceptance of such incomplete performance in the future.

### 23.14 Entire Agreement

This Agreement, including its exhibits as listed below, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior oral or written understandings, agreements, promises or other undertakings between the parties with respect hereto. The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's preparation of the same.

Exhibit A-1: Premises - Building 30 - First Floor Floorplan

Exhibit A-2: Premises - Building 30 - Second Floor Floorplan

Exhibit A-3: Adjacent Area and Parking/Loading Zone

Exhibit A-4: List of Spaces

Exhibit A-5: Legal Description

Exhibit B-1: Public Benefit Description

~~Exhibit B-2: Examples of Services~~

Exhibit C: Capital Improvement Categories Eligible for Allowance

Exhibit D: USA Deed

### 23.15 City's Consent or Approval

Whenever the consent of the City or Superintendent to any act to be performed by Concessionaire is required under this Agreement, Concessionaire must obtain the consent or approval in writing expressly for purposes of this Agreement, regardless of whether a consent or approval shall have been granted by the City in its regulatory, public utility, or other capacity. No permission, consent, or approval of the City or the Superintendent contained herein or given pursuant to this Agreement is, or shall be

construed as, a representation or assurance that the matter consented to or approved complies with applicable laws, regulations, ordinances or codes, nor shall any such consent or approval be construed to authorize any failure to comply with any of the foregoing.

23.16 Counterparts

This Agreement may be executed in counterparts for the convenience of the parties, and such counterparts shall together constitute one Agreement.

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

**CITY:**  
**THE CITY OF SEATTLE**

**CONCESSIONAIRE:**  
**EARTHCORPS**

By: \_\_\_\_\_  
Jesús Aguirre, Superintendent  
Department of Parks and Recreation

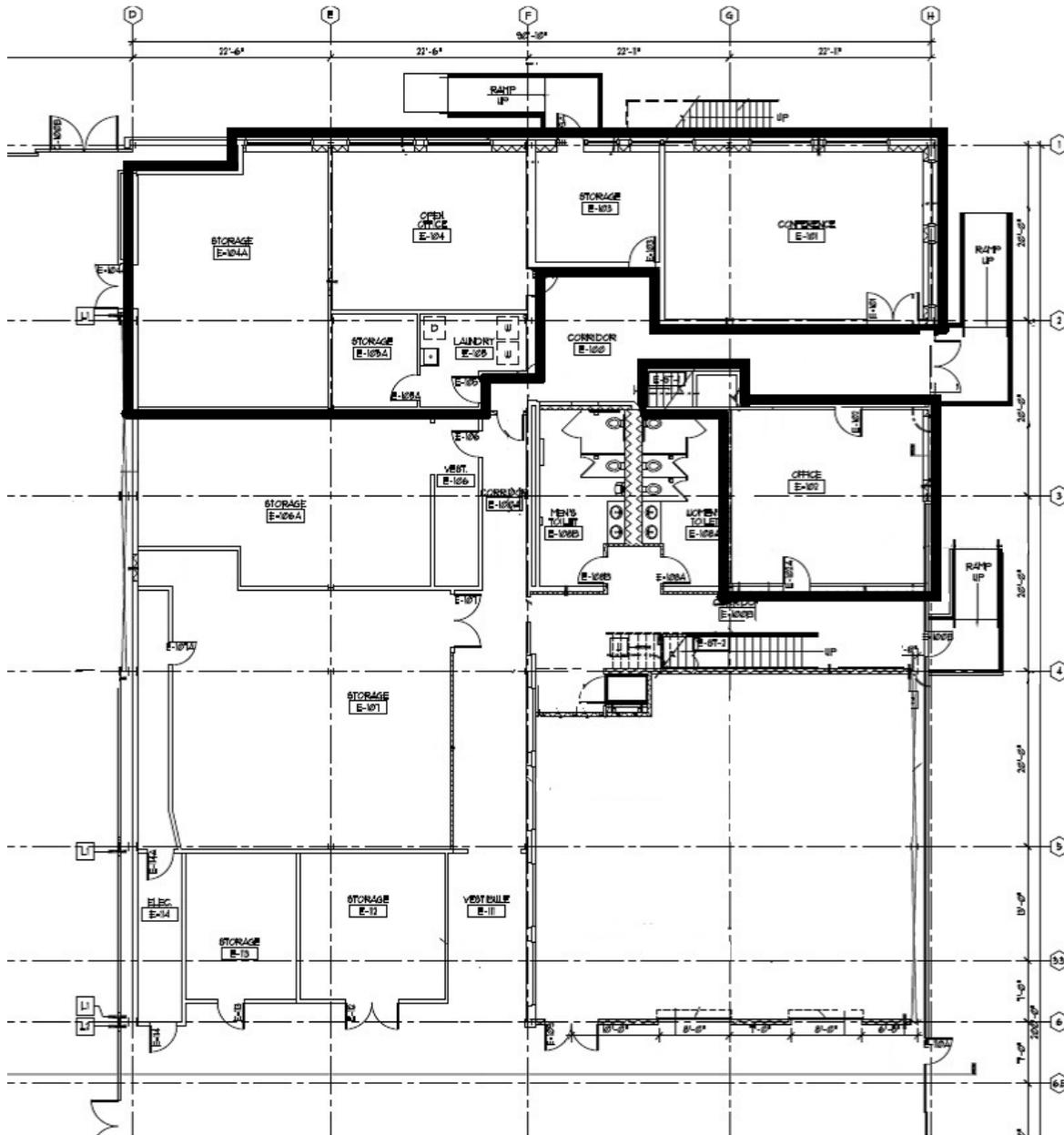
By: \_\_\_\_\_  
Steve Dubiel, Executive Director

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

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

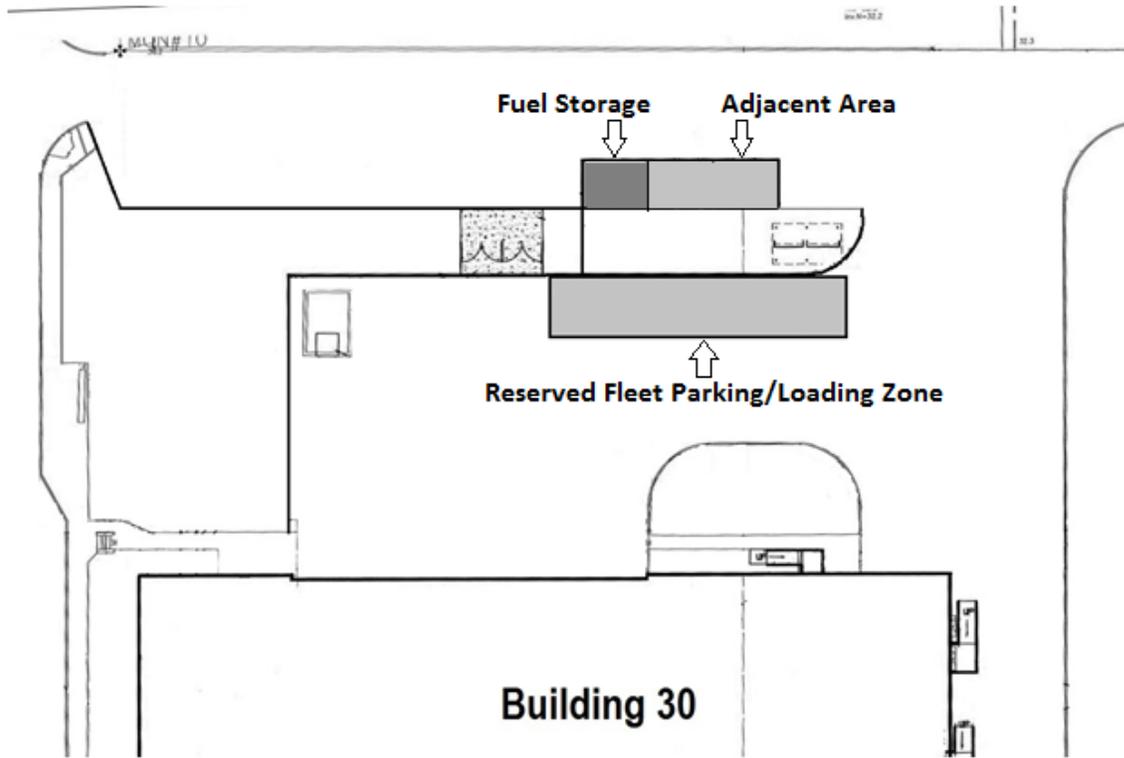


**EXHIBIT A-1**  
**Premises - Building 30 - First Floor Floorplan**





**EXHIBIT A-3**  
**Adjacent Area and Parking/Loading Zone**



**EXHIBIT A-4**  
**List of Spaces**

<b>Room</b>	<b>Name</b>	<b>Room SF</b>	<b>Floor SF</b>
E-101	Conference	549	
E-102	Office	431	
E-103	Storage	180	
E-104	Open Office	400	
E-104A	Storage	602	
E-105	Laundry	104	
E-105A	Storage	101	
<b>Total First Floor</b>			<b>2367</b>
E-201	Office	299	
E-202	Open Office	607	
E-202A	Office	93	
E-202B	Office	81	
E-202C	Office	72	
E-203	Office	336	
E-204	Storage	29	
E-205	Lockers	183	
E-206	Corridor	75	
E-207	Open Office	536	
E-207A	Office	171	
E-207B	Office	143	
E-207C	Storage	16	
E-207D	Office	147	
E-207E	Storage	43	
E-208	Open Office	701	
E-208A	Office	124	
E-208B	Office	105	
E-209	Office	83	
E-210	Server Room	117	
E-211	Open Office	515	
E-212	Break Room	239	
E-212A	Storage	32	
<b>Total Second Floor</b>			<b>4747</b>
<b>Total Premises</b>			<b>7114</b>

**Excluded Rooms**

<b>Room</b>	<b>Name</b>	<b>Room SF</b>	<b>Floor SF</b>
E-100	Corridor	486	
<b>Total First Floor</b>			<b>486</b>

E-200A	Corridor	201	
E-200B	Corridor	135	
E-200C	Corridor	185	
E-200D	Corridor	210	
Total Second Floor			731
Total Excluded Area			1217

## EXHIBIT A-5

### Legal Description

Bldg 30

W ½ Section 2, TWP 25, RNG 04E, W.M.

