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Kathy Hill, Skagit County Auditor  
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340416-4-011-0007

FIRST AMERICAN TITLE CO.  
60842-1

### LEASE


**THIS LEASE** is made and entered into this 19th day of January, 2000, by and between the CITY OF MOUNT VERNON, a Washington municipal corporation (hereinafter referred to as "LANDLORD"), and S.K.Y. DOMES ENTERPRISES, INC., a Washington corporation (hereinafter referred to as "TENANT").

### WITNESSETH:

#### 1. Lease Data and Exhibits.

SKAGIT COUNTY WASHINGTON  
Real Estate Excise Tax

JAN 21 2000

Amount Paid \$  
Skagit Co. Treasurer  
By  Deputy

Lease

Exhibit "A" - Legal Description of Leased Property.

Exhibit "B" - Design, Construction, and Operating Requirements.

Exhibit "C" - Description of Sidewalks.

Exhibit "D" - Description of Parking areas.

Exhibit "E" - Building "A" Schematic Drawings.

Exhibit "F" - Building "A" Use Standards

1.1 Date. The effective date of this Agreement shall be January 1, 2000.

1.2 Address of Premises.

3301 East Fir Street  
Mount Vernon, Washington 98273

1.3 Notices. Notices shall be addressed as follows:

LANDLORD:

City of Mount Vernon  
Attn: **Parks Director**  
Parks & Recreation Department  
P.O. Box 809  
Mount Vernon, WA 98273

with a copy to:

**City Attorney**

City Attorney's Office  
City of Mount Vernon  
P.O. Box 809  
Mount Vernon, WA 98273

**TENANT:**

S.K.Y. Domes Enterprises, Inc.  
Attn: **Dennis Sobchuk**  
206 Sudden Valley  
Bellingham, WA 98226

1.4 Term. 30 years  
Commencement Date. January 1, 2000  
Expiration Date. December 31, 2029

1.5 Options. No option periods.

1.6 Consideration: As consideration for this lease, TENANT shall construct and operate on LANDLORD's property a recreational facility, all as described herein. The parties hereto agree that the reasonable value of such consideration is \$36,666 per year, during the 30 year term of this Lease. As further consideration to LANDLORD for this Lease, TENANT agrees that LANDLORD shall be allowed and authorized to use the recreational facility for 65 hours each quarter of the Term (260 hours each year), all as set forth in Section 5.2.

2. **Premises.** LANDLORD hereby leases to TENANT, and TENANT hereby leases from LANDLORD all of the premises situated in Skagit County, Washington, generally described in Section 1.2 and legally described in Exhibit "A," attached hereto (hereinafter "Premises"). The parties agree that the Premises are currently undeveloped with any permanent structures.

3. **Lease Term.**

3.1 TERM. Subject to the provisions of this Lease, the Term of this Lease is as designated in Section 1.4, commencing on the Commencement Date and ending, unless earlier terminated pursuant to the provisions of this Lease, at midnight on the Expiration Date.

3.2 RECAPTURE. LANDLORD shall have the option, which may be exercised on a date not earlier than the tenth annual anniversary of the Commencement Date of this Lease but not later than 60 days after such tenth annual anniversary of the Commencement Date, to require Tenant to execute an assignment to Landlord of this Lease. If Landlord exercises this option,



then Tenant will be released from all further liability hereunder from and after the effective date of the assignment. Upon the execution of such assignment, LANDLORD shall pay TENANT a sum equal to the value of the Business, as consideration for such assignment.

(a) As used in this subsection 3.2, the term "Business" shall be defined as those portions of the TENANT's business enterprise, whether a separate entity or a portion of an entity, necessary for the continued operation of the facility.

(b) The value of the Business shall be established by a business appraiser, skilled and experienced as such, and possessing credentials issued by the Institute of Business Appraisers; the American Society of Appraisers; the American Institute of Certified Public Accountants; or the National Association of Certified Valuation Analysts. The costs of such appraisal shall be borne by the LANDLORD.

(c) If the TENANT does not concur with the valuation established by the LANDLORD's appraisal, then the TENANT may commission an appraisal at its own expense. If the LANDLORD concurs with the value established by the appraisal, then such appraised value shall be the sum transferred to the TENANT.

(d) If the parties are unable to agree to a valuation based upon the appraisals obtained by each party, then a third appraisal shall be commissioned jointly by the parties. The third appraiser shall be selected jointly by the two previous appraisers.

(e) Each such appraisal shall conform to standard industry practices, and shall evaluate tangible and intangible assets, provided that human resources and business relationships with other businesses shall not be considered.

**4. Taxes on Rent.** The TENANT shall pay any tax upon leasing of the Premises or rents collected, including any business and occupation or similar gross receipts tax, and any leasehold excise tax, but not including any federal or state income tax of the LANDLORD or any franchise tax.

## **5. Operating Covenants.**

5.1 CONSTRUCTION. Within eighteen (18) months of execution of this Agreement, TENANT shall have constructed on the Premises and opened for business a structure (hereinafter, "Building A"), from which TENANT shall continuously operate its business from the Premises for the Permitted Use. In connection with the construction of Building A:

(a) The design, construction, and operation of Building A, and the responsibility for payment therefore, shall be in accordance with those provisions set forth in Exhibit "B."

(b) TENANT shall provide, prior to the beginning of construction of Building A, a public works bond acceptable to LANDLORD, all in accordance with Chapter 39.08 RCW, provided that TENANT may propose alternative financial vehicles that will provide equivalent assurance to the City that all architects, engineers, surveyors, workers,



contractors, subcontractors, and materials suppliers will receive payment for services rendered to TENANT.

(c) TENANT may, pursuant to permits duly obtained, remove dirt, and grade the site in accordance with the overall purposes of this lease and as it deems proper. Any amounts received by TENANT in the course of such activity may be used to reduce the cost of capital improvements upon the Property.

