Ordinance No. 122365

Council Bill No. 115833

AN ORDINANCE relating to the Seattle Department of Parks and Recreation; authorizing the Superintendent to enter into a Lease Agreement with Schober & Associates, Inc. for the purpose of providing marina management at the Leschi and Lakewood Moorage facilities.

CF No. _____

Date Introduced: 2.20.07	
Date 1st Referred: 2.20.07	To: (committee) Parks, Ed, Libraries + Labor
Date Re - Referred:	To: (committee)
Date Re - Referred:	To: (committee)
Date of Final Passage: 3-26-07	Full Council Vote: 9-0
Date Presented to Mayor: 3-25-07	Date Approved: 4-2-07
Date Returned to City Clerk: 4-2-07	Date Published: Title Pg 2 T.O. ✓ F.T. ___
Date Vetoed by Mayor:	Date Veto Published:
Date Passed Over Veto:	Veto Sustained:

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: _____ Councilmember

Committee Action:

PELL 3/7/07
yea = DD, RC, TD
nay = 0
as amended
3-26-07 Passed as amended 9-0

This file is complete and ready for presentation to Full Council. Committee: _____ (initial/date)

Law Department

Law Dept. Review	OMP Review	City Clerk Review	Electronic Copy Loaded	Indexed

Rita Hollomon/Charles Ng/Valles
DPR Moorage Lease ORDv4.doc
March 21, 2006
Version #4

ORDINANCE 122365

AN ORDINANCE relating to the Seattle Department of Parks and Recreation; authorizing the Superintendent to enter into a Lease Agreement with Schober & Associates, Inc. for the purpose of providing marina management at the Leschi and Lakewood Moorage facilities.

WHEREAS, the Seattle Department of Parks and Recreation (Parks) has historically provided marina service through multi-year concession agreements originally authorized by Ordinances 113075 and 116542 and thereafter yearly extensions through the current year; and

WHEREAS, in 2005 Parks conducted a publicly advertised Request for Qualifications/Request for Proposals (RFP) process in order to seek a company who would manage the Leschi and Lakewood Moorages and operate the marinas for tenants and park patrons; and

WHEREAS, Parks evaluated and approved the proposer, Schober & Associates, Inc., as the most qualified company to manage the City-owned moorage facilities; and

WHEREAS, Parks desires to continue offering marina services to tenants and park patrons at Leschi and Lakewood Moorage facilities through this Lease Agreement; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of Parks and Recreation is authorized to execute, for and on behalf of the City, a six-year Lease Agreement with Schober & Associates, Inc., in substantially the form attached hereto as Attachment 1, with the exception of minor, administrative, or non-substantive changes to the lease as the Mayor or said Superintendent deem appropriate. The agreement also includes the option of two extension periods, the first (a) a four (4) year extension, and the second (b) a ten (10) year extension at the option of the City.

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Section 2. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 26th day of March, 2007, and signed by me in open session in authentication of its passage this 26th day of March, 2007.

President _____ of the City Council

Approved by me this 2nd day of April, 2007.

Gregory J. Nickels, Mayor

Filed by me this 2nd day of April, 2007.

City Clerk

(Seal)

Attachment 1: Lease with Schober and Associates for Leschi and Lakewood Moorages

CITY CLERK

Attachment 1

LEASE

Lease with Schober and Associates for Leschi and Lakewood Moorages

THIS LEASE ("Lease") is entered into this ____ day of _____, 20__, by and between **THE CITY OF SEATTLE** ("City"), a city of the first class of the State of Washington, acting by and through its Department of Parks and Recreation ("Parks") and the Superintendent thereof ("Superintendent"), and **Schober and Associates Inc.** ("Lessee") a corporation organized under the laws of the State of Washington.

RECITALS

WHEREAS, Parks has historically provided marina service at the Leschi and Lakewood Moorages through multi-year agreements originally authorized by Ordinances 113075 and 116542 and thereafter by yearly extensions through the current year; and

WHEREAS, Lessee has been the approved operator under contracts with Parks to provide this service for over 25 years and has been responsible for operation, maintenance, completion of all required improvements to the moorages during this period, and as such, is very familiar with the conditions of the moorages; and

WHEREAS, the improvements to the moorages became the property of the City at the expiration of the initial term of the contract and the Lessee has been managing the moorages under a series of extensions since the initial term; and

WHEREAS, in 2005 the Department conducted a publicly advertised Request for Qualifications/Request for Proposals (RFP) process to select a company who would manage the moorages and operate them for tenants and park patrons; and

WHEREAS, the Department evaluated proposals to this RFP and selected the Lessee as the most qualified company to manage the moorages; and

WHEREAS, the Department desires to continue offering marina services to tenants and park patrons at Leschi and Lakewood Marinas through this new Lease;

NOW, THEREFORE,

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

AGREEMENT

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

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1.1 Premises. Property known as the "Leschi Moorage and Marina", docks and piers, located at 400 Lake Washington Blvd S., Seattle, Washington 98144; AND property known as the "Lakewood Moorage and Marina", docks and piers located at 4400 Lake Washington Blvd S., Seattle, Washington 98144. Such properties shall hereafter be referred to as the "Premises". Lessee shall have the exclusive right to the use of the Premises. Said real properties are legally described in Exhibit A.

1.2 Commencement Date. Upon execution by the Superintendent.

1.3 Expiration Date. This Lease shall expire six (6) years after the Commencement Date, unless terminated earlier pursuant to the provisions of this Lease or by operation of law. The City may extend the Lease four (4) years and ten (10) years in accordance with Section 3.2 of this Lease.

1.4 Rent and Additional Charges

1.4.1 Rent: Lessee shall pay the City rent in accordance with Section 4 of this Agreement.

1.4.2 Additional Charges: Whether or not so designated, all other sums due from Lessee under this Lease shall constitute Additional Charges, payable when specified in this Lease.

1.5 Security Deposit. **[not applicable]**

1.6 Parking. **[not applicable]**

1.7 Use of the Premises

1.7.1 Required Use. Lessee is required to use and operate the Premises as a year-round marina business at the Leschi Moorage Marina located at 400 Lake Washington Blvd S., Seattle, Washington 98144, which operation shall consist of renting both wet and dry slips, the operation of the transient moorage and overall management of the City-owned Leschi Marina, AND the Lessee is also required to operate a year-round marina business at the Lakewood Moorage Marina located at 4400 Lake Washington Blvd S., Seattle, Washington 98144, which operation shall consist of renting wet slips, the operation of the transient moorage, and the overall management of the City-owned Lakewood Marina. The granting of the right to operate on such Premises is subject to the Lessee meeting the terms and conditions of this Lease.

1.7.2 Permitted Uses. The Lessee is permitted to sell retail merchandise, including, but not limited to, t-shirts, sports attire, food, non-alcoholic beverages and bait and tackle.

1.7.3 Lessee shall not use the Premises for any purpose whatsoever other than the uses specified in this Section 1.7.

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1.8 Notice Addresses.

To City:	The City of Seattle Department of Parks and Recreation Attention: Parks Concessions Coordinator Magnuson Park & Business Resources 6310 NE 74th Street, #109 E., Seattle, Washington 98115
To Lessee:	Christopher Schober, President Schober & Associates, Inc., Leschi Moorage; PO Box 1407, Sumner, Washington 98390

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

Exhibit A - Legal Description

2. **Premises.**

2.1 Grant. City hereby leases to Lessee and Lessee hereby leases from City those certain premises referenced in Section 1.1 (the "Premises"), which are located on the real property described on Exhibit A.

2.2 Condition. City leases the Premises and Lessee accepts the Premises in their "as is" condition.

2.3 Parking Lot Area. During the Term, Lessee and its licensees, invitees and customers shall have the non-exclusive right to access the sidewalks, pathways, and parking lot just adjacent and west of the entrances to the North and South Leschi docks and piers; AND the non-exclusive right to access the sidewalks, pathways, and parking lot just adjacent and west of the entrances to the Lakewood docks and piers.

2.4 Alterations. City, in its discretion, may increase, decrease or change the number, locations and dimensions of any parking lot area and other improvements shown that are not within the Premises. Such increase, decrease, or change shall not materially interfere with Lessee's business as permitted in Subsection 1.7.1, Required Use.

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3. **Lease Term**.

3.1 Initial Term. This Lease shall be for a term ("Lease Term" or "Term") beginning on the Commencement Date specified in Subsection 1.2 and ending on the Expiration Date specified in Subsection 1.3, unless the Lease Term is terminated earlier in accordance with the provisions of this Lease or extended as provided in Subsection 3.2 below.

3.2 Extended Terms. City shall have the option to extend this Lease for up to 2 successive individual extended terms of an initial four (4) year extension and a subsequent ten (10) year extension, ("Extended Terms") each on the same terms and conditions set forth herein. The City may extend the Lease Term to include any Extended Term by giving Lessee written notice of its intention to do so at least ninety (90) days prior to the beginning of the Extended Term. As used in this Lease, the "Lease Term" means the original term commencing on the Commencement Date and ending on the Expiration Date specified in Subsection 1.3, and any and all Extended Term[s] established by City hereunder.

4. **Rent**.

4.1 Monthly Percentage Payment to the City

4.1.1 On or before the 10th day of each month through January 10, 2010, the Lessee shall remit to the City as a Concession Fee for each month in which the Lessee is authorized to engage in business under this Lease, thirty-nine percent (39 %) of Lessee's Gross Revenue for the preceding month. This payment includes state leasehold tax.

4.1.2 Commencing on January 11, 2010 through the end of the Lease Term, on or before the 10th day of each month, the Lessee shall remit to the City as a Concession Fee for each month in which the Lessee is authorized to engage in business under this Lease, forty-three percent (43 %) of Lessee's Gross Revenue for the preceding month. This payment includes state leasehold tax.

4.2 Place of Payment. All payments to the City shall be paid to The City of Seattle Department of Parks and Recreation, Magnuson Park and Business Resources, Attention: Concessions Coordinator, 6310 N.E. 74th Street #109E, Seattle, WA 98115. Lessee shall further submit a Monthly Concession Report on or before the tenth (10th) calendar day of each month.

5. **Late Charge; Interest**. If Lessee fails to pay the City any sum when due, such amount shall bear interest at the rate of 12% per annum from the date due until the date paid.

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6. **Lessee's Operations**.

6.1 Use of Premises. Lessee shall use the Premises only for the uses specified in Section 1.7. As City's willingness to enter into this Lease with Lessee was predicated, in part, on the nature of Lessee 's business, Lessee shall not use or permit the use of the Premises for any other business, or purpose, or under any other name, without City's prior written consent. Lessee shall promptly comply, at its sole cost and expense, with such reasonable rules and regulations relating to the use of the Premises as City, from time to time, may promulgate. Any newly promulgated rules and regulations shall not materially interfere with Lessee's business for the Permitted Use. In the event of any conflict between the rules and regulations promulgated by City and the terms of this Lease, the terms of this Lease shall prevail. Lessee shall maintain the Premises in a clean, orderly and neat fashion and to a standard established for other similar moorage facilities in the Puget Sound area, permit no objectionable odors to be emitted from the Premises, and shall neither commit waste nor permit any waste to be committed thereon. Lessee shall not permit any accumulation of trash on or about the Premises. Lessee shall not create or contribute to the creation of a nuisance in the Premises. The Lessee must also perform the following requirements:

6.1.2 The Lessee shall make improvements to the facility that will enhance public access as appropriate, including posting of signage in a conspicuous place informing the public that it is a City facility, and available for special event rentals.

6.1.3 The Lessee must provide equipment and services sufficient to satisfy the requirement of this Lease that Lessee operates a full-time, year-round moorage operation as described above.

6.1.4 The Lessee shall satisfy all other conditions and requirements imposed on the Lessee by this Lease or by law.

6.1.5 The Lessee shall operate and keep the Premises open to the public as follows: Tuesday through Saturday, 10:00am to 5:00pm. The Lessee may close the Premises to the general public on Sundays and Mondays. Tenants who have a moorage lease with the Lessee shall have access to the facility at all times. Lessee shall post in writing the hours of operation in a conspicuous place in the vicinity of the public entry to the Leschi and Lakewood Marinas visible from the exterior.

6.1.6 The Lessee has the right to propose moorage fees but shall not propose moorage fees lower than $6.75 per slip foot for wet moorage and $3.50 per slip foot for dry moorage; provided, that the Lessee submits the proposed moorage fee changes to the Department for review and approval at least 3 months prior to the implementation of any fee revisions. However, any fee changes that would result in fees being set below the minimum defined in this section or in fees being set that are higher than the current moorage rates charged by comparable facilities in the Puget Sound Region must be approved by the City Council through legislation.

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6.2 Compliance with Laws; Nondiscrimination.

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

6.2.2 Nondiscrimination. Without limiting the generality of Subsection 6.2.1, Lessee agrees to and shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and The City of Seattle, including but not limited to Chapters 14.04, 14.10 and 20.42 of the Seattle Municipal Code, as they may be amended from time to time, and rules, regulations, orders and directives of the associated administrative agencies and their officers.

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

6.4 Hazardous Substances. Lessee shall not, without City's prior written consent, keep on or about the Premises any substance designated as, or containing any component now or hereafter designated as hazardous, dangerous, toxic or harmful and/or subject to regulation under any federal, state or local law, regulation or ordinance ("Hazardous Substances"), except customary office, kitchen, cleaning and other related supplies in normal quantities handled in compliance with applicable laws. With respect to any Hazardous Substances stored with City's consent, Lessee shall promptly, timely and completely comply with all governmental requirements for reporting and record keeping; submit to City true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities; within five (5) days after City's request therefor, provide evidence satisfactory to City of Lessee's compliance with all applicable governmental rules, regulations and requirements; and comply with all governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment and disposal of Hazardous Substances. Any and all costs incurred by City and associated with City's inspections of the Premises and City's monitoring of Lessee's compliance with this Subsection 6.4, including City's attorneys' fees and costs, shall be

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Additional Charges and shall be due and payable to City within ten (10) days after City's demand therefor, if Lessee's violation of this Subsection 6.4 is discovered as a result of such inspection or monitoring. Lessee shall be fully and completely liable to City for any and all cleanup costs and expenses and any and all other charges, expenses, fees, fines, penalties (both, civil and criminal) and costs imposed with respect to Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances in or about the Premises. Lessee shall indemnify, defend and hold City harmless from any and all of the costs, fees, penalties, charges and expenses assessed against, or imposed, upon City (as well as City's attorneys' fees and costs) as a result of Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances on or about the Premises. The indemnification and defense obligations of this subsection shall survive the expiration or earlier termination of this Lease.

7. **Utilities**.

7.1 General. Lessee shall pay when due to the appropriate providers, all charges for utilities for the Premises, including but not limited to, electricity, water and sewer services and data and telecommunications services.

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

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

8. **Licenses and Taxes**. Without any deduction or offset whatsoever, Lessee 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; Lessee shall be responsible for, and shall pay prior to delinquency, all fees, charges, or costs, for any

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governmental inspections or examinations relating to Lessee's use and occupancy of the Premises, and pay all taxes on the leasehold interest created by this Lease (*e.g.*, leasehold excise taxes).

