

CONCESSION AGREEMENT
between
THE CITY OF SEATTLE
and
MAGNUSON BREWERY, LLC
PR0PC25-1597

THIS CONCESSION AGREEMENT (“Agreement”) is entered into this day _____ by and between THE CITY OF SEATTLE (“City”), a city of the first class of the State of Washington, acting by and through the Seattle Parks and Recreation Department (“SPR”) and the Superintendent thereof (“Superintendent”), and MAGNUSON BREWERY, LLC (“Concessionaire”) a limited liability company organized under the laws of the State of Washington.

RECITALS

WHEREAS, Seattle, Washington, owns certain land totaling 309 acres, obtained from the United States of America (USA) known formerly as Naval Air Station Sand Point (known now as Warren G Magnuson Park), and deeded to Seattle, Washington, on April 29, 1999. Said quitclaim deed is attached and hereinafter referred to as Exhibit A; and

WHEREAS, a covenant of the deed states, “The property shall not be sold, leased, assigned, or otherwise disposed of except to another eligible governmental agency that the Secretary of Interior agrees in writing can assure the continued use and maintenance of the property for public park or public recreation purposes subject to the same terms and conditions in the original instrument of conveyance. However, nothing in this provision shall preclude the Grantee from providing related recreational facilities and service 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 2012 Warren G. Magnuson Park Strategic Development Plan identified the establishment of restaurants and/or food services within the Park as a key priority; and

WHEREAS, it benefits the City to designate concession space in Magnuson Park Building 11 and Building 20 to generate revenue to manage its debt service and building renovation expenses; and

WHEREAS, the ongoing activation of Magnuson Park Building 11 and Building 20 supports the overall mission of SPR in providing safe, healthy, and thriving public spaces at Magnuson Park’s North Shore Recreation Area; and

WHEREAS, Concessionaire has provided restaurant service to Warren G. Magnuson Park (“Magnuson Park”) visitors from the entirety of Building 20 and a portion of the first floor of Building 11 at Magnuson Park (the “Premises”) since 2018; and

WHEREAS, Concessionaire and City have expressed a desire and believe it is in the best interest to continue to have these services available to the community for the long term; and

WHEREAS, the City performed a Capital Improvement Project (CIP) in 2024 to satisfy compliance with Title II of the Americans with Disabilities Act (ADA) to support Concessionaire's ongoing and future operations in Building 20;

NOW, THEREFORE, in consideration of the mutual promises, terms, conditions, and performances described herein, City and Concessionaire covenant and agree as follows:

AGREEMENT

1. DEFINITIONS AND EXHIBITS

The following terms shall have the following meanings, except as otherwise specifically modified in this Agreement:

1.1. Buildings

The structure containing the formerly separate buildings designated in the Magnuson Park Master Plan as Building 11 and Building 20, located at 7821 62nd Ave NE, Seattle, King County, Washington 98115 and 7801 62nd Ave NE, Seattle, King County, Washington 98115 respectively, situated on a portion of the real property legally described in Exhibit B. Building 11 and Building 20 are connected through architectural features added prior to SPR ownership and are served by a unified set of utility infrastructure. Individually, "Building 11" and "Building 20" refer to portions of the Buildings as depicted in the floorplan attached as Exhibit C and are collectively herein referred to as "Building".

1.2. Premises

A space of approximately 1,680 square feet located on the first floor of the Buildings in the Building 20 area; an outdoor, partially-covered seating area ("Exterior Deck") comprising approximately 2,700 square feet on the east side of the Buildings in the Building 20 area; Room 157A, a space of approximately 1,170 square feet located on the first floor of the Buildings in the Building 11 area; and additional outdoor space of approximately 360 square feet adjacent to the Buildings in the Building 11 area, depicted in Exhibit C.

1.3. Effective Date

The date this Agreement is signed by an authorized representative of each party following an authorizing ordinance of Seattle City Council.

1.4. Commencement Date

The Commencement Date is August 1, 2025, unless the Effective Date is after this date, in which case the Effective Date and Commencement Date shall be the same.

1.5. Expiration Date

This Agreement shall expire on July 31, 2035, unless the parties mutually agree to an Extended Term as described in Section 4.2.

1.6. Fees and Charges

1.6.1. Concession Fee. Concessionaire shall pay to the City a monthly fee (“Concession Fee”) as defined in Section 5.1.

1.6.2. Annual Percentage Fee. Concessionaire shall pay to the City a percentage of annual revenue (“Annual Percentage Fee”), if applicable, as defined in Section 5.2.

1.6.3. Additional Charges. Whether or not so designated, all other sums due from Concessionaire under this Agreement shall constitute Additional Charges, payable when specified in this Agreement.

1.7. Tenant Improvement

As used in this agreement, a “Tenant Improvement” shall describe any capital project undertaken by Concessionaire or subcontractor(s) commissioned by Concessionaire within Premises (a) to improve the fair market value of the Premises; (b) to aid in the performance and/or security of Concessionaire’s business operations; or (c) both of the foregoing. Such Tenant Improvements shall be undertaken following the procedures set out in Section 10 and will devolve to City ownership upon vacation of Premises by Concessionaire.

1.8. Notice Addresses

To City:

The City of Seattle, Department of Parks and Recreation
Attention: Manager, Warren G. Magnuson Park
6310 NE 74th St. Suite 109E
Seattle, WA 98115

To Concessionaire:

Magnuson Brewery, LLC
Attention: Cody Cluff
6420 NE 60th St.
Seattle, WA 98115

1.9. Delegated Authority

Where used hereafter in this Agreement, the term “Superintendent”, when referring to the Superintendent of Seattle Parks and Recreation, shall be understood to include any designee(s) from that Department authorized to exercise delegated authority on behalf of the Superintendent.

1.10. Exhibits

The following Exhibits are made a part of this Agreement:

- Exhibit A – Naval Station Puget Sound (Sand Point) Deed of Conveyance
- Exhibit B – Legal Description
- Exhibit C – Interior Floorplan
- Exhibit D – Gross Receipts Definition

- Exhibit E – Outdoor Premises
- Exhibit F – Public Benefits Plan

2. CONSIDERATION

The City grants the Concession rights set out in Section 3.1 in exchange for the Concessionaire's performance of the following:

- Making timely payments of the Monthly Concession Fee and any applicable Annual Percentage Fee or Additional Charge as described in Section 5.
- Providing all equipment and services to operate the Concession in the manner required in Section 7.
- Completing Tenant Improvements to Parks property in the manner set out in Section 10.
- Providing the public benefit services set out in Section 11 and Exhibit F.

3. USE OF PREMISES

3.1. Grant of Concession

City grants to Concessionaire the right to use and occupy the Premises, defined in Section 1.2 and depicted in Exhibits C and E, for the exclusive purpose of carrying out the Permit Use set out in Section 3.4. Concessionaire shall also have the right to non-exclusive use (but on occupancy) of the Common Areas in the Premises as set out in Section 3.5.

3.2. Condition of Premises

Concessionaire currently occupies the Premises and has inspected same and is aware of the Premises' condition as of the date of this Agreement. Concessionaire accepts the Premises in its "as is" condition with no representation or warranty by the City as to its condition or its suitability or fitness for Concessionaire's proposed activities.

3.3. Parking

No parking rights are associated with this Agreement. Parking at Magnuson Park is available on a first come/first served, unreserved basis, and any areas designated by the Superintendent for parking shall be deemed Common Areas under this Agreement.

3.4. Permitted Use

Concessionaire shall use the Premises for the purposes of running a restaurant and brewery, including the sale of food, beer, wine, and cider, and the manufacturing and wholesale of beer, as well as the necessary clerical, preparatory, and miscellaneous support operations pertaining to that use. Concessionaire may also use the Premises to sell merchandise associated with a restaurant and brewery, subject to approval by the Superintendent. Concessionaire shall not use the Premises for any purpose whatsoever other than the uses specifically permitted herein (collectively, the "Permitted Use"). Subject to the terms and conditions in Section 7.6, Concessionaire may manage and conduct Permitted Uses on an outdoor deck (the "Exterior

Deck”). Concessionaire’s use of the Exterior Deck shall be on a non-exclusive basis, with use permitted for the public and Concessionaire’s patrons.

3.5. Common Areas

During the Term, Concessionaire and its employees, contractors, and invitees shall have the nonexclusive right to use the lobbies, stairs, corridors, restrooms and other public areas of the Building and Magnuson Park (the “Common Areas”) in common with City, the general public, and other Building occupants and their respective Concessionaires, invitees, customers, and employees. Use of the Common Areas shall be governed by Park rules as the Superintendent may amend them from time to time, and by those terms set forth in this Agreement. 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 the Concession Fee.