5.2 CITY USE. TENANT shall provide LANDLORD with free access to Building A for that amount of time set forth in Section 1.6 above, for use by LANDLORD to provide additional recreational opportunities to residents of Mount Vernon, provided that LANDLORD may not assign its right (granted pursuant to this paragraph) to use Building A. Such use by LANDLORD shall be without cost to LANDLORD, or to any guests or invitees of LANDLORD. Such use by LANDLORD shall be in accordance with the following:

(a) LANDLORD and TENANT shall meet on a bi-monthly basis (i.e., every two months), to determine how such hours shall be allocated to the LANDLORD in the upcoming quarter. The parties shall reach mutual agreement as to such allocation, PROVIDED THAT, if the parties are unable to reach such mutual agreement then in that event LANDLORD shall have absolute discretion to determine which hours it desires to have allocated to it for its use during the ensuing quarter and TENANT shall have absolute discretion to determine which hours shall be allocated to LANDLORD during the following two quarters which hours shall be between 8:00 a.m. and 4:30 p.m. Monday through Friday, after which LANDLORD shall have absolute discretion to determine which hours it desires to have allocated to it for its use during the ensuing quarter, and PROVIDED FURTHER that the parties may mutually agree to allocate hours from one quarter until the following quarter.

(b) To the extent liability for use of the facilities is not precluded by RCW 4.24.210, as that statute reads as of the date of this Lease, liability for death or personal injury resulting from use of the Premises by the LANDLORD shall be consistent with the provisions set forth in Section 15.

5.3 DARK RENT. The availability of recreational opportunities for Mount Vernon residents is a material consideration for this Lease. Accordingly, TENANT shall continuously during the entire Term, conduct and carry on TENANT's Permitted Uses and shall keep the Premises open for business and cause TENANT's business to be conducted therein during the usual business hours of each and every business day as mutually agreed upon by the parties on a bi-monthly basis; PROVIDED, HOWEVER, that should the parties be unable to agree upon the usual business hours, then in that event the TENANT business shall remain open between the hours of 9:00 a.m. and 10:00 p.m. 6 days each week, and PROVIDED FURTHER that this provision shall not apply if the Premises should be closed and the business of TENANT is temporarily suspended on account of labor strikes, lockouts, or similar causes beyond the reasonable control of TENANT, or for maintenance, remodeling, repair, or renovation as



approved by the LANDLORD in writing (including approvals of any construction schedules.) TENANT covenants and agrees to provide sufficient personnel, and to keep the Premises adequately stocked with merchandise, recreational equipment, fixtures, and facilities so as to conduct its business in accordance with sound business practice. If TENANT intends to cease business operations on the Premises, TENANT shall provide to LANDLORD no less than thirty (30) days prior written notice of such intent (provided that actual cessation shall also constitute notice.) LANDLORD shall, within thirty (30) days of receipt of TENANT's notice (or within sixty (60) days of actual cessation if TENANT fails to give notice), either elect to terminate this Lease or elect to have this Lease continue in effect as further provided hereunder. If TENANT has given notice of cessation, and LANDLORD fails to respond within thirty days as required herein, such failure to respond shall be deemed to be an election to terminate this Lease. If LANDLORD elects to have this Lease continue notwithstanding the cessation of business, then the parties obligations under this Lease shall be modified as follows: (a) beginning with the first month after such cessation of business, TENANT shall pay LANDLORD monthly in arrears, as "Dark Facility Rent" (prorated for any partial month) an amount equal to \$100 multiplied by the number of hours during the preceding month that the Premises would otherwise have been open and available for recreational purposes pursuant to the terms of this Lease; and (b) if the cessation of business continues for fifteen (15) months after commencement of cessation, then either party may terminate this Lease at any time thereafter by giving the other party one hundred twenty (120) days prior written notice of such termination. If LANDLORD terminates this Lease in response to TENANT's initial notice of cessation without notice, or either party terminates this Lease under subparagraph (b) above, then, except for obligations accruing prior to or as a result of termination (e.g. pre-termination indemnifications or restoration obligations), neither party shall have any further rights against the other.

5.4 CLOSING TIME. Notwithstanding any other provision to the contrary, TENANT shall close the Premises to public use no later than 10:30 p.m. Sunday – Thursday, and no later than 11:00 p.m. Fridays and Saturdays. For the purposes of this Section 5.4, janitorial and maintenance activities shall not be deemed to be a public use." The parties shall review this Section 5.4 on a date one year after the opening of Building A (as defined in Section 5.1), for the purpose of reviewing the time restrictions placed on the building's operations.

5.5 SECUREMENT OF PARK FACILITIES. TENANT shall take such reasonable steps as may be required by LANDLORD to secure the surrounding park facilities, including roadways accessing the Premises, when TENANT's employees remain on the grounds of the park facilities after such time as the park facilities are closed to the public.

5.6 LANDLORD'S OFFICE. TENANT shall provide the LANDLORD with access to approximately 240 square feet of office space situated within Building A. TENANT shall be compensated annually for such office space the sum of \$1,000, PROVIDED THAT LANDLORD's obligation shall be limited to payment for 240 square feet of space regardless of the actual amount of space provided by TENANT. TENANT shall be responsible for providing all utilities. LANDLORD shall remit payment on or before December 31 for the preceding



year's payment, provided that the first years payment shall be pro-rated as of the date of the opening of Building A (as defined in Section 5.1)