PARCEL 6 Lot A

That portion of the northeast quarter (NE4) of the southwest quarter (SW4), the southwest quarter (SW4) of the northwest quarter (NW4) and Govt. Lot 2 in Section 2, TWP 25N, RNG 04E, as acquired by the U. S. Navy on behalf of the United States of America by deed recorded in the records of King Co., Washington in Vol. 1306 at pg. 455, described as follows:

Commencing at the southwest corner of said Lot 2, accepted as being the same as the intersection of the centerline of Sand Point Way NE with the production east of the north margin of NE 75th Street, thence S 00° 48' 49" E on said centerline a distance of 171.45 feet, thence N 89° 11' 11" E a distance of 40.00 feet to the east margin of Sand Point Way NE, thence N 89° 57' 38" E a distance of 94.91 feet, thence S 00° 01' 23" E a distance of 95.37 feet, thence N 89° 42' 47" E a distance of 404.93 feet to the True Point of Beginning, thence continuing N 89° 42' 47" E a distance of 690.05 feet to the west boundary of a tract of land under the jurisdiction of the National Oceanic & Atmospheric Administration (NOAA), thence N 00° 02' 51" E on said NOAA boundary a distance of 460.89 feet to a concrete monument marking an angle point in the NOAA boundary, thence N 89° 57' 32" W on said NOAA boundary a distance of 690.63 feet to a concrete monument with metal disk stamped "U.S. NAVY #10", thence S 00° 01' 33" E a distance of 464.84 feet to the True Point of Beginning.

## EXHIBIT B-1

### Public Benefit Description

The categories of public benefits described in this exhibit are generally available for the Public Benefit Offset under Section 5.6 of this Agreement. Other types of programs or services will be eligible only if approved in advance by the Superintendent.

~~EarthCorps will provide Ecological Restoration services in DPR's parks. These services may include but are not limited to, invasive plant removal, native plant installation, volunteer management, trail construction, slope stabilization, monitoring, vegetation assessments, and project management. EarthCorps will work with Urban Forestry and/or Trails staff at DPR to determine the location and types of work needed each year. These services will be valued at standard billing rates charged by comparable entities for comparable services, which may change over time.~~

~~Annual Reporting. Lessee shall submit to DPR an annual Public Benefit Report describing its programs, activities and educational services for its fiscal year. Seattle Parks and Recreation will provide a template for this report before the end of the lessee's current fiscal year for the following year. The Public Benefit Report will be submitted following the guidelines set in Section 5.6.5 of this Agreement.~~

#### 1. Community Outreach:

~~EarthCorps will work to grow its recruitment network by engaging organizations such as EPOC (Environmental Professionals of Color), Got Green, Rainier Valley Corps, InterIm WILD and Student Conservation Association in an effort to increase recruitment of disadvantaged youth. EarthCorps will reach out to a minimum of 3 organizations including, but not limited to those organizations referenced above, and will provide supporting documentation verifying these recruitment efforts. The recruitment plans are updated annually and are included in annual reporting to DPR.~~

#### 2. Ecological Restoration Offset:

~~EarthCorps will provide a minimum of 2 restoration projects annually to the Seattle Department of Parks and Recreation (DPR) at no cost to the City of Seattle. These services may include but are not limited to, invasive plant removal, native plant installation, volunteer management, trail construction, slope stabilization, monitoring, vegetation assessments, and project management. EarthCorps will work with Urban Forestry and/or Trails staff at DPR to determine the location and types of work needed each year. Services will be valued at standard billing rates charged by comparable entities for comparable services, which may change over time. The current rates will be presented in the annual Public Benefit Plan and will be approved by the Superintendent.~~

For example, if EarthCorps provides 2 Ecological Restoration Projects at the level of effort described below, then, based on the 2017 Standard Rates, Earthcorp would they will be eligible for a Public Benefit Offset of \$4,325, as shown below:

<u>Example of Ecological Restoration Public Benefit Offset</u>			
<u>Project</u>	<u>2017 Standard Rates</u>	<u>Project Length</u>	<u>Total</u>
<u>1. Crew of 3 – 4 Persons</u>	<u>\$870.00 per day</u>	<u>1 Day</u>	<u>\$870</u>
<u>Project manager</u>	<u>\$75.00 per hour</u>	<u>8 Hours</u>	<u>\$600</u>
<u>Ecologist</u>	<u>\$115.00 per hour</u>	<u>3 Hours</u>	<u>\$345</u>
		<u>Subtotal</u>	<u>\$1,815</u>
<u>2. Crew of 5 – 6 persons</u>	<u>\$1,300.00 per day</u>	<u>1 Day</u>	<u>\$1,300</u>
<u>Project manager</u>	<u>\$75.00 per hour</u>	<u>10 Hours</u>	<u>\$750</u>
<u>Ecologist</u>	<u>\$115.00 per hour</u>	<u>4 Hours</u>	<u>\$460</u>
		<u>Subtotal</u>	<u>\$2,510</u>
<u>Total Ecological Restoration Public Benefit Eligible for Offset</u>			<u>\$4,325</u>

3. Volunteer Opportunities:

EarthCorps shall provide volunteer and experiential learning opportunities in the City of Seattle for students and the general public that are not funded by the City of Seattle. Volunteer hours shall be reported as public benefit at the most current rate for volunteers as listed under the National Value of Volunteer Time on the Independent Sector website: <https://www.independentsector.org/resource/the-value-of-volunteer-time/>. For 2016, the most current rate available at this time, the Estimated Value of Volunteer time is \$24.14 per hour.

For example, if EarthCorps provides volunteer opportunities for 25 persons, for 5 hours per person, at the 2016 standard rate of \$24.14 per hour, then EarthCorps will be eligible for a Volunteer Opportunities Public Benefit Offset of \$3,017.50.

## **Exhibit B-2**

### **Examples of Services**

#### **Crew of 5 – 6 persons including a crew leader**

~~— Crew includes transportation to and from the work site as well as hand tools to complete tasks such as invasive plant removal, installation of erosion control materials, planting, trail construction, and stewardship of sites. In addition, crews are trained to operate herbicide application equipment, brush cutters, and power wheelbarrows. The crew leader is qualified to operate chainsaws for bucking material and is a licensed Washington State Pesticide Applicator.~~

#### **Crew of 3 – 4 persons including a crew leader (March - May ONLY)**

~~— Crew includes transportation to and from the work site as well as hand tools to complete tasks such as invasive plant removal, installation of erosion control materials, planting, trail construction, and stewardship of sites. In addition, crews are trained to operate herbicide application equipment, brush cutters, and power wheelbarrows. The crew leader is qualified to operate chainsaws for bucking material and is a licensed Washington State Pesticide Applicator.~~

#### **Project manager**

~~— An EarthCorps project manager coordinates the communication and logistics to ensure crews are equipped with the knowledge and skills to perform the requested tasks. In addition, a project manager can develop restoration plans, purchase materials, coordinate project activities between various entities, and ensure the project goals and objectives are met to the partner's satisfaction. Furthermore, a project manager can write and/or collaborate on grant opportunities and provide reports.~~

#### **Ecologist**

~~— An EarthCorps ecologist utilizes best available science and technology to provide clients with the tools needed to make informed management decisions. Services include habitat and invasive species mapping (GIS) and analysis; vegetation management plan development; monitoring of restoration/ mitigation projects; street tree and landscape area surveys; and restoration action plans.~~

#### **Field truck**

- ~~• 4 x 4 pickup truck or 3-ton capacity dump truck to move material~~
- ~~• Accommodations, when necessary, and food.~~

#### **2017 Volunteer Management Services**

~~— Volunteer event management services include: volunteer recruitment, event coordination, event leadership, pre-event technical support, pre-event site visits and post-event reporting. EarthCorps supervises and educates volunteers with an average ratio of 20 volunteers per staff person. EarthCorps comes equipped with tools and hospitality items for volunteers. An EarthCorps project manager communicates with the project partner prior to the event and oversees the activities to implement the event work plan as~~

agreed. The project manager instructs volunteers and EarthCorps members so they are equipped with the knowledge and skills to perform the requested tasks. The Volunteer Recruiter works with the project partner to recruit community volunteers to attend the event. At events, volunteers are educated in safety, tool use, and environmental restoration techniques and philosophy.

#### **Volunteer Event (up to 40 volunteers)**

- Project Management (15 hours)
- 1 Event Assistant (9 hours)
- Volunteer Recruiter/ Coordination (1 hour)
- Hospitality and tools

#### **Volunteer Event (41-60 volunteers)**

- Project Management (15 hours)
- 2 Event Assistants (18 hours)
- Volunteer Recruiter/ Coordination (1 hour)
- Hospitality and tools

#### **Volunteer Event (61-80 volunteers)**

- Project Management (15 hours)
- 3 Event Assistants (27 hours)
- Volunteer Recruiter/ Coordination (2 hours)
- Hospitality and tools

#### **Volunteer Event (81-100 volunteers)**

- Project Management (20 hours)
- 1 Crew of 5-6 event assistants
- Volunteer Recruiter/ Coordination (3 hours)
- Hospitality and tools

#### **Volunteer Event (101-200 volunteers)**

- Project Management (28 hours)
- 2 Crews of 5-6 event assistants
- Volunteer Recruiter/ Coordination (3 hours)
- Hospitality and tools

#### **Site Preparation**

- 1 Project Manager (4-8 hours per day)
- 1 crew of 5-6 persons including a crew leader

A crew includes transportation to and from the work site as well as hand tools to complete tasks to prepare the site for volunteers and improve the safety and efficiency of volunteer events. Tasks include, but are not limited to, plant staging, invasive plant brush cutting, improving the safety of the site and delivering and staging materials.