3.6. Special Events

Concessionaire shall not utilize Magnuson Park common areas, either within or outside the Building, for special events unless it has obtained a Park Use Permit from SPR or a Special Events Permit from the City a minimum of ninety (90) days in advance. In addition, recognizing that Magnuson Park has limited capacity to handle multiple events with large attendance, if Concessionaire promotes any event that it reasonably anticipates will draw more than 50 people beyond its normal use and occupancy at one time, Concessionaire shall provide City with no less than ninety (90) days’ advance written notice. If the Superintendent determines that the event would unreasonably conflict with other uses of Magnuson Park, the City shall notify the Concessionaire within five (5) business days after receipt of the notice. Upon receipt of such notice the Concessionaire shall reschedule the event or limit attendance at the event to the number of people that can be served within the Premises at one time under all applicable laws and regulations.

3.7. Alterations

City, in its discretion, may increase, decrease, or change the number, locations and dimensions of any hallways, lobby areas, Common Areas and other improvements shown that are not within the Premises. Such an increase, decrease, or change shall not materially interfere with Concessionaire’s business as permitted in Section 2.4. City reserves the right from time to time (i) to install, use, maintain, repair, relocate and replace pipes, ducts, conduits, wires and appurtenant meters and equipment for service to the Premises or to other parts of the Building in areas above the suspended ceiling surfaces, below the floor surfaces, within the walls and elsewhere in the Building; (ii) to alter or expand the Building; and (iii) to alter, relocate or substitute any of the Common Areas.

3.8. Square Footage of Premises

The square footage of the Premises provided in Section 1.2 are based on measurements taken pursuant to Concessionaire’s commission of a 2023 market rate analysis and mutually agreed upon between the City and Concessionaire for purposes of calculating the Concession Fee.

These Premises measurements shall not be re-measured after the completion of any building improvements pursuant to Section 10, and Concessionaire shall pay the Concession Fee based upon the measurements provided in Section 1.2 without future adjustment of the square footage measurements.

4. TERM

4.1. Initial Term

This Agreement shall be for a 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 and ending on the Expiration Date specified in Section 1.5, unless the Agreement Term is terminated early in accordance with the provisions of this Agreement.

4.2. Extended Term

City and Concessionaire may mutually agree to extend the term of the Agreement beyond the Initial Term for one (1) extended terms of five (5) years (“Extended Term”) to commence immediately after the Initial Term. To exercise its option to extend, Concessionaire must provide the City written notice at least two hundred and seventy (270) days prior to the expiration of the Initial Term. The option for this Extended Term will only be effective when City and Concessionaire agree in writing to such an extension. As a condition precedent for any Extended Term, Concessionaire must not be in Default at the time the written request is provided to City and at the time the written agreement to extend the term is signed. All terms and conditions of this Agreement shall continue in full force and effect during the Extended Term and the Concession Fee shall be adjusted as provided in Section 5.5. 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.

5. CONCESSION FEE

5.1. Term Concession Fee; Annual Increase Date

Starting on the Effective Date, Concessionaire shall pay the City a fee (“Concession Fee”) for Concessionaire’s use of the Premises based on the table below.

Year	Annual Fee	Monthly Fee
1	\$60,000.00	\$5,000.00
2	\$65,000.00	\$5,416.67
3	\$75,000.00	\$6,250.00
4	\$85,000.00	\$7,083.33
5	\$90,000.00	\$7,500.00
6	\$105,000.00	\$8,750.00
7	\$110,000.00	\$9,166.67
8	\$120,293.00	\$10,024.42
9	\$126,307.65	\$10,525.64

10	\$132,623.03	\$11,051.92
----	--------------	-------------

The date marking the annual Concession Fee increase shall be August 1 of each year. Therefore, regardless of this Agreement's Effective Date, for purposes of Concession Fee increases the first day of Year 2 shall be August 1, 2026; the first day of Year 3 shall be August 1, 2027; and so on.

5.2. Annual Percent Fee

Concessionaire shall pay to City at the address and to the account specified by City, on or before January 31 of each calendar year during the Term (or any Extended Term), without notice or demand or any offset or deduction whatsoever, 3% of Concessionaire's Gross Receipts, for Restaurant Sales only, above \$3,500,000. For example, if Concessionaire's Gross Receipts, for Restaurant Sales only, in year one (1) is \$4,000,000 then Concessionaire will pay to City 3% of \$500,000 for a total payment of \$15,000 ($\$4,000,000 - \$3,500,000 \times 3\% = \$15,000$). The definition of Gross Receipts is defined in Exhibit D.

5.3. Time and Manner of Payment

Concessionaire shall pay the annual Concession Fee in twelve (12) equal monthly installments, along with any applicable LET, in advance, on or before the first day of each month during the Term. If the Commencement Date does not occur at the start of a calendar month, the Concessionaire's obligation to pay shall be prorated for the first month. For clarity, if the Commencement Date is August 12th, the Concessionaire would pay a prorated Concession Fee, along with any LET, for the remaining days in August, and then pay eleven (11) equal monthly installments. All payments shall be by check or money order and made payable to the City. All payments shall be delivered to:

City of Seattle Treasury
PO Box 94626
Seattle, WA 98124-6926

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

5.4. Additional Charges

Concessionaire shall pay to the City as and when specified elsewhere in this Agreement Additional Charges; but if not specified, then within ten (10) days after written demand. Proration of Additional Charges for partial months shall be solely at the discretion of the Superintendent.

5.5. Extended Term Fee Increases

Beginning on the Commencement of the Extended Term, if exercised, and annually thereafter on the anniversary of the Commencement Date, Concessionaire's monthly Concession Fee shall increase by 5% over the previous year's total. For example, since the Concession Fee for Year 10 of the Initial Term is \$132,623.03, the annual Concession Fee for Year 1 of the

Extended Term will be \$139,254.18. The monthly fee for each year of the Extended Term shall be calculated by dividing this annual Concession Fee into twelve (12) equal payments (therefore, for Year 1 of the Extended Term, the monthly fee would be \$11,604.52).

5.6. Security Deposit

City acknowledges that Concessionaire has previously provided a total security deposit of **\$5,946.00** pursuant to an Amendment to the 2018 Magnuson Park Building 11 Concession Agreement for the Premises. The aforementioned deposit shall be transferred in its entirety to this new Concession Agreement. Within two (2) days of the execution of this Agreement, Concessionaire will provide an additional deposit in the amount of **\$2,130.86**. The resulting total deposit amount of **\$8,076.86** is equal to the average (mean) monthly fee owed to City by Concessionaire during the Initial Term. The City will hold the Security Deposit for the Term of the Agreement (including any Extended Term) and keep Security Deposit funds separate from other funds associated with this Agreement. All interest earned by the Security Deposit will become the property of the City. If Concessionaire defaults on any of its obligations under this Agreement, the City may, without prior notice to Concessionaire, use this Security Deposit to cure any such default. If the City withdraws all or a portion of the Security Deposit funds to cure Concessionaire's default, the City shall notify the Concessionaire within a reasonable time of the amount of funds withdrawn, the reason the funds were withdrawn, and a general description of how the funds were spent. If the Agreement is not terminated by the default leading to withdrawal of Security Deposit funds, within ten (10) days of receiving the City's notice, Concessionaire shall provide as an additional Security Deposit an amount equal to the amount withdrawn by the City. The City shall pay Concessionaire the balance of the Security Deposit, with no liability for interest earned, within thirty (30) days after the expiration or prior termination of the Term if, and only if, Concessionaire has fully performed all its obligations under this Agreement.

5.7. Late and Refused Payments

If Concessionaire fails to pay any sum when such amount is due to the City, Concessionaire shall pay to the City interest on the unpaid amount at the rate of 12% per annum from the date such amount was due until the date paid. Concessionaire shall pay City a Twenty Dollar (\$20.00) charge for each check refused payment for insufficient funds or any other reason.

6. FINANCIAL RECORDS & AUDIT

6.1. Concessionaire's Records

The Concessionaire shall maintain at the Premises a clear and documented set of books, records, documents, financial statements, and other evidence reflecting all business activity conducted at the Premises, including cash register tapes, Point of Sale system reports, credit card charge records and any other data relating to the determination of Gross Receipts and the calculation of the Percent Fee.

6.2. Audit

Concessionaire shall permit its records to be inspected by the City, with reasonable notice, and Concessionaire's records shall be subject to copying and audit by the City, the Office of the State Auditor, and other officials so authorized by law, rule, regulation, or contract. The Concessionaire shall ensure that this right of inspection, audit, and copying is a condition of any sub-concession agreement or other arrangement under which any person or entity other than Concessionaire is permitted to carry on a business activity in, on, or from the Premises. The Concessionaire shall not be required to staff the City's audit of Concessionaire's financial records, and the City shall solely bear the costs associated with its inspection of Concessionaire's financial activity under this Agreement.