## **6. TENANT's Property.**

6.1 SECURITY INTEREST. LANDLORD reserves (and is hereby granted) a first and superior lien and security interest (which shall be in addition to and not in lieu of any statutory landlord's lien or security interest) on all fixtures, equipment, and personal property (tangible and intangible) now or hereafter located in or on the Premises to secure all sums due from and all obligations to be performed by TENANT hereunder, which lien shall and security interest may be enforced by LANDLORD in any manner provided by law, including, without limitation, under and in accordance with the Uniform Commercial Code applicable in the state of Washington (the "UCC.") The Lease shall constitute a security agreement under the UCC. At LANDLORD's request, TENANT shall execute and file, where appropriate, all documents required under the UCC to perfect the security interest herein granted. LANDLORD may, at LANDLORD's election, at any time file a photocopy of this Lease as a financing statement. Upon the occurrence of an event of default by TENANT, LANDLORD may, in addition to any other remedies provided herein, enter upon the Premises and take possession of any and all fixtures, equipment, and personal property (tangible and intangible) of TENANT situated on the Premises, without liability for trespass or conversion, and sell the same at public or private sale, after giving TENANT five (5) days prior notice of the time and place of any public sale or of the time after which any private sale is to be made, at which sale the LANDLORD or its assigns may purchase unless otherwise prohibited by law. The proceeds from any such disposition, less any and all expenses connected with the taking of possession, holding, and selling of the property (including reasonable attorney's fees and other expenses), shall be applied as a credit against the indebtedness secured by the security interest granted in this paragraph. Any surplus shall be paid to TENANT or as otherwise required by law; and the TENANT shall pay all deficiencies forthwith. In the event LANDLORD exercises its contractual statutory lien rights or remedies such that LANDLORD is deemed to have taken possession of the TENANT's personal property and fixtures in and about the Premises, the LANDLORD shall not be deemed or considered a bailee of the TENANT's property, nor shall LANDLORD be responsible for or liable for the preservation, safety, or care of any of TENANT's property.

6.2 Notwithstanding the foregoing Section 6.1, LANDLORD agrees that its security interest in all fixtures, equipment, and personal property (tangible and intangible) now or hereafter located in or on the Premises will be subordinate to any UCC security agreement and UCC-1 financing statement evidencing a security interest in TENANT's lender, Horizon Bank, or Horizon Bank's assigns. Such security interest in Horizon Bank may further be set forth in any mortgage, deed of trust, or other lien covering building "A" on the premises, upon and subject to the following conditions: LANDLORD'S subordination hereunder is expressly conditioned upon execution and delivery to LANDLORD by each security interest lienholder and each beneficiary of a deed of trust by whom subordination is hereafter requested of an agreement reasonably acceptable to LANDLORD. Such Agreement shall be a standard form of a





subordination agreement, shall be in a recordable form, and shall provide that each Mortgagee, each Lienholder, and each Beneficiary of a Deed of Trust shall accede to and shall comply with the terms and provisions of this Lease.

6.3 REMOVAL OF PROPERTY. Except as otherwise stated herein, upon the expiration or sooner termination of this Lease, TENANT shall remove its property and any property of any party other than LANDLORD from the Premises. TENANT shall repair damage to the Premises resulting from the installation or removal of its property, and TENANT shall promptly surrender the Premises in the condition required in Section 33. In the event of any failure by TENANT to remove, repair, or clean the Premises as provided in this section, TENANT shall, upon demand, reimburse LANDLORD for the cost of any such removal, repair, or cleaning. Any property left on the Premises after the expiration or termination of the Term or after TENANT's vacation or abandonment of the Premises ("Abandoned Property") will be deemed to have been abandoned and to have become the property of LANDLORD to dispose of at LANDLORD's discretion. TENANT shall reimburse LANDLORD for any of LANDLORD's court costs, and/or attorney's fees in enforcing this section.

## **7. Maintenance and Repair.**

7.1 TENANT MAINTENANCE. TENANT shall, at its sole cost and expense and as additional rent, clean and maintain the Premises, and make repairs, restorations, and replacements to the Premises, including without limitation the heating, ventilating, air conditioning, mechanical, electrical, and plumbing systems, structural roof, walls, and foundations, roof coverings, sprinkling and irrigation systems, playing surfaces, and the fixtures and appurtenances to the Premises as and when needed to preserve them in "first class" condition and repair throughout the Term. TENANT shall further keep in repair and maintain as necessary all machinery, equipment and facilities necessary for the playing of sports and the comfort of viewers. TENANT shall paint the exterior of the buildings with such frequency as may be required to maintain their good, clean appearance. All such repairs, restorations, and replacements will be in quality and workmanship at least equal to the original work or installations. If TENANT fails to make such repairs, restorations, or replacements, LANDLORD may make them at the expense of TENANT and such expense will be collectible as additional rent and will be paid by TENANT within fifteen (15) days after delivery of a statement for such expense. TENANT agrees that at the expiration of the term of this Lease, or sooner termination or assignment thereof, it will quit and surrender the leased Property in the same or better condition and repair as of the completion of construction, reasonable wear and tear excepted.

7.2 SIDEWALKS and PARKING AREAS. At its sole cost and expense, TENANT shall maintain the sidewalks on the Premises (as depicted in the attached Exhibit "C") in good and presentable condition during the Term, shall be responsible for correcting any unsafe conditions, and shall be responsible for the removal of ice and snow from the sidewalks. TENANT shall be responsible for the removal of ice and snow from the parking spaces adjacent

to the Premises (as depicted in the attached Exhibit "D") and shall notify LANDLORD of any deficiencies in such parking areas of which TENANT becomes aware.

7.3 JANITORIAL AND LANDSCAPING SERVICES. At its sole cost and expense, TENANT shall keep the Premises clean, and shall provide sufficient janitorial services to maintain a tidy appearance on and about the Premises. TENANT shall provide landscaping maintenance services such that landscaping on the Premises remain healthy, attractive, and well-maintained.

7.4 WASTE. TENANT shall not commit or cause to be committed any waste on the Premises.

7.5 HEALTH CODE. TENANT shall not knowingly commit or willfully permit to be committed any act or thing contrary to the rules and regulations prescribed from time to time by the Board of Health, or which shall be contrary to the laws, rules or regulations of any federal, state or municipal authority.

7.6 UTILITIES. During the Term, TENANT will pay for all water, gas, garbage, sewage, electricity, telephone, and other utilities and communications services used by TENANT on the Premises, whether or not such services are billed directly to TENANT. TENANT will also procure, or cause to be procured, without cost to LANDLORD, any and all necessary permits, licenses, or other authorizations required for the lawful and proper installation and maintenance upon the Premises of utility appurtenances and appliances for use in supplying such utilities and services to and upon the Premises. LANDLORD, upon request of TENANT, and at the sole expense and liability of TENANT, will join with TENANT in any application required for obtaining or continuing any such services, provided that such services do not violate any other applicable provision of this Lease.