## **Other Services**

### **Project Manager**

~~———— In addition to the volunteer event services project above, a project manager can develop restoration plans, purchase materials, coordinate project activities between various entities, and essentially ensure the project goals and objectives are met to the partner's satisfaction.~~

### **Volunteer Recruiter/Community Outreach**

~~———— Volunteer recruitment comes standard with our volunteer events and includes posting on our website, posting on VolunteerMatch.com and the United Way websites. The Volunteer Recruiter also fields questions about the upcoming event, meeting location, and specific project information. Volunteers who sign up for EarthCorps projects will receive a reminder email with project location information the day prior to the event and a post-event thank you email. EarthCorps can do community outreach for DPR events as well including, but not limited to, tabling, festival participation, and community meetings.~~

### **Event Assistant**

~~Additional EarthCorps staff to manage volunteers, lead registration or support general event logistics on the day of an event.~~

### **Field truck**

- ~~• 4 x 4 pickup truck or 3-ton capacity dump truck to move material~~

**EXHIBIT C**  
**Capital Improvement Categories Eligible for Allowance**

**SITework:**

Demolition  
Parking lot improvements, pavement and repair  
Site Lighting  
Pedestrian Amenities  
ADA Compliance & Repairs  
Site Permits & Fees  
Project Signage  
Tenant Signage  
Landscape Improvements

**BUILDING CONSTRUCTION:**

Environmental Remediation  
Interior Repair  
Electrical  
ADA Compliance  
Windows, Storefront, Canopies, Doors  
Restroom  
Interior Walls  
Paint  
Building Permits and Fees  
Historic Preservation Review Fees  
Mechanical System Upgrades

**DEVELOPMENT COSTS:**

Project Management Costs

**TENANT IMPROVEMENTS:**

Tenant Building Improvements  
(Not cash allowances or payments)

**EXHIBIT D**  
**USA Deed**



Seattle Department of Parks and Recreation  
Property Management  
800 Maynard Avenue South, 3rd Floor  
Seattle, Washington 98134

DOCUMENT TYPE  
COVER SHEET

Document Title: Quit Claim Deed

Reference number of related documents: Not Applicable

Grantor:  
UNITED STATES OF AMERICA, acting by & through the Department of the Interior

Grantee:  
THE CITY OF SEATTLE

Abbreviated Legal Description:  
Portions of Section 2, Township 25N, Range 4 E, WM

Assessor's Property Tax Parcel Account Number(s):  
Portion of 022504-9001  
Portion of 022504-9061

9905041194

990504-1194 10:21:00 AM KING COUNTY RECORDS 027 716 24.00

Portion, Naval Station Puget Sound (Sand Point)  
King County, Washington

QUIT CLAIM DEED

THE UNITED STATES OF AMERICA, acting by and through the Secretary of the Interior, acting by and through the Director, National Park Service, under and pursuant to the power and authority contained in the provisions of the Federal Property and Administrative Services Act of 1949 (63 Stat. 337), as amended, and particularly as amended by Public Law 485, 91st Congress, and regulations and orders promulgated thereunder (hereinafter designated "Grantor"), for and in consideration of the perpetual use of the hereinafter described premises as and for public park and public recreation area purposes, by the City of Seattle, Washington (hereinafter designated "Grantee"), does hereby convey and quit claim to Grantee, and to its successors and assigns, all Grantor's right, title and interest, together with all after-acquired title of the Grantor therein, in and to property containing approximately ninety three and one tenth (93.1) acres, including improvements appurtenant thereto, located in King County, Washington, and identified as Parcel 1 - Lots A, B, C, D, E, Parcel 3 - Lot E, Parcel 6 - Lots A, B, and C, and Parcel 6 - Lots D, E, and F, and Parcel 6B western segment described in Exhibit A, attached herein.

The herein described property is conveyed by the Grantor to the Grantee subject to the reservations, exceptions, restrictions, conditions and covenants herein expressed and set forth unto the Grantee, its successors and assigns, forever.

The Grantor expressly excepts and reserves all remaining oil, gas, and mineral rights and deposits in said land to the Grantor, without rights to surface entry, from the hereinbefore described property, in accordance with all applicable laws.

Pursuant to CERCLA, 42 U.S.C. Section 9620(h), the United States Department of the Navy prepared an Environmental Baseline Survey (EBS), revised March 1, 1996, for the herein-described property. On May 16, 1996, the State of Washington issued a No Further Action Determination. A *Finding of Suitability to Transfer* (FOST) for Sand Point was approved by the United States Department of the Navy on April 15, 1998, and Addendum One to the FOST was approved by the United States Department of the Navy on August 25, 1998. Grantee acknowledges that it has received copies of the EBS and FOST, together with all documents attached thereto, and has received a copy of Addendum One to the FOST. Remedial action taken by the Navy is set forth in the Base Realignment and Closure Cleanup Plan (BCP), Close Out Version, dated "revised February 28, 1996".

Pursuant to CERCLA, 42 U.S.C. Section 9620(h), the United States covenants and warrants to Grantee, its successors and assigns, that all remedial action, response action or corrective action necessary to protect human health and the environment with respect to any hazardous substance remaining on the property has been taken prior to the date of said transfer.

Pursuant to CERCLA, 42 U.S.C. Section 9620(h), the Grantor, on behalf of the Department of Navy, covenants and warrants to grantee, its successors, and assigns that any additional remedial action found to be necessary to protect human health and the environment with respect to any hazardous substance

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stored, disposed of, or released on the herein described property prior to the date of transfer shall be conducted by the United States.

Pursuant to CERCLA 42 U.S.C. Section 9620(h), the Grantor reserves a right of access to the property in any case in which a response action or corrective action is found to be necessary after the date of this conveyance for the purpose of, but not limited to, monitoring, investigation, sampling, testing, or removal of any hazardous substance(s). The Grantee shall be provided reasonable notice of any action requiring access to the property and the Grantor shall take all reasonable steps to minimize the disruption of the Grantee's use of the property.

For the purposes of this deed, the term "hazardous substance" shall mean any hazardous, toxic, or dangerous substance, waste, or material that is regulated under any Federal or Washington State environmental or safety law.

The Grantee, by its acceptance of this deed does covenant and agree for itself, and its successors and assigns, forever, as follows:

Recreation Use Covenants

1. This property shall be used and maintained for public park and recreation purposes in perpetuity, as set forth in the program of utilization and plan contained in the December 1996, application submitted by the City of Seattle for the *Acquisition of a Portion of the Naval Station Puget Sound* and subsequent amendments thereto, a copy of which is on file with the Seattle City Clerk. Said program and plan may be amended from time to time at the written request of either the Grantor or Grantee, with the written concurrence of the other party, and such amendments will be added to and become a part of the original application.
2. The Grantee shall, within six (6) months of the date of the deed of conveyance, erect and maintain a permanent sign or marker near the point of principal access to the conveyed area indicating that the property is a park or recreation area and has been acquired from the Federal Government for use by the general public.
3. The property shall not be sold, leased, assigned or otherwise disposed of except to another eligible governmental agency without the prior approval of the Secretary of the Interior in writing. Any such disposition shall assure the continued use and maintenance of the property for public park or public recreational purposes subject to the same terms and conditions contained herein. However, nothing in this provision shall preclude the Grantee from providing recreational facilities and services compatible with the approved application, through concession agreements entered into with third parties, provided prior concurrence to such agreements is obtained in writing from the Secretary of the Interior. The Grantee, its successor or assign shall provide written notice to the State of Washington Department of Ecology or successor agency of any intent to convey any interest in portions of the property identified in Section 8.
4. From the date of this conveyance, the Grantee shall submit biennial reports to the Secretary of the Interior, setting forth the use made of the property during the preceding two-year period, and other pertinent data establishing its continuous use for the purposes set forth above, for ten consecutive reports and as further determined by the Secretary of the Interior.

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5. The Grantee further agrees to comply with the requirements of Public Law 90-480 (82 Stat. 718) the Architectural Barriers Act of 1968 as amended by Public Law 91-205 of 1970 (84 Stat. 49) to assure that facilities developed on this property are accessible to the physically handicapped; and, further assure in accordance with Public Law 93-112, the Rehabilitation Act of 1973 (87 Stat. 394) that no otherwise qualified handicapped individual shall solely by reasons of his handicap be excluded from the participation in, be denied benefits of, or be subjected to discrimination under any program or activity in effect on this property; and agrees to comply with the provisions of Title III of the Age Discrimination Act of 1975, as amended (Public Law 94-135; 45 C.F.R. Part 90) prohibiting discrimination on the basis of age in programs and activities conducted on this property.
6. As part of the consideration for this Deed, the Grantee covenants and agrees that: (1) the program for or in connection with which this Deed is made will be conducted in compliance with, and the Grantee will comply with all requirements imposed by or pursuant to the regulations of the Department of the Interior as in effect on the date of this Deed (43 C.F.R. Part 17) issued under the provisions of Title VI of the Civil Rights Act of 1964; (2) this covenant shall be subject in all respects to the provisions of said regulations; (3) the Grantee will promptly take and continue to take such action as may be necessary to effectuate this covenant; (4) the United States shall have the right to seek judicial enforcement of this covenant; (5) the Grantee will insure that each other person (any legal entity) who, through contractual or other arrangements with the Grantee is authorized to provide services or benefits under said program complies with the same obligations as those imposed upon the Grantee by this covenant (6) this covenant shall run with the land hereby conveyed, and shall in any event, without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity, for the benefit of, and in favor of the Grantor and enforceable by the Grantor against the Grantee; and (7) the Grantor expressly reserves a right of access to, and entrance upon, the above described property in order to determine compliance with the terms of this conveyance.
7. As to the obligations in Section 1 through 6, the Grantee shall hold harmless, defend and indemnify the United States, its employees, agents, and representatives from and against any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) that arises from the Grantee's or the Grantee's agent's use or occupancy of the property and/or the Grantee's default of the terms of this deed. Nothing in this Section 7 shall be construed in any way to limited the United States obligations pursuant to CERCLA, 42 U.S.C. Section 9620(h), any other law, or this deed, including but not limited to the obligation that any additional remedial action, response action or corrective action found to be necessary to protect human health and the environment with respect to any hazardous substances stored, disposed of, or released on the property prior to the date of transfer shall be conducted by the United States.

#### Hazardous Materials Covenants

8. Portions of the conveyed property have been determined to contain hazardous substances that exceed standards established under the State of Washington Model Toxics Control Act (MTCOA). The following restrictive covenants are imposed on the identified portions of the conveyed property. As between Grantee, its successors and assigns, and the United States, a release requiring remediation, including testing and investigations, resulting from the violation of a restriction required by this section by the Grantee or any of its successors or assigns is the responsibility of such Grantee, successor or assign.