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

9. **Alterations by Lessee**. Lessee shall not make any alterations, additions or improvements in or to the Premises without first submitting to City professionally-prepared plans and specifications for such work and obtaining City's prior written approval thereof. Lessee covenants that it will cause all alterations, additions and improvements to the Premises to be completed at Lessee's sole cost and expense by a contractor approved by City and in a manner that (a) is in accordance 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 any of the Premises' systems and (f) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Premises. Lessee shall secure all governmental permits and approvals required for the work; shall comply with all other applicable governmental requirements and restrictions; and reimburse City for any and all expenses incurred in connection therewith. Except as provided in Section 13 with regard to concurrent negligence, Lessee shall indemnify, defend and hold City harmless from and against all losses, liabilities, damages, liens, costs, penalties and expenses (including attorneys' fees, but without waiver of the duty to hold harmless) arising from or out of Lessee's performance of such alterations, additions and improvements, including, but not limited to, all which arise from or out of Lessee's breach of its obligations under terms of this Section 9. All alterations, additions and improvements (expressly including all light fixtures; heating and ventilation units; floor, window and wall coverings; and electrical wiring), except Lessee's moveable trade fixtures and appliances and equipment not affixed to the Premises (including without limitation furniture, computers, point of sale systems and registers) shall become the property of City at the expiration or termination of this Lease without any obligation on its part to pay for any of the same. At City's request, Lessee shall execute a deed or bill of sale in favor of City with respect to such alterations and/or improvements. Notwithstanding the foregoing, Lessee shall remove all or any portion of such alterations and/or improvements on the expiration or termination of this Lease if City specifically so directs, in writing, at the time of City's issuance of its approval thereof. Within ninety (90) days after the completion of any alteration, addition or improvement to the Premises, Lessee shall deliver to City a full set of "as-built" plans of the Premises showing the details of all alterations, additions and improvements made to the Premises by Lessee.

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10. **Care of Premises**.

10.1 General Obligation. Through December 31, 2009, the Lessee shall set aside 4% of its gross revenues for emergency repairs of the Premises that are above and beyond the routine maintenance described in Section 10.2, 10.3, and 10.5 of this Lease. The Lessee must obtain the City's written approval prior to performing emergency maintenance and repairs. The Lessee shall establish an account in its operations budget to fund emergency repairs, track such expenses, and provide a report to the City detailing the work performed. Not later than January 31 of each year the lessee shall pay the City all the previous years' unexpended balances from the emergency repairs account.

10.2 Damage Reimbursement. Lessee shall take good care of the Premises and shall reimburse City for all damage done to the Premises that results from any act or omission of Lessee or any of Lessee's officers, contractors, agents, invitees, licensees or employees, including, but not limited to, cracking or breaking of glass.

10.3 Custodial Service for Premises. Lessee shall, at its own expense and at all times, keep the Premises and areas immediately adjacent thereto in a neat, clean, safe, and sanitary condition; and keep the glass of all windows and doors serving such areas clean and presentable. Lessee shall furnish all cleaning supplies and materials needed to operate such areas in the manner prescribed in this Lease; Lessee shall provide all necessary janitorial service to adequately maintain the Premises either by itself or by using a company that is approved by City. Lessee shall be responsible for keeping the areas immediately adjacent to the perimeter of such areas free of litter and clean of spills resulting from Lessee's operations.

If Lessee fails to take good care of such areas, after City provides written notice to Lessee of Lessee's failure to comply with this Section, the City may so inform Lessee in writing that it will perform said work, in which case Lessee shall then 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.

10.4 City Maintenance Obligations. All major repairs necessary to maintain the parking lot area serving 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 Lessee 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 rent arising by reason of City's making of repairs, alterations or improvements.

10.5 Lessee Specialized Equipment Maintenance Responsibility. All repairs necessary to maintain any specialized marina equipment and facilities (including any boat lifts, etc.), as well as routine customary maintenance repairs and upkeep serving the Premises in a reasonably good operating condition, shall be performed by Lessee at its expense regardless of the original purchaser or installer of the equipment. Except in the event of City's gross negligence or

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intentional misconduct, there shall be no abatement or reduction of rent arising by reason of City's making of repairs, alterations or improvements.

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

10.7 Lessee's Indemnification of City Against Liability under Visual Artists Rights Act of 1990. Lessee shall protect, defend, and hold City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of (a) the installation or integration of any work of visual art on or into the Premises; or (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any breach of Subsection 10.6 of this Lease; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by Lessee or any of its officers, employees or agents. The indemnification and defense obligations 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 and defense obligations of this subsection shall survive the expiration or earlier termination of this Lease.

11. Signs and Advertising.

11.1 Signs, Generally. Lessee shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster, or any advertising matter whatsoever anywhere in or about the Premises, without the Superintendent's prior written consent. Lessee shall remove all signage at the expiration or earlier termination of this Lease and repair any damage or injury to the Premises.

11.2 On-Premises Signs. Lessee may install approved permanent exterior signage. Exterior signage shall include the Premises' name, Lessee's name and the Parks logo and shall be constructed in a style and size consistent with the Parks sign policy.

11.3 Recognition. Lessee shall include a statement and the Parks logo in its printed materials, or similar materials stating, in effect, that: "We would like to thank Seattle Parks and Recreation for providing a location for moorage services."

12. Surrender of Premises.

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12.1 General Matters. At the expiration or sooner termination of the Lease Term, Lessee shall return the Premises to City in the same condition in which received on the Commencement Date (or, if altered, then the Premises shall be returned in such altered condition unless otherwise directed by City pursuant to Section 9), reasonable wear and tear, casualty and condemnation damages not resulting from or contributed to by negligence of Lessee, excepted. Prior to such return, Lessee shall remove its moveable trade fixtures and appliances and equipment that have not been attached to the Premises, and shall repair any damage resulting from their removal. In no event shall Lessee remove floor coverings; heating or ventilating equipment; lighting equipment or fixtures; or floor, window or wall coverings unless otherwise specifically directed by City in writing at the time when City's approval of their installation is issued. Lessee's obligations under this Section 12 shall survive the expiration or termination of this Lease. Lessee shall indemnify City for all damages and losses suffered as a result of Lessee's failure to remove voice and data cables, wiring and communication lines and moveable trade fixtures and appliances and to redeliver the Premises on a timely basis.

12.2 Cable and Wiring. Notwithstanding any provision to the contrary in this Lease and if the City so directs, on or by the Expiration Date, or if this Lease is terminated before the Expiration Date, within fifteen (15) days after the effective termination date, whichever is earlier, Lessee shall remove all voice and data communication and transmission cables and wiring installed by or for Lessee to serve any telephone, computer or other equipment located in that portion of the Premises. Cables and wiring shall include all of the same located within the interior and exterior walls, through or above the ceiling through or below the floor, vertical or horizontal risers, raceways, conduits, channels, or connection openings of such portion of the Premises to be vacated and surrendered to City as of the Expiration Date or earlier termination date. Lessee shall leave the mud rings, face plates and floor boxes in place.

13. **Waiver; Indemnification**.

13.1 Lessee's Indemnification. Except as otherwise provided in this section, Lessee shall indemnify, defend (using legal counsel reasonably acceptable to City) and save City, City's officers, agents, employees and contractors, harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable personnel and overhead costs and attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to, any property arising out of or in connection with (i) Lessee's occupation, use or improvement of the Premises, or that of any of its employees, agents or contractors, (ii) Lessee's breach of its obligations hereunder, or (iii) any act or omission of Lessee or any licensee, assignee or sublessee of Lessee, or of any officer, agent, employee, guest or invitee of any of the same in or about the Premises. Lessee agrees that the foregoing indemnity specifically covers actions brought by its own employees. The indemnification and defense obligations of this subsection shall survive termination or expiration of this Lease. The foregoing indemnity is specifically and expressly intended to, constitute a waiver of Lessee's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the extent necessary to provide City with a full and complete indemnity from claims

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made by Lessee and its employees, to the extent of their negligence. Lessee shall promptly notify City of casualties or accidents occurring in or about the Premises. **CITY AND LESSEE ACKNOWLEDGE THAT THEY SPECIFICALLY NEGOTIATED AND AGREED UPON THE INDEMNIFICATION PROVISIONS OF THIS SECTION 13.**

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

13.3 Limitation of Lessee's Indemnification. In compliance with RCW 4.24.115 as in effect on the date of this Lease, all provisions of this Lease pursuant to which City or Lessee (the "Indemnitor") agrees to indemnify the other (the "Indemnitee") against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Premises (i) shall not apply to damages caused by or resulting from the sole negligence of the Indemnitee, its agents or employees, and (ii) to the extent caused by or resulting from the concurrent negligence of (a) the Indemnitee or the Indemnitee's agents or employees, and (b) the Indemnitor or the Indemnitor's agents or employees, shall apply only to the extent of the Indemnitor's negligence; PROVIDED, HOWEVER, the limitations on indemnity set forth in this section shall automatically and without further act by either City or Lessee be deemed amended so as to remove any of the restrictions contained in this section no longer required by then applicable law.

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

14. **Insurance**.

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

14.1.1 Commercial General Liability Insurance including:

a. Premises
b. Products and Completed Operations
c. Personal/Advertising Injury
d. Medical Expense

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e. Work in progress
f. Contractual
g. Stop Gap/Employers Liability

with a limit of liability of not less than $1,000,000 each occurrence combined single limit bodily injury and property damage ("CSL"), except $5,000 as respects Medical Expense, $1,000,000 each offense Personal/Advertising Injury, $1,000,000 each accident/employee/policy limit Stop Gap/Employers Liability insurance and $2,000,000 General and Products and Completed Operations aggregate.

14.1.2 **Marina Operator's Legal Liability** insurance covering the Lessee's liability to owners of watercraft while in the marina's care, custody or control with a limit of liability of not less than $1,000,000 per occurrence with not more than a $5,000 deductible.

14.1.3 **Automobile Liability** insurance for owned, non-owned, leased and hired vehicles as required with a limit of liability of not less than $1,000,000 CSL.

14.1.4 **Protection & Indemnity** insurance for marina operations, including boat work and owned and non-owned watercraft liability, with a limit of liability of not less than $1,000,000.

14.1.5 **Workers Compensation** insurance in compliance with RCW 51 and the United States Longshore and Harborworkers Act, as required.

14.1.6 **Bumbershoot or Excess/Umbrella Liability** insurance if and as required to maintain minimum limits of liability as specified herein.

14.1.7 **All Risk Property** insurance, excluding earthquake and flood, on Lessee's office structure on the North Leschi Moorage ("Office Building") and on its business personal property, tenant improvements, stock and inventory and trade fixtures on the Premises ("Business Contents") based on the replacement value thereof subject to a maximum deductible of $5,000 each claim. No property insurance coverage is required to be maintained on piers, wharves, docks or floats.

14.1.8 Terms and Conditions (Does not apply to Workers Compensation in compliance with RCW 51).

1. As respects legal liability insurance, the City of Seattle shall be an additional insured for primary limits of liability that is not contributory with any insurance or

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self-insurance that the City may maintain. The limits of liability specified herein are minimum limits of liability only and shall not be construed to limit the liability of Lessee or any of its insurers; the City shall be an additional insured for the total valid and collectible limits of liability maintained by Lessee, whether such limits are primary, excess, contingent or otherwise. Notwithstanding insurance, the Lessee shall be obligated for the full and total amount of any damage, injury or loss caused by negligence of the Lessee, or any of its agents, officers and employees or through use or occupancy of the Premises.

2. As respects property insurance, the City of Seattle shall be an additional named insured or additional insured on the Office Building.

3. Insurers shall have minimum A.M. Best's ratings of A- VII or be procured under the provisions of chapter 48.15 RCW (surplus lines), unless otherwise approved by the City.

4. Insurance shall not be cancelled without delivery of written notice at least thirty (30) days prior to cancellation, except ten (10) days as respects cancellation for non-payment of premium, or as may otherwise be required under Revised Code of Washington (RCW) 498.18.290 ("Cancellation by insurer.").

5. The Lessee shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of the Lessee under this Agreement. The Lessee shall ensure that all such claims, whether processed by the Lessee or its insurer, either directly or by means of an agent or broker, will be handled by a person with a permanent office in the Seattle area.

6. The placement and storage of personal property on the Premises shall be the responsibility, and at the sole risk, of the Lessee. In the event of casualty loss to the Office Building and/or Business Contents, Lessee shall replace the lost or damaged property as soon as practicable to the extent that insurance proceeds are available.

7. Notwithstanding any other provision of this Agreement, the failure of the Lessee to comply with the above provisions of this section shall subject this Agreement to immediate termination at the discretion of the Superintendent without notice to any party, if it is necessary to protect the public interest.

14.1.9 Evidence of Insurance (Does not apply to Workers Compensation in compliance with RCW 51).

1. At all times during the term of this Agreement, Lessee shall maintain, or cause to be maintained on file with the Department and the City's Risk Management Division certification of insurance in compliance with the requirements herein. Such

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certification shall include copies of the declarations pages of each policy and additional insured policy or endorsement language to each policy where required.

2. Certification as described above shall be issued to:

The City of Seattle
Department of Parks and Recreation
Magnuson Park & Business Resources
6310 N.E. 74th Street #109E
Seattle, WA 98115

and a copy faxed to the City's Risk management Division at (206) 470-1270 or emailed as an attachment to riskmanagement@seattle.gov.

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

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

17. **Destruction**. If the Premises are rendered partially or totally untenantable by fire or other casualty, and if the damage is repairable within twenty-four (24) months from the date of the occurrence, then if proceeds of Lessee's insurance or self-insurance coverages are available to pay the full cost of the repairs (except for the deductible amounts) City shall repair the Premises with due diligence; otherwise City may elect to terminate this Lease. Rent and Additional Charges shall be abated in the proportion that the untenantable portion of the Premises bears to the whole thereof, as the City determines, for the period from the date of the casualty to the completion of the repairs. If the damage to the Premises is uninsured or cannot be repaired

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within twenty-four (24) months from the date of the occurrence, City or Lessee may terminate this Lease upon sixty (60) days' written notice to the other. City shall advise Lessee of City's election to terminate by giving notice to Lessee thereof within thirty (30) days after the occurrence. In the event of damage by casualty, Lessee shall, at its sole cost and expense, repair all damage to its own personal property. Except in the event of City's gross negligence, intentional misconduct or breach of this Lease, City shall not be liable to Lessee for damages, compensation or other sums for inconvenience, loss of business or disruption arising from any repairs to or restoration of any portion of the Premises.

18. **Eminent Domain**.

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

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

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19. **Default by Lessee**.

19.1 Definition. If Lessee violates, breaches, or fails to keep or perform any term, provision, covenant, or any obligation of this Lease; or if Lessee files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for Lessee's assets or if Lessee makes an assignment for the benefit of creditors, or if Lessee is adjudicated insolvent, or becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or liquidated, voluntarily or otherwise; then Lessee shall be deemed in default ("Default").

19.2 City Remedies. If Lessee 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 Lessee, then City shall have the following nonexclusive rights and remedies at its option: (1) to cure such default on Lessee's behalf and at Lessee's sole expense and to charge Lessee for all actual and reasonable costs and expenses incurred by City in effecting such cure as an Additional Charge; (2) to terminate this Lease; provided, however, that if the nature of Lessee'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 Lessee shall not be in default if it commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

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

19.4 Vacation or Abandonment. If Lessee vacates or abandons the Premises in their entirety and fails to reoccupy them within thirty (30) days after City (1) delivers a notice to Lessee's notice address set forth in Section 1.8 above demanding such reoccupancy and (2) mails by certified or registered mail a copy of the notice to any forwarding address given by Lessee to City in writing, Lessee shall be in default under this Lease.

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19.5 City's Non-exclusive Remedies upon Termination due to Default of Lessee. Notwithstanding any reentry by City and anything to the contrary in this Lease, in the event of the termination of this Lease due to the Default of Lessee, the liability of Lessee for all sums due under this Lease provided herein shall not be extinguished for the balance of the Term of this Lease. Lessee shall also be liable to City for any other amount (excluding consequential or specific damages) necessary to compensate City for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any costs incurred in authorizing others the use and occupancy of the Premises and in preparing the Premises for such use and occupancy, and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington. The provisions of this Subsection 19.5 shall survive the expiration or earlier termination of this Lease.