7.7 LANDLORD'S RIGHT TO REPAIR. In the event any damage or injury shall occur to the Property or the buildings thereon of any kind or nature whatsoever, TENANT shall promptly cause said damage or injury to be fully repaired at TENANT's own cost and expense. In the event TENANT fails to accomplish such repairs after receipt of written notice by the LANDLORD, then in that event LANDLORD may, but is not required to, enter the Premises and accomplish same and bill TENANT therefor, which billing shall be payable on demand.

7.8 TRASH AND GARBAGE. TENANT shall place all trash and garbage into such areas and containers as are designed and intended to accommodate the trash and garbage generated within or on the Premises. TENANT shall not allow trash and/or garbage to accumulate such that a nuisance or health hazard results.



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## **8. Improvements.**

8.1 FUNDING. TENANT shall be solely responsible for providing adequate funding for any alterations or improvements, including those improvements described in Section 5.1, and such alterations or improvements shall be made without cost to LANDLORD.

8.2 PREVAILING WAGES. TENANT shall comply with any prevailing wage requirements set forth in Chapter 39.12 RCW, and Section 39.04.260 RCW, which may be applicable to the construction of TENANT's improvements.

8.3 PUBLIC WORK. It is understood by the parties that any alteration, repair, or improvement to the Premises may be considered to be a Public Work, as that term is defined in Section 39.04.010 RCW, and must therefore conform to local and state requirements governing public works. TENANT shall remain solely responsible for complying with such requirements.

8.4 FACILITY CONSTRUCTION. Pursuant to Section 5.1, TENANT shall construct those Facilities described in that Section. The LANDLORD shall execute such licenses and easements that, in the LANDLORD's sole discretion, are reasonably necessary to facilitate such construction processes.

8.5 SUBSEQUENT ALTERATIONS. After such time as the Premises have been completed and accepted as defined above the Tenant shall not make any alterations to the Premises, or to the Park Facility, including any changes to the landscaping, without the LANDLORD's prior written consent. Any alterations made, including those alterations described in Section 5.1, shall remain on the Property and be surrendered with the Premises upon expiration or termination of this Lease, except that LANDLORD may elect at the time of such expiration or termination to require TENANT to remove any alterations which TENANT may have made to the Premises. If LANDLORD so elects, at its own costs TENANT shall restore the premises to the condition designated by the LANDLORD, before the last day of the Term.

8.6 FACILITY CONSTRUCTION AND MAINTENANCE. TENANT shall at all times conduct its construction and maintenance activities so as not to create a nuisance or hazard within LANDLORD's park facilities. TENANT shall safeguard its construction site (including its materials storage areas) as follows:

- (a) TENANT shall be responsible for providing adequate work zone safety controls for the protection of public pedestrian and vehicular traffic in and around the Premises;
- (b) TENANT shall be responsible for site security during non-construction hours, including the provision of adequate warning devices and barriers to hazardous conditions;
- (c) TENANT shall notify LANDLORD at least 48 hours in advance of the closure of any street on park grounds. TENANT shall provide for emergency vehicle access during such times as streets are closed;

(d) TENANT shall be responsible for the protection of public and private property during construction, including the identification and protection of telecommunication lines;

(e) TENANT shall restore the site to its original condition at the completion of any construction or maintenance activities;

(f) TENANT shall be responsible for the safeguarding of any construction supplies, debris, unguarded machinery, equipment, or other devices having the characteristics of an attractive nuisance likely to attract children and be hazardous to their safety;

(g) TENANT shall promptly remove any loose material and debris resulting from TENANT's construction or maintenance operations from park facilities roadways

(h) TENANT shall be solely responsible for ensuring compliance with OSHA, WISHA, or other workplace safety standards for all construction and maintenance operations.

## **9. Use of Premises.**

9.1 USE. TENANT will use and occupy the leased premises throughout the entire term hereof for the purpose of providing indoor athletic and recreational opportunities all in accordance with those standards set forth in Exhibit "E", and, at TENANT's option, TENANT may provide concessions in the form of food and beverage solely for the enjoyment of the patrons of Building A, and the sale of incidental items directly related to the use of the recreation facility (including, but not limited to, gym equipment, soap, shampoo and similar shower supplies, and clothing related to athletic pursuits) and TENANT shall use the Premises for no other purposes whatsoever unless TENANT first obtains the written consent of LANDLORD, which consent LANDLORD may withhold in its sole and absolute discretion, PROVIDED, THAT, no more than ten percent (10%) of the floor area of Building A shall be dedicated or used for the sale of such incidental items, AND PROVIDED FURTHER, THAT, no more than ten percent (10%) of the floor area of Building A shall be dedicated or used for the sale and service of food and beverages. By taking possession of the Premises, TENANT has determined to its satisfaction that the Premises can be used for that purpose.

9.2 SOCIAL EVENTS. Notwithstanding the foregoing, TENANT shall allow no parties, social gatherings, festivities, celebrations, or any other similar events at which alcohol is served, or at which amplified music is to be supplied, PROVIDED THAT, TENANT may allow the service of alcoholic beverages at such events upon the prior written approval of the LANDLORD, which approval may be denied in the LANDLORD's sole discretion, and PROVIDED FURTHER that TENANT shall submit adequate proof to LANDLORD of adequate insurance coverage naming the LANDLORD as an additional insured together with proof of the issuance to the TENANT of such liquor control permits as may be applicable. TENANT shall not use the Premises for any disorderly, unlawful, or hazardous purpose, nor as a source of annoyance to LANDLORD, or so as to violate the ability of neighboring property owners to the quiet enjoyment of their properties. TENANT shall conduct its operations so as to preclude violation of the City of Mount Vernon's noise ordinance, Chapter 9.28 MVMC as that chapter now exists or may hereafter be amended.



9.3 **NUISANCES.** TENANT shall not use or occupy the Premises or the property in violation of the certificate of occupancy issued for the Premises, and may not do, bring, or keep anything in or about the Premises that will cause an increase of LANDLORD's insurance premiums, or the cancellation of any insurance covering the property. If TENANT does cause any such increase in insurance premiums, TENANT shall pay or reimburse LANDLORD for the entire amount thereof, without regard to whether LANDLORD elects to terminate this Lease as a result of TENANT's unauthorized use of the Premises. TENANT may not use the Premises in any manner that will constitute a waste or nuisance, nor may TENANT do anything that will cause damage to the Property. TENANT shall not use or occupy or permit the Premises to be used or occupied in any manner that will violate any present or future laws, rules or regulations of any governmental authority having jurisdiction.