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- 8.1. The use of Building 2, a 144,000 s.f. hangar building located on Parcel 1, Lot B as described in Exhibit A, is restricted to uses which do not penetrate the building's concrete slab. Soils sampling under the slab reveal metals above MTCA levels.
  - 8.2. A grass landscaping strip located between Building 30, a 80,066 s.f. hangar building located on Parcel 6, Lot A as described in Exhibit A, and a parking area north of Building 30 is restricted to its current landscaped use. Soils sampling of the area revealed metals above MTCA levels.
  - 8.3. The use of a paved tarmac east of Building 11, a 62,000 s.f. public works office and shop building located on Parcel 1, Lot A is restricted to uses which do not penetrate the paved tarmac. Petroleum was detected in concentrations exceeding MTCA levels.
  - 8.4. Prior to willingly conducting a use inconsistent with a restrictive covenant contained in this Section 8, the Grantee, or its assignee or successors shall notify in writing the Grantor and the State of Washington Department of Ecology, or successor agency and obtain approval of the proposed change in use in accordance with WAC 173-340-440(5) or any amendment thereto. The Grantor shall take any action necessary with regards to this Section 8 to carry out an approval or other decision of the State of Washington Department of Ecology or successor agency.
  - 8.5. Grantee, or its successor or assign, shall provide notice to the State of Washington Department of Ecology or successor agency of the party's intent to convey any interest in portions of the property identified in this Section 8.
  - 8.6. If the Grantee is in default of the conditions and terms of this Section 8, Grantee shall hold harmless, defend, and indemnify the United States, its employees, agents, and representatives from and against any suit, claim, demand, or action, liability of judgement, cost or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) to the extent caused by such default.
  - 8.7. The Grantor for itself and its successors and assigns hereby grants to the Washington State Department of Ecology or successor agency, and its designated representatives, the right to enter the property at reasonable times for the purpose of evaluating compliance with a cleanup action plan and other required plans relating to this Section 8, including the right to take samples, inspect any remedial actions taken at the site, and to inspect records.
9. The Grantee acknowledges that it has received the EBS and the FOST and its attachments. The Grantee acknowledges that it has had the opportunity to inspect the physical condition and current level of environmental hazards on the property and to determine the suitability of the property as to safety for the Grantee's intended use, human health, and the environment in general.
  10. The Grantee agrees to indemnify, defend, save, and hold harmless the Grantor, and Grantor employees, officers, representatives, attorneys and agents, from and against any and all debts, duties, obligations, liabilities, law suits, claims, demands, causes of action, damages, losses, costs, and expenses (including, without limitation, costs associated with any investigation, monitoring, sampling, testing, or removal of hazardous substance(s), attorney fees and expenses, and court costs) to the extent caused by the release of any hazardous substance(s) brought onto the herein described property after the date of this deed and while the property was in the possession and/or control of the Grantee. However, nothing in this Section 10 shall be construed to limit in any way the United States' obligations pursuant to CERCLA, 42 U.S.C. Section 9620(h), any other law, or this deed, including but not limited to the obligation that any additional remedial action, response or corrective action found to be necessary to protect human health and the environment with respect to any hazardous substances stored, disposed or, or released on the property prior to the date of transfer shall be conducted by the United States.

Lead Based Paints and Asbestos Covenants

11. The Grantee is hereby informed and does acknowledge Grantor's representation that certain buildings on the property have been found to contain lead-based paints as indicated in the EBS and FOST and attachments. The scope of this Section 11, and the meaning of "applicable property," is specifically limited to only the building interiors of those portions of the property on which the EBS, or the FOST or its attachments, identified that lead-based paint was present. The presence of lead-based paints within these structures may affect their use for residential purposes in compliance with 24 CFR Part 35, Subpart H. A lead warning statement is attached as Exhibit B. The Grantee acknowledges that it has received the opportunity to conduct a risk assessment or inspection for the presence of lead-based paints or lead-based paint hazards prior to the execution of this conveyance. The Grantee covenants that, if required by applicable federal or state law and in compliance with such law, Grantee will provide for an inspection, abatement, and/or elimination of any lead-based paint hazard on a portion of the applicable property (as defined and limited by this Section 11) prior to the occupancy or use of said portion of the property by successors or assigns. The Grantee covenants and agrees to be responsible for any remediation of lead-based paint or lead-based paint hazards on the applicable property (as defined and limited by this Section 11) found to be necessary and required by federal or state law after the date of conveyance. The Grantee covenants and agrees to indemnify and hold harmless the Grantor, its agents and employees against any claims for personal injury to the extent caused by exposure, after the date on which the City took control of the relevant portion of the property, to lead-based paint on the applicable property (as defined and limited by this Section 11). Should, in the future, lead-based paint present in, on, or under the property prior to the date of transfer be considered a CERCLA release, nothing in this Section 11 shall be construed to limit in any way the United States' obligations pursuant to CERCLA, 42 U.S.C. Section 9620(h), any other law, or this deed, including but not limited to the obligation that may additional remedial action, response or corrective action found to be necessary to protect human health and the environment with respect to any hazardous substances stored, disposed or, or released on the property prior to the date of transfer shall be conducted by the United States.

12. The Grantee is hereby informed and does acknowledge Grantor's representation that asbestos and asbestos containing materials have been found on the property as described in the FOST and its attachments. The scope of this Section 11, and the meaning of "applicable property," is specifically limited to only the building interiors of those portions of the property on which the EBS, or the FOST or its attachments, identified that asbestos or asbestos containing material was present. The Grantee covenants and agrees that in its use and occupancy of the applicable property (as defined and limited by this Section 12), it will comply with all Federal, State and local laws relating to asbestos; and that Grantor assumes no liability for damages for personal injury, illness, disability or death, to the Grantee or to any other person, including members of the general public, to the extent caused by the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever, after the date on which the City took control of the relevant portion of the property, with asbestos on the applicable property (as defined and limited by this Section 12), whether Grantee has properly warned or failed properly to warn the individual(s) injured. The Grantee agrees to be responsible for any future remediation of asbestos found to be necessary and required by federal or state law on the applicable property (as defined and limited by this Section 12). Should, in the future, asbestos present in, on, or under the property prior to the date of transfer be considered a CERCLA release, nothing in this Section 12 shall be construed to limit in any way the United States' obligations pursuant to CERCLA, 42 U.S.C. Section 9620(h), any other law, or this deed, including but not limited to the obligation that any additional remedial action, response or corrective action found to be necessary

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to protect human health and the environment with respect to any hazardous substances stored, disposed or, or released on the property prior to the date of transfer shall be conducted by the United States.

Historic Resource Covenant

13. The following parcels as described in Exhibit A are contained within Sand Point Historic District: Parcel 1, Lots A, B, C, D, and E, Parcel 3, Lot E, and Parcel 6, Lots D and E. The described portions of the following parcels, fully described in Exhibit A, are also included within the Sand Point Historic District: the westerly 300 feet of Parcel 6, Lot A; the westerly 410 feet of Parcel 6, Lot B and that portion of the Lot B within 50 feet and containing Building 41, and the southwest corner of Parcel 6, Lot C, containing an area 110.22 feet by 147.34 feet. The Grantee hereby covenants on behalf of itself, heirs, successors, and assigns at all times to the United States to maintain property described within this Section in accordance with the Historic Preservation Covenant, attached hereto as Exhibit C. Incorporation of this Historic Preservation Covenant is made pursuant to the October 1997 Programmatic Agreement among the Department of the Navy, The Advisory Council on Historic Preservation, and The Washington State Historic Preservation Officer Regarding: Base Closure and Disposal of the Naval Station Puget Sound, Sand Point, a copy of which can be located at the Office of Sand Point Operations, 7400 Sand Point Way NE, Seattle, WA 98115.

Reversion and Default

14. The failure of the Grantee, or of its successors and assigns, to comply with any of the conditions and covenants contained in this deed shall constitute a default if such default shall continue, after written notice from the Grantor specifically identifying the nature of the default, for a period of not less than ninety (90) days, or such longer period as may be reasonably required to cure the default, provided the Grantee commences the cure within said ninety (90) days after the Grantor's written notice of default and covenants to diligently complete the cure within such reasonable period. In the event the Grantee is in default of any covenant or condition contained in this deed then upon failure to eliminate, rectify, cure, or commence action to cure said breach within the time agreed upon, all right, title, and interest in and to said premises shall, at the Grantor's option revert to and become the property of the Grantor. In addition to all other remedies for such breach relating to the use of the property for park and recreation purposes, the preservation of identified historic resources, or related to nondiscrimination, the Grantee, its successors and assigns, at the Grantor's option, shall forfeit all right, title, and interest in any and all of the tenements, hereditaments, and appurtenances thereunto belonging. With regard thereto, the Grantee shall execute a deed, as directed by the Grantor, conveying all interest in the premises and improvements thereon to the Grantor. The failure of the grantor to require in any one or more instances complete performance of any of the conditions or covenants shall not be construed as a waiver or relinquishment or such future performance, but the obligation of the Grantee, its successors and assigns, with respect to such future performance shall continue in full force and effect.

15. The Grantee, by its acceptance of this deed, covenants and agrees that in the event the Grantor exercises its option to revert all right, title, and interest in the property to the Grantor, or the Grantee voluntarily returns title to the property in lieu of a reverter, then the Grantee shall provide protection to and maintenance of said property at all times until such time as the title is actually reverted or returned to and accepted by the Grantor, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed by the General Services Administration in its regulations FPMR 101-47.402 in effect as of the date of this deed.

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IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name and on its behalf on this 17 day of MARCH 1999.

UNITED STATES OF AMERICA  
Acting by and through the Secretary of the Interior

By [Signature]  
John J. Reynolds  
Regional Director, Pacific West  
National Park Service

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN FRANCISCO )

On this 17 day of MARCH 1999, before me, the subscriber, personally appeared John J. Reynolds to be known and personally known to me to be the Regional Director, Pacific West, National Park Service, of the United States of America, acting by and through the Secretary of the Interior, a governmental agency of the United States of America, and known to me to be the same person described in and who executed the foregoing instrument as such Regional Director, Pacific West aforesaid, as the act and deed of the United States, for and on behalf of the Secretary of the Interior, and he acknowledged that he executed the foregoing instrument for and on behalf of the United States of America, for the purposes and uses therein described.