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

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

22. **Termination for Convenience**. Notwithstanding anything else in this Lease to the contrary, the City may, at any time and without liability of any kind to Lessee, terminate this Lease upon thirty (30) days' written notice to Lessee if the City determines that the Premises are required for a different public purpose

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

24. **Access by City**. City and its agents shall have the right to enter the Premises at any reasonable time 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

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Premises as City may deem necessary or desirable. If Lessee is not personally present to permit entry and an entry is necessary in an emergency, City may enter the same by master key or may forcibly enter the same, without rendering City liable therefor, except in the event of City's gross negligence or intentional misconduct. Nothing contained herein shall be construed to impose upon City any duty of repair or other obligation not specifically stated in this Lease. Lessee shall change the locks to the Premises only through City and upon paying City for all actual and reasonable costs related thereto.

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

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

27. **Successors or Assigns**. All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon City, Lessee and, subject to the terms of Sections 15 and 16, their respective heirs, administrators, executors, successors and permitted assigns, and upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

28. **Authority and Liability**. Lessee warrants that this Lease has been duly authorized, executed and delivered by Lessee, and that Lessee has the requisite power and authority to enter into this Lease and perform its obligations hereunder. Lessee covenants to provide City with evidence of its authority and the authorization of this Lease upon request. All persons and

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entities named as Lessee herein shall be jointly and severally liable for Lessee's liabilities, covenants and agreements under this Lease.

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

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

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

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

33. **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.

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

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

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36. **Continuous Operation**. Lessee shall keep the Premises open and use them to transact business with the public daily during hours as designated below or as otherwise may be designated by the Superintendent. Subject to the Superintendent's prior reasonable approval, Lessee may, upon posting a written notice to the public of not less than one (1) week in duration prior to any approved closure, close the Premises or a portion thereof for a reasonable period for repairs or any approved remodeling, or for taking inventory. Lessee shall close to accommodate reasonable operational requirements of City's business, upon thirty (30) days' prior written notice to Lessee, and Lessee shall immediately close in the case of any emergency as determined by the Superintendent; provided, however, that if Lessee shall close pursuant to this sentence at the direction of City, and if Lessee remains closed at the direction of City for more than three (3) days, then Lessee's Rent 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. Lessee 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:

Tuesdays through Saturdays, year round	10:00AM	5:00PM

37. **Standards**. Lessee 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. Lessee, 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. Lessee shall operate and conduct the facilities on the Premises in a businesslike manner, and will not permit any conduct on the part of Lessee's employees, which would be detrimental to City's operations.

38. **City's Control of Premises and Vicinity**. All parking lot area 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 Lessee:

38.1 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;

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

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38.3 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.

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

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

39. **Lessee's Records**. Lessee shall keep true, full, and accurate books of account setting forth Lessee's receipts, together with any other information that will affect the determination of Rent and Additional Charges. City shall be allowed after five (5) days' prior written notice to Lessee to inspect Lessee's books of account at Lessee's office and to procure audits thereof by an auditor at City's sole cost and expense (except as provided below). If in the reasonable judgment of such auditor Lessee's books of account are incomplete or improperly reflect the information necessary for an accurate determination of the Rent, or if the audit shall show that the reports submitted by Lessee understated Lessee's receipts by more than three percent (3%) thereof for any year covered by the audit, the costs and fees for such audit shall be paid by Lessee to City. If an audit discloses any willful or intentional effort to understate Lessee's receipts, then, at City's option, Lessee may be required to surrender possession of the Premises under the provisions of Section 19 of this Lease. Lessee shall retain all books of accounting and any other information that will affect the determination of Rent and Additional Charges for a period of six (6) years after the expiration or termination of this Lease, and Lessee shall make them available for inspection at Lessee's office within ten (10) days of City's prior written demand therefor. Lessee's obligations under this paragraph shall survive expiration or termination of this Lease.

40. **Miscellaneous**.

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

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

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

CITY:
THE CITY OF SEATTLE

LESSEE:
_____

By: _____
Print Name/Title:_____
Department of Parks and Recreation

By: _____
_____
_____

STATE OF WASHINGTON)
) ss. (Acknowledgement for City)
COUNTY OF KING)

On this _____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared _____, known to me to be the _____ of the Department of Parks and Recreation of **THE CITY OF SEATTLE**, the party that executed the foregoing instrument as City, and acknowledged said instrument to be the free and voluntary act and deed of said party, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

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

_____ _____
[Signature] *[Printed Name]*

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

STATE OF WASHINGTON)
) ss. (Acknowledgement for _____)
COUNTY OF KING)

On this _____ day of _____, 20__, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____of _____, the entity that executed the foregoing instrument as _____; and acknowledged to me that he signed the same as the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and that he was authorized to execute said instrument for said entity.

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

_____ _____
[Signature] *[Printed Name]*

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

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EXHIBIT A

Legal Description

North Leschi Moorage

"That portion of the Southwest quarter of Section 34, Township 25 North, Range 4 East, W.M. described as follows: Lots 9 through 21 inclusive, Block 54, Yesler's 3rd Addition to the City of Seattle as recorded in Volume 6 of Plats, page 41, records of King County Washington, TOGETHER WITH Lots 11 through 23, inclusive, Block 51, Lake Washington Shorelands, as platted by the Department of Public Lands, State of Washington, according to the official plat thereof on file in the office of the Commissioner of Public Lands, Olympia, Washington. Also, that portion of the Harbor Area lying between the inner and outer harbor lines and bounded on the north by the easterly production of the north line or Lot 11 and on the south by the south line of Lot 23, Block 51, Lake Washington Shorelands."

South Leschi Moorage

"That portion of the Northwest Quarter of Section 3, Township 24 North, Range 4 East, W.M. described as follows: Block 52 Lake Washington Shorelands, TOGETHER WITH that portion of the Harbor Area lying between the inner and outer harbor lines and bounded on the north by the easterly production of the south line of Lot 31, Block 51 and on the south by the easterly production of the south line of Block 52 Lake" Washington Shorelands, as platted by the Department of Public Lands, State of Washington, according to the official plat thereof on file in the office of the Commissioner of Public Lands, Olympia, Washington.

Lakewood Moorage

That certain portion of the west ½ of the southwest ¼ of section 14, Township 24 North, Range 4 East, W. M. lying easterly of Lake Washington Boulevard South; southerly of S. Genesee Street produced easterly; northerly of S. Snoqualmie Street produced easterly; westerly of the inner harborline of Lake Washington; situated in the City of Seattle, County of King, State of Washington. Granted to the City of Seattle for Park, parkway and Boulevard purposes, pursuant to Chapter 183, Laws of 1913.

DNS CITY CLERK

Charles Ng
DPR Moorage Lease FISC
December 29, 2006
Version #2

Form revised December 4, 2006

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Parks & Recreation	Charles Ng / 684-8001	Tyler Running Deer / 684-8075

Legislation Title:
AN ORDINANCE relating to the Seattle Department of Parks and Recreation; authorizing the Superintendent to enter into a Lease Agreement with Schober & Associates, Inc. for the purpose of providing marina management at the Leschi and Lakewood Moorage facilities.

- **Summary of the Legislation:**
  The proposed legislation authorizes the Superintendent of Parks and Recreation to enter into a six-year lease agreement (lease) with Schober & Associates, Inc. for the purpose of providing marina management at the Leschi and Lakewood Moorage facilities. The proposed lease includes the option of two extension periods to the original term of the lease: an initial four-year extension, and a final ten-year extension, for a potential lease period of twenty years. The extensions to the lease agreement are at the discretion of the City of Seattle (City).

- **Background:**
  The Seattle Department of Parks and Recreation (Parks) is responsible for the operation of the Leschi and Lakewood Moorages which are owned by the City and located on Lake Washington. Since the mid-1970s, Parks has been providing marina services at these moorage facilities with concessionaires through multi-year leases, originally authorized by Ordinances 113075 & 116542, and yearly extensions. As part of the lease, the concessionaire is required to pay for all operating expenses which include: utilities and communications, insurance, routine and ongoing maintenance, staffing, security, all required state and local payroll taxes, administrative and office expenses, supplies, tools and equipment. Any improvements made to the moorages by the concessionaire become the property of the City at the end of the term of the lease.

  Lakewood Moorage was developed in 1952 in response to community needs and replaced a public boathouse which was built in 1910. Lakewood Moorage has 138 wet moorage slips and no dry slips. The moorage site was improved in the late 1970's with Forward Thrust bond money. Since 1975, concessionaires have made various capital improvements to the facility which have included: re-decking of the pier docks, construction of a security gate, installation of water/electrical/lighting systems, construction of a retail/food/office store, renovations and parking lot improvements.

  Leschi Moorage consists of a south and a north moorage. The south Leschi Moorage was built in 1949 and improvements were made in the 1970's with Forward Thrust bond

money. The south moorage has 111 wet moorage slips and 39 dry slips. The north Leschi Moorage was built in 1962 and has a small office located on the water side of the pier with a viewing deck above it. There is a breakwater at the north moorage and it has 88 wet moorage slips and 132 dry slips. Since the early 1980's concessionaires have made various capital improvements to the facility which have included: re-decking the north pier docks, installation of water/electrical/lighting systems, construction of a security gate, and construction of a breakwater at the north Leschi Moorage.

- *Please check one of the following:*

____ **This legislation does not have any financial implications.** (*Stop here and delete the remainder of this document prior to saving and printing.)*

__X__ **This legislation has financial implications.** *(Please complete all relevant sections that follow.)*

Appropriations:

Fund Name and Number	Department	Budget Control Level*	2007 Appropriation	2008 Anticipated Appropriation
Not Applicable.				
TOTAL				

***Notes*:** There is no appropriation requested by this legislation.

Anticipated Revenue/Reimbursement: Resulting From This Legislation:

Fund Name and Number	Department	Revenue Source	2007 Revenue	2008 Revenue
Parks and Recreation Fund (10200)	Parks and Recreation	Income from Moorage Fees	$ 362,400	$362,400
TOTAL			**$ 362,400**	**$362,400**

Notes: It is estimated that the gross revenues generated by the moorages in 2006 will be approximately $859,500. Of that amount, the City will receive an estimated $352,395. From 2000 to 2005, the total gross revenue generated by moorage fees was $4,288,549. Of that amount, the City received $1,761,993. In 2007 and 2008 it is estimated that Parks revenues from moorages fees will increase by approximately $10,000 per year due to a $.25 per 'slip foot' increase per month for wet moorage slips.

Total Regular Positions Created Or Abrogated Through This Legislation, Including FTE Impact:

Position Title and Department*	Fund Name	Fund Number	Part-Time/ Full Time	2007 Positions	2007 FTE	2008 Positions**	2008 FTE**
TOTAL	N/A						

Notes: There are no positions requested as a result of this legislation.

- **Do positions sunset in the future?** Not Applicable.

Spending/Cash Flow:

Fund Name and Number	Department	Budget Control Level*	2007 Expenditures	2008 Anticipated Expenditures
Not Applicable.				
TOTAL	N/A			

Notes: Not Applicable.

What is the financial cost of not implementing the legislation? Potentially, the City could suffer a revenue loss if a qualified concessionaire is not secured with a long term lease. Without a long term lease the current concessionaire may choose not to renew for another interim annual lease. A long term lease provides stability for the concessionaire and gives them the incentive and financial ability to manage the facilities and to hire and train qualified staff. The selected concessionaire, which is also the current concessionaire, has a proven track record of effectively generating revenues and managing the moorage facilities.

What are the possible alternatives to the legislation that could achieve the same or similar objectives? Parks could consider taking over the direct operation of the facilities although it currently does not have the staff, expertise, capability, or funding to do this.

Is the legislation subject to public hearing requirements: This legislation is not subject to public hearing requirements but Parks staff have attended various public meetings. Those meetings were on the following dates:

June 1, 2005 - Leschi Community Council meeting, coordinated with Diane Snell (206) 726-0923 and President Thurston Muskelly (206) 325-3683.

June 9, 2005 - Lakewood/Seward Park Neighborhood Association meeting, coordinated with President Grover Haynes (206) 722-6947.

June 23, 2005 – Park Board Briefing, coordinated with Sandy Brooks (206) 684-5066 of the Parks Superintendents Office.

- **Other Issues** (*including long-term implications of the legislation*):

The City Council has approved $2 million of REET I in the Department's 2007-2012 CIP for major maintenance of the moorages.

Please list attachments to the fiscal note below:

Attachment 1: Contract Summary

City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

January 23, 2007

Honorable Nick Licata
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Licata:

I am pleased to transmit the attached Council Bill that authorizes a six-year lease agreement with Schober & Associates, Inc. for the purpose of operating the City-owned Lakewood and Leschi Moorage facilities. The proposed lease agreement includes the option of two extension periods to the original term of the lease, including an initial four-year extension and a final ten-year extension, for a potential total lease term of twenty years.

Since the mid-1970s, the Seattle Department of Parks and Recreation (Parks) has contracted with concessionaires to provide marina services at the Lakewood and Leschi Moorage facilities. The current lease agreement has expired, and Parks has retained the current concessionaire via interim annual lease agreements. In 2006, Parks conducted a standardized request for proposal process and selected Schober & Associates, Inc., as the most qualified company for the new six-year lease agreement. As part of the lease agreement, the concessionaire is required to pay for all operating expenses, as well as all routine and ongoing maintenance of the facilities. In exchange for the right to manage and operate the facilities, Schober & Associates, Inc. will pay monthly concession fees to the City.

This lease agreement will provide continued effective and professional management of these revenue generating facilities for the western Lake Washington boating community. Thank you for your consideration of this legislation. If you have questions, please contact Eric Friedli at 684-8369.

Sincerely,

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7th Floor, P.O. Box 94749, Seattle, WA 98124-4749
Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360, Email: mayors.office@seattle.gov
An equal employment opportunity, affirmative action employer. Accommodations for people with disabilities provided upon request.

2007 CITY CLERK

Rita Hollomon/Charles Ng/Valles
DPR Moorage Lease ORDv3.doc
March 7, 2006
Version #3

ORDINANCE _____

AN ORDINANCE relating to the Seattle Department of Parks and Recreation; authorizing the Superintendent to enter into a Lease Agreement with Schober & Associates, Inc. for the purpose of providing marina management at the Leschi and Lakewood Moorage facilities.

WHEREAS, the Seattle Department of Parks and Recreation (Parks) has historically provided marina service through multi-year concession agreements originally authorized by Ordinances 113075 and 116542 and thereafter yearly extensions through the current year; and

WHEREAS, in 2005 Parks conducted a publicly advertised Request for Qualifications/Request for Proposals (RFP) process in order to seek a company who would manage the Leschi and Lakewood Moorages and operate the marinas for tenants and park patrons; and

WHEREAS, Parks evaluated and approved the proposer, Schober & Associates, Inc., as the most qualified company to manage the City-owned moorage facilities; and

WHEREAS, Parks desires to continue offering marina services to tenants and park patrons at Leschi and Lakewood Moorage facilities through this Lease Agreement; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of Parks and Recreation is authorized to execute, for and on behalf of the City, a six-year Lease Agreement with Schober & Associates, Inc., in substantially the form attached hereto as Attachment 1, with the exception of minor, administrative, or non-substantive changes to the lease as the Mayor or said Superintendent deem appropriate. The agreement also includes the option of two extension periods, the first (a) a four (4) year extension, and the second (b) a ten (10) year extension at the option of the City.

Section 2. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2007, and signed by me in open session in authentication of its passage this _____ day of _____, 2007.

_____
President _____of the City Council

Approved by me this ____ day of _____, 2007.

_____
Gregory J. Nickels, Mayor

Filed by me this ____ day of _____, 2007.