10. **Signs.** TENANT may place and maintain upon the leased property such neat and appropriate signs as it may receive a sign permit for. Upon the termination of this Lease, TENANT shall remove all such signs and repair any damage to the leased property caused by the erection, maintenance, or removal of such signs, if so directed by LANDLORD.

11. **Utilities.** TENANT shall pay all charges for electricity, heat, garbage, sewage, telephone, water and other utilities which shall be charged against the Premises during the Term of this Lease and all renewals thereof.

12. **No Representations.** Neither LANDLORD nor its agents have made any representations with respect to the building, the land upon which it is erected, or the Premises except as expressly set forth herein, and no rights, easements or licenses are acquired by TENANT by implication or otherwise except as expressly set forth in the provisions of this Lease. Taking of possession of the Premises by TENANT shall be conclusive evidence that TENANT accepts the same "AS IS" and that the premises were in good condition at the time possession was taken.

13. **Liens.** Except as provided in Section 6.2 hereof, TENANT shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of LANDLORD in the Premises or to charge the rentals payable hereunder for any claim in favor of any person dealing with TENANT, including those who may furnish materials or perform labor for any construction or repairs, and each such claim shall affect and each such lien shall attach to, if at all, only the leasehold interest granted to TENANT by this instrument. If any such liens are filed, LANDLORD may, without waiving its rights and remedies for breach, and without releasing TENANT from its obligations hereunder, require TENANT to post security in form and amount reasonably satisfactory to LANDLORD or cause such liens to be released by any means LANDLORD deems proper, including payment in satisfaction of the claim giving rise to the lien. TENANT shall pay to LANDLORD upon demand any sum paid by LANDLORD to remove the liens, together with interest from the date of payment by LANDLORD, at the lesser of 1-1/2 percent per month or the maximum rate permissible by law. Further, TENANT agrees that it will save and hold the LANDLORD



harmless from any and all loss, cost, or expenses based on or arising out of the asserted claims or liens against the leasehold estate or against the right, title, and interest of the LANDLORD in the Premises or under the terms of this Lease, including reasonable attorney's fees and costs incurred by LANDLORD in removing such liens, and in enforcing this paragraph.

#### **14. Insurance.**

14.1 At all times during the term of this Lease and of any extensions hereof, TENANT shall, at its sole cost and expense and as additional rent, maintain in full force and effect the following insurance coverages:

- (a) Commercial General Liability with a minimum coverage of \$1,000,000 payable to any one person for personal injury or death arising out of one occurrence, and \$500,000 for property damage arising out of any one occurrence. The limits of such policy shall be reviewed by the TENANT annually, and the policy limits adjusted so as to account for inflation;
- (b) Fire and other Casualty coverage (all risk, excluding earthquake and flood) insurance covering the contents of the Premises, including all personal property, fixtures, and TENANT improvements and trade fixtures. Such policy shall include a replacement cost endorsement.

14.2 ADDITIONAL INSURED. All policies of insurance required to be maintained by TENANT shall name TENANT, LANDLORD, and TENANT's mortgagee, if any, jointly as insureds as their respective interests may appear. All such policies of insurance shall, to the extent obtainable, provide that any loss shall be payable to LANDLORD or to the holder of any mortgage notwithstanding any act or negligence of TENANT which might otherwise result in the forfeiture of such insurance.

14.3 CERTIFICATE. All insurance required to be maintained by TENANT under this Lease shall be effected with insurers authorized to transact business in the State of Washington, and with a company acceptable to LANDLORD. On the effective date of this Lease, and thereafter not less than 15 days prior to the expiration dates of the existing policies furnished pursuant to this paragraph, certificates evidencing the required insurance shall be delivered by TENANT to LANDLORD. Within 15 days after any premium on each such policy shall become due and payable, evidence shall be supplied to LANDLORD of such payment.

14.4 CANCELLATION NOTICE. All insurance required to be maintained by TENANT shall include a ten-day cancellation notice to LANDLORD.

14.6 WAIVER OF SUBROGATION. Any policy of insurance carried by either LANDLORD or TENANT shall, to the extent available, contain a waiver of subrogation clause on the part of the insurer. Such waiver shall apply to damages to adjacent property.



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14.7 USE OF INSURANCE PROCEEDS. In the event of any loss covered by the insurance policies described above, unless this Lease shall be terminated as provided herein, the proceeds of such insurance policies shall be used by TENANT first to restore or replace the improvements, fixtures, and equipment which may be damaged or destroyed by such casualty.

14.8 DEFAULT. TENANT's failure to provide and keep in force the aforementioned insurance will be regarded as a default hereunder, entitling LANDLORD to exercise any and all of the remedies provided in this Lease for default.

## **15. Waiver and Indemnification.**

15.1 TENANT INDEMNITY. Except as otherwise provided in this Section, TENANT shall indemnify, defend (using legal counsel acceptable to LANDLORD), and hold LANDLORD, its officers, agents, employees and contractors, harmless from and against any and all claims, demands, causes of action, penalties, fines, liabilities, suits or judgments, and expenses (including LANDLORD's personnel and overhead costs and attorney's fees and other expenses 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 (a) TENANT's occupation, use or improvement of the Premises, or that of its employees, agents, or contractors; (b) TENANT's breach of its obligations hereunder; or (c) any act or omission of TENANT or any subtenant, licensee, assignee, transferee, or concessionaire of TENANT, or of any officer, employee, guest, or invitee of TENANT, or of any such entity in or about the Premises. In the event of any claims made or suits filed against LANDLORD, LANDLORD shall endeavor to give TENANT prompt written notice thereof and TENANT shall have the right to defend or settle the same to the extent of its interest hereunder. TENANT agrees that the foregoing indemnity specifically covers actions brought by its own employees. This indemnity with respect to acts or omissions during the term of this Lease shall survive termination or expiration of this Lease. The foregoing indemnity is specifically and expressly intended to constitute a waiver of TENANT's immunity under Washington's industrial Insurance Act, Title 51 RCW, to the extent necessary to provide LANDLORD with a full and complete indemnity from claims made by TENANT and its employees, to the extent of their negligence, provided that this section and this Lease agreement shall not be construed so as to create a benefit for any third party. TENANT shall promptly notify LANDLORD of casualties or accidents occurring about the Premises (excluding those casualties or accidents occurring within the Premises.)