Witness my hand and official seal.



[Signature]  
NOTARY PUBLIC

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GRANTEE  
City of Seattle, Washington

By *Kenneth R. Bounds*  
Kenneth R. Bounds,  
Superintendent  
Department of Parks and Recreation

Date *MARCH 25, 1999*

STATE OF WASHINGTON )  
COUNTY OF KING ) ss.

On this *25th* day of *March*, 1999, before me, the undersigned notary, the subscriber, personally appeared and being the duly authorized official of the City of Seattle, Washington and known to me to be the same person described herein and who executed the foregoing acceptance of said on behalf of the City of Seattle, Washington, for the purposes and uses therein described.

Witness my hand and official seal.

*Dianne Hood*  
NOTARY PUBLIC  
*Expiration Date 10/16/2000*  
*State of Washington*



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Exhibit A  
PARCEL 1 - Lot A

Those portions of the southwest quarter (SW<sup>4</sup>) of the northwest quarter (NW<sup>4</sup>) of Section 2, TWP 25N, RNG 04E and Govt. Lots 1 and 2 in said Section, together with the 1<sup>st</sup> Class Shore Lands adjacent, abutting and attached thereto, as acquired by the U. S. Navy on behalf of the United States of America described as follows:

Commencing at the northwest corner of said Section 2, thence S 89°43'27" E on the north line of said Section a distance of 528.79 feet to the east margin of Sand Point Way NE (formerly referred to as the James Kiefer County Rd. No. 1283), and the **True Point of Beginning**; thence S 30°28'08" E on said east margin a distance of 360.75 feet to a point of curvature in said east margin of which the radial center bears S 59°31'52" W at a distance of 2336.20 feet, thence continuing on said east margin on a curve concave to the south and west through a central angle of 16°31'03" an arc distance of 673.49 feet, thence S 13°57'05" E on said east margin a distance of 225.43 feet, to a point of intersection with the northerly boundary of a parcel of land under the jurisdiction of the United States Department of Commerce (NOAA) as surveyed and described in a record of survey drawing titled "Boundary Survey for the National Oceanic and Atmospheric Administration N.O.A.A. Western Regional Center Access Road", project No. 96545.00 by Penhalligon Associated Consulting Engineers, Inc., said point being identified by a 5/8" iron rebar with cap marked P.A.C.E., L.S. 11691 and herein referred to as rebar marker thence leaving said east margin and along a line adjoining said N.O.A.A. property the following courses and distances, S 30°43'19" E a distance of 199.50 feet to a rebar marker, thence S 85°28'44" E a distance of 87.72 feet to a rebar marker, thence S 71°12'22" E a distance of 46.87 feet to a rebar marker, thence S 76°54'27" E a distance of 20.06 feet to a rebar marker, thence S 62°39'42" E a distance of 33.69 feet to a rebar marker, thence N 00°01'44" W a distance of 485.07 feet to a rebar marker, thence N 89°59'11" E a distance of 252.00 feet to a rebar marker, thence N 25°28'42" E a distance of 277.22 feet to the Inner Harbor Line of the Lake Washington Shore Lands as established by the State of Washington Commissioner of Public Lands and according to the Maps thereof on file in Olympia, Washington and a point of departure from the said line adjoining N.O.A.A., thence N 50°40'00" W on said Inner Harbor Line a distance of 989.04 feet to the intersection with the north line of said Section 2, thence N 89°43'27" W on said north line a distance of 380.23 feet to the True Point of Beginning.

PARCEL 1 - Lot B

That portion of the northeast quarter (NE<sup>4</sup>) of the southwest quarter (SW<sup>4</sup>), the southwest quarter (SW<sup>4</sup>) of the northwest quarter (NW<sup>4</sup>) and Govt. Lot 2 in Section 2, TWP 25N, RNG 04E, as acquired by the U. S. Navy on behalf of the United States of America by deed recorded in the records of King Co., Washington in Vol. 1306 at pg. 455, described as follows:

Commencing at the southwest corner of said Lot 2, accepted as being the same as the intersection of the centerline of Sand Point Way NE with the production east of the north

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margin of NE 75th Street, thence S 00° 48' 49" E on said centerline a distance of 171.45 feet, thence N 89° 11' 11" E a distance of 40.00 feet to the east margin of Sand Point Way NE, thence N 89° 57' 38" E a distance of 94.91 feet, thence S 00° 01' 23" E a distance of 95.37 feet, thence N 89° 42' 47" E a distance of 329.93 feet, thence N 0° 01' 33" W a distance of 945.00 feet to the **True Point of Beginning**, thence continuing N 0° 01' 33" W a distance of 455.06 feet, thence S 89° 54' 15" W a distance of 382.55 feet, thence S 00° 07' 23" E a distance of 162.10 feet, thence S 89° 28' 49" W a distance of 130.88 feet, thence S 28° 13' 40" E a distance of 300.77 feet to a point of curvature the radial center of which bears N 61° 46' 20" E at a distance of 50.00 feet, thence on said curve concave to the northeast through a central angle of 61° 48' 42" an arc distance of 53.94 feet, thence N 89° 57' 38" E a distance of 326.93 feet to the **True Point of Beginning**.

PARCEL 1 - Lot C

That portion of the northeast quarter (NE<sup>4</sup>) of the southwest quarter (SW<sup>4</sup>), the southwest quarter (SW<sup>4</sup>) of the northwest quarter (NW<sup>4</sup>) and Govt. Lot 2 in Section 2, TWP 25N, RNG 04E, as acquired by the U. S. Navy on behalf of the United States of America by deed recorded in the records of King Co., Washington in Vol. 1306 at pg. 455, described as follows:

Commencing at the southwest corner of said Lot 2, accepted as being the same as the intersection of the centerline of Sand Point Way NE with the production east of the north margin of NE 75th Street, thence S 00° 48' 49" E on said centerline a distance of 171.45 feet, thence N 89° 11' 11" E a distance of 40.00 feet to the east margin of Sand Point Way NE, thence N 89° 57' 38" E a distance of 94.91 feet, thence S 00° 01' 23" E a distance of 95.37 feet, thence N 89° 42' 47" E a distance of 329.93 feet, thence N 0° 01' 33" W a distance of 1400.06 feet, thence S 89° 54' 15" W a distance of 382.55 feet to the **True Point of Beginning**, thence S 78° 17' 54" W a distance of 116.65 feet to a point of curvature the radial center of which bears S 11° 42' 06" E at a distance of 118.61 feet, thence on said curve concave to the southeast through a central angle of 39° 41' 40" an arc distance of 82.17 feet to a non-tangent cusp, thence leaving said curve S 28° 13' 40" E, a distance of 110.65 feet, thence N 89° 28' 49" E a distance of 130.88 feet, thence N 00° 07' 23" W a distance of 162.10 feet to the **True Point of Beginning**.

PARCEL 1 - Lot D

That portion of the northeast quarter (NE<sup>4</sup>) of the southwest quarter (SW<sup>4</sup>), the southwest quarter (SW<sup>4</sup>) of the northwest quarter (NW<sup>4</sup>) and Govt. Lot 2 in Section 2, TWP 25N, RNG 04E, as acquired by the U. S. Navy on behalf of the United States of America by deed recorded in the records of King Co., Washington in Vol. 1306 at pg. 455, described as follows:

Commencing at the southwest corner of said Lot 2, accepted as being the same as the intersection of the centerline of Sand Point Way NE with the production east of the north margin of NE 75th Street, thence S 00° 48' 49" E on said centerline a distance of 171.45 feet, thence N 89° 11' 11" E a distance of 40.00 feet to the east margin of Sand Point

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Way NE, thence N 00° 48' 49" W on said east margin a distance of 304.41 feet to a point of curvature in said east margin the radial center of which bears S 89° 11' 11" W at a distance of 612.25 feet, thence north and west on said east margin on a curve concave to the south and west through a central angle of 26° 51' 36" an arc distance of 287.02 feet to the **True Point of Beginning**, thence leaving said east margin N 89° 57' 38" E a distance of 196.07 feet, thence N 00° 01' 33" W a distance of 230.96 feet, thence S 89° 57' 38" W a distance of 24.12 feet to a point of curvature of which the radial center bears N 00° 02' 22" W at a distance of 90.00 feet, thence continuing on the curve concave to the north and east through a central angle of 61° 48' 42" an arc distance of 97.10 feet, thence N 28° 13' 40" W a distance of 338.18 feet to a point of curvature of which the radial center bears S 61° 46' 20" W at a distance of 13.89 feet, thence continuing on the curve concave to the south and through a central angle of 127° 02' 10" an arc distance of 30.80 feet to a point of compound curvature of which the radial center bears S 65° 15' 50" E at a distance of 221.89 feet, thence continuing on the curve concave to the southeast through a central angle of 20° 40' 59" an arc distance of 80.10 feet to a point of compound curvature of which the radial center bears S 85° 56' 49" E at a distance of 440.08 feet, thence continuing on the curve concave to the east through a central angle of 41° 28' 44" an arc distance of 318.60 feet to a non-tangent cusp, thence N 89° 56' 55" W a distance of 83.74 feet to a point on a curve on the east margin of Sand Point Way NE, the radial center of which bears N 66° 27' 12" E at a distance of 533.90 feet, thence continuing southeasterly on said east margin on the curve concave to the north and east through a central angle of 04° 58' 40" an arc distance of 46.38 feet, thence continuing on said east margin S 28° 31' 28" E a distance of 171.16 feet to a point of curvature in said east margin of which the radial center bears S 61° 28' 32" W at a distance of 612.25 feet, thence continuing on said east margin, on a curve concave to the south and west through a central angle of 00° 51' 03" an arc distance of 9.09 feet to the **True Point of Beginning**.