_____
City Clerk

(Seal)

Attachment 1: Lease with Schober and Associates for Leschi and Lakewood Moorages

Attachment 1

LEASE

Lease with Schober and Associates for Leschi and Lakewood Moorages

THIS LEASE ("Lease") is entered into this ____ day of _____, 20__, by and between **THE CITY OF SEATTLE** ("City"), a city of the first class of the State of Washington, acting by and through its Department of Parks and Recreation ("Parks") and the Superintendent thereof ("Superintendent"), and **Schober and Associates Inc.** ("Lessee") a corporation organized under the laws of the State of Washington.

RECITALS

WHEREAS, Parks has historically provided marina service at the Leschi and Lakewood Moorages through multi-year agreements originally authorized by Ordinances 113075 and 116542 and thereafter by yearly extensions through the current year; and

WHEREAS, Lessee has been the approved operator under contracts with Parks to provide this service for over 25 years and has been responsible for operation, maintenance, completion of all required improvements to the moorages during this period, and as such, is very familiar with the conditions of the moorages; and

WHEREAS, the improvements to the moorages became the property of the City at the expiration of the initial term of the contract and the Lessee has been managing the moorages under a series of extensions since the initial term; and

WHEREAS, in 2005 the Department conducted a publicly advertised Request for Qualifications/Request for Proposals (RFP) process to select a company who would manage the moorages and operate them for tenants and park patrons; and

WHEREAS, the Department evaluated proposals to this RFP and selected the Lessee as the most qualified company to manage the moorages; and

WHEREAS, the Department desires to continue offering marina services to tenants and park patrons at Leschi and Lakewood Marinas through this new Lease;

NOW, THEREFORE,

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

AGREEMENT

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

1.1 Premises. Property known as the "Leschi Moorage and Marina", docks and piers, located at 400 Lake Washington Blvd S., Seattle, Washington 98144; AND property known as the "Lakewood Moorage and Marina", docks and piers located at 4400 Lake Washington Blvd S., Seattle, Washington 98144. Such properties shall hereafter be referred to as the "Premises". Lessee shall have the exclusive right to the use of the Premises. Said real properties are legally described in Exhibit A.

1.2 Commencement Date. Upon execution by the Superintendent.

1.3 Expiration Date. This Lease shall expire six (6) years after the Commencement Date, unless terminated earlier pursuant to the provisions of this Lease or by operation of law. The City may extend the Lease four (4) years and ten (10) years in accordance with Section 3.2 of this Lease.

1.4 Rent and Additional Charges

1.4.1 Rent: Lessee shall pay the City rent in accordance with Section 4 of this Agreement.

1.4.2 Additional Charges: Whether or not so designated, all other sums due from Lessee under this Lease shall constitute Additional Charges, payable when specified in this Lease.

1.5 Security Deposit. **[not applicable]**

1.6 Parking. **[not applicable]**

1.7 Use of the Premises

1.7.1 Required Use. Lessee is required to use and operate the Premises as a year-round marina business at the Leschi Moorage Marina located at 400 Lake Washington Blvd S., Seattle, Washington 98144, which operation shall consist of renting both wet and dry slips, the operation of the transient moorage and overall management of the City-owned Leschi Marina, AND the Lessee is also required to operate a year-round marina business at the Lakewood Moorage Marina located at 4400 Lake Washington Blvd S., Seattle, Washington 98144, which operation shall consist of renting wet slips, the operation of the transient moorage, and the overall management of the City-owned Lakewood Marina. The granting of the right to operate on such Premises is subject to the Lessee meeting the terms and conditions of this Lease.

1.7.2 Permitted Uses. The Lessee is permitted to sell retail merchandise, including, but not limited to, t-shirts, sports attire, food, non-alcoholic beverages and bait and tackle.

1.7.3 Lessee shall not use the Premises for any purpose whatsoever other than the uses specified in this Section 1.7.

1.8 Notice Addresses.

To City: The City of Seattle
Department of Parks and Recreation
Attention: Parks Concessions Coordinator
Magnuson Park & Business Resources 6310 NE 74th Street, #109 E., Seattle, Washington 98115

To Lessee: Christopher Schober, President
Schober & Associates, Inc., Leschi Moorage; PO Box 1407, Sumner, Washington 98390

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

Exhibit A - Legal Description

2. **Premises**.

2.1 Grant. City hereby leases to Lessee and Lessee hereby leases from City those certain premises referenced in Section 1.1 (the "Premises"), which are located on the real property described on Exhibit A.

2.2 Condition. City leases the Premises and Lessee accepts the Premises in their "as is" condition.

2.3 Parking Lot Area. During the Term, Lessee and its licensees, invitees and customers shall have the non-exclusive right to access the sidewalks, pathways, and parking lot just adjacent and west of the entrances to the North and South Leschi docks and piers; AND the non-exclusive right to access the sidewalks, pathways, and parking lot just adjacent and west of the entrances to the Lakewood docks and piers.

2.4 Alterations. City, in its discretion, may increase, decrease or change the number, locations and dimensions of any parking lot area and other improvements shown that are not within the Premises. Such increase, decrease, or change shall not materially interfere with Lessee's business as permitted in Subsection 1.7.1, Required Use.

3. **Lease Term**.

3.1 Initial Term. This Lease shall be for a term ("Lease Term" or "Term") beginning on the Commencement Date specified in Subsection 1.2 and ending on the Expiration Date specified in Subsection 1.3, unless the Lease Term is terminated earlier in accordance with the provisions of this Lease or extended as provided in Subsection 3.2 below.

3.2 Extended Terms. City shall have the option to extend this Lease for up to 2 successive individual extended terms of an initial four (4) year extension and a subsequent ten (10) year extension, ("Extended Terms") each on the same terms and conditions set forth herein. The City may extend the Lease Term to include any Extended Term by giving Lessee written notice of its intention to do so at least ninety (90) days prior to the beginning of the Extended Term. As used in this Lease, the "Lease Term" means the original term commencing on the Commencement Date and ending on the Expiration Date specified in Subsection 1.3, and any and all Extended Term[s] established by City hereunder.

4. **Rent**.

4.1 Monthly Percentage Payment to the City

4.1.1 On or before the 10th day of each month through January 10, 2010, the Lessee shall remit to the City as a Concession Fee for each month in which the Lessee is authorized to engage in business under this Lease, thirty-nine percent (39 %) of Lessee's Gross Revenue for the preceding month. This payment includes state leasehold tax.

4.1.2 Commencing on January 11, 2010 through the end of the Lease Term, on or before the 10th day of each month, the Lessee shall remit to the City as a Concession Fee for each month in which the Lessee is authorized to engage in business under this Lease, forty-three percent (43 %) of Lessee's Gross Revenue for the preceding month. This payment includes state leasehold tax.

4.2 Place of Payment. All payments to the City shall be paid to The City of Seattle Department of Parks and Recreation, Magnuson Park and Business Resources, Attention: Concessions Coordinator, 6310 N.E. 74th Street #109E, Seattle, WA 98115. Lessee shall further submit a Monthly Concession Report on or before the tenth (10th) calendar day of each month.

5. **Late Charge; Interest**. If Lessee fails to pay the City any sum when due, such amount shall bear interest at the rate of 12% per annum from the date due until the date paid.

6. **Lessee's Operations**.

6.1 Use of Premises. Lessee shall use the Premises only for the uses specified in Section 1.7. As City's willingness to enter into this Lease with Lessee was predicated, in part, on the nature of Lessee 's business, Lessee shall not use or permit the use of the Premises for any other business, or purpose, or under any other name, without City's prior written consent. Lessee shall promptly comply, at its sole cost and expense, with such reasonable rules and regulations relating to the use of the Premises as City, from time to time, may promulgate. Any newly promulgated rules and regulations shall not materially interfere with Lessee's business for the Permitted Use. In the event of any conflict between the rules and regulations promulgated by City and the terms of this Lease, the terms of this Lease shall prevail. Lessee shall maintain the Premises in a clean, orderly and neat fashion and to a standard established for other similar moorage facilities in the Puget Sound area, permit no objectionable odors to be emitted from the Premises, and shall neither commit waste nor permit any waste to be committed thereon. Lessee shall not permit any accumulation of trash on or about the Premises. Lessee shall not create or contribute to the creation of a nuisance in the Premises. The Lessee must also perform the following requirements:

6.1.2 The Lessee shall make improvements to the facility that will enhance public access as appropriate, including posting of signage in a conspicuous place informing the public that it is a City facility, and available for special event rentals.

6.1.3 The Lessee must provide equipment and services sufficient to satisfy the requirement of this Lease that Lessee operates a full-time, year-round moorage operation as described above.

6.1.4 The Lessee shall satisfy all other conditions and requirements imposed on the Lessee by this Lease or by law.

6.1.5 The Lessee shall operate and keep the Premises open to the public as follows: Tuesday through Saturday, 10:00am to 5:00pm. The Lessee may close the Premises to the general public on Sundays and Mondays. Tenants who have a moorage lease with the Lessee shall have access to the facility at all times. Lessee shall post in writing the hours of operation in a conspicuous place in the vicinity of the public entry to the Leschi and Lakewood Marinas visible from the exterior.

6.1.6 The Lessee has the right to propose moorage fees but shall not propose moorage fees lower than $6.75 per slip foot for wet moorage and $3.50 per slip foot for dry moorage; provided, that the Lessee submits the proposed moorage fee changes to the Department for review and approval at least 3 months prior to the implementation of any fee revisions.

6.2 Compliance with Laws; Nondiscrimination.

6.2.1 General Obligation. Lessee shall not use or permit the Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law,

ordinance or regulation, or for any purpose offensive to the standards of the community. Lessee shall promptly comply, at its sole cost and expense, with all laws, ordinances and regulations now in force or hereafter adopted relating to or affecting the condition, use or occupancy of the Premises.

6.2.2 Nondiscrimination. Without limiting the generality of Subsection 6.2.1, Lessee agrees to and shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and The City of Seattle, including but not limited to Chapters 14.04, 14.10 and 20.42 of the Seattle Municipal Code, as they may be amended from time to time, and rules, regulations, orders and directives of the associated administrative agencies and their officers.

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

6.4 Hazardous Substances. Lessee shall not, without City's prior written consent, keep on or about the Premises any substance designated as, or containing any component now or hereafter designated as hazardous, dangerous, toxic or harmful and/or subject to regulation under any federal, state or local law, regulation or ordinance ("Hazardous Substances"), except customary office, kitchen, cleaning and other related supplies in normal quantities handled in compliance with applicable laws. With respect to any Hazardous Substances stored with City's consent, Lessee shall promptly, timely and completely comply with all governmental requirements for reporting and record keeping; submit to City true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities; within five (5) days after City's request therefor, provide evidence satisfactory to City of Lessee's compliance with all applicable governmental rules, regulations and requirements; and comply with all governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment and disposal of Hazardous Substances. Any and all costs incurred by City and associated with City's inspections of the Premises and City's monitoring of Lessee's compliance with this Subsection 6.4, including City's attorneys' fees and costs, shall be Additional Charges and shall be due and payable to City within ten (10) days after City's demand therefor, if Lessee's violation of this Subsection 6.4 is discovered as a result of such inspection or monitoring. Lessee shall be fully and completely liable to City for any and all cleanup costs and expenses and any and all other charges, expenses, fees, fines, penalties (both, civil and criminal)

and costs imposed with respect to Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances in or about the Premises. Lessee shall indemnify, defend and hold City harmless from any and all of the costs, fees, penalties, charges and expenses assessed against, or imposed, upon City (as well as City's attorneys' fees and costs) as a result of Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances on or about the Premises. The indemnification and defense obligations of this subsection shall survive the expiration or earlier termination of this Lease.

7. **Utilities**.

7.1 General. Lessee shall pay when due to the appropriate providers, all charges for utilities for the Premises, including but not limited to, electricity, water and sewer services and data and telecommunications services.

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

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

8. **Licenses and Taxes**. Without any deduction or offset whatsoever, Lessee 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; Lessee shall be responsible for, and shall pay prior to delinquency, all fees, charges, or costs, for any governmental inspections or examinations relating to Lessee's use and occupancy of the Premises, and pay all taxes on the leasehold interest created by this Lease (*e.g.*, leasehold excise taxes).

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

9. **Alterations by Lessee**. Lessee shall not make any alterations, additions or improvements in or to the Premises without first submitting to City professionally-prepared plans and specifications for such work and obtaining City's prior written approval thereof. Lessee covenants that it will cause all alterations, additions and improvements to the Premises to be completed at Lessee's sole cost and expense by a contractor approved by City and in a manner that (a) is in accordance 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 any of the Premises' systems and (f) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Premises. Lessee shall secure all governmental permits and approvals required for the work; shall comply with all other applicable governmental requirements and restrictions; and reimburse City for any and all expenses incurred in connection therewith. Except as provided in Section 13 with regard to concurrent negligence, Lessee shall indemnify, defend and hold City harmless from and against all losses, liabilities, damages, liens, costs, penalties and expenses (including attorneys' fees, but without waiver of the duty to hold harmless) arising from or out of Lessee's performance of such alterations, additions and improvements, including, but not limited to, all which arise from or out of Lessee's breach of its obligations under terms of this Section 9. All alterations, additions and improvements (expressly including all light fixtures; heating and ventilation units; floor, window and wall coverings; and electrical wiring), except Lessee's moveable trade fixtures and appliances and equipment not affixed to the Premises (including without limitation furniture, computers, point of sale systems and registers) shall become the property of City at the expiration or termination of this Lease without any obligation on its part to pay for any of the same. At City's request, Lessee shall execute a deed or bill of sale in favor of City with respect to such alterations and/or improvements. Notwithstanding the foregoing, Lessee shall remove all or any portion of such alterations and/or improvements on the expiration or termination of this Lease if City specifically so directs, in writing, at the time of City's issuance of its approval thereof. Within ninety (90) days after the completion of any alteration, addition or improvement to the Premises, Lessee shall deliver to City a full set of "as-built" plans of the Premises showing the details of all alterations, additions and improvements made to the Premises by Lessee.

10. **Care of Premises**.

10.1 General Obligation. Through December 31, 2009, the Lessee shall set aside 4% of its gross revenues for emergency repairs of the Premises that are above and beyond the routine

maintenance described in Section 10.2, 10.3, and 10.5 of this Lease. The Lessee must obtain the City's written approval prior to performing emergency maintenance and repairs. The Lessee shall establish an account in its operations budget to fund emergency repairs, track such expenses, and provide a report to the City detailing the work performed. Not later than January 31 of each year the lessee shall pay the City all the previous years' unexpended balances from the emergency repairs account.

10.2 Damage Reimbursement. Lessee shall take good care of the Premises and shall reimburse City for all damage done to the Premises that results from any act or omission of Lessee or any of Lessee's officers, contractors, agents, invitees, licensees, or employees, including, but not limited to, cracking or breaking of glass.

10.3 Custodial Service for Premises. Lessee shall, at its own expense and at all times, keep the Premises and areas immediately adjacent thereto in a neat, clean, safe, and sanitary condition; and keep the glass of all windows and doors serving such areas clean and presentable. Lessee shall furnish all cleaning supplies and materials needed to operate such areas in the manner prescribed in this Lease; Lessee shall provide all necessary janitorial service to adequately maintain the Premises either by itself or by using a company that is approved by City. Lessee shall be responsible for keeping the areas immediately adjacent to the perimeter of such areas free of litter and clean of spills resulting from Lessee's operations.

If Lessee fails to take good care of such areas, after City provides written notice to Lessee of Lessee's failure to comply with this Section, the City may so inform Lessee in writing that it will perform said work, in which case Lessee shall then 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.

10.4 City Maintenance Obligations. All major repairs necessary to maintain the parking lot area serving 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 Lessee 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 rent arising by reason of City's making of repairs, alterations or improvements.