**LANDLORD AND TENANT ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.**

15.2 RELEASE OF CLAIMS. TENANT hereby fully and completely waives and releases all claims against LANDLORD for any losses or other damages sustained by TENANT or any person claiming through TENANT resulting from any accident or occurrence in or upon



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the Premises, including but not limited to: any defect failure, surge in, or interruption of utility services; or any failure by LANDLORD to make repairs, provided that LANDLORD may be held liable for actual damage to persons or property (excluding consequential damages such as lost profits) to the extent caused by the gross negligence or willful misconduct of LANDLORD.

**15.3 LANDLORD INDEMNITY.** Except as otherwise provided in this Section, LANDLORD shall indemnify, defend (using legal counsel acceptable to TENANT), and hold TENANT, its officers, agents, employees and contractors, harmless from and against any and all claims, demands, causes of action, penalties, fines, liabilities, suits or judgments, and expenses (including TENANT's personnel and overhead costs and attorney's fees and other expenses 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 (a) LANDLORD's ownership, use or improvement of the Park Facility, or that of its employees, agents, or contractors; (b) LANDLORD's breach of its obligations hereunder; or (c) any act or omission of LANDLORD or any subtenant, licensee, assignee, transferee, or concessionaire of LANDLORD, or of any officer, employee, guest, or invitee of LANDLORD, or of any such entity in or about the Park Facility outside the Premises. LANDLORD agrees that the foregoing indemnity specifically covers actions brought by its own employees. This indemnity with respect to acts or omissions during the term of this Lease shall survive termination or expiration of this Lease. The foregoing indemnity is specifically and expressly intended to constitute a waiver of LANDLORD's immunity under Washington's industrial Insurance Act, Title 51 RCW, to the extent necessary to provide TENANT with a full and complete indemnity from claims made by LANDLORD and its employees, to the extent of their negligence, provided that this section and this Lease agreement shall not be construed so as to create a benefit for any third party.

**LANDLORD AND TENANT ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.**

**15.4 LIMITATION OF INDEMNITY.** In compliance with RCW 4.24.115 as in effect on the date of this Lease, all provisions of this Lease pursuant to which LANDLORD or TENANT (the "Indemnitor") agrees to indemnify the other (the "Indemnatee") 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 to real estate, including the buildings to be constructed pursuant to this Lease, (a) shall not apply to damages caused by or resulting from the sole negligence of the Indemnatee, its agents or employees, and (b) to the extent caused by or resulting from the concurrent negligence of (i) the Indemnatee or the Indemnatee's agents or employees, and (ii) 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 LANDLORD or TENANT be deemed amended so as to remove any of the restrictions contained in this Section no longer required by then applicable law.



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15.5 **RELEASE; WAIVER OF SUBROGATION.** Notwithstanding any other provision of this Lease, neither LANDLORD nor TENANT shall be liable to the other party or to any insurance company (by subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or tangible personal property of the other occurring in or about the Premises or Park Facilities, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees, if such loss or damage is covered by insurance issued by an insurance carrier authorized or licensed by the Insurance Commissioner of the State of Washington to issue lines of insurance, benefiting the party suffering such loss or damage or was required under the terms of this Lease to be covered by insurance by the party covering the loss.

15.6 TENANT agrees that no officer, agent, or employee of LANDLORD, or its constituent entities will be personally liable for any obligations of LANDLORD hereunder, and that TENANT must look solely to the interest of LANDLORD in the Property for enforcement of any claim against LANDLORD arising hereunder.

16. **Risk of Loss.** All personal property of any kind or description whatsoever in the leased premises shall be at the TENANT's sole risk, and LANDLORD shall not be liable for any damage done to, or loss of, such personal property.

17. **Destruction of Premises.** In the event the Premises are destroyed or injured by fire, earthquake, or other casualty, then TENANT shall proceed to rebuild and restore the Premises, or such part thereof as may be injured as aforesaid.

18. **Assignment, Subletting, and Succession.**

18.1 **DEFINITIONS.** As used in this section, the term "Transfer" shall include (a) any assignment of TENANT's interest in this Lease; (b) the subletting of all or a portion of the Premises; (c) any mortgaging or encumbering of TENANT's interest in this Lease; or (d) any transaction the immediate or cumulative effect of which is to change the ownership structure or effective control of TENANT. If TENANT is a corporation, any assignment of this Lease by merger, consolidation, or liquidation or any change in ownership, or power to vote the majority of the outstanding voting stock of TENANT, constitutes a Transfer for the purposes of this section. If TENANT is a partnership or proprietorship, an assignment of a controlling interest in such partnership or proprietorship constitutes a Transfer for the purposes of this section.

18.2 **CONSENT OF LANDLORD.** TENANT shall not engage in a Transfer without obtaining the prior written consent of LANDLORD, nor shall any Transfer of this Lease be effectuated by operation of law or otherwise without the prior written consent of LANDLORD. LANDLORD shall not unreasonably withhold, condition, or delay its consent to any Transfer request of TENANT.

18.3 NOTICE TO LANDLORD: If TENANT at any time desires to Transfer this Lease, it must first provide LANDLORD with forty-five (45) days advance written notice of TENANT's proposed Transfer, together with copies of any proposed Transfer document and such financial and business information concerning the proposed transferee as LANDLORD may request. LANDLORD shall have the right during the forty-five day period to:

- (a) release TENANT from this Lease;
- (b) consent to the Transfer; or
- (c) refuse to consent to TENANT's proposed Transfer and to continue this Lease in full force and effect as to the entire Premises.