6.3. Retention

The Concessionaire shall retain all financial books, records, documents, cash register tapes, credit card records and other material relevant to the financial activity under this Agreement for seven (7) years after the expiration or termination of any calendar year under the Agreement, or longer if required by the relevant local, state, or federal authority.

6.4. Public Disclosure

Concessionaire understands that all documents, correspondence, and records associated with this Agreement may be subject to State and City public disclosure laws. If and when directed by the City, Concessionaire will comply with requests for public disclosure by providing to the City any documents and records requested by the date indicated by the City. In the event Concessionaire fails to timely provide documents and records legally subject to disclosure, Concessionaire will be liable for and will pay on the City's behalf any fines or penalty imposed on the City resulting from Concessionaire's acts or omissions.

6.5. Cash Register

The Concessionaire shall enter all sales on a type of cash register or Point of Sale (POS) System that records and identifies the date, type of sale, and the amount of each transaction, and that is equipped with a cumulative, non-alterable accounting control mechanism.

6.6. Record Keeping Subject to Approval

Concessionaire shall not change record keeping methods or change or discontinue use of the cash register or POS System without the Superintendent's authorization, which will not be unreasonably withheld.

6.7. Annual Report

On or before January 31 of each calendar year during the Term (including any Extended Term), Concessionaire shall submit to Parks annual financial reports, in a form acceptable to the Superintendent. These reports shall at minimum provide details concerning Concessionaire's expenses, revenues, profit and loss, maintenance and operations for the Premises, financial balance sheets, and any other information necessary for City to accurately inspect and audit Concessionaire's financial operations.

6.8. Survival

The obligations in this Section 6 shall survive termination or expiration of the Agreement for the applicable duration of any statute of limitations.

7. CONCESSIONAIRE'S OPERATIONS AND SERVICES

7.1. Use of Premises

Concessionaire shall use the Premises only for the Permitted Use. As City's willingness to enter into this Agreement with Concessionaire was predicated, in part, on the nature of Concessionaire's business, and the compatibility of such business with the use of the remainder of the Building, Concessionaire shall not use or permit the use of the Premises for any other business, or purpose, or under any other name, without City's prior written consent. Concessionaire shall promptly comply, at its sole cost and expense, with such reasonable rules and regulations relating to the use of the Premises, Building, and Common Areas as the City, from time to time, may promulgate. Concessionaire shall maintain the Premises in a clean, orderly, and neat fashion and to a standard reasonably established by the Superintendent for the Building, permitting no objectionable odors to be emitted from the Premises. Concessionaire shall neither commit waste of the Premises nor permit any waste to be committed thereon. Concessionaire shall not permit any accumulation of trash on or about the Premises. Concessionaire shall not create or contribute to the creation of a nuisance in either the Premises or the Building, and Concessionaire shall not engage in or permit any action that will disturb the quiet enjoyment of any other occupant in the Building.

7.1.1. Building 11 Common Area Restrooms Maintenance. Concessionaire and City agree to share maintenance and custodial responsibility of the first-floor common area restrooms adjacent to Concessionaire's premises, as indicated on Exhibit C. SPR will be responsible for cleaning the common area restrooms on a regular basis to SPR standard once daily, prior to Concessionaire's public operating hours. Concessionaire will be responsible for minor maintenance and cleaning of common area restrooms during the operating hours of the restaurant, and at or after daily closing of business, and for prompt reporting of major maintenance issues to SPR's Facilities division. Consumables and cleaning supplies (including paper products, hand soap, and floor cleaner) will be provided by SPR. Maintenance of common area restrooms may be considered as a contribution for Concessionaire's Public Benefit Requirement, provided that proper documentation is submitted pursuant to Section 11.3.

7.2. Products.

7.2.1. All food products used on the Premises shall meet the following minimum requirements. Food used must be United States Department of Agriculture (USDA) inspected or approved as follows:

1. Fish and poultry shall be of a quality equivalent to a number "1" grade cod or halibut.
2. Dairy products shall meet top USDA requirements.
3. Beef shall be of a "choice" or "prime" grade and shall be used as 100% beef only; additives shall not be used as extenders.

4. Canned food products shall carry the "fancy" label.
5. All products with a shelf life indicated by code shall not be used outside the code period unless properly preserved prior to that period ending.
6. At no time shall any meat product be used on a day other than the day upon which it was cooked.
7. At no time shall any "refrozen product" be used on the Premises.
8. Concessionaire shall ensure that all products are stored in properly working refrigeration units, heat units, and dry storage units.

7.2.2. The following shall be excluded from Concessionaire's operation without prior written approval:

1. Cigarette sales.
2. Non-food products unless approved by City.
3. Alcoholic beverages (excluding beer, wine, and cider) unless approved by City.
4. Vending machines unless approved by City.
5. Video games or gambling devices unless approved by City.

7.3. Menu

Concessionaire's menus may not contain messages the Superintendent deems to include, promote, or encourage racism, profanity, sexual innuendo, or socially irresponsible behavior. Superintendent shall have the right to require Concessionaire to change menu design, artwork, and wording to remove content with the above subject matter at any time. Upon receiving notice from Superintendent by any means (including verbal communication, telephone, email, or written notice) that menu design, artwork, or wording is not acceptable, Concessionaire shall remove the unacceptable content from the menu within five (5) business days. Concessionaire and its employees shall not make or permit any misrepresentation as to kind, quality, weight, or price of food, beverages, or merchandise offered for sale. Excluding employee discounts, Concessionaire and its employees shall not sell any food, beverage, or merchandise at prices different from prices displayed or advertised.

7.4. Mandated Menu Items

7.4.1. Beverages. Subject to agreement between the parties, the City may direct Concessionaire to create no more than two (2) beers bearing a City-associated name, such as "Seattle Parks and Recreation" and "Magnuson Park," for City marketing purposes. The name and availability of this beer will be subject to agreement between the parties. Concessionaire expressly acknowledges that all rights to the designated City-associated name stated in the agreement will remain strictly with the City notwithstanding any agreement allowing Concessionaire to make use of that name.

7.4.2. Food. Concessionaire shall always provide a minimum of one vegetarian food item on the menu throughout the duration of the Agreement.

7.5. Private Parties/Events

Concessionaire shall secure all required permits, licenses, and any additional insurance coverage that the Superintendent may require for sponsored private parties and special events. Concessionaire may use the Exterior Deck for sponsored private parties and events, subject to the City's use set out in Section 7.6 and to permitting requirements set out in Section 3.7. Concessionaire may not use the Exterior Deck for more than four (4) parties or events per calendar year requiring the exclusion of the public without the prior approval of the Superintendent.

7.6. City Use of Exterior Deck

The City shall have reasonable access to and use of the Exterior Deck for City events, including events that require exclusion of the public or Concessionaire. The City may schedule during business days no more than four (4) such exclusive events of no more than six (6) hours each during any year. Superintendent shall give Concessionaire at least thirty (30) days' notice before any City-hosted event at which Concessionaire will be excluded from the Exterior Deck. Superintendent shall work to reasonably accommodate Concessionaire's use of the Exterior Deck when scheduling City events.

7.7. Concessionaire's Staff

An experienced on-site manager shall be selected and designated as the Concessionaire's authorized representative who shall oversee all concession operations on the Premises and transmit and receive communications to and from City. This designated manager shall meet twice annually with a representative of City to discuss operational concerns. Concessionaire shall employ competent, courteous, and efficient staff in numbers to adequately serve its patrons. All Concessionaire staff members shall, while on duty, be equipped with any apparatus or clothing that may be required by law, ordinance, or regulation. Concessionaire staff shall not smoke within Magnuson Park. Employees shall behave professionally in all aspects of employment, appearance, professional level, training, and operation. Concessionaire understands and agrees that the designation and presence of the on-site manager is a material term of this Agreement. Failure to comply with this provision shall be an event of Default under Section 22.

7.8. Operating Hours & Closure

7.8.1. General. Concessionaire shall keep the Premises open and use them to transact business with the public daily during hours as designated below at a minimum or as otherwise may be mutually agreed to by both parties. If a new schedule for hours of operation cannot be mutually agreed upon by both parties, then the Concessionaire shall keep the Premises open and use them to transact business with the public daily during hours as designated below. Subject to the Superintendent's prior reasonable approval, Concessionaire may, upon posting a written notice to the public of not less than one (1) week in duration prior to any approved closure, closing of the Premises or a portion thereof for a reasonable period for repairs or any approved remodeling, or for taking inventory. Concessionaire shall close to accommodate reasonable operational requirements of City's business, upon thirty (30) days' prior written notice to Concessionaire, and Concessionaire shall immediately close in the case of any

emergency as determined by the Superintendent; provided, however, that if Concessionaire shall close pursuant to this sentence at the direction of City, and if Concessionaire remains closed at the direction of City for more than three (3) days, then Concessionaire's Concession Fee and Additional Charges shall be prorated for the duration of the closure in the proportion that the number of days of the closure bears to the number of days of the month. Concessionaire shall furnish an approved sign at the Premises entrance advising the public of any approved closure, unless closed at the direction of City.