10.5 Lessee Specialized Equipment Maintenance Responsibility. All repairs necessary to maintain any specialized marina equipment and facilities (including any boat lifts, etc.), as well as routine customary maintenance repairs and upkeep serving the Premises in a reasonably good operating condition, shall be performed by Lessee at its expense regardless of the original purchaser or installer of the equipment. Except in the event of City's gross negligence or intentional misconduct, there shall be no abatement or reduction of rent arising by reason of City's making of repairs, alterations or improvements.

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

10.7 Lessee's Indemnification of City Against Liability under Visual Artists Rights Act of 1990. Lessee shall protect, defend, and hold City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of (a) the installation or integration of any work of visual art on or into the Premises; or (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any breach of Subsection 10.6 of this Lease; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by Lessee or any of its officers, employees or agents. The indemnification and defense obligations 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 and defense obligations of this subsection shall survive the expiration or earlier termination of this Lease.

11. **Signs and Advertising**.

11.1 Signs, Generally. Lessee shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster, or any advertising matter whatsoever anywhere in or about the Premises, without the Superintendent's prior written consent. Lessee shall remove all signage at the expiration or earlier termination of this Lease and repair any damage or injury to the Premises.

11.2 On-Premises Signs. Lessee may install approved permanent exterior signage. Exterior signage shall include the Premises' name, Lessee's name and the Parks logo and shall be constructed in a style and size consistent with the Parks sign policy.

11.3 Recognition. Lessee shall include a statement and the Parks logo in its printed materials, or similar materials stating, in effect, that: "We would like to thank Seattle Parks and Recreation for providing a location for moorage services."

12. **Surrender of Premises**.

12.1 General Matters. At the expiration or sooner termination of the Lease Term, Lessee shall return the Premises to City in the same condition in which received on the Commencement Date (or, if altered, then the Premises shall be returned in such altered condition

unless otherwise directed by City pursuant to Section 9), reasonable wear and tear, casualty and condemnation damages not resulting from or contributed to by negligence of Lessee, excepted. Prior to such return, Lessee shall remove its moveable trade fixtures and appliances and equipment that have not been attached to the Premises, and shall repair any damage resulting from their removal. In no event shall Lessee remove floor coverings; heating or ventilating equipment; lighting equipment or fixtures; or floor, window or wall coverings unless otherwise specifically directed by City in writing at the time when City's approval of their installation is issued. Lessee's obligations under this Section 12 shall survive the expiration or termination of this Lease. Lessee shall indemnify City for all damages and losses suffered as a result of Lessee's failure to remove voice and data cables, wiring and communication lines and moveable trade fixtures and appliances and to redeliver the Premises on a timely basis.

12.2 Cable and Wiring. Notwithstanding any provision to the contrary in this Lease and if the City so directs, on or by the Expiration Date, or if this Lease is terminated before the Expiration Date, within fifteen (15) days after the effective termination date, whichever is earlier, Lessee shall remove all voice and data communication and transmission cables and wiring installed by or for Lessee to serve any telephone, computer or other equipment located in that portion of the Premises. Cables and wiring shall include all of the same located within the interior and exterior walls, through or above the ceiling through or below the floor, vertical or horizontal risers, raceways, conduits, channels, or connection openings of such portion of the Premises to be vacated and surrendered to City as of the Expiration Date or earlier termination date. Lessee shall leave the mud rings, face plates and floor boxes in place.

13. **Waiver; Indemnification.**

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

ACKNOWLEDGE THAT THEY SPECIFICALLY NEGOTIATED AND AGREED UPON THE INDEMNIFICATION PROVISIONS OF THIS SECTION 13.

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

13.3 Limitation of Lessee's Indemnification. In compliance with RCW 4.24.115 as in effect on the date of this Lease, all provisions of this Lease pursuant to which City or Lessee (the "Indemnitor") agrees to indemnify the other (the "Indemnitee") against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Premises (i) shall not apply to damages caused by or resulting from the sole negligence of the Indemnitee, its agents or employees, and (ii) to the extent caused by or resulting from the concurrent negligence of (a) the Indemnitee or the Indemnitee's agents or employees, and (b) the Indemnitor or the Indemnitor's agents or employees, shall apply only to the extent of the Indemnitor's negligence; PROVIDED, HOWEVER, the limitations on indemnity set forth in this section shall automatically and without further act by either City or Lessee be deemed amended so as to remove any of the restrictions contained in this section no longer required by then applicable law.

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

14. **Insurance**.

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

14.1.1 Commercial General Liability Insurance including:

a. Premises
b. Products and Completed Operations
c. Personal/Advertising Injury
d. Medical Expense
e. Work in progress
f. Contractual

g. Stop Gap/Employers Liability

with a limit of liability of not less than $1,000,000 each occurrence combined single limit bodily injury and property damage ("CSL"), except $5,000 as respects Medical Expense, $1,000,000 each offense Personal/Advertising Injury, $1,000,000 each accident/employee/policy limit Stop Gap/Employers Liability insurance and $2,000,000 General and Products and Completed Operations aggregate.

14.1.2 **Marina Operator's Legal Liability** insurance covering the Lessee's liability to owners of watercraft while in the marina's care, custody or control with a limit of liability of not less than $1,000,000 per occurrence with not more than a $5,000 deductible.

14.1.3 **Automobile Liability** insurance for owned, non-owned, leased and hired vehicles as required with a limit of liability of not less than $1,000,000 CSL.

14.1.4 **Protection & Indemnity** insurance for marina operations, including boat work and owned and non-owned watercraft liability, with a limit of liability of not less than $1,000,000.

14.1.5 **Workers Compensation** insurance in compliance with RCW 51 and the United States Longshore and Harborworkers Act, as required.

14.1.6 **Bumbershoot or Excess/Umbrella Liability** insurance if and as required to maintain minimum limits of liability as specified herein.

14.1.7 **All Risk Property** insurance, excluding earthquake and flood, on Lessee's office structure on the North Leschi Moorage ("Office Building") and on its business personal property, tenant improvements, stock and inventory and trade fixtures on the Premises ("Business Contents") based on the replacement value thereof subject to a maximum deductible of $5,000 each claim. No property insurance coverage is required to be maintained on piers, wharves, docks or floats.

14.1.8 Terms and Conditions (Does not apply to Workers Compensation in compliance with RCW 51).

1. As respects legal liability insurance, the City of Seattle shall be an additional insured for primary limits of liability that is not contributory with any insurance or self-insurance that the City may maintain. The limits of liability specified herein are minimum limits of liability only and shall not be construed to limit the liability of

Lessee or any of its insurers; the City shall be an additional insured for the total valid and collectible limits of liability maintained by Lessee, whether such limits are primary, excess, contingent or otherwise. Notwithstanding insurance, the Lessee shall be obligated for the full and total amount of any damage, injury or loss caused by negligence of the Lessee, or any of its agents, officers and employees or through use or occupancy of the Premises.

2. As respects property insurance, the City of Seattle shall be an additional named insured or additional insured on the Office Building.

3. Insurers shall have minimum A.M. Best's ratings of A- VII or be procured under the provisions of chapter 48.15 RCW (surplus lines), unless otherwise approved by the City.

4. Insurance shall not be cancelled without delivery of written notice at least thirty (30) days prior to cancellation, except ten (10) days as respects cancellation for non-payment of premium, or as may otherwise be required under Revised Code of Washington (RCW) 498.18.290 ("Cancellation by insurer.").

5. The Lessee shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of the Lessee under this Agreement. The Lessee shall ensure that all such claims, whether processed by the Lessee or its insurer, either directly or by means of an agent or broker, will be handled by a person with a permanent office in the Seattle area.

6. The placement and storage of personal property on the Premises shall be the responsibility, and at the sole risk, of the Lessee. In the event of casualty loss to the Office Building and/or Business Contents, Lessee shall replace the lost or damaged property as soon as practicable to the extent that insurance proceeds are available.

7. Notwithstanding any other provision of this Agreement, the failure of the Lessee to comply with the above provisions of this section shall subject this Agreement to immediate termination at the discretion of the Superintendent without notice to any party, if it is necessary to protect the public interest.

14.1.9 Evidence of Insurance (Does not apply to Workers Compensation in compliance with RCW 51).

1. At all times during the term of this Agreement, Lessee shall maintain, or cause to be maintained on file with the Department and the City's Risk Management Division certification of insurance in compliance with the requirements herein. Such certification shall include copies of the declarations pages of each policy and additional insured policy or endorsement language to each policy where required.

2. Certification as described above shall be issued to:

The City of Seattle
Department of Parks and Recreation
Magnuson Park & Business Resources
6310 N.E. 74th Street #109E
Seattle, WA 98115

and a copy faxed to the City's Risk management Division at (206) 470-1270 or emailed as an attachment to riskmanagement@seattle.gov.

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

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

17. **Destruction**. If the Premises are rendered partially or totally untenantable by fire or other casualty, and if the damage is repairable within twenty-four (24) months from the date of the occurrence, then if proceeds of Lessee's insurance or self-insurance coverages are available to pay the full cost of the repairs (except for the deductible amounts) City shall repair the Premises with due diligence; otherwise City may elect to terminate this Lease. Rent and Additional Charges shall be abated in the proportion that the untenantable portion of the Premises bears to the whole thereof, as the City determines, for the period from the date of the casualty to the completion of the repairs. If the damage to the Premises is uninsured or cannot be repaired within twenty-four (24) months from the date of the occurrence, City or Lessee may terminate this Lease upon sixty (60) days' written notice to the other. City shall advise Lessee of City's

election to terminate by giving notice to Lessee thereof within thirty (30) days after the occurrence. In the event of damage by casualty, Lessee shall, at its sole cost and expense, repair all damage to its own personal property. Except in the event of City's gross negligence, intentional misconduct or breach of this Lease, City shall not be liable to Lessee for damages, compensation or other sums for inconvenience, loss of business or disruption arising from any repairs to or restoration of any portion of the Premises.

18. **Eminent Domain**.

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

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

19. **Default by Lessee**.

19.1 Definition. If Lessee violates, breaches, or fails to keep or perform any term, provision, covenant, or any obligation of this Lease; or if Lessee files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for Lessee's assets or if Lessee makes an assignment for the benefit of creditors, or if Lessee is adjudicated insolvent, or becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or liquidated, voluntarily or otherwise; then Lessee shall be deemed in default ("Default").

19.2 City Remedies. If Lessee 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 Lessee, then City shall have the following nonexclusive rights and remedies at its option: (1) to cure such default on Lessee's behalf and at Lessee's sole expense and to charge Lessee for all actual and reasonable costs and expenses incurred by City in effecting such cure as an Additional Charge; (2) to terminate this Lease; provided, however, that if the nature of Lessee'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 Lessee shall not be in default if it commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

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

19.4 Vacation or Abandonment. If Lessee vacates or abandons the Premises in their entirety and fails to reoccupy them within thirty (30) days after City (1) delivers a notice to Lessee's notice address set forth in Section 1.8 above demanding such reoccupancy and (2) mails by certified or registered mail a copy of the notice to any forwarding address given by Lessee to City in writing, Lessee shall be in default under this Lease.

19.5 City's Non-exclusive Remedies upon Termination due to Default of Lessee. Notwithstanding any reentry by City and anything to the contrary in this Lease, in the event of the termination of this Lease due to the Default of Lessee, the liability of Lessee for all sums due

under this Lease provided herein shall not be extinguished for the balance of the Term of this Lease. Lessee shall also be liable to City for any other amount (excluding consequential or specific damages) necessary to compensate City for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom, including but not limited to, any costs or expenses incurred in maintaining or preserving the Premises after such Default, and any costs incurred in authorizing others the use and occupancy of the Premises and in preparing the Premises for such use and occupancy, and such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington. The provisions of this Subsection 19.5 shall survive the expiration or earlier termination of this Lease.

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

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

22. **Termination for Convenience**. Notwithstanding anything else in this Lease to the contrary, the City may, at any time and without liability of any kind to Lessee, terminate this Lease upon thirty (30) days' written notice to Lessee if the City determines that the Premises are required for a different public purpose

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

24. **Access by City**. City and its agents shall have the right to enter the Premises at any reasonable time 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 as City may deem necessary or desirable. If Lessee is not personally present to permit entry and an entry is necessary in an emergency, City may enter the same by master key or may forcibly enter the same, without rendering City liable therefor, except in the event of City's gross

negligence or intentional misconduct. Nothing contained herein shall be construed to impose upon City any duty of repair or other obligation not specifically stated in this Lease. Lessee shall change the locks to the Premises only through City and upon paying City for all actual and reasonable costs related thereto.

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

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

27. **Successors or Assigns**. All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon City, Lessee and, subject to the terms of Sections 15 and 16, their respective heirs, administrators, executors, successors and permitted assigns, and upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

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

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

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

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

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

33. **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.

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

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

36. **Continuous Operation**. Lessee shall keep the Premises open and use them to transact business with the public daily during hours as designated below or as otherwise may be designated by the Superintendent. Subject to the Superintendent's prior reasonable approval,

Lessee may, upon posting a written notice to the public of not less than one (1) week in duration prior to any approved closure, close the Premises or a portion thereof for a reasonable period for repairs or any approved remodeling, or for taking inventory. Lessee shall close to accommodate reasonable operational requirements of City's business, upon thirty (30) days' prior written notice to Lessee, and Lessee shall immediately close in the case of any emergency as determined by the Superintendent; provided, however, that if Lessee shall close pursuant to this sentence at the direction of City, and if Lessee remains closed at the direction of City for more than three (3) days, then Lessee's Rent 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. Lessee 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:

Tuesdays through Saturdays, year round	10:00AM	5:00PM

37. **Standards**. Lessee 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. Lessee, 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. Lessee shall operate and conduct the facilities on the Premises in a businesslike manner, and will not permit any conduct on the part of Lessee's employees, which would be detrimental to City's operations.

38. **City's Control of Premises and Vicinity**. All parking lot area 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 Lessee:

38.1 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;

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

38.3 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.

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

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

39. **Lessee's Records**. Lessee shall keep true, full, and accurate books of account setting forth Lessee's receipts, together with any other information that will affect the determination of Rent and Additional Charges. City shall be allowed after five (5) days' prior written notice to Lessee to inspect Lessee's books of account at Lessee's office and to procure audits thereof by an auditor at City's sole cost and expense (except as provided below). If in the reasonable judgment of such auditor Lessee's books of account are incomplete or improperly reflect the information necessary for an accurate determination of the Rent, or if the audit shall show that the reports submitted by Lessee understated Lessee's receipts by more than three percent (3%) thereof for any year covered by the audit, the costs and fees for such audit shall be paid by Lessee to City. If an audit discloses any willful or intentional effort to understate Lessee's receipts, then, at City's option, Lessee may be required to surrender possession of the Premises under the provisions of Section 19 of this Lease. Lessee shall retain all books of accounting and any other information that will affect the determination of Rent and Additional Charges for a period of six (6) years after the expiration or termination of this Lease, and Lessee shall make them available for inspection at Lessee's office within ten (10) days of City's prior written demand therefor. Lessee's obligations under this paragraph shall survive expiration or termination of this Lease.

40. **Miscellaneous**.

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

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

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

CITY:
THE CITY OF SEATTLE

By: _____
Print Name/Title:_____
Department of Parks and Recreation

LESSEE:
_____

By: _____
_____
_____

STATE OF WASHINGTON)
) ss. (Acknowledgement for City)
COUNTY OF KING)

On this _____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared _____, known to me to be the _____ of the Department of Parks and Recreation of **THE CITY OF SEATTLE**, the party that executed the foregoing instrument as City, and acknowledged said instrument to be the free and voluntary act and deed of said party, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

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

_____ _____
[Signature] *[Printed Name]*

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

STATE OF WASHINGTON)
) ss. (Acknowledgement for _____)
COUNTY OF KING)

On this _____ day of _____, 20__, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of _____, the entity that executed the foregoing instrument as _____; and acknowledged to me that he signed the same as the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and that he was authorized to execute said instrument for said entity.