18.4 REASONS FOR DENIAL. Without limiting the reasons LANDLORD may rely upon to reject a proposed Transfer, LANDLORD shall not be required to consent to a Transfer, and its refusal to consent shall be deemed reasonable, if any of the following conditions exist:

- (a) the proposed transferee's net worth is not equal to that of TENANT as of the date hereof;
- (b) the proposed transferee has an unsatisfactory credit record;
- (c) the Transfer would involve a change of use of the Premises;
- (d) the proposed transferee does not have a reputation at least equivalent to that of the TENANT as of the date of this Lease, or would in some other way diminish the reputation of the park facility by conducting its business at the Premises;
- (e) as a result of the proposed Transfer, LANDLORD would be required to incur additional costs, such as the construction of improvements to the park facility, or as a result of the proposed Transfer, LANDLORD's costs of operating the park facility would increase; or
- (f) Tenant is in default pursuant to this Lease.

18.5 TRANSFER TO PARENT OR SUBSIDIARY. Notwithstanding the foregoing paragraph, provided TENANT is not in default, and pursuant to the conditions contained in this paragraph, TENANT may assign its interest in the Premises without seeking LANDLORD's consent to a parent or subsidiary of TENANT if the following conditions are met:

- (a) The proposed transferee has a net worth at least equal to the greater of:
    - (i) TENANT's net worth as of the date of this Lease; or
    - (ii) TENANT's net worth as of the date of the proposed Transfer.
  - (b) The proposed transferee may use the Premises only for the Permitted use;
- and
- (c) The proposed transferee shall execute a document in form satisfactory to LANDLORD pursuant to which the transferee assumes all of TENANT's obligations pursuant to this Lease, and shall be and become jointly and severally liable with TENANT for the nonperformance of this Lease.

18.6 NO RELEASE. Any Transfer by TENANT hereunder, whether to a permitted transferee or to a transferee that requires LANDLORD's written consent, shall not act to release TENANT from its obligations hereunder, and TENANT shall remain primarily liable for the



performance of each and every term and condition of this Lease. No further or additional Transfer shall be made, except upon compliance with and subject to all of the provisions of this section.

18.7 **ASSIGNMENT BY LANDLORD.** LANDLORD shall have the right, without selling its fee interest in the leased property, to assign at any time from time to time this Lease and/or all or a portion of the rents payable hereunder to persons, firms, corporations, trusts, bondholders, or other entities designated by LANDLORD in a written notice to TENANT, and in any such case TENANT shall pay the net rent, subject to the terms of this Lease, to LANDLORD's designee at the address mentioned in any such notice for the period covered by such assignment.

18.8 **FORECLOSURE.** Notwithstanding the foregoing, LANDLORD shall not object to any Transfer resulting from the foreclosure of any mortgage or deed of trust securing the construction of improvements on the premises. The holder of any such mortgage or deed of trust shall promptly execute any document acceding to this Lease.

18.9 LANDLORD has the option, which may be exercised within 30 days from the date of receipt of notice received pursuant to Section 18.3, to require TENANT to execute an assignment to LANDLORD of this Lease or a sublease to LANDLORD of the Premises (or such portion of either as TENANT desires to sublet or assign, as the case may be) with the right of LANDLORD to assign or sublet to anyone. If LANDLORD exercises this option and such assignment or sublease is at or above the rental rate specified in this Lease, then TENANT will be released from all further liability hereunder from and after the effective date of the assignment or sublease, with respect to the portion of the Premises subject thereto. If LANDLORD does not exercise its option to recapture within 30 days from the date of receipt of notice, then TENANT may thereafter assign this Lease or sublet the Premises as proposed, provided that LANDLORD has consented in writing thereto. No inaction by LANDLORD in connection with its rights under this Section 18.9 will constitute an approval of a proposed assignment or sublease. Whether or not LANDLORD shall grant consent to an assignment or subletting, TENANT shall pay LANDLORD the reasonable legal fees LANDLORD incurs to review the proposal.

19. **Attornment.** TENANT shall in the event of the sale or assignment of LANDLORD's interest in the building of which the Premises form a part, attorn to the purchaser and recognize such purchaser as LANDLORD under this Lease thereafter.

20. **LANDLORD's Financing.** TENANT agrees to negotiate in good faith with LANDLORD at any time, and from time to time, to make such changes in the terms and conditions of this Lease as may be reasonably required to secure financing in connection with the acquisition, development, extension or future improvement of LANDLORD's properties.

21. **Compliance with Law.** TENANT shall use the Premises in accordance with all statutes, ordinances, and regulations of any governmental entity having jurisdiction.



**22. TENANT'S Employees.** TENANT shall not employ any individual to work at the Premises who:

(a) has been adjudicated or convicted of a sex offense as defined in RCW 9A.44.130 or a kidnapping offense as defined by RCW 9A.44.130;

(b) is under the jurisdiction of the indeterminate sentence review board as the result of a sex offense or kidnapping offense;

(c) has been committed as a sexually violent predator under chapter 71.09 RCW or as a sexual psychopath under chapter 71.06 RCW;

(d) has been found not guilty of a sex offense or kidnapping offense by reason of insanity under chapter 10.77 RCW;

(e) has been found incompetent to stand trial for a sex offense or kidnapping offense and subsequently committed under chapter 71.05 or 71.34 RCW; or

(f) has been adjudicated or convicted of voyeurism as defined by RCW 9A.44.115.

**23. TENANT's Default.**

**23.1 EVENTS OF DEFAULT.** The occurrence of any one or more of the following events constitutes a default under this Lease by TENANT:

(a) TENANT shall be in default of the performance of any covenants, conditions, or provisions of this Lease, other than the covenants for the payment of rent, where such failure continues for a period of thirty (30) days after written notice is given by LANDLORD; provided that if the nature of TENANT's obligations is such that more than thirty (30) days are reasonably required for cure, TENANT will not be in default if TENANT commences to cure within thirty (30) days of LANDLORD's notice and thereafter diligently pursues completion and completes performance within a reasonable time.