Minimum hours of operation of the business conducted on the Premises are as follows:

- Year-Round Operation: 11:00 AM – 8:00 PM, Seven Days/Week

Holiday Closures:

- Christmas Day
- Thanksgiving Day
- New Year's Day

7.8.2. Additional Closures. Concessionaire may request additional closure dates via formal request to City at least sixty (60) days in advance and subject to Superintendent's approval. If approval for closure is granted, such closure must be announced via public notice in accordance with Section 7.8.1.

7.9. Compliance with Laws; Nondiscrimination.

7.9.1. General Obligation. Concessionaire shall not use or permit the Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, ordinance, or regulation, or for any purpose offensive to the standards of the community of which the Building is a part. Concessionaire shall promptly comply, at its sole cost and expense, with all laws, ordinances, and regulations now in force or hereafter adopted relating to or affecting the condition, use, or occupancy of the Premises (provided that Concessionaire shall not be responsible for maintaining in compliance with laws those portions of the Building, including the Premises, that are City's responsibility to maintain under terms of this Agreement).

7.9.2. Nondiscrimination. Without limiting the generality of Section 7.9.1, Concessionaire agrees to and shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and The City of Seattle, including but not limited to Chapters 14.04, 14.10 and 20.42 of the Seattle Municipal Code, as they may be amended from time to time, and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

7.10. Liens and Encumbrances

Concessionaire shall keep the Premises and Building free and clear of, and shall indemnify, defend, and hold City harmless from, any and all liens and encumbrances arising or growing out

of any act or omission, or breach of this Agreement or its use, improvement or occupancy of the Premises by Concessionaire or any of its principals, officers, employees or agents or subtenants. If any lien is so filed against the Premises or Building, Concessionaire shall either cause the same to be fully discharged and released of record within ten (10) days after City's written demand therefor or, within such period, provide City with cash or other security acceptable to City in an amount equal to one and one-half (1½) times the amount of the claimed lien as security for its prompt removal. City shall have the right to disburse such security to cause the removal of the lien if City deems such necessary, in City's sole discretion.

7.11. Hazardous Substances

Concessionaire shall not, without City's prior written consent, keep on or about the Premises or Building any substance designated as, or containing any component now or hereafter designated as hazardous, dangerous, toxic, or harmful, and/or subject to regulation under any federal, state or local law, regulation or ordinance ("Hazardous Substances"), except customary office, kitchen, cleaning and other related supplies in normal quantities handled in compliance with applicable laws. With respect to any Hazardous Substances stored with City's consent, Concessionaire shall promptly, timely and completely comply with all governmental requirements for reporting and record keeping; submit to City true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities; within five (5) days after City's request therefor, provide evidence satisfactory to City of Concessionaire's compliance with all applicable governmental rules, regulations and requirements; and comply with all governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment and disposal of Hazardous Substances. Any and all costs incurred by City and associated with City's inspections of the Premises and City's monitoring of Concessionaire's compliance with this Section 7.11, including City's attorneys' fees and costs, shall be Additional Charges and shall be due and payable to City within ten (10) days after City's demand therefor, if Concessionaire's violation of this Section 7.11 is discovered as a result of such inspection or monitoring. Concessionaire shall be fully and completely liable to City for any and all cleanup costs and expenses and any and all other charges, expenses, fees, fines, penalties (both, civil and criminal) and costs imposed with respect to Concessionaire's use, disposal, transportation, generation and/or sale of Hazardous Substances in or about the Premises or Building. Concessionaire shall indemnify, defend, and hold City harmless from any and all costs, fees, penalties, charges and expenses assessed against, or imposed, upon City (as well as City's attorneys' fees and costs) as a result of Concessionaire's use, disposal, transportation, generation and/or sale of Hazardous Substances on or about the Premises or Building. The indemnification obligation of this Section shall survive the expiration or early termination of this Agreement.

7.12. Noise

Concessionaire shall use no machine or equipment in or about the Premises that causes noise or vibration that may be transmitted to the structure of the Building or to any space therein, to such a degree as to be objectionable to the City or to any Concessionaire in the Building.

7.13. 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 or the Building anything that is inconsistent with this Agreement, or the Park Code as now existing or amended, or that will be dangerous to life or limb, or that will increase any insurance rate upon the Building.

8. UTILITIES

8.1. General

So long as Concessionaire is not in default under this Agreement, the City shall furnish and pay for electrical, water, and sewer services to the Premises. City further agrees to furnish and pay for garbage collection consistent with surrounding SPR properties. Concessionaire may, at Concessionaire's sole expense, elect to furnish and provide additional garbage collection services. Concessionaire shall be responsible for the cost of any telecommunications, natural gas service, or any other services not heretofore specified 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 levels.

8.2. Refuse Collection; Disposal of Waste Materials

Concessionaire shall provide all necessary housekeeping and janitorial services for the Premises, including the exterior deck, to a level consistent with other similar Parks facilities and operations and to the Superintendent's reasonable satisfaction. Concessionaire shall be responsible for proper storage and removal of trash, litter and recycling consistent with City standards, and storage and removal of fats, cooking oil, and grease in accordance with City standards as they are provided by the Superintendent and updated from time to time during the Term. These standards include but are not limited to Chapter 21.16 of the Seattle Municipal Code.

8.3. Interruption

City shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption, or failure of services due to any cause whatsoever, including, but not limited to, electrical surges, or from failure to make any repairs or perform any maintenance. No temporary interruption or failure of such services incident to the making of repairs, alterations, or improvements or due to accident, strike or conditions or events beyond City's reasonable control shall be deemed an eviction of Concessionaire or to relieve Concessionaire from any of Concessionaire's obligations hereunder or to give Concessionaire a right of action against City for damages. 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 48 hours' prior written notice of any City-planned electricity outage on 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, after the Commencement Date, utilities are interrupted at the Premises so as to render them unfit for their Permitted Uses for longer than a period of three (3) days, then the Monthly Concession Fee for the affected month(s) 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 month.

9. LICENSES AND TAXES

9.1. Responsibility

Without any deduction or offset whatsoever, Concessionaire shall be liable for, and shall pay prior to delinquency, all taxes, license and excise fees and occupation taxes covering the business conducted on the Premises and all personal property taxes and other impositions levied with respect to all personal property located at the Premises; Concessionaire shall be responsible for, and shall pay prior to delinquency, all fees, charges, or costs, for any governmental inspections or examinations relating to Concessionaire's use and occupancy of the Premises, and pay all taxes on the leasehold interest created by this Agreement if applicable to Concessionaire, including but not limited to the tax under RCW Ch. 82.29A (Leasehold Excise Tax or "LET"). As of the Commencement Date, the applicable LET rate is 12.84%, which amount is subject to change.

9.2. Contests

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

10. IMPROVEMENTS BY CONCESSIONAIRE; TENANT IMPROVEMENT ALLOWANCE

10.1. Improvements – General

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 Premises or adjacent areas, or that impact the historic features of Premises, or that exceed \$25,000 in cost without first submitting to SPR 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 City 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 first-class, commercial standards; (c) includes acceptable insurance coverage for City's benefit; (d) does not affect the structural integrity of the Premises or the Building or any of the Premises' or Building's systems; (e) does not disrupt the business or operations of any other occupant of the Building; and (f) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Premises or the Building. Concessionaire shall secure all governmental permits and approvals required for the work; shall comply with all other applicable governmental requirements and restrictions; and reimburse City for any and all expenses incurred 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. 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, Concessionaire shall remove all or any portion of such alterations and/or improvements on the expiration or termination of this Agreement if City specifically so directs, in writing, at the time of City's issuance of its approval thereof. Within ninety (90) days after the completion of any alteration, addition or improvement to the Premises, 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.

10.2. Required Tenant Improvement

10.2.1. Required Tenant Improvement Scope. Concessionaire covenants that it will complete improvements necessary to comply with City's decarbonization plans for municipal buildings as described in Executive Order #2021-09. Concessionaire and City mutually agree that Concessionaire will undertake a Tenant Improvement project to convert all restaurant, brewery, and any other Premises infrastructure from operations requiring natural gas or any other fossil fuel utility, including propane, to operations requiring electric utility only. Utility usage pursuant to this Tenant Improvement shall follow the guidelines set out in Section 8.