PARCEL 1 - Lot E

That portion of the northeast quarter (NE<sup>4</sup>) of the southwest quarter (SW<sup>4</sup>), the southwest quarter (SW<sup>4</sup>) of the northwest quarter (NW<sup>4</sup>) and Govt. Lot 2 in Section 2, TWP 25N, RNG 04E, as acquired by the U. S. Navy on behalf of the United States of America by deed recorded in the records of King Co., Washington in Vol. 1306 at pg. 455, described as follows:

Commencing at the southwest corner of said Lot 2, accepted as being the same as the intersection of the centerline of Sand Point Way NE with the production east of the north margin of NE 75th Street, thence S 00° 48' 49" E on said centerline a distance of 212.12 feet, thence N 89° 11' 11" E a distance of 40.00 feet to the east margin of Sand Point Way NE, thence N 00° 48' 49" W on said east margin a distance of 274.35 feet to the **True Point of Beginning**, thence N 89° 57' 38" E a distance of 139.78 feet, thence N 00° 01' 33" W a distance of 187.00 feet, thence S 89° 57' 38" W a distance of 14.53 feet, thence N 00° 01' 33" W a distance of 159.43 feet, thence S 89° 57' 38" W a distance of 196.07 feet to a point on a curve in the east margin of Sand Point Way NE, the radial center of which bears S 62° 19' 35" W at a distance of 612.25 feet, thence south and east on said east margin on a curve concave to the southwest through a central angle of 26°

51' 34" an arc distance of 287.02 feet; thence continuing on said east margin S 00° 48' 49" E a distance of 70.73 feet to the **True Point of Beginning**.

**PARCEL 3 - Lot E**

That portion of the northeast quarter (NE<sup>4</sup>) of the southwest quarter (SW<sup>4</sup>), the southwest quarter (SW<sup>4</sup>) of the northwest quarter (NW<sup>4</sup>) and Govt. Lot 2 in Section 2, TWP 25N, RNG 04E, as acquired by the U. S. Navy on behalf of the United States of America by deed recorded in the records of King Co., Washington in Vol. 1306 at pg. 455, described as follows:

Commencing at the southwest corner of said Lot 2, accepted as being the same as the intersection of the centerline of Sand Point Way NE with the production east of the north margin of NE 75th Street, thence S 00° 48' 49" E on said centerline a distance of 171.45 feet, thence N 89° 11' 11" E a distance of 40.00 feet to the east margin of Sand Point Way NE and the **True Point of Beginning**, thence N 89° 57' 38" E a distance of 94.91 feet, thence S 00° 01' 23" E a distance of 95.37 feet, thence S 89° 42' 47" W a distance of 93.59 feet to the east margin of Sand Point Way NE, thence N 00° 48' 49" W on said east margin a distance of 95.79 feet to the **True Point of Beginning**.

**PARCEL 6 - Lot A**

That portion of the northeast quarter (NE<sup>4</sup>) of the southwest quarter (SW<sup>4</sup>), the southwest quarter (SW<sup>4</sup>) of the northwest quarter (NW<sup>4</sup>) and Govt. Lot 2 in Section 2, TWP 25N, RNG 04E, as acquired by the U. S. Navy on behalf of the United States of America by deed recorded in the records of King Co., Washington in Vol. 1306 at pg. 455, described as follows:

Commencing at the southwest corner of said Lot 2, accepted as being the same as the intersection of the centerline of Sand Point Way NE with the production east of the north margin of NE 75th Street, thence S 00° 48' 49" E on said centerline a distance of 171.45 feet, thence N 89° 11' 11" E a distance of 40.00 feet to the east margin of Sand Point Way NE, thence N 89° 57' 38" E a distance of 94.91 feet, thence S 00° 01' 23" E a distance of 95.37 feet, thence N 89° 42' 47" E a distance of 404.93 feet to the **True Point of Beginning**, thence continuing N 89° 42' 47" E a distance of 690.05 feet to the west boundary of a tract of land under the jurisdiction of the National Oceanic & Atmospheric Administration (NOAA), thence N 00° 02' 51" E on said NOAA boundary a distance of 460.89 feet to a concrete monument marking an angle point in the NOAA boundary, thence N 89° 57' 32" W on said NOAA boundary a distance of 690.63 feet to a concrete monument with metal disk stamped "U.S. NAVY #10", thence S 00° 01' 33" E a distance of 464.84 feet to the **True Point of Beginning**.

**PARCEL 6- Lot B**

That portion of the east one-half of the southwest quarter (SW<sup>4</sup>) of Section 2, TWP 25N, RNG 04E, W.M., said east one-half being acquired by the U. S. Navy on behalf of the United States of America by deed recorded in the records of King Co., Washington in Vol. 1306 at pg. 455, described as follows:

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Commencing at the west one-sixteenth corner common to Sections 2 and 11, TWP 25N, RNG 04E, W.M., accepted as being the same as the center-line intersection of NE 65th Street and Sand Point Way NE, thence N 00° 48' 49" W on the centerline of Sand Point Way NE a distance of 60.01 feet, thence leaving said centerline S 89° 35' 06" E a distance of 40.01 feet to a point on the east margin of said Sand Point Way NE, said point being 60.00 feet north of the south line of said Section 2 as measured at right angles thereto, thence continuing S 89° 35' 06" E parallel with the south line of said Section 2 a distance of 489.94 feet, thence N 00° 19' 00" W a distance of 331.50 feet, thence N 23° 24' 06" W a distance of 323.73 feet, thence N 00° 01' 23" W a distance of 1211.94 feet to the **True Point Of Beginning** of this description, thence continuing N 00° 01' 23" W a distance of 410.18 feet, thence N 89° 42' 47" E a distance of 796.53 feet to the west boundary of a tract of land under the jurisdiction of the National Oceanic & Atmospheric Administration (NOAA), thence S 00° 02' 51" W on said NOAA boundary a distance of 276.81 feet to a concrete monument marking a boundary corner of Warren G Magnuson Park as established in 1975, thence continuing S 00° 02' 51" W on said Park boundary a distance of 159.18 feet, thence leaving said Park boundary S 89° 44' 09" W a distance of 546.98 feet, N 00° 15' 51" W a distance of 25.49 feet, thence S 89° 44' 09" W a distance of 248.90 feet to the **True Point Of Beginning**.

PARCEL 6 - Lot C

All those portions of Section 2, TWP 25N, RNG 04E, W.M., acquired the U. S. Navy on behalf of the United States of America described as follows:

Commencing at the west one-sixteenth corner common to Sections 2 and 11, TWP 25N, RNG 04E, W.M., accepted as being the same as the center-line intersection of NE 65th Street and Sand Point Way NE, thence N 00° 48' 49" W on the centerline of Sand Point Way NE a distance of 60.01 feet, thence leaving said centerline S 89° 35' 06" E a distance of 40.01 feet to a point on the east margin of said Sand Point Way NE, said point being 60.00 feet north of the south line of said Section 2 as measured at right angles thereto, thence continuing S 89° 35' 06" E parallel with the south line of said Section 2 a distance of 489.94 feet to the **True Point Of Beginning** of this description, thence continuing S 89° 35' 06" E a distance of 1015.52 feet, thence S 01° 17' 22" a distance of 32.30 feet to the north boundary of a parcel of land under the jurisdiction of the United States Department of Interior (BRD), thence N 88° 39' 59" E on said BRD boundary a distance of 938.55 feet to the east boundary of Warren G. Magnuson Park as described in A.O. 105244, thence N 00° 01' 56" E on said Park boundary a distance of 699.25 feet to a concrete monument with metal disk set by the U. S. Navy, thence N 85° 48' 34" W on said Park boundary a distance of 1076.96 feet to a concrete monument with metal disk set by the U. S. Navy, thence N 31° 56' 06" W on said Park boundary a distance of 408.95 feet to a concrete monument with metal disk set by the U. S. Navy, thence N 00° 02' 51" E on said Park boundary a distance of 711.51 feet, thence S 89° 44' 09" W a distance of 546.98 feet, thence S 00° 15' 51" E a distance of 412.92 feet, thence N 89° 46' 57" W a distance of 97.67 feet, thence S 00° 00' 57" W a distance of 210.01 feet, thence S 43° 40' 36" E a distance of 172.10 feet, thence S 00° 00' 41" E a distance

of 348.04 feet, thence S 67° 06' 04" W a distance of 180.33 feet, thence S 23° 24' 06" E a distance of 348.19 feet, thence S 01° 14' 46" W a distance of 183.51 feet, thence S 89° 41' 00" W a distance of 110.22 feet, thence S 00° 19' 00" E a distance of 147.34 feet to the **True Point Of Beginning**.

**PARCEL 6 - Lot D**

That portion of the east one-half of the southwest quarter (SW<sup>4</sup>) of Section 2, TWP 25N, RNG 04E, W.M., said east one-half being acquired by the U. S. Navy on behalf of the United States of America by deed recorded in the records of King Co., Washington in Vol. 1306 at pg. 455, described as follows:

Commencing at the west one-sixteenth corner common to Sections 2 and 11, TWP 25N, RNG 04E, W.M., accepted as being the same as the center-line intersection of NE 65th Street and Sand Point Way NE, thence N 00° 48' 49" W on the centerline of Sand point Way NE a distance of 60.01 feet, thence leaving said centerline S 89° 35' 06" E a distance of 40.01 feet to a point on the east margin of said Sand Point Way NE, said point being 60.00 feet north of the south line of said Section 2 as measured at right angles thereto, thence continuing S 89° 35' 06" E parallel with the south line of said Section 2 a distance of 489.94 feet, thence N 00° 19' 00" W a distance of 331.50 feet, thence N 23° 24' 06" W a distance of 323.73 feet, thence N 00° 01' 23" W a distance of 1211.94 feet to the **True Point Of Beginning** of this description, thence N 89° 44' 09" E a distance of 248.90 feet, thence S 00° 15' 51" E a distance of 438.41 feet, thence N 89° 46' 57" W a distance of 250.75 feet, thence N 00° 01' 23" W a distance of 436.31 feet to the **True Point Of Beginning**.