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

_____ _____
[Signature] *[Printed Name]*

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

EXHIBIT A

Legal Description

North Leschi Moorage

"That portion of the Southwest quarter of Section 34, Township 25 North, Range 4 East, W.M. described as follows: Lots 9 through 21 inclusive, Block 54, Yesler's 3rd Addition to the City of Seattle as recorded in Volume 6 of Plats, page 41, records of King County Washington, TOGETHER WITH Lots 11 through 23, inclusive, Block 51, Lake Washington Shorelands, as platted by the Department of Public Lands, State of Washington, according to the official plat thereof on file in the office of the Commissioner of Public Lands, Olympia, Washington. Also, that portion of the Harbor Area lying between the inner and outer harbor lines and bounded on the north by the easterly production of the north line or Lot 11 and on the south by the south line of Lot 23, Block 51, Lake Washington Shorelands."

South Leschi Moorage

"That portion of the Northwest Quarter of Section 3, Township 24 North, Range 4 East, W.M. described as follows: Block 52 Lake Washington Shorelands, TOGETHER WITH that portion of the Harbor Area lying between the inner and outer harbor lines and bounded on the north by the easterly production of the south line of Lot 31, Block 51 and on the south by the easterly production of the south line of Block 52 Lake" Washington Shorelands, as platted by the Department of Public Lands, State of Washington, according to the official plat thereof on file in the office of the Commissioner of Public Lands, Olympia, Washington.

Lakewood Moorage

That certain portion of the west ½ of the southwest ¼ of section 14, Township 24 North, Range 4 East, W. M. lying easterly of Lake Washington Boulevard South; southerly of S. Genesee Street produced easterly; northerly of S. Snoqualmie Street produced easterly; westerly of the inner harborline of Lake Washington; situated in the City of Seattle, County of King, State of Washington. Granted to the City of Seattle for Park, parkway and Boulevard purposes, pursuant to Chapter 183, Laws of 1913.

Rita Hollomon/Charles Ng
DPR Moorage Lease ORD
December 14, 2006
Version #1

ORDINANCE _____

AN ORDINANCE relating to the Seattle Department of Parks and Recreation; authorizing the Superintendent to enter into a Lease Agreement with Schober & Associates, Inc. for the purpose of providing marina management at the Leschi and Lakewood Moorage facilities.

WHEREAS, the Seattle Department of Parks and Recreation (Parks) has historically provided marina service through multi-year concession agreements originally authorized by Ordinances 113075 and 116542 and thereafter yearly extensions through the current year; and

WHEREAS, in 2005 Parks conducted a publicly advertised Request for Qualifications/Request for Proposals (RFP) process in order to seek a company who would manage the Leschi and Lakewood Moorages and operate the marinas for tenants and park patrons; and

WHEREAS, Parks evaluated and approved the proposer, Schober & Associates, Inc., as the most qualified company to manage the City-owned moorage facilities; and

WHEREAS, Parks desires to continue offering marina services to tenants and park patrons at Leschi and Lakewood Moorage facilities through this Lease Agreement; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of Parks and Recreation is authorized to execute, for and on behalf of the City, a six-year Lease Agreement with Schober & Associates, Inc., in substantially the form attached hereto as Attachment 1, with additions, modifications, or deletions as the Mayor or said Superintendent deems to be in the best interest of the City. The agreement also includes the option of two extension periods, the first (a) a four (4) year extension, and the second (b) a ten (10) year extension at the option of the City.

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Section 2. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2007, and signed by me in open session in authentication of its passage this _____ day of _____, 2007.

_____
President _____of the City Council

Approved by me this ____ day of _____, 2007.

_____
Gregory J. Nickels, Mayor

Filed by me this ____ day of _____, 2007.

_____
City Clerk

(Seal)

Attachment 1: Lease with Schober and Associates for Leschi and Lakewood Moorages

EDMS CITY CLERK

Attachment 1

LEASE

Lease with Schober and Associates for Leschi and Lakewood Moorages

THIS LEASE ("Lease") is entered into this ____ day of _____, 20__, by and between **THE CITY OF SEATTLE** ("City"), a city of the first class of the State of Washington, acting by and through its Department of Parks and Recreation ("Parks") and the Superintendent thereof ("Superintendent"), and **Schober and Associates Inc.** ("Lessee") a corporation organized under the laws of the State of Washington.

RECITALS

WHEREAS, Parks has historically provided marina service at the Leschi and Lakewood Moorages through multi-year agreements originally authorized by Ordinances 113075 and 116542 and thereafter by yearly extensions through the current year; and

WHEREAS, Lessee has been the approved operator under contracts with Parks to provide this service for over 25 years and has been responsible for operation, maintenance, completion of all required improvements to the moorages during this period, and as such, is very familiar with the conditions of the moorages; and

WHEREAS, the improvements to the moorages became the property of the City at the expiration of the initial term of the contract and the Lessee has been managing the moorages under a series of extensions since the initial term; and

WHEREAS, in 2005 the Department conducted a publicly advertised Request for Qualifications/Request for Proposals (RFP) process to select a company who would manage the moorages and operate them for tenants and park patrons; and

WHEREAS, the Department evaluated proposals to this RFP and selected the Lessee as the most qualified company to manage the moorages; and

WHEREAS, the Department desires to continue offering marina services to tenants and park patrons at Leschi and Lakewood Marinas through this new Lease;

NOW, THEREFORE,

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

AGREEMENT

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

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1.1 Premises. Property known as the "Leschi Moorage and Marina", docks and piers, located at 400 Lake Washington Blvd S., Seattle, Washington 98144; AND property known as the "Lakewood Moorage and Marina", docks and piers located at 4400 Lake Washington Blvd S., Seattle, Washington 98144. Such properties shall hereafter be referred to as the "Premises". Lessee shall have the exclusive right to the use of the Premises. Said real properties are legally described in Exhibit A.

1.2 Commencement Date. Upon execution by the Superintendent.

1.3 Expiration Date. This Lease shall expire six (6) years after the Commencement Date, unless terminated earlier pursuant to the provisions of this Lease or by operation of law. The City may extend the Lease four (4) years and ten (10) years in accordance with Section 3.2 of this Lease.

1.4 Rent and Additional Charges

1.4.1 Rent: Lessee shall pay the City rent in accordance with Section 4 of this Agreement.

1.4.2 Additional Charges: Whether or not so designated, all other sums due from Lessee under this Lease shall constitute Additional Charges, payable when specified in this Lease.

1.5 Security Deposit. **[not applicable]**

1.6 Parking. **[not applicable]**

1.7 Use of the Premises

1.7.1 Required Use. Lessee is required to use and operate the Premises as a year-round marina business at the Leschi Moorage Marina located at 400 Lake Washington Blvd S., Seattle, Washington 98144, which operation shall consist of renting both wet and dry slips, the operation of the transient moorage and overall management of the City-owned Leschi Marina, AND the Lessee is also required to operate a year-round marina business at the Lakewood Moorage Marina located at 4400 Lake Washington Blvd S., Seattle, Washington 98144, which operation shall consist of renting wet slips, the operation of the transient moorage, and the overall management of the City-owned Lakewood Marina. The granting of the right to operate on such Premises is subject to the Lessee meeting the terms and conditions of this Lease.

1.7.2 Permitted Uses. The Lessee is permitted to sell retail merchandise, including, but not limited to, t-shirts, sports attire, food, non-alcoholic beverages and bait and tackle.

1.7.3 Lessee shall not use the Premises for any purpose whatsoever other than the uses specified in this Section 1.7.

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1.8 Notice Addresses.

To City: The City of Seattle
Department of Parks and Recreation
Attention: Parks Concessions Coordinator
Magnuson Park & Business Resources 6310 NE 74th Street, #109 E., Seattle, Washington 98115

To Lessee: Christopher Schober, President
Schober & Associates, Inc., Leschi Moorage; PO Box 1407, Sumner, Washington 98390

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

Exhibit A - Legal Description

2. **Premises**.

2.1 Grant. City hereby leases to Lessee and Lessee hereby leases from City those certain premises referenced in Section 1.1 (the "Premises"), which are located on the real property described on Exhibit A.

2.2 Condition. City leases the Premises and Lessee accepts the Premises in their "as is" condition.

2.3 Parking Lot Area. During the Term, Lessee and its licensees, invitees and customers shall have the non-exclusive right to access the sidewalks, pathways, and parking lot just adjacent and west of the entrances to the North and South Leschi docks and piers; AND the non-exclusive right to access the sidewalks, pathways, and parking lot just adjacent and west of the entrances to the Lakewood docks and piers.

2.4 Alterations. City, in its discretion, may increase, decrease or change the number, locations and dimensions of any parking lot area and other improvements shown that are not within the Premises. Such increase, decrease, or change shall not materially interfere with Lessee's business as permitted in Subsection 1.7.1, Required Use.

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3. **Lease Term**.

3.1 Initial Term. This Lease shall be for a term ("Lease Term" or "Term") beginning on the Commencement Date specified in Subsection 1.2 and ending on the Expiration Date specified in Subsection 1.3, unless the Lease Term is terminated earlier in accordance with the provisions of this Lease or extended as provided in Subsection 3.2 below.

3.2 Extended Terms. City shall have the option to extend this Lease for up to 2 successive individual extended terms of an initial four (4) year extension and a subsequent ten (10) year extension, ("Extended Terms") each on the same terms and conditions set forth herein. The City may extend the Lease Term to include any Extended Term by giving Lessee written notice of its intention to do so at least ninety (90) days prior to the beginning of the Extended Term. As used in this Lease, the "Lease Term" means the original term commencing on the Commencement Date and ending on the Expiration Date specified in Subsection 1.3, and any and all Extended Term[s] established by City hereunder.

4. **Rent**.

4.1 Monthly Percentage Payment to the City

4.1.1 On or before the 10th day of each month through January 10, 2010, the Lessee shall remit to the City as a Concession Fee for each month in which the Lessee is authorized to engage in business under this Lease, thirty-nine percent (39 %) of Lessee's Gross Revenue for the preceding month. This payment includes state leasehold tax.

4.1.2 Commencing on January 11, 2010 through the end of the Lease Term, on or before the 10th day of each month, the Lessee shall remit to the City as a Concession Fee for each month in which the Lessee is authorized to engage in business under this Lease, forty-three percent (43 %) of Lessee's Gross Revenue for the preceding month. This payment includes state leasehold tax.

4.2 Place of Payment. All payments to the City shall be paid to The City of Seattle Department of Parks and Recreation, Magnuson Park and Business Resources, Attention: Concessions Coordinator, 6310 N.E. 74th Street #109E, Seattle, WA 98115. Lessee shall further submit a Monthly Concession Report on or before the tenth (10th) calendar day of each month.

5. **Late Charge; Interest**. If Lessee fails to pay the City any sum when due, such amount shall bear interest at the rate of 12% per annum from the date due until the date paid.

6. **Conditions Precedent**

6.1 City Alteration Requirements. The City shall, at its sole cost and expense, make capital improvements to the Premises and adjacent areas it deems necessary for the permitted uses not later than January 31, 2009. Lessee may inspect the Premises and determine, not later than July 8, 2009, whether or not the Premises are acceptable for its use. If Lessee determines

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the Premises are not acceptable, Lessee may terminate this Lease by providing written notice not later than August 31, 2009. In the event that Lessee exercises its right to terminate this Lease under this section, the City shall not be liable for any costs or losses incurred or any other damages as a result of such termination.

7. **Lessee's Operations**.

7.1 Use of Premises. Lessee shall use the Premises only for the uses specified in Section 1.7. As City's willingness to enter into this Lease with Lessee was predicated, in part, on the nature of Lessee 's business, Lessee shall not use or permit the use of the Premises for any other business, or purpose, or under any other name, without City's prior written consent. Lessee shall promptly comply, at its sole cost and expense, with such reasonable rules and regulations relating to the use of the Premises as City, from time to time, may promulgate. Any newly promulgated rules and regulations shall not materially interfere with Lessee's business for the Permitted Use. In the event of any conflict between the rules and regulations promulgated by City and the terms of this Lease, the terms of this Lease shall prevail. Lessee shall maintain the Premises in a clean, orderly and neat fashion and to a standard established for other similar moorage facilities in the Puget Sound area, permit no objectionable odors to be emitted from the Premises, and shall neither commit waste nor permit any waste to be committed thereon. Lessee shall not permit any accumulation of trash on or about the Premises. Lessee shall not create or contribute to the creation of a nuisance in the Premises. The Lessee must also perform the following requirements:

7.1.2 The Lessee shall make improvements to the facility that will enhance public access as appropriate, including posting of signage informing the public that it is a City facility, and available for special event rentals.

7.1.3 The Lessee must provide equipment and services sufficient to satisfy the requirement of this Lease that Lessee operates a full-time, year-round moorage operation as described above.

7.1.4 The Lessee shall satisfy all other conditions and requirements imposed on the Lessee by this Lease or by law.

7.1.5 The Lessee shall operate and keep the Premises open to the public as follows: Tuesday through Saturday, 10:00am to 5:00pm. The Lessee may close the Premises to the general public on Sundays and Mondays. Tenants who have a moorage lease with the Lessee shall have access to the facility at all times. Lessee shall post in writing the hours of operation in a conspicuous place in the vicinity of the public entry to the Leschi and Lakewood Marinas visible from the exterior.

7.1.6 The Lessee has the right to propose moorage fees but shall not propose moorage fees lower than $6.75 per slip foot for wet moorage and $3.50 per slip foot for dry moorage; provided, that the Lessee submits the proposed moorage fee changes to the Department for review and approval at least 3 months prior to the implementation of any fee revisions.

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7.2 Compliance with Laws; Nondiscrimination.

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

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

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

7.4 Hazardous Substances. Lessee shall not, without City's prior written consent, keep on or about the Premises any substance designated as, or containing any component now or hereafter designated as hazardous, dangerous, toxic or harmful and/or subject to regulation under any federal, state or local law, regulation or ordinance ("Hazardous Substances"), except customary office, kitchen, cleaning and other related supplies in normal quantities handled in compliance with applicable laws. With respect to any Hazardous Substances stored with City's consent, Lessee shall promptly, timely and completely comply with all governmental requirements for reporting and record keeping; submit to City true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities; within five (5) days after City's request therefor, provide evidence satisfactory to City of Lessee's compliance with all applicable governmental rules, regulations and requirements; and comply with all governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment and disposal of Hazardous Substances. Any and all costs incurred by City and associated with City's inspections of the Premises and City's monitoring of Lessee's compliance with this Subsection 7.4, including City's attorneys' fees and costs, shall be

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Additional Charges and shall be due and payable to City within ten (10) days after City's demand therefor, if Lessee's violation of this Subsection 7.4 is discovered as a result of such inspection or monitoring. Lessee shall be fully and completely liable to City for any and all cleanup costs and expenses and any and all other charges, expenses, fees, fines, penalties (both, civil and criminal) and costs imposed with respect to Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances in or about the Premises. Lessee shall indemnify, defend and hold City harmless from any and all of the costs, fees, penalties, charges and expenses assessed against, or imposed, upon City (as well as City's attorneys' fees and costs) as a result of Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances on or about the Premises. The indemnification and defense obligations of this subsection shall survive the expiration or earlier termination of this Lease.

8. **Utilities**.

8.1 General. Lessee shall pay when due to the appropriate providers, all charges for utilities for the Premises, including but not limited to, electricity, water and sewer services and data and telecommunications services.

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

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

9. **Licenses and Taxes**. Without any deduction or offset whatsoever, Lessee 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; Lessee shall be responsible for, and shall pay prior to delinquency, all fees, charges, or costs, for any

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governmental inspections or examinations relating to Lessee's use and occupancy of the Premises, and pay all taxes on the leasehold interest created by this Lease (*e.g.*, leasehold excise taxes).