10.2.2. Required Tenant Improvement Timeline. Concessionaire covenants that it will complete the project described in Section 10.2.1 no later than the end of the eighth (8th) year of this Agreement's initial Term (that is, no later than July 31, 2033). If

future instruction from the City or its natural gas utility provider necessitates that this date must change to be sooner, SPR shall provide formal notice to Concessionaire, along with the new completion date, no later than fifteen (15) days after the announcement of this change. Failure to complete the required Tenant Improvement Project by the date specified in this Section 10.2.2 will be an event of Default under Section 22.

- 10.2.3. Required Tenant Improvement; Acknowledgement of Risk and Indemnification. Concessionaire understands that SPR does not control the timeline for decarbonization of municipal buildings pursuant to Executive Order #2021-09. Concessionaire further understands that the required completion date specified in Section 10.2.2 represents a good-faith and conservative estimate by SPR to provide Concessionaire sufficient time to convert operations from natural gas and electric to electric-only prior to the discontinuing of natural gas service to Premises. If concessionaire fails to complete the Required Tenant Improvement on or before the date specified in Section 10.2.2, or on an earlier date through the process described therein, Concessionaire agrees to indemnify and hold harmless the City for any and all damage or loss to Concessionaire's property or business resulting from a partial or total loss of natural gas service, and Concessionaire shall not be eligible for any Concession Fee offset or abatement in such an event, provided that due notice has been given pursuant to Section 10.2.2.

10.3. Tenant Improvements: Plan and Allowance

- 10.3.1 Tenant Improvement Plan. Within one (1) year of the planned commencement date of any Tenant Improvement project, including that described in Section 10.2, Concessionaire shall submit to SPR a full and complete overview of the proposed Tenant Improvement (the "Tenant Improvement Plan"). The Tenant Improvement Plan shall include but not be limited to the following components: narrative scope of work; project timeline; anticipated budget; architectural plan and drawings; approved permits from Seattle's Department of Construction and Inspections; SPR Proview approval; planned date of project commencement; and community outreach plans and feedback from any community outreach efforts to date. The decision to approve, deny, or request modifications to the Tenant Improvement Plan shall be made at the Superintendent's sole discretion within sixty (60) days of SPR's receipt of said Plan. If the Tenant Improvement Plan is approved by the Superintendent, Concessionaire shall endeavor to complete the Tenant Improvement project following the terms of said Plan. If any Tenant Improvement Plan is denied or if modifications are requested by Superintendent, that Plan must be resubmitted in full for consideration under the terms of this Section 10.3.1.

- 10.3.2 The City will allow Concessionaire to offset up to a maximum of \$190,000 of the Concession Fee for improvements made to the Premises (the "Allowance"). The Allowance will be in the form of an offset against the annual Concession Fee otherwise due in an amount equal to Concessionaire's actual costs associated with Concessionaire's improvements that have been pre-approved using the process in

Sections 10.1 and 10.3 and are completed in compliance with Section 7. The Allowance shall only be available to offset the cost of improvements actually made under the terms and conditions of this Section 10 and Section 7, and Concessionaire shall not be entitled to any refund or Concession Fee offset for unused portions of the Allowance. The Allowance is solely a fee offset and is not, and shall not be interpreted to be, an offer of payment-in-kind to Concessionaire. If the Agreement terminates before all Concession Fee offsets have been provided, City shall have no obligation to pay Concessionaire for any portion of Concessionaires costs or the value of any improvements to the Premises. Only payments expended for the categories of costs described in Exhibit D are eligible to be applied by Concessionaire towards its Allowance.

10.3.3 Periodic Offsets of Allowance. The City and Concessionaire mutually understand that improvement plans may be implemented intermittently during the Term. So long as Concessionaire has commenced an approved tenant improvement, the Concessionaire may provide SPR an accounting of expenses actually paid to date which are eligible for the Allowance, together with any supporting documentation (receipts or paid invoices) the Superintendent may reasonably require. Within sixty (60) days of receipt of the accounting, SPR shall notify Concessionaire in writing of the amount of the approved offset. Thereafter, City will apply the approved offset to Concessionaire's monthly Concession Fee payment, provided that the offset shall not exceed 50% of the Concession Fee due in any single month. Thereafter, Concessionaire may continue to submit accountings of costs eligible for the Allowance at least annually, and no more frequently than quarterly, for additional Allowance consideration and approval from Superintendent. Concessionaire will notify The City of the planned reporting schedule at the time of the first report submission.

10.3.4 Final Accounting. Not later than six (6) months after Concessionaire completes improvements which the Superintendent approved for the Allowance, Concessionaire shall provide the Superintendent with a final accounting of all Concessionaire's actual costs associated with such capital improvements together with such supporting documentation (receipts of paid invoices) 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 Sections 10.3.1 and 10.3.2). 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 50% of the Concession Fee due in any single month and that the offset has not been previously provided via the terms outlined in Sections 10.3.1 and 10.3.2. For example, if the monthly installment of the Concession Fee due is \$10,525.64, then the maximum offset amount is \$5,262.82. This Allowance shall not carry over into the

Extended Term of this Agreement if the total Offset amount has not yet been attained by the initial Termination Date. If mandatory tenant improvement is not completed by end of Year 8 as specified in Section 10.2, any fee offsets theretofore granted are subject to repayment by Concessionaire to City.

10.4. 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 any part of the Concession Fee, Concessionaire shall comply with any applicable state or federal public works requirements and shall require its contractor to pay prevailing wages in accordance with Washington's Prevailing Wage Statute, chapter 39.12 RCW.

10.5. 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 this Section 10. Nothing in this Section shall be construed to limit Concessionaire's general obligations to care for the Premises as provided under Sections 7 and 12.

10.6. SPR Project Liaison Expenses

Concessionaire will pay City a Project Liaison Fee of \$114.28 per hour for a SPR Project Liaison to guide tenant improvement plans and designs through review by Seattle Department of Construction and Inspections (SDCI), SPR ProView and ProView Tech, Landmark Preservation Board, and any other required agency or body. Concessionaire and City mutually acknowledge that this hourly fee is set for 2025 and will increase annually in parallel with the annual Consumer Price Index (CPI) for the US West Region, measured from the period of January through December of the previous year. Concessionaire will remain responsible for funding, leading, and implementing all tenant improvements of Premises according to terms set out in this Section 10. All permitting decisions shall be made by SDCI in their sole discretion as regulator. This Agreement, and in particular any SPR assistance by the SPR Project Liaison, does not constitute a promise of timely review, approval, or any other action by SDCI. For purposes of clarity, the SDCI review is separate and in addition to any SPR design review, review required by the City's Landmarks Preservation Board, and as may otherwise be required by the Superintendent. Within thirty (30) business days of any written request from Concessionaire, City agrees to provide the Concessionaire with an estimate of the number of hours of SPR Project Liaison anticipated on all projects prior to incurring any expenses that the Concessionaire will be liable for. This estimate will be based on the total budget for each proposed phase of development. SPR Project Liaison and MCB staff work collaborate to budget necessary Project Liaison expenses.

10.7. Improvements – Indemnification

Except as provided in Section 15 with regard to concurrent negligence, 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 10.

11. PUBLIC BENEFIT REQUIREMENT

11.1. Required Public Benefits

City's willingness to enter into this Agreement is conditioned, in part, on Concessionaire's commitment to provide Public Benefits at Magnuson Park. Each year during the Term, Concessionaire shall provide a level of Public Benefits that are consistent with those described in Exhibit F (the "Public Benefits Plan"). Concessionaire shall not be eligible for a fee offset pursuant to the performance of Public Benefits during the Term, including any Extended Term.

11.2. Public Benefit Plan

Concessionaire shall submit to the Superintendent a Public Benefits Plan proposal with measurable performance objectives it intends to provide during each year of the Agreement, to be included herein as Exhibit F. 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.

11.3. Annual Public Benefits Report

On or before January 31 of each year, Concessionaire shall submit to the Superintendent a robust and inclusive Public Benefits Report detailing the pre-approved programs, benefits and services actually delivered in the prior year and including an itemized statement of time, labor rates, photographs, materials, and other information supporting the dollar value of Concessionaire's Public Benefits, as well as proposed updates and changes, if any, to the Public Benefit Plan for the current year. The Superintendent will respond within sixty (60) days, and may request more information, deny, partially approve, or approve the proposed Public Benefits Report. Final approval of Public Benefits Report is at the sole discretion of the Superintendent. If the Superintendent delivers written objections within the sixty (60) day period, the Superintendent shall also specify subsequent actions to be taken by Concessionaire that will satisfy the Superintendent's concerns.