**PARCEL 6 - Lot E**

That portion of the east one-half of the southwest quarter (SW<sup>4</sup>) of Section 2, TWP 25N, RNG 04E, W.M., said east one-half being acquired by the U. S. Navy on behalf of the United States of America by deed recorded in the records of King Co., Washington in Vol. 1306 at pg. 455, described as follows:

Commencing at the west one-sixteenth corner common to Sections 2 and 11, TWP 25N, RNG 04E, W.M., accepted as being the same as the center-line intersection of NE 65th Street and Sand Point Way NE, thence N 00° 48' 49" W on the centerline of Sand Point Way NE a distance of 60.01 feet, thence leaving said centerline S 89° 35' 06" E a distance of 40.01 feet to a point on the east marginal boundary of said Sand Point Way NE, and the **True Point Of Beginning** of this description, said point being 60.00 feet north of the south line of said Section 2 as measured at right angles thereto, thence continuing S 89° 35' 06" E parallel with said Section line a distance of 429.94 feet, thence N 00° 19' 00" W a distance of 146.64 feet, thence S 89° 41' 00" W a distance of 267.55 feet to a point of curvature of a curve concave to the north and east of which the radial center bears N 00° 19' 00" W at a distance of 165.00 feet, thence west and north on said curve through a central angle of 89° 30' 11" an arc distance of 257.75 feet to the east marginal boundary of Sand point Way NE, thence S 00° 48' 49" E on said east marginal boundary a distance of 304.73 feet to the **True Point Of Beginning**.

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PARCEL 6 - Lot F

That portion of the Evergreen Addition to the City of Seattle as recorded in Vol. 12, pg. 66, of the Records of King Co., said Tract being acquired by the War Department through Civil Action 388, together with those portions of the streets and avenues in said Addition as vacated by V.O. 71498, bounded by the following description:

Commencing at the SE corner of Block 2 of said Evergreen Add., thence N 00° 48' 49" W on the east line of said Block 2, a distance of 239.39 feet to the north line of said Addition, being the same as the Section line common to Sections 2 and 11, Twp 25N, Rng 4E, W.M., thence N 89° 35' 05" W on said Section line a distance of 349.10 feet to the True Point Of Beginning, thence S 00° 41' 00" W a distance of 239.34 feet to the south line of Block 4 in said Addition, thence N 89° 35' 06" W on the south line of said Addition, a distance of 186.71 feet to a point 251.47 east of the SW corner of Block 6 in said Addition, thence N 17° 27' 07" W a distance of 251.47 feet to a point on the north line of said Addition said point being distant 198.15 feet east of the production north of the west line of said Block 6, thence S 89° 35' 06" E on the north line of said Addition, being the same as the Section line common to aforementioned Sections, a distance of 264.98 feet to the True Point Of Beginning; EXCEPT the north 20 feet thereof.

PARCEL 6 - Lot G

Those portions of a Tract of land in Gilmore's Addition to the City of Seattle as recorded in Vol. 32, pg. 10 of the Records of King Co., said Tract being acquired by the War Department through Civil Action 388, together with those portions of vacated NE 65th St. in said Addition as vacated by V.O. 71498, bounded by the following description:

Beginning at the SW corner of Block 1 in said Gilmore's Add., thence N 42° 03' 59" E a distance of 320.31 feet to the north line of said Gilmore's Add., being the same as the Section line common to Sections 2 and 11, Twp 25N, Rng 4E, W.M., thence N 89° 35' 06" W on said Section line a distance of 198.00 to a point on a curve of the east margin of Sand Point Way N.E., the radial center of which bears S 89° 22' 20" W at a distance of 356.64 feet, thence south and west on said curved margin through a central angle of 19° 05' 40" an arc distance of 118.86 feet to a non-tangent cusp on the west line of said Block 1, thence S 00° 48' 49" E feet on said west line a distance of 122.36 feet to the point of beginning. EXCEPT the north 20.00 feet thereof.

PARCEL 6B western segment

That portion of the east one-half of the southwest quarter (SW<sup>4</sup>) of Section 2, TWP 25N, RNG 04E, W.M., said east one-half being acquired by the U. S. Navy on behalf of the United States of America by deed recorded in the records of King Co., Washington in Vol. 1306 at pg. 455, described as follows:

Commencing at the west one-sixteenth corner common to Sections 2 and 11, TWP 25N, RNG 04E, W.M., accepted as being the same as the center-line intersection of NE 65th Street and Sand Point Way NE, thence N 00° 48' 49" W on the centerline of Sand Point Way NE a distance of 60.01 feet, thence leaving said centerline S 89° 35' 06" E a distance of 40.01 feet to a point on the east marginal

boundary of said Sand Point Way NE, thence N 00° 48' 49" W on said east marginal boundary a distance of 2084.19 feet to the **True Point Of Beginning** of this description, thence continuing N 00° 48' 49" W on said east marginal boundary a distance of 157.23 feet, thence leaving said east marginal boundary N 89° 42' 47" E a distance of 290.69 feet, thence S 00° 01' 23" E a distance of 109.19 feet, thence S 89° 59' 00" W a distance of 198.34 feet, thence S 00° 01' 23" E a distance of 49.40 feet, thence S 89° 59' 00" W a distance of 90.18 feet to the east marginal boundary of Sand Point Way NE and the **True Point Of Beginning**.

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**Exhibit B  
Lead Based Paint Warning**

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a risk to pregnant women. The seller of any interest in residential property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

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**Exhibit C**  
**HISTORIC PRESERVATION COVENANT**  
**NATIONAL PARKS SERVICE PUBLIC BENEFIT CONVEYANCE**

A portion of the property conveyed herein is within the Naval Station Puget Sound (NSPS) Sand Point Historic District. A location map depicting the parcel in relation to the Historic District and a list of buildings and other site features that are considered contributing elements to the Historic District are described on Attachment 1 to this Exhibit. All structures and site features identified as contributing elements to the NSPS Sand Point Historic District have been determined by the Washington State Historic Preservation Office (SHPO) to be eligible for inclusion in the National Register of Historic Places and shall therefore be preserved, protected, and maintained in accordance with plans approved by the National Park Service (NPS) and prior agreements between the Department of the Navy and the State of Washington Historic Preservation Officer (SHPO), herein incorporated by reference.

1. Prior to the initiation of any construction, alteration, remodeling, demolition, disturbance of the ground surface, irrevocable disturbance of landscape settings, or other action which would materially affect the integrity, appearance, or historic value of structures or settings, the grantee or successors and assigns shall obtain the approval of the National Park Service and/or a designee (SHPO). Actions considered to materially affect the property would affect the exterior surfaces, or change the height, or alter the exterior facade (including without limitation exterior walls, windows and roofs, design, color and materials), or adversely effect the structural soundness of the property or alter a significant interior feature. Actions that would affect views within the historic district, landscaping, open space, add new structures or paved areas or site elements such as towers, fences, signs would also be considered to materially affect the property. Plans which are submitted in accordance with this section shall be prepared to conform, to the maximum extent possible, with the Secretary of Interior's *Standards and Guidelines for Historic Preservation Projects* as supplemented or amended.
2. Projects identified within and in full conformance with a Historic Property Reuse and Protection Plan, approved by the National Park Service and /or a designee shall be considered to be pre-approved and are not subject to the requirements of item 1 of this section.
3. Grantee will make every effort to retain and reuse, to the extent practicable, the historic structures.
4. In the event of a violation of this covenant, and in addition to any remedy now or hereafter provided by law, the United States Government may, following reasonable notice to the Grantee, institute any action to enjoin said violation or to recover the restoration of the property. The successful party shall be entitled to recover all costs or expenses incurred in connection with such action, including all court costs and attorney's fees.
5. The failure of the United States Government to exercise any right or remedy granted under this instrument shall not have the effect of waiving or limiting the exercise of any other right or remedy or the use of such right or remedy at any other time.
6. This historic preservation covenant is a binding servitude on the grantee and its successors, and assigns in perpetuity. Restrictions, stipulations and covenants contained herein shall be inserted by the grantee verbatim or by explicit reference in any deed or other legal instrument by which it divests

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itself of either fee simple or any lesser estate of all or any part of the real estate that is associated with the NSPS Sand Point Historic District.

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**ATTACHMENT 1 to Exhibit C  
SAND POINT HISTORIC DISTRICT CONTRIBUTING ELEMENTS  
AND THEIR CHARACTER DEFINING FEATURES  
CONTAINED WITHIN THE NATIONAL PARK SERVICE'S  
PUBLIC BENEFIT CONVEYANCE TO THE CITY OF SEATTLE**

The following features of the various historic district elements were determined to be character defining by the representatives of the Washington State Office of Archeology and Historic Preservation, the Navy and the City of Seattle during site inspections conducted in September, 1996, March, June, July, and August of 1997.

**BUILDINGS**

In general the character defining exterior features of contributing buildings are wall surfaces, rooflines, window openings and divided light windows, specialized doors, art deco architectural ornamentation and lighting fixtures. Most of the buildings retain their original style. There have been additions to many of the buildings but most were completed prior to W.W. II and used similar materials in the same style to mimic the original structure. Original windows and doors have been replaced in several instances with non-original material but the placement and style have been retained. There is sufficient integrity in the floor plans, space volumes, exposed structural elements, and industrial finishes in the hangars and other shop spaces to make these interior features contributing elements. In the case of the other types of buildings most have been substantially modified during numerous renovations and use changes and exhibit a limited amount of details or fabric worthy of retention.

It is important to note that the building specific character defining features listed below are intended to provide a baseline reference point for consideration during development of alteration and maintenance projects. Preservation of the listed features should be the goal during project planning. In addition it should not be assumed that projects, especially large scale interior remodel projects, will not have an adverse effect on historic character even if none of the listed features is affected. Such projects will still require review by a historic preservation specialist.

**Building Specific Features**

**Building 2** (Parcel 1, Lot B - constructed 1929) This building is 144,000 SF and contains two large hangar bays and numerous smaller rooms. The exteriors of the hangar bays have somewhat different styles with brick exterior walls on the north section and corrugated transite on the south section. This building is the oldest surviving structure at Sand and relates directly to the historic aviation mission and exhibits strong art deco influence in its finishes and details.

Building 2 Specific Exterior Features

1. Original multi-story rolling metal framed hangar doors on the east facade on north and south hangar bays and also on the west side of the south hangar bay. These doors are solid at the bottom with window lights in a grid the remainder of the door height.
2. Original steel framed divided light doors and windows on end and back walls.
3. Emblem above southeast hangar doors.
4. Overhead beam for loading and lifting on south end of west side.