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

10. **Alterations by Lessee**. Lessee shall not make any alterations, additions or improvements in or to the Premises without first submitting to City professionally-prepared plans and specifications for such work and obtaining City's prior written approval thereof. Lessee covenants that it will cause all alterations, additions and improvements to the Premises to be completed at Lessee's sole cost and expense by a contractor approved by City and in a manner that (a) is in accordance 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 any of the Premises' systems and (f) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Premises. Lessee shall secure all governmental permits and approvals required for the work; shall comply with all other applicable governmental requirements and restrictions; and reimburse City for any and all expenses incurred in connection therewith. Except as provided in Section 14 with regard to concurrent negligence, Lessee shall indemnify, defend and hold City harmless from and against all losses, liabilities, damages, liens, costs, penalties and expenses (including attorneys' fees, but without waiver of the duty to hold harmless) arising from or out of Lessee's performance of such alterations, additions and improvements, including, but not limited to, all which arise from or out of Lessee's breach of its obligations under terms of this Section 10. All alterations, additions and improvements (expressly including all light fixtures; heating and ventilation units; floor, window and wall coverings; and electrical wiring), except Lessee's moveable trade fixtures and appliances and equipment not affixed to the Premises (including without limitation furniture, computers, point of sale systems and registers) shall become the property of City at the expiration or termination of this Lease without any obligation on its part to pay for any of the same. At City's request, Lessee shall execute a deed or bill of sale in favor of City with respect to such alterations and/or improvements. Notwithstanding the foregoing, Lessee shall remove all or any portion of such alterations and/or improvements on the expiration or termination of this Lease if City specifically so directs, in writing, at the time of City's issuance of its approval thereof. Within ninety (90) days after the completion of any alteration, addition or improvement to the Premises, Lessee shall deliver to City a full set of "as-built" plans of the Premises showing the details of all alterations, additions and improvements made to the Premises by Lessee.

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11. **Care of Premises**.

11.1 General Obligation. Through December 31, 2009, the Lessee shall set aside 4% of its gross revenues for emergency repairs of the Premises that are above and beyond the routine maintenance described in Section 11.2, 11.3, and 11.4 of this Lease. The Lessee must obtain the City's written approval prior to performing emergency maintenance and repairs. The Lessee shall establish an account in its operations budget to fund emergency repairs, track such expenses, and provide a report to the City detailing the work performed. Not later than January 31 of each year the lessee shall pay the City all the previous years' unexpended balances from the emergency repairs account.

11.2 Damage Reimbursement. Lessee shall take good care of the Premises and shall reimburse City for all damage done to the Premises that results from any act or omission of Lessee or any of Lessee's officers, contractors, agents, invitees, licensees or employees, including, but not limited to, cracking or breaking of glass.

11.3 Custodial Service for Premises. Lessee shall, at its own expense and at all times, keep the Premises and areas immediately adjacent thereto in a neat, clean, safe, and sanitary condition; and keep the glass of all windows and doors serving such areas clean and presentable. Lessee shall furnish all cleaning supplies and materials needed to operate such areas in the manner prescribed in this Lease; Lessee shall provide all necessary janitorial service to adequately maintain the Premises either by itself or by using a company that is approved by City. Lessee shall be responsible for keeping the areas immediately adjacent to the perimeter of such areas free of litter and clean of spills resulting from Lessee's operations.

If Lessee fails to take good care of such areas, after City provides written notice to Lessee of Lessee's failure to comply with this Section, the City may so inform Lessee in writing that it will perform said work, in which case Lessee shall then 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.

11.4 City Maintenance Obligations. All major repairs necessary to maintain the parking lot area serving 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 Lessee 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 rent arising by reason of City's making of repairs, alterations or improvements.

11.5 Lessee Specialized Equipment Maintenance Responsibility. All repairs necessary to maintain any specialized marina equipment and facilities (including any boat lifts, etc.), as well as routine customary maintenance repairs and upkeep serving the Premises in a reasonably good operating condition, shall be performed by Lessee at its expense regardless of the original purchaser or installer of the equipment. Except in the event of City's gross negligence or

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intentional misconduct, there shall be no abatement or reduction of rent arising by reason of City's making of repairs, alterations or improvements.

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

11.7 Lessee's Indemnification of City Against Liability under Visual Artists Rights Act of 1990. Lessee shall protect, defend, and hold City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of (a) the installation or integration of any work of visual art on or into the Premises; or (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any breach of Subsection 11.6 of this Lease; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by Lessee or any of its officers, employees or agents. The indemnification and defense obligations 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 and defense obligations of this subsection shall survive the expiration or earlier termination of this Lease.

12. **Signs and Advertising**.

12.1 Signs, Generally. Lessee shall not inscribe, post, place, or in any manner display any sign, notice, picture, poster, or any advertising matter whatsoever anywhere in or about the Premises, without the Superintendent's prior written consent. Lessee shall remove all signage at the expiration or earlier termination of this Lease and repair any damage or injury to the Premises.

12.2 On-Premises Signs. Lessee may install approved permanent exterior signage. Exterior signage shall include the Premises' name, Lessee's name and the Parks logo and shall be constructed in a style and size consistent with the Parks sign policy.

12.3 Recognition. Lessee shall include a statement and the Parks logo in its printed materials, or similar materials stating, in effect, that: "We would like to thank Seattle Parks and Recreation for providing a location for moorage services."

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13. **Surrender of Premises**.

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

13.2 Cable and Wiring. Notwithstanding any provision to the contrary in this Lease and if the City so directs, on or by the Expiration Date, or if this Lease is terminated before the Expiration Date, within fifteen (15) days after the effective termination date, whichever is earlier, Lessee shall remove all voice and data communication and transmission cables and wiring installed by or for Lessee to serve any telephone, computer or other equipment located in that portion of the Premises. Cables and wiring shall include all of the same located within the interior and exterior walls, through or above the ceiling through or below the floor, vertical or horizontal risers, raceways, conduits, channels, or connection openings of such portion of the Premises to be vacated and surrendered to City as of the Expiration Date or earlier termination date. Lessee shall leave the mud rings, face plates and floor boxes in place.

14. **Waiver; Indemnification**.

14.1 Lessee's Indemnification. Except as otherwise provided in this section, Lessee shall indemnify, defend (using legal counsel reasonably acceptable to City) and save City, City's officers, agents, employees and contractors, harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable personnel and overhead costs and attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to, any property arising out of or in connection with (i) Lessee's occupation, use or improvement of the Premises, or that of any of its employees, agents or contractors, (ii) Lessee's breach of its obligations hereunder, or (iii) any act or omission of Lessee or any licensee, assignee or sublessee of Lessee, or of any officer, agent, employee, guest or invitee of any of the same in or about the Premises. Lessee agrees that the foregoing indemnity specifically covers actions brought by its own employees. The indemnification and defense obligations of this subsection shall survive termination or expiration of this Lease. The foregoing indemnity is specifically and expressly intended to,

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constitute a waiver of Lessee's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the extent necessary to provide City with a full and complete indemnity from claims made by Lessee and its employees, to the extent of their negligence. Lessee shall promptly notify City of casualties or accidents occurring in or about the Premises. **CITY AND LESSEE ACKNOWLEDGE THAT THEY SPECIFICALLY NEGOTIATED AND AGREED UPON THE INDEMNIFICATION PROVISIONS OF THIS SECTION 14.**

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

14.3 Limitation of Lessee's Indemnification. In compliance with RCW 4.24.115 as in effect on the date of this Lease, all provisions of this Lease pursuant to which City or Lessee (the "Indemnitor") agrees to indemnify the other (the "Indemnitee") against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Premises (i) shall not apply to damages caused by or resulting from the sole negligence of the Indemnitee, its agents or employees, and (ii) to the extent caused by or resulting from the concurrent negligence of (a) the Indemnitee or the Indemnitee's agents or employees, and (b) the Indemnitor or the Indemnitor's agents or employees, shall apply only to the extent of the Indemnitor's negligence; PROVIDED, HOWEVER, the limitations on indemnity set forth in this section shall automatically and without further act by either City or Lessee be deemed amended so as to remove any of the restrictions contained in this section no longer required by then applicable law.

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

15. **Insurance**.

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

15.1.1 Commercial General Liability Insurance including:

a. Premises
b. Products and Completed Operations

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c. Personal/Advertising Injury
d. Medical Expense
e. Work in progress
f. Contractual
g. Stop Gap/Employers Liability

with a limit of liability of not less than $1,000,000 each occurrence combined single limit bodily injury and property damage ("CSL"), except $5,000 as respects Medical Expense, $1,000,000 each offense Personal/Advertising Injury, $1,000,000 each accident/employee/policy limit Stop Gap/Employers Liability insurance and $2,000,000 General and Products and Completed Operations aggregate.

15.1.2 **Marina Operator's Legal Liability** insurance covering the Lessee's liability to owners of watercraft while in the marina's care, custody or control with a limit of liability of not less than $1,000,000 per occurrence with not more than a $5,000 deductible.

15.1.3 **Automobile Liability** insurance for owned, non-owned, leased and hired vehicles as required with a limit of liability of not less than $1,000,000 CSL.

15.1.4 **Protection & Indemnity** insurance for marina operations, including boat work and owned and non-owned watercraft liability, with a limit of liability of not less than $1,000,000.

15.1.5 **Workers Compensation** insurance in compliance with RCW 51 and the United States Longshore and Harborworkers Act, as required.

15.1.6 **Bumbershoot or Excess/Umbrella Liability** insurance if and as required to maintain minimum limits of liability as specified herein.

15.1.7 **All Risk Property** insurance, excluding earthquake and flood, on Lessee's office structure on the North Leschi Moorage ("Office Building") and on its business personal property, tenant improvements, stock and inventory and trade fixtures on the Premises ("Business Contents") based on the replacement value thereof subject to a maximum deductible of $5,000 each claim. No property insurance coverage is required to be maintained on piers, wharves, docks or floats.

15.1.8 Terms and Conditions (Does not apply to Workers Compensation in compliance with RCW 51).

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1. As respects legal liability insurance, the City of Seattle shall be an additional insured for primary limits of liability that is not contributory with any insurance or self-insurance that the City may maintain. The limits of liability specified herein are minimum limits of liability only and shall not be construed to limit the liability of Lessee or any of its insurers; the City shall be an additional insured for the total valid and collectible limits of liability maintained by Lessee, whether such limits are primary, excess, contingent or otherwise. Notwithstanding insurance, the Lessee shall be obligated for the full and total amount of any damage, injury or loss caused by negligence of the Lessee, or any of its agents, officers and employees or through use or occupancy of the Premises.

2. As respects property insurance, the City of Seattle shall be an additional named insured or additional insured on the Office Building.

3. Insurers shall have minimum A.M. Best's ratings of A- VII or be procured under the provisions of chapter 48.15 RCW (surplus lines), unless otherwise approved by the City.

4. Insurance shall not be cancelled without delivery of written notice at least thirty (30) days prior to cancellation, except ten (10) days as respects cancellation for non-payment of premium, or as may otherwise be required under Revised Code of Washington (RCW) 498.18.290 ("Cancellation by insurer.").

5. The Lessee shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of the Lessee under this Agreement. The Lessee shall ensure that all such claims, whether processed by the Lessee or its insurer, either directly or by means of an agent or broker, will be handled by a person with a permanent office in the Seattle area.

6. The placement and storage of personal property on the Premises shall be the responsibility, and at the sole risk, of the Lessee. In the event of casualty loss to the Office Building and/or Business Contents, Lessee shall replace the lost or damaged property as soon as practicable to the extent that insurance proceeds are available.

7. Notwithstanding any other provision of this Agreement, the failure of the Lessee to comply with the above provisions of this section shall subject this Agreement to immediate termination at the discretion of the Superintendent without notice to any party, if it is necessary to protect the public interest.

15.1.9 Evidence of Insurance (Does not apply to Workers Compensation in compliance with RCW 51).

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1. At all times during the term of this Agreement, Lessee shall maintain, or cause to be maintained on file with the Department and the City's Risk Management Division certification of insurance in compliance with the requirements herein. Such certification shall include copies of the declarations pages of each policy and additional insured policy or endorsement language to each policy where required.

2. Certification as described above shall be issued to:

The City of Seattle
Department of Parks and Recreation
Magnuson Park & Business Resources
6310 N.E. 74th Street #109E
Seattle, WA 98115

and a copy faxed to the City's Risk management Division at (206) 470-1270 or emailed as an attachment to riskmanagement@seattle.gov.

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

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

18. **Destruction**. If the Premises are rendered partially or totally untenantable by fire or other casualty, and if the damage is repairable within twenty-four (24) months from the date of the occurrence, then if proceeds of Lessee's insurance or self-insurance coverages are available to pay the full cost of the repairs (except for the deductible amounts) City shall repair the Premises with due diligence; otherwise City may elect to terminate this Lease. Rent and Additional

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Charges shall be abated in the proportion that the untenantable portion of the Premises bears to the whole thereof, as the City determines, for the period from the date of the casualty to the completion of the repairs. If the damage to the Premises is uninsured or cannot be repaired within twenty-four (24) months from the date of the occurrence, City or Lessee may terminate this Lease upon sixty (60) days' written notice to the other. City shall advise Lessee of City's election to terminate by giving notice to Lessee thereof within thirty (30) days after the occurrence. In the event of damage by casualty, Lessee shall, at its sole cost and expense, repair all damage to its own personal property. Except in the event of City's gross negligence, intentional misconduct or breach of this Lease, City shall not be liable to Lessee for damages, compensation or other sums for inconvenience, loss of business or disruption arising from any repairs to or restoration of any portion of the Premises.

19. **Eminent Domain**.

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

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

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trade fixtures and equipment and the cost of restoring its personal property and improvements made by it to the Premises.

20. **Default by Lessee**.

20.1 Definition. If Lessee violates, breaches, or fails to keep or perform any term, provision, covenant, or any obligation of this Lease; or if Lessee files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for Lessee's assets or if Lessee makes an assignment for the benefit of creditors, or if Lessee is adjudicated insolvent, or becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or liquidated, voluntarily or otherwise; then Lessee shall be deemed in default ("Default").

20.2 City Remedies. If Lessee 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 Lessee, then City shall have the following nonexclusive rights and remedies at its option: (1) to cure such default on Lessee's behalf and at Lessee's sole expense and to charge Lessee for all actual and reasonable costs and expenses incurred by City in effecting such cure as an Additional Charge; (2) to terminate this Lease; provided, however, that if the nature of Lessee'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 Lessee shall not be in default if it commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

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

20.4 Vacation or Abandonment. If Lessee vacates or abandons the Premises in their entirety and fails to reoccupy them within thirty (30) days after City (1) delivers a notice to Lessee's notice address set forth in Section 1.8 above demanding such reoccupancy and (2) mails by certified or registered mail a copy of the notice to any forwarding address given by Lessee to City in writing, Lessee shall be in default under this Lease.

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

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

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

23. **Termination for Convenience**. Notwithstanding anything else in this Lease to the contrary, the City may, at any time and without liability of any kind to Lessee, terminate this Lease upon thirty (30) days' written notice to Lessee if the City determines that the Premises are required for a different public purpose

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

25. **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

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Premises as City may deem necessary or desirable. If Lessee is not personally present to permit entry and an entry is necessary in an emergency, City may enter the same by master key or may forcibly enter the same, without rendering City liable therefor, except in the event of City's gross negligence or intentional misconduct. Nothing contained herein shall be construed to impose upon City any duty of repair or other obligation not specifically stated in this Lease. Lessee shall change the locks to the Premises only through City and upon paying City for all actual and reasonable costs related thereto.