11.4. Failure to Provide Public Benefit Documentation

Concessionaire and City mutually acknowledge that SPR staff shall not direct or assist with the creation of Concessionaire's Public Benefit Plan or Report, or any associated documentation. Failure by Concessionaire to provide such documentation in an adequate or timely fashion may result in Concessionaire being considered in default of this Agreement, at the sole discretion of the SPR Superintendent. This condition will be communicated via formal notice, including reasons for the decision in writing, by the process described in Section 27. Concessionaire will have sixty (60) days from date of notice to resolve this default or to request alternative resolution methods.

12. CARE OF PREMISES

12.1. 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. 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 12.2.2.

12.2. Custodial Service for Premises.

12.2.1. Concessionaire's Obligations; General. Concessionaire shall at its own expense, at all times, keep the Premises and areas immediately adjacent thereto, including the Exterior Deck and the Building 11 first floor restrooms, in a neat, clean, safe, and sanitary condition; and keep the glass of all windows and doors serving such areas clean and presentable. With the exception of those supplies specified in Section 12.2.4, Concessionaire shall furnish all cleaning supplies and materials needed to operate such areas in the manner prescribed in this Agreement. Concessionaire shall provide all necessary janitorial services to adequately maintain the inside of such areas using a company subject to reasonable approval by the Superintendent. Concessionaire shall be responsible for keeping the areas immediately adjacent to the perimeter of such areas free of litter and clean of spills resulting from Concessionaire's operations. If, after City provides written notice to Concessionaire of Concessionaire's failure to comply with this Section 12, Concessionaire fails to take good care of such areas, City, at its option, may do so, and in such event, upon receipt of written statements from City, Concessionaire shall promptly pay the entire actual and reasonable cost thereof as an Additional Charge. City shall have the right to enter the Premises for such purposes. City shall not be liable for interference with light, air or view.

12.2.2. Concessionaire's Obligations; Repairs. All routine repairs necessary to maintain the interior of the Premises, and the exterior of the premises (including windows, doors and exterior deck), and the utilities, electric and plumbing and other systems and equipment located in the interior of the Premises and the Exterior Deck in a reasonably good operating condition, as determined by City, shall be performed by Concessionaire at its expense. The foregoing sentence does not extend to maintenance occasioned by an act or omission of City or its officers, agents, employees, or contractors.

12.2.3. City's Obligations. All routine repairs necessary to maintain the structural aspects of the Premises (excluding exterior deck), the Common Areas, utilities, electric and plumbing and other systems, and equipment serving the Building (not including the interior of the Premises) in a reasonably good operating condition, as determined by City, shall be performed by City at its expense. 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.

12.2.4 Building 11 First Floor Restrooms. The public restrooms on the first floor of Building 11, noted on Exhibit C, are not within the Premises and will be used by Concessionaire and Concessionaire's invitees in common with the public. Concessionaire and City mutually agree to share maintenance and custodial responsibility for these public restrooms. City agrees to provide one daily cleaning to City standard levels prior to Concessionaire's public operating hours as specified in Section 7.8. Concessionaire staff agrees to provide and/or facilitate subsequent daily minor maintenance and custodial responsibilities, including but not limited to: refilling paper towel, soap, and toilet paper fixtures, cleaning of minor spills, floor mopping, and submitting maintenance requests to SPR shops for repair. This maintenance responsibility may be considered for inclusion in Concessionaire's Public Benefit Plan and Report pursuant to Section 11. City agrees to coordinate with labor partners and to provide approved cleaning materials for Concessionaire's performance of this work.

12.3. 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 artwork may be granted, granted upon one or more conditions, or withheld in City's discretion.

12.4. Concessionaire's Indemnification of City Against Liability under Visual Artists Rights Act of 1990

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 (a) the installation or integration of any work of visual art on or into the Premises; or (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any breach of Section 12.3; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by Concessionaire or any of its officers, employees or agents. This indemnification obligation shall exist regardless of whether City or any other person employed by City has knowledge of such installation, integration, or removal or has consented to any such action or is not required to give prior consent to any such action. The indemnification obligation of this Section 12.4 shall survive the expiration or early termination of this Agreement.

13. SIGNS AND ADVERTISING

13.1. Signs, Generally

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 the Superintendent's prior written consent. Concessionaire shall remove all signage at the expiration or early termination of this Agreement and repair any damage or injury to the Premises.

13.2. On-Premises Signs

Concessionaire may install permanent exterior signage, subject to approval by Superintendent, and review and approval by the City of Seattle's Office of Planning and Community Development (OPCD) and the Landmarks Preservation Board. Exterior signage shall include the Premises' name and Concessionaire's name and shall be constructed in a style and size consistent with the City sign policy. As per the Sign Code, no roof signage is permitted in Magnuson Park.

14. **SURRENDER OF PREMISES**

14.1. General Matters

At the expiration or sooner termination of the Agreement Term, including any Extended Term, Concessionaire shall return the Premises to City in the same condition in which it was received on the Commencement Date (or, if altered pursuant to Section 10, then the Premises shall be returned in such approved altered condition unless otherwise directed by City), excepting reasonable wear and tear, casualty and condemnation damages not resulting from or contributed to by negligence of Concessionaire. Prior to such return, Concessionaire shall remove its moveable trade fixtures and appliances and equipment that have not been attached to the Premises and shall repair any damage resulting from their removal. In no event shall Concessionaire remove floor coverings; heating or ventilating equipment and appliances that are permanently affixed; lighting equipment or fixtures; fixtures or other alterations pursuant to improvement projects that, pursuant to the terms of Section 10 or of an earlier agreement between Concessionaire and City, have become defined property of City; or floor, windows or wall coverings unless otherwise specifically directed by City in writing at the time when City's approval of their installation is issued. Concessionaire's obligations under this Section 14.1 shall survive the expiration or termination of this Agreement. Concessionaire shall indemnify City for all damages and losses suffered as a result of Concessionaire's failure to remove voice and data cables, wiring and communication lines and moveable trade fixtures and appliances and to redeliver the Premises on a timely basis.

14.2. Cable and Wiring

Notwithstanding any provision to the contrary in this Agreement, and if the City so directs, on or by the Expiration Date, or if this Agreement is terminated before the Expiration Date, within fifteen (15) business days after the effective termination date, whichever is earlier, Concessionaire shall remove all voice and data communication and transmission cables and wiring installed by or for Concessionaire to serve any telephone, computer or other equipment

located in that portion of the Premises, which wiring and cabling shall include all of the same located within the interior and exterior walls and through or above the ceiling or through or below the floor of such portion of the Premises or located in any Building equipment room, vertical or horizontal riser, raceway, conduit, channel, or opening connecting to the portion of the Premises to be vacated and surrendered to City as of such Expiration Date or early termination date. Concessionaire shall leave the mud rings, face plates and floor boxes in place.

15. INDEMNIFICATION; RELEASE

15.1. Concessionaire's Indemnification

Except as limited by law or otherwise provided in this section, Concessionaire shall indemnify, defend (using legal counsel reasonably acceptable to City) and save City, City's officers, agents, employees and contractors harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable personnel and overhead costs and attorneys' fees, and other costs incurred in connection with claims, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to, any property arising out of or in connection with (i) Concessionaire's occupation, use or improvement of the Premises, or that of any of its employees, agents, subtenants, or contractors, (ii) Concessionaire's breach of its obligations hereunder, or (iii) any act or omission of Concessionaire or any employee, officer, agent, subtenant, Concessionaire, invitee, assignee or Concessionaire of Concessionaire, or invitee of any of the same in or about the Premises or Building. Concessionaire's obligation to indemnify the City shall not apply to any claim or liability resulting from the sole negligence of the City or any of its employees, contractors, tenants, or agents, and in the event of joint negligence, Concessionaire's obligations shall apply to the extent of Concessionaire's negligence or that of any of Concessionaire's employees, officers, agents, tenants, Concessionaires, invitees, assignees, or concessionaires. Concessionaire agrees that the foregoing indemnity specifically covers actions brought by its own employees. As a result, the foregoing indemnity is specifically and expressly intended to constitute a waiver of Concessionaire's immunity under Washington's Industrial Insurance Act, Title 51 RCW, but only as to the City and to the extent necessary to provide City with a full and complete indemnity as provided under this Section. Concessionaire shall promptly notify City of casualties or accidents occurring in or about the Premises. Concessionaire's obligation to defend and indemnify the City under this Section 15 shall survive the expiration or termination of this Agreement with respect to any claim or liability arising from acts, omissions, occurrences, or events occurring during the term.

15.2. Concessionaire's Release of Claims

Concessionaire hereby fully and completely waives and releases all claims against City to the extent a loss or damage is covered by insurance for any losses or other damages sustained by Concessionaire or any person claiming through Concessionaire resulting from any accident or occurrence in or upon the Premises, including but not limited to any defect in or failure of Building equipment; any failure to make repairs; any defect, failure, surge in, or interruption of Building facilities or services; any defect in or failure of Common Areas; broken glass; water

leakage; the collapse of any Building component; or any act, omission or negligence of co-tenants, Concessionaires or any other persons or occupants of the Building.