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Building 2 Specific Interior Features

1. Interior space volume in both hangar bays. The mezzanine in the north hangar is not a character defining feature.

**Building 11** (Parcel 1, Lot A - constructed 1940) Contains 62,000 SF and was public works office and shop complex. The facade combines brick veneer and corrugated exterior wall material.

Building 11 Specific Exterior Features

1. Original steel frame divided light windows.

Building 11 Specific Interior Features

1. Exposed structural system in shop area especially post and beam connections.
2. Entry lobby to office portion detailing consisting of ceiling cornice of stars and hefron pilasters flanking interior door.

**Building 12** (Parcel 1, Lot C - constructed 1930) Central Steam Plant houses three large boilers and associated equipment.

Building 12 Specific Exterior Feature

1. Original double height divided light industrial windows with operable center panels.
2. Large door openings with side by side original side by side shop doors with divide light industrial windows in top 2/3.
3. Emission stacks and vents on roof.

Building 12 Specific Interior Features

None

**Building 15** (Parcel 6, Lot E - constructed 1938) Recreation Facility originally a green house later converted to a golf club house and last used as arts and crafts center. Does not have specific exterior or interior features.

**Building 18** (Parcel 6, Lot B - constructed 1936) Brick building first used as motor vehicle shop and then a fire station. The hose-drying tower is a prominent vertical element in the District, especially looking from north to south.

Building 18 Specific Exterior Features

1. Cast concrete parapet
2. Divided light industrial windows with cast concrete sills
3. Large garage type doors on north facade
4. Hose drying tower

Building 18 Specific Interior Features

None

**Building 30** (Parcel 6, Lot A - constructed 1938) Consists of large central hangar space flanked by a three story office wing on the west side and two levels of shop and office spaces on the east side. Another classic hangar area although smaller in area than Building 2, at 80,066 SF. Non-hangar portion has Art Deco detailing similar to Buildings 25 and 29.

Portion, Naval Station Puget Sound (Sand Point) Deed of Conveyance  
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Building 30 Specific Exterior Features

1. Large rolling hangar doors. Door area above 7 feet is divided lights End panel door have standard 3' wide doors built in for access.
2. Main entrance to office area on the west side. Features include double sided "T" shaped stairway leading to entry, Art Deco lanterns on the railings at the bottom of the staircase, a fluted panel into which double entry doors are recessed that extends the full height of the building, and a flat canopy projects out from the doors forming a weather cover. The cover is wrapped in fluted aluminum with stand up letters in Art Deco style reading Administration.
3. Original windows on two story east wing with dark painted frames on the first floor and pre-cast concrete sills on the second floor. Most windows in the three-floor west wing are replacements.

Building 30 Specific Interior Features

1. Base Commanding Officer's suite located on the third floor of the west wing. Specific details include paneled conference room with fireplace and adjacent Officer's Ward room including built in wall seating, glass block bar and original linoleum floor with pre W.W.II aircraft logo with red star in the center.
2. General configuration of office area on southwest corridor of the first floor of the west wings in particular the interior daylight glass top partitions.
3. High bay and open space volume of the hangar area.

**Building 31** (Parcel 1, Lot A - constructed 1938) Built on a pier that originally was used to unload fuel barges. The building was used to provide covered slips for boats, including the Admiral's barge and watch standing space for the barge crew.

Building 31 Specific Exterior Features

1. Green patterned asphalt roof shingles (although may not be original).

Building 31 Specific Interior Features

None

**Building 47** (Parcel 6, Lot D - constructed 1941) Contains 50,060 SF and was used as multi-use recreation complex consisting of gymnasium including bleacher area on one side, weight and exercise rooms, lockers, swimming pool, library, offices, and theater. Street facade is brick faced but other sides of building are painted cmu.

Building 47 Specific Exterior Features

1. Cast concrete banding on brick facade
2. Original metal framed windows with divided lights and operable awning center panel
3. Main building entrance on west side consisting of three deep set windows in concrete frame above the entry, and fluted aluminum round edge canopy extending over the entry
4. Lead downspouts

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Building 47 Specific Interior Features

1. Theater area on north side of the building, especially the stage and orchestra pit area, including the wood molding on the front of the stage and wood stairways on either side.

**Building 67** (Parcel 1, Lot D - constructed 1941) Contains 33,720 SF used as vehicle maintenance and parking garage facility. It was built on a hillside to provide vehicle access to service and garage areas on separate levels.

Building 67 Specific Exterior Features

1. Main entrance on upper level with glass block walls on the side and half round cover over the doorway that is edged in stainless steel.
2. Multiple, large garage-style openings on the ground and second level.

Building 67 Specific Interior Features

None

**Building 138** (Parcel 3, Lot E - constructed 1942) Built as Pass and ID office and police station. Two story building on either side of main entrance with continuous second floor forming a bridge over the entrance. High visibility location at the main entry point and close to major public thoroughfare.

Building 138 Specific Exterior Features

1. Original metal frame windows with operable awning center panels.
2. Flat roof line with concrete cornice.

Building 138 Specific Interior Features

1. Stair moldings.
2. Interior walk-in safes.

**MONUMENTS**

There is one monument on the base, located in the center island of the main entry road (in front of Building 138). It is a stone column, approximately 13' high, which is capped by a bronze eagle with outstretched wings. A shield shaped plaque indicates that the monument commemorates the first around the world military flight that originated and returned to the Sand Point aerodrome in 1926. The monument was moved from its original location in 1942.

**LANDSCAPE, SITE FEATURES, VIEWS**

The following landscape and other site features within the area conveyed, are considered to be contributing features to the Sand Point Historic District. Any proposed action that might effect these features or proposed direct alteration of them would require consultation with Washington SHPO.

**Location of features is shown on attached map**

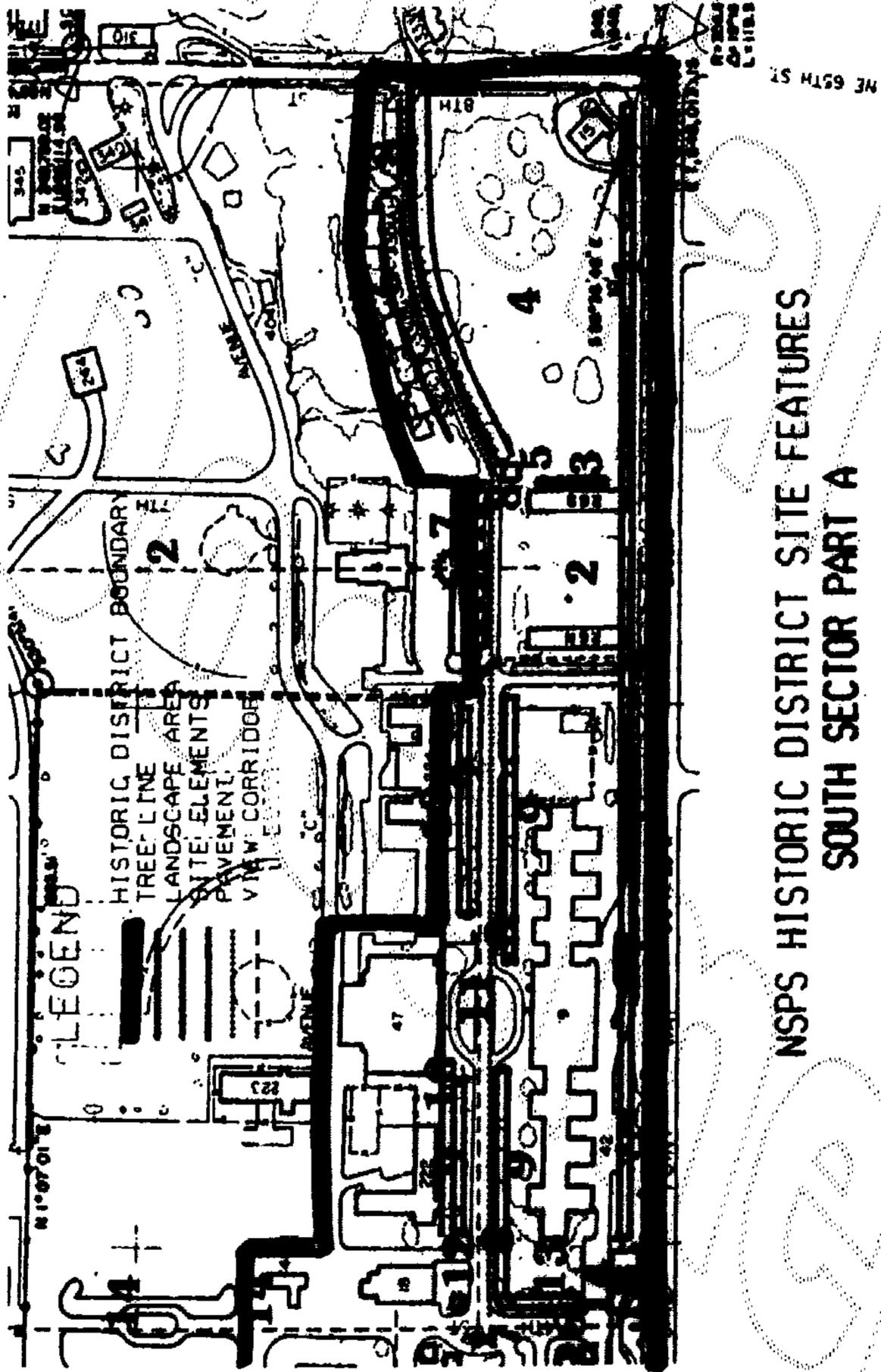
Numbering below coincides with the site feature number on the map. Gaps in the numbers relate to site features that contribute to the Historic District but are not within the area covered by this conveyance.

1. Edge effect created by uniform front foundation lines of buildings 224, 47 and 222.

2. Site of large signboard on southeast corner of intersection of B Street and 4<sup>th</sup> Street. Sign itself is not original or significant but continuous use of this site for this function is significant.
21. Seaplane Ramp.
22. North/ South view corridor down Avenue A from overpass at 1<sup>st</sup> Street to Lake Washington.
23. Stepped aggregate shoreline edging south of Building 31.
24. Remaining example of original street light (to be model for new ones placed on site).

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NSPS HISTORIC DISTRICT SITE FEATURES  
SOUTH SECTOR PART A

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