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

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

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

29. **Authority and Liability**. Lessee warrants that this Lease has been duly authorized, executed and delivered by Lessee, and that Lessee has the requisite power and authority to enter into this Lease and perform its obligations hereunder. Lessee covenants to provide City with evidence of its authority and the authorization of this Lease upon request. All persons and

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entities named as Lessee herein shall be jointly and severally liable for Lessee's liabilities, covenants and agreements under this Lease.

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

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

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

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

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

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

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

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37. **Continuous Operation**. Lessee shall keep the Premises open and use them to transact business with the public daily during hours as designated below or as otherwise may be designated by the Superintendent. Subject to the Superintendent's prior reasonable approval, Lessee may, upon posting a written notice to the public of not less than one (1) week in duration prior to any approved closure, close the Premises or a portion thereof for a reasonable period for repairs or any approved remodeling, or for taking inventory. Lessee shall close to accommodate reasonable operational requirements of City's business, upon thirty (30) days' prior written notice to Lessee, and Lessee shall immediately close in the case of any emergency as determined by the Superintendent; provided, however, that if Lessee shall close pursuant to this sentence at the direction of City, and if Lessee remains closed at the direction of City for more than three (3) days, then Lessee's Rent 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. Lessee 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:

Tuesdays through Saturdays, year round	10:00AM	5:00PM

38. **Standards**. Lessee 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. Lessee, 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. Lessee shall operate and conduct the facilities on the Premises in a businesslike manner, and will not permit any conduct on the part of Lessee's employees, which would be detrimental to City's operations.

39. **City's Control of Premises and Vicinity**. All parking lot area 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 Lessee:

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 Lessee and its invitees, employees, and patrons.

CITY CLERK

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 Department property including, but not limited to, the Premises.

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

40. **Lessee's Records**. Lessee shall keep true, full, and accurate books of account setting forth Lessee's receipts, together with any other information that will affect the determination of Rent and Additional Charges. City shall be allowed after five (5) days' prior written notice to Lessee to inspect Lessee's books of account at Lessee's office and to procure audits thereof by an auditor at City's sole cost and expense (except as provided below). If in the reasonable judgment of such auditor Lessee's books of account are incomplete or improperly reflect the information necessary for an accurate determination of the Rent, or if the audit shall show that the reports submitted by Lessee understated Lessee's receipts by more than three percent (3%) thereof for any year covered by the audit, the costs and fees for such audit shall be paid by Lessee to City. If an audit discloses any willful or intentional effort to understate Lessee's receipts, then, at City's option, Lessee may be required to surrender possession of the Premises under the provisions of Section 20 of this Lease. Lessee shall retain all books of accounting and any other information that will affect the determination of Rent and Additional Charges for a period of six (6) years after the expiration or termination of this Lease, and Lessee shall make them available for inspection at Lessee's office within ten (10) days of City's prior written demand therefor. Lessee's obligations under this paragraph shall survive expiration or termination of this Lease.

41. **Miscellaneous**.

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

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

CITY CLERK

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

CITY:
THE CITY OF SEATTLE

By: _____
Print Name/Title:_____
Department of Parks and Recreation

LESSEE:
_____

By: _____
_____
_____

STATE OF WASHINGTON)
) ss. (Acknowledgement for City)
COUNTY OF KING)

On this _____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared _____, known to me to be the _____ of the Department of Parks and Recreation of **THE CITY OF SEATTLE**, the party that executed the foregoing instrument as City, and acknowledged said instrument to be the free and voluntary act and deed of said party, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

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

_____ _____
[Signature] *[Printed Name]*

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

STATE OF WASHINGTON)
) ss. (Acknowledgement for _____)
COUNTY OF KING)

On this _____ day of _____, 20__, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of _____, the entity that executed the foregoing instrument as _____; and acknowledged to me that he signed the same as the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and that he was authorized to execute said instrument for said entity.

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

_____ _____
[Signature] *[Printed Name]*

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

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EXHIBIT A

Legal Description

North Leschi Moorage

"That portion of the Southwest quarter of Section 34, Township 25 North, Range 4 East, W.M. described as follows: Lots 9 through 21 inclusive, Block 54, Yesler's 3rd Addition to the City of Seattle as recorded in Volume 6 of Plats, page 41, records of King County Washington, TOGETHER WITH Lots 11 through 23, inclusive, Block 51, Lake Washington Shorelands, as platted by the Department of Public Lands, State of Washington, according to the official plat thereof on file in the office of the Commissioner of Public Lands, Olympia, Washington. Also, that portion of the Harbor Area lying between the inner and outer harbor lines and bounded on the north by the easterly production of the north line or Lot 11 and on the south by the south line of Lot 23, Block 51, Lake Washington Shorelands."

South Leschi Moorage

"That portion of the Northwest Quarter of Section 3, Township 24 North, Range 4 East, W.M. described as follows: Block 52 Lake Washington Shorelands, TOGETHER WITH that portion of the Harbor Area lying between the inner and outer harbor lines and bounded on the north by the easterly production of the south line of Lot 31, Block 51 and on the south by the easterly production of the south line of Block 52 Lake" Washington Shorelands, as platted by the Department of Public Lands, State of Washington, according to the official plat thereof on file in the office of the Commissioner of Public Lands, Olympia, Washington.

Lakewood Moorage

That certain portion of the west ½ of the southwest ¼ of section 14, Township 24 North, Range 4 East, W. M. lying easterly of Lake Washington Boulevard South; southerly of S. Genesee Street produced easterly; northerly of S. Snoqualmie Street produced easterly; westerly of the inner harborline of Lake Washington; situated in the City of Seattle, County of King, State of Washington. Granted to the City of Seattle for Park, parkway and Boulevard purposes, pursuant to Chapter 183, Laws of 1913.

SEA CITY CLERK

Form revised December 4, 2006

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Parks & Recreation	Charles Ng / 684-8001	Tyler Running Deer / 684-8075

Legislation Title:
AN ORDINANCE relating to the Seattle Department of Parks and Recreation; authorizing the Superintendent to enter into a Lease Agreement with Schober & Associates, Inc. for the purpose of providing marina management at the Leschi and Lakewood Moorage facilities.

- **Summary of the Legislation:**
  The proposed legislation authorizes the Superintendent of Parks and Recreation to enter into a six-year lease agreement (lease) with Schober & Associates, Inc. for the purpose of providing marina management at the Leschi and Lakewood Moorage facilities. The proposed lease includes the option of two extension periods to the original term of the lease: an initial four-year extension, and a final ten-year extension, for a potential lease period of twenty years. The extensions to the lease agreement are at the discretion of the City of Seattle (City).

- **Background:**
  The Seattle Department of Parks and Recreation (Parks) is responsible for the operation of the Leschi and Lakewood Moorages which are owned by the City and located on Lake Washington. Since the mid-1970s, Parks has been providing marina services at these moorage facilities with concessionaires through multi-year leases, originally authorized by Ordinances 113075 & 116542, and yearly extensions. As part of the lease, the concessionaire is required to pay for all operating expenses which include: utilities and communications, insurance, routine and ongoing maintenance, staffing, security, all required state and local payroll taxes, administrative and office expenses, supplies, tools and equipment. Any improvements made to the moorages by the concessionaire become the property of the City at the end of the term of the lease.

  Lakewood Moorage was developed in 1952 in response to community needs and replaced a public boathouse which was built in 1910. Lakewood Moorage has 138 wet moorage slips and no dry slips. The moorage site was improved in the late 1970's with Forward Thrust bond money. Since 1975, concessionaires have made various capital improvements to the facility which have included: re-decking of the pier docks, construction of a security gate, installation of water/electrical/lighting systems, construction of a retail/food/office store, renovations and parking lot improvements.

  Leschi Moorage consists of a south and a north moorage. The south Leschi Moorage was built in 1949 and improvements were made in the 1970's with Forward Thrust bond

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money. The south moorage has 111 wet moorage slips and 39 dry slips. The north Leschi Moorage was built in 1962 and has a small office located on the water side of the pier with a viewing deck above it. There is a breakwater at the north moorage and it has 88 wet moorage slips and 132 dry slips. Since the early 1980's concessionaires have made various capital improvements to the facility which have included: re-decking the north pier docks, installation of water/electrical/lighting systems, construction of a security gate, and construction of a breakwater at the north Leschi Moorage.

- *Please check one of the following:*

____ **This legislation does not have any financial implications.** (*Stop here and delete the remainder of this document prior to saving and printing.)*

__X__ **This legislation has financial implications.** *(Please complete all relevant sections that follow.)*

Appropriations:

Fund Name and Number	Department	Budget Control Level*	2007 Appropriation	2008 Anticipated Appropriation
Not Applicable.				
TOTAL				

***Notes*:** There is no appropriation requested by this legislation.

Anticipated Revenue/Reimbursement: Resulting From This Legislation:

Fund Name and Number	Department	Revenue Source	2007 Revenue	2008 Revenue
Parks and Recreation Fund (10200)	Parks and Recreation	Income from Moorage Fees	$ 362,400	$362,400
TOTAL			**$ 362,400**	**$362,400**

Notes: It is estimated that the gross revenues generated by the moorages in 2006 will be approximately $859,500. Of that amount, the City will receive an estimated $352,395. From 2000 to 2005, the total gross revenue generated by moorage fees was $4,288,549. Of that amount, the City received $1,761,993. In 2007 and 2008 it is estimated that Parks revenues from moorages fees will increase by approximately $10,000 per year due to a $.25 per 'slip foot' increase per month for wet moorage slips.

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Total Regular Positions Created Or Abrogated Through This Legislation, Including FTE Impact:

Position Title and Department*	Fund Name	Fund Number	Part-Time/ Full Time	2007 Positions	2007 FTE	2008 Positions**	2008 FTE**
TOTAL	**N/A**						

Notes: There are no positions requested as a result of this legislation.

- **Do positions sunset in the future?** Not Applicable.

Spending/Cash Flow:

Fund Name and Number	Department	Budget Control Level*	2007 Expenditures	2008 Anticipated Expenditures
Not Applicable.				
TOTAL	**N/A**			

Notes: Not Applicable.

What is the financial cost of not implementing the legislation? Potentially, the City could suffer a revenue loss if a qualified concessionaire is not secured with a long term lease. Without a long term lease the current concessionaire may choose not to renew for another interim annual lease. A long term lease provides stability for the concessionaire and gives them the incentive and financial ability to manage the facilities and to hire and train qualified staff. The selected concessionaire, which is also the current concessionaire, has a proven track record of effectively generating revenues and managing the moorage facilities.

What are the possible alternatives to the legislation that could achieve the same or similar objectives? Parks could consider taking over the direct operation of the facilities although it currently does not have the staff, expertise, capability, or funding to do this.

Is the legislation subject to public hearing requirements: This legislation is not subject to public hearing requirements but Parks staff have attended various public meetings. Those meetings were on the following dates:

June 1, 2005 - Leschi Community Council meeting, coordinated with Diane Snell (206) 726-0923 and President Thurston Muskelly (206) 325-3683.

ENS CITY CLERK

June 9, 2005 - Lakewood/Seward Park Neighborhood Association meeting, coordinated with President Grover Haynes (206) 722-6947.

June 23, 2005 – Park Board Briefing, coordinated with Sandy Brooks (206) 684-5066 of the Parks Superintendents Office.

- **Other Issues** (*including long-term implications of the legislation*):

The City Council has approved $2 million of REET I in the Department's 2007-2012 CIP for major maintenance of the moorages.

Please list attachments to the fiscal note below:

Attachment 1: Contract Summary

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Seattle Department of Parks and Recreation

CONTRACT SUMMARY

Contracting Party/ Lessee/ Concessionaire/Other: Schober & Associates, Inc.

Contract Title and Contract Type: Leschi & Lakewood Moorage Lease Agreement

Non-Profit_____ or **For Profit** X

New X - Long Term Lease or **Renewal (or extension of existing Lease)** _____

Premises: Property known as "Leschi Moorage and Marina", docks and piers, located at 400 Lake Washington Blvd S., Seattle, Washington 98144; AND property known as the "Lakewood Moorage and Marina", docks and piers located at 4400 Lake Washington Blvd S., Seattle, Washington 98144.

Term of Lease: Six (6) years after the execution of the lease unless terminated earlier pursuant to the provisions of this Agreement or by operation of law. The agreement also includes two options to extend the Agreement at the discretion of the City: the first, a four (4) year extension; and the second, a ten (10) year extension

Purpose of Lease (description of license): Renting both wet and dry slips, the operation of the transient moorage and the management of the City-owned Leschi & Lakewood Marinas.

Rent: Lessee shall remit to the City as a Concession Fee of thirty-nine percent (39 %) of Lessee's Gross Revenue for the preceding month, through December 2009. Commencing January 2010 the Lessee shall remit to the City forty-three percent (43 %) of Lessee's Gross Revenue for the preceding month. These payments include state leasehold tax.

Adjustments to Rent (if any): See pertinent information below.

Public Benefit (e.g., description of permitted use): Expert operation and management of the moorages. This is a specialized function that can be done more effectively and professionally by the concessionaire. They will do routine and minor maintenance and repairs.

Maintenance: All repairs necessary to maintain any specialized marina equipment and facilities (including any boat lifts, etc.), as well as routine customary maintenance repairs and upkeep serving the Premises in a reasonably good operating condition, shall be performed by Lessee at its expense regardless of the original purchaser or installer of the equipment. Except in the event of City's gross negligence or intentional misconduct, there shall be no abatement or reduction of rent arising by reason of City's making of repairs, alterations or improvements.

Other Pertinent Information: Through December 31, 2009, the Lessee shall set aside 4% of its gross revenues for emergency repairs of the Premises that are above and beyond the routine maintenance. This provision is to allow for continued maintenance of the deteriorated facilities until the City Capital Improvement project is completed. The Lessee must obtain the City's written approval prior to performing emergency maintenance and repairs. The Lessee shall establish an account in its operations budget to fund emergency repairs, track such expenses, and provide a report to the City detailing the work performed. Not later than January 31 of each year the lessee shall pay the City all the previous years' unexpended balances from the emergency repairs account.

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State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on March 26, 2007, and published here by title only, will be mailed upon request, or can be accessed electronically at http://clerk.ci.seattle.wa.us. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 122365

AN ORDINANCE relating to the Seattle Department of Parks and Recreation; authorizing the Superintendent to enter into a Lease Agreement with Schober & Associates, Inc. for the purpose of providing marina management at the Leschi and Lakewood Moorage facilities.

ORDINANCE NO. 122366

AN ORDINANCE relating to the Seattle Fire Chiefs Association, IAFF, Local 2898, authorizing execution of a collective bargaining agreement effective January 1, 2005 through December 31, 2007, and a Memorandum of Understanding effective January 1, 2008 through December 31, 2008 by and between the City of Seattle and the Seattle Fire Chiefs Association, IAFF, Local 2898, and ratifying and confirming prior acts.

ORDINANCE NO. 122367

AN ORDINANCE amending the 2007 Fleets and Facilities Department adopted Budget; authorizing the Fleets and Facilities Department Director, on behalf of the Seattle Department of Transportation, to execute a sublease agreement with Bank of America, N.A. for office space in the Bank of America Fifth Avenue Plaza; increasing the Fleets and Facilities Department's appropriations in the 2007 budget; all by a three-fourths vote of the City Council.

ORDINANCE NO. 122368

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Publication ordered by JUDITH PIPPIN, City Clerk

Date of publication in the Seattle Daily Journal of Commerce, April 4, 2007.

4/4(209569)

122365

STATE OF WASHINGTON – KING COUNTY

--ss.

209569 No. TITLE ONLY

CITY OF SEATTLE,CLERKS OFFICE

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:122365-122368

was published on

04/04/07

The amount of the fee charged for the foregoing publication is the sum of $ 69.75, which amount has been paid in full.

Subscribed and sworn to before me on

04/04/07

Notary public for the State of Washington, residing in Seattle

JENNIFER A. PATZER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES OCT. 24, 2007