15.3. City's Release of Claims

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

16. GENERAL OBLIGATIONS

16.1. Concessionaire's Obligations

Concessionaire further agrees it shall, at its sole cost and expense:

16.1.1. Maintain the Premises in good, clean and safe condition and on the Expiration Date, return the Premises to City in at least as good a condition as it was in immediately before Concessionaire took possession, reasonable wear and tear excepted. No work or alterations shall be performed in or to the Premises without City's prior written approval, which approval may be withheld or conditioned by City in its sole discretion;

16.1.2. Observe and comply with all laws, ordinances, rules, regulations and code requirements applicable to the Premises and the Concessionaire's business conducted therein and secure all permits and licenses regarding the conduct of Concessionaire's business. Concessionaire shall not use or permit the Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, statute, ordinance or regulation. Concessionaire shall promptly comply, at its sole cost and expense, with all laws, statutes, 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;

16.1.3. Secure and maintain, during the full term of this Agreement, at no expense to the City, insurance as described herein:

(a) 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

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.

- (b) 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.
- (c) Workers’ Compensation insurance securing Concessionaire’s liability for industrial injury to its employees in accordance with the provisions of Title 51 RCW.
- (d) 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.

- (e) 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 Agreement 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 Fees 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.

16.2. 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 Agreement 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. City’s Property Insurance currently is subject to a \$625,000 deductible for most claims for which Concessionaire shall be responsible only to the proportional extent to which the loss or damage

is attributable to Concessionaire negligent acts that are, or should be, covered by Tenant's Fire/Tenant Legal Liability insurance.

16.3. General Requirements for Concessionaire's Insurance

16.3.1. Minimum Limits. 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. In the event that the City 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.

16.3.2. Cancellation Notice Period. 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 RCW 48.18.290 (Cancellation by insurer). The City and the Concessionaire mutually agree that for the purpose of RCW 48.18.290(1)(b), 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."

16.3.3. Insurer Standard. 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).

16.3.4. Self-Insured Retention. 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.

16.3.5. Waiver of Subrogation. Unless such waiver would void the property insurance coverage to be provided pursuant to this section, 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, except such rights as they have to proceeds of such insurance held by the City or the Concessionaire or both as fiduciary. This waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, whether or not the person or entity paid the insurance premium directly or indirectly, and whether or not the person or entity has an insurable interest in the property damaged.

16.3.6. The City of Seattle as Additional Insured. 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.

16.3.7. Severability. Concessionaire’s insurance policy shall include a “separation of insureds” or “severability” clause that applies coverage separately to each insured and additional insured, except with respect to the limits of the insurer’s liability. Concessionaire’s insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City of Seattle from coverage or asserting a claim under the Concessionaire’s insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy.

16.3.8. 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:

- (a) Certification of insurance documenting compliance with the coverage, minimum limits and general requirements specified herein; and
- (b) 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;
- (c) A copy of the CGL insurance policy provision(s) and endorsements expressly including the City of Seattle and its officers, elected officials, employees, agents and volunteers as additional insureds (whether on ISO Form CG 20 26 (version 0704 or earlier) 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.

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

17. BACKGROUND CHECKS AND IMMIGRANT STATUS

The City may require background checks for Concessionaire and its employees and contracted workers who may perform work under this Agreement. The City reserves the right to require such background checks at any time. The City has strict policies regarding the use of background checks, criminal checks, and immigrant status for contract workers. The policies are incorporated into this Agreement and available for viewing online at <http://www.seattle.gov/purchasing-and-contracting/social-equity/background-checks>.

18.FEDERAL IMMIGRATION ENFORCEMENT NOTIFICATION REQUIREMENT

18.1 Applicability

This Section 18 applies to Concessionaire and its employees and contracted workers who (i) are working at City facilities and properties, or (ii) have access to City records, databases, technology, or information systems.

18.2 Definitions

As used in this Section 18, “Federal Immigration Authority” means an employee or agent of any federal immigration agency, including the Immigration and Customs Enforcement (ICE), the U.S. Department of Homeland Security (DHS), Homeland Security Investigations (HSI), Enforcement Removal Operations (ERO) Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) or any other federal agency representative seeking to enforce immigration law.

18.3 Process

Prior to responding to any requests from a Federal Immigration Authority for access to City property or City information provided to Concessionaire through this Agreement, Consultant shall notify the Project Manager immediately.

Such requests may include:

- a. Requests for access to non-public areas in City buildings and venues (i.e., areas not open to the public such as staff work areas that require card key access and other areas designated as “private” or “employee only”); or
- b. Requests for City records, databases, technology or information (written or oral).

18.4 Access

Access to non-public areas or information shall not be provided without prior review and consent of the City. The Consultant shall request that the Federal Immigration Authority wait until the Project Manager is able to verify the credentials and authority of the Federal Immigration Authority and direct the Consultant on how to proceed.

18.5 Disclosures

Consultant shall inform its employees and subcontractors of the requirements of this Section and shall include the requirements in this Section 18 in all subcontracts for work under this Agreement.

18.6 Intent

The requirements in this Section 18 are intended to enable the City to verify that access to non-public City facilities, property, and information complies with federal and local law. Nothing in this Section 18 shall be construed to require any City employee, the Concessionaire, its employees, or its subcontractors to obstruct, interfere with, or otherwise fail to comply with requirements of federal and local law.

19. ASSIGNMENT OR SUBLEASE BY CONCESSIONAIRE

Concessionaire shall not assign or transfer any use or occupancy rights associated with this Agreement or encumber the whole or any part of the Premises, nor shall this Agreement or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court or otherwise without the prior written consent of Superintendent, whose consent shall be given or withheld in his or her sole discretion. The granting of consent to a given transfer shall not constitute a waiver of the consent requirement as to future transfers. Any assignment or transfer without Superintendent's prior written consent, at the Superintendent's option, shall be void. No assignment or transfer shall release Concessionaire from primary liability hereunder. Each assignment or transfer shall be by an instrument in writing in form satisfactory to Superintendent. If Concessionaire is a corporation, then any transfer of this Agreement by merger, consolidation, or liquidation, or any direct or indirect change, in the ownership of, or power to vote the majority of, Concessionaire's outstanding voting stock, shall constitute an assignment for the purposes of this Agreement. If Concessionaire is a partnership, then a change in general partners in or voting or decision-making control of the partnership shall also constitute an assignment.

20. ASSIGNMENT BY CITY

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

21. EMINENT DOMAIN

21.1 Taking

If all the Premises are taken by Eminent Domain, this Agreement shall terminate as of the date Concessionaire is required to vacate the Premises and all Concession Fee's and Additional

Charges shall be paid to that date. The term "Eminent Domain" shall include the taking or damaging of property by, through or under any governmental or statutory authority, and any purchase or acquisition in lieu thereof, whether the damaging or taking is by government or any other person. If a taking of any part of the Premises by Eminent Domain renders the remainder thereof unusable for the business of Concessionaire, in the reasonable judgment of City, the Agreement may, at the option of either party, be terminated by written notice given to the other party not more than thirty (30) days after City gives Concessionaire written notice of the taking, and such termination shall be effective as of the date when Concessionaire is required to vacate the portion of the Premises so taken. If this Agreement is so terminated, all Concession Fees, including Monthly Concession Fees, Annual Percentage Fee and Additional Charges shall be paid to the date of termination and any security deposit due to Concessionaire shall be paid in accordance with Section 5. Whenever any portion of the Premises is taken by Eminent Domain and this Agreement is not terminated, City, at its expense, shall proceed with all reasonable dispatch to restore, to the extent of available proceeds and to the extent it is reasonably prudent to do so, the remainder of the Premises to the condition they were in immediately prior to such taking, and Concessionaire, at its expense, shall proceed with all reasonable dispatch to restore its personal property and all improvements made by it to the Premises to the same condition they were in immediately prior to such taking, to the extent award is available therefor. The Monthly Concession Fee and Additional Charges payable hereunder shall be reduced from the date Concessionaire is required to partially vacate the Premises in the same proportion that the Rentable Area taken bears to the total Rentable Area of the Premises prior to taking.

21.2 Award

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

22. DEFAULT BY CONCESSIONAIRE

22.1 Definition

If Concessionaire violates, breaches, or fails to keep or perform any material term, provision, covenant, or any obligation of this Agreement; or if Concessionaire fails to make any payment due under this Agreement by the date payment is due; or if Concessionaire fails to remedy any breach within sixty (60) days of being requested to do so by the Superintendent; or 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; then Concessionaire shall be deemed in default ("Default"). Superintendent will decide in Superintendent's sole discretion whether a breach is material so as to trigger a Default.

22.2 City Remedies

City shall provide formal notice to Concessionaire upon establishment of a condition of Default as specified in Section 22.1. If Concessionaire has defaulted and such Default continues or has not been remedied to the reasonable satisfaction of the Superintendent within thirty (30) days after written notice thereof has been provided to Concessionaire, then City shall have the following nonexclusive rights and remedies at its option: (i) to cure such 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. If City determines in the sole discretion of Superintendent that the nature of Concessionaire's obligation (other than monetary obligations and other than vacation or abandonment of the Premises) is such that more than thirty (30) days is required for performance, then City shall not consider Concessionaire to be in default if Concessionaire commences performance within such thirty (30) day period and for as long as Superintendent determines that Concessionaire is diligently prosecuting the same to completion. Concessionaire's failure to pay any Concession Fee obligation or Concessionaire's abandonment or vacation of the Premises shall not be subject to any extension of the thirty (30) day cure period without the express written permission of the Superintendent.

22.3 Reentry by City Upon Termination

Upon the termination of this Agreement, City may reenter the Premises, take possession thereof, require Concessionaire to stop all Permitted Use of the Premises and surrounding property, and remove all persons therefrom, for which actions Concessionaire shall have no claim thereon or hereunder. Concessionaire shall be liable and shall reimburse City upon demand for all actual and reasonable costs and expenses of every kind and nature incurred in retaking possession of the Premises. If City retakes the Premises, City shall have the right, but not the obligation, to remove therefrom all or any part of the personal property located therein and may place the same in storage at any place selected by City, including a public warehouse, at the expense and risk of Concessionaire. City shall have the right to sell such stored property, after reasonable prior notice to Concessionaire or such owner(s), after it has been stored for a period of sixty (60) 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 City; the balance, if any, shall be paid to Concessionaire.

22.4 Vacation or Abandonment

If Concessionaire vacates or abandons the Premises in their entirety and fails to reoccupy them within thirty (30) days after City (a) delivers a notice to Concessionaire's notice address set forth in Section 1.8 demanding such re-occupancy and (b) mails by certified or registered mail a copy

of the notice to any forwarding address given by Concessionaire to City in writing, Concessionaire shall be in default under this Agreement.

22.5 City's Non-Exclusive Remedies upon Termination due to Default of Concessionaire

Notwithstanding any reentry by City and anything to the contrary in this Agreement, in the event of the termination of this Agreement due to the Default of Concessionaire, the liability of Concessionaire for all sums due under this Agreement provided herein shall not be extinguished for the balance of the Term of this Agreement. Concessionaire shall also be liable to City for any other amounts (excluding consequential or specific damages) necessary to compensate City for all the detriment proximately caused by Concessionaire's failure to perform its obligations under this Agreement or that in the ordinary course of things would be likely to result therefrom, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any costs incurred in authorizing others the use and occupancy of the Premises and in preparing the Premises for such use and occupancy, and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington. The provisions of this Section 22.5 shall survive the expiration or early termination of this Agreement.

23. CITY'S REMEDIES CUMULATIVE; WAIVER

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

24. DEFAULT BY CITY

City shall be in default if City fails to perform its obligations under this Agreement 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.

25. TERMINATION FOR CONVENIENCE

Notwithstanding anything else in this Concession Agreement to the contrary, the City may, at any time and without liability of any kind to Concessionaire terminate this Agreement for any or

no reason for City's convenience, including use for another public or private purpose, upon two hundred-seventy (270) days prior written notice to Concessionaire. If the City terminates for convenience under this Section 25, City shall not owe Concessionaire any refund reflecting unallocated Tenant Improvement offsets or in-kind return of installed or attached improvements.

26. ACCESS BY CITY

City and its agents shall have the right to enter the Premises at any reasonable time to examine the same, and to show them to prospective purchasers, lenders, or tenants, and to make such repairs, alterations, improvements, additions or improvements to the Premises or Building as City may deem necessary or desirable. If Concessionaire is not personally present to permit entry and an entry is necessary in an emergency, City may enter the same by master key or may forcibly enter the same, without rendering City liable therefor, except in the event of City's gross negligence or intentional misconduct. Nothing contained herein shall be construed to impose upon City any duty of repair or other obligation not specifically stated in this Agreement. Concessionaire shall change the locks to the Premises only through City and upon paying City for all actual and reasonable costs related thereto.

27. NOTICES

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

28. SUCCESSORS OR ASSIGNS

All of the terms, conditions, covenants, and agreements of this Agreement shall extend to and be binding upon City, Concessionaire and, subject to the terms of Section 19 and Section 20, their respective heirs, administrators, executors, successors and permitted assigns, and upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

29. NO PARTNERSHIP

The City shall in no event be construed to be a partner, associate, or joint venturer of the Concessionaire or any party associated with the Concessionaire. The Concessionaire shall not create any obligation or responsibility on behalf of the City or bind the City in any manner.

30. AUTHORITY AND LIABILITY

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

31. PARTIAL INVALIDITY

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

32. FORCE MAJEURE

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

33. COUNTERPARTS

This parties may execute this Agreement in counterparts, which, taken together, constitute the entire Agreement.

34. HEADINGS

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

35. CONTEXT

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

36. EXECUTION BY CITY AND CONCESSIONAIRE; EFFECTIVE DATE

Neither City nor Concessionaire shall be deemed to have made an offer to the other party by furnishing the other party with a copy of this Agreement with particulars inserted. No contractual or other rights shall exist or be created between City and Concessionaire until all parties hereto have executed this Agreement. This Agreement shall become effective on the date (the

“Effective Date”) on which this Agreement is executed by both City and Concessionaire, per Sections 1.3 and 1.4.

37. TIME OF ESSENCE; TIME CALCULATION METHOD

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

38. STANDARDS

Concessionaire recognizes that, although it is operating its facilities as an independent operator, Seattle Parks and Recreation is organized and exists for the purpose of maintaining park and recreation facilities for the use and enjoyment of the general public. Concessionaire, its agents and employees, will devote their efforts toward rendering courteous service to the public as though they were employees of the City, with a view of adding to the enjoyment of the patrons of this recreational facility. Concessionaire and Concessionaire’s staff shall operate and conduct the facilities on the Premises in a businesslike manner and will not permit any conduct on the part of Concessionaire’s employees or guests which would be detrimental to City’s operations.

39. CITY’S CONTROL OF PREMISES AND VICINITY

All common areas and other facilities provided by City in or about the Premises are subject to the City’s exclusive control and management by City. Accordingly, City may do any and all of the following (among other activities in support of Parks or other municipal objectives), all without incurring any liability whatsoever to Concessionaire:

39.1 Change of Vicinity

City may increase, reduce, or change in any manner whatsoever the number, dimensions, and locations of the walks, buildings, landscaping, exhibit, service area, and parking areas in the vicinity of the Premises.

39.2 Traffic Regulation

City may regulate all traffic within and adjacent to the Premises, including the operation and parking of vehicles of Concessionaire and its invitees, employees, and patrons.

39.3 Display of Promotional Materials

City may erect, display, and remove promotional exhibits and materials and permit special events on property adjacent to and nearby the Premises.

39.4 Promulgation of Rules

City may promulgate, from time to time, reasonable rules and regulations regarding the use and occupancy of any City property including, but not limited to, the Premises.

39.5 Change of Businesses

City may change the size, number, type and identity of concessions, stores, businesses, and operations being conducted or undertaken in the vicinity of the Premises.

40. MISCELLANEOUS

40.1 Entire Agreement

This Agreement and the Exhibits attached hereto, and by this reference incorporated herein, set forth the entire Agreement of City and Concessionaire concerning the Premises and supersedes any previous agreements between City and Concessionaire concerning the Premises. Any subsequent modification or amendment of this Agreement shall be binding upon City and Concessionaire only if reduced to writing and signed by them.

40.2 Applicable Law; Venue and Forum

This Agreement shall be governed by, and construed in accordance with the laws of the State of Washington and any dispute shall be finally resolved by King County Superior Court.

40.3 Negotiated Agreement

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 draftsmanship thereof.

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

CITY:
SEATTLE PARKS AND RECREATION

By: _____

Anthony-Paul (AP) Díaz, Esq.
Superintendent of Parks and Recreation

CONCESSIONAIRE:
MAGNUSON BREWERY, LLC

By: _____

Cody Cluff
Owner, Magnuson Café & Brewery

EXHIBITS

The following Exhibits are made a part of this Agreement:

- Exhibit A – Point Deed – USA to City 1999
- Exhibit B – Magnuson Brewery Legal Description
- Exhibit C – Interior Floorplan
- Exhibit D – Gross Receipts Definition
- Exhibit E – Outdoor Premises
- Exhibit F – Public Benefits Plan