(b) TENANT shall be adjudged a bankrupt, make a general assignment for the benefit of creditors, or take the benefit of any insolvency act, or if a permanent receiver and trustee in bankruptcy shall be appointed for TENANT's property and such appointment is not vacated within thirty (30) days (for these purposes the "TENANT" shall mean TENANT who is then in possession of the Premises);

(c) Premises become vacant or deserted for a period of thirty (30) days;

(d) If this Lease shall be assigned or the Premises sublet other than in accordance with the terms of this Lease and such default is not cured within twenty (20) days after written notice to TENANT;





(e) TENANT shall fail to make any payment of Rent when due, or fail to make any other payment required hereunder when due, when that failure is not cured within five days after mailing of written notice thereof by LANDLORD; or

(f) TENANT shall fail to comply with the same Lease term or covenant on three occasions during the Term, even if such breach is cured within the applicable cure period.

23.2 REMEDIES. If any of the above events of default are not cured within the period stated above, LANDLORD may immediately or at any time thereafter and without further notice or demand, terminate the Lease, and/or re-enter into and upon the Premises or any part thereof and take possession of the same, fully and absolutely without such re-entry working a forfeiture of the rents to be paid or of the covenant or covenants to be performed by TENANT and any guarantors for the full term of this Lease, lease or sublease the premises or any part thereof on such terms and conditions and for such rents and for such period of time as LANDLORD may elect, and after crediting the rent actually collected by LANDLORD for such reletting against the rental stipulated to be paid under this Lease by TENANT, collect from TENANT any balance due on the rent reserved under this Lease, plus all additional costs to LANDLORD of reletting the premises. TENANT shall pay any such deficiency each month as the amount thereof is ascertained by LANDLORD, without the necessity of separate enforcement proceedings. Upon termination, all damages shall become due.

23.3 ADDITIONAL RENT. TENANT agrees to pay as additional rent any and all sums which may become due by reason of the failure of TENANT to comply with all the covenants of this Lease and any and all damages, costs, and expenses which LANDLORD may suffer or incur by reason of any default of TENANT, or failure on TENANT's part to comply with all the covenants of this Lease, and also any and all damages to the Premises caused by any act or neglect of TENANT.

23.4 NOTICE OF DEFAULT. Nothing in this paragraph shall be deemed to require LANDLORD to give TENANT any notice, other than such notice as may be required by statute, prior to the commencement of any unlawful detainer action, it being intended that the five (5) day notice is only for the purpose of creating a conditional limitation hereunder pursuant to which this Lease shall terminate.

23.5 LANDLORD'S OPTION TO CURE. Without in any way limiting the above remedies in the event of default, if TENANT shall default in the performance of any covenant or condition in this Lease required to be performed by TENANT, LANDLORD may at its option and upon twenty (20) days written notice to TENANT, or without notice if in LANDLORD's opinion an emergency exists, perform such covenant or condition for the account and at the expense of TENANT. If LANDLORD shall incur any such expense to remedy a default, TENANT shall reimburse LANDLORD for all



sums paid to effect such cure, together with interest at the rate of twelve percent (12%) per annum and reasonable attorney's fees. Should TENANT, pursuant to this Lease, become obligated to reimburse or otherwise pay LANDLORD any sum of money under this provision, the amount thereof shall be deemed additional rent and LANDLORD shall have all the remedies for default in payment of rent provided for otherwise in this section. The provisions of this paragraph shall survive the termination of this Lease.

23.6 **ADDITIONAL REMEDIES.** The statement of specific remedies as set forth above is not exclusive, and LANDLORD shall, at its option, have available any and all other remedies for default available to it under the laws of the State of Washington.

24. **LANDLORD's Default.** LANDLORD will not be in default unless LANDLORD fails to perform an obligation within thirty (30) days after notice by TENANT, which notice must specify the alleged breach; provided that if the nature of LANDLORD's obligation is such that more than thirty [30] days are reasonably required for cure, then LANDLORD will not be in default if LANDLORD commences to cure within thirty [30] days of TENANT's notice and thereafter diligently pursues completion and completes performance within a reasonable time.

25. **Additional Parking.** The City shall allow TENANT during the term of this Lease to use, for parking purposes and only in support of the authorized use of the Property under this Lease, on a first come first serve basis and at no charge, such existing general parking as described in Exhibit "D," for so long as such property is used as a parking lot by the City. TENANT shall have no obligation to sign or in any fashion maintain the parking described in Exhibit "D."

26. **Access.**

26.1 **ENTRY.** LANDLORD may enter the Premises at all times to inspect; provide services required hereunder; post notices of nonresponsibility; or determine TENANT's compliance with the provisions of this Lease, all without being deemed a constructive eviction. Any person or persons who may have an interest in the purpose of LANDLORD's visit may accompany LANDLORD. LANDLORD has the right to use any and all means that LANDLORD deems proper to open doors and gates in an emergency in order to obtain entry to the Premises.

26.2 **TENANT'S OBLIGATION TO PERFORM.** Nothing herein shall imply any duty upon LANDLORD to do any work which under any provision of this Lease TENANT may be required to perform, and the performance thereof by LANDLORD shall not constitute a waiver of TENANT's default. LANDLORD shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business, or other damage to TENANT or the Transferees of TENANT by reason of making such repairs or the performance of any such work in or on the leased property, or on account of bringing materials, supplies, and equipment into or through the leased property during the course



of such work. The obligations of TENANT under this Lease shall not thereby be affected in any manner.

**27. Right to Show Property.** TENANT shall permit inspection of the Premises by or on behalf of prospective purchasers of said premises, during business hours, at any time during the Lease term or any extension thereof. During the two months prior to the expiration of the term of this Lease or of any extension hereof, if the renewal option has not been exercised, TENANT shall permit inspection of the Premises during reasonable hours by LANDLORD's agents.

**28. Notices.** Any notice required or permitted hereunder must be in writing and will be effective upon the earlier of personal delivery or three days after being mailed by certified mail, return receipt requested, addressed to TENANT or to LANDLORD at the address for that party designated in Section 1.3 of this Lease. Either party may specify a different address for notice purposes by written notice to the other, except that LANDLORD may in any event use the Premises as TENANT's address for notice purposes.

**29. Eminent Domain.** The following rules shall govern the rights and duties of the parties in the event of interference with the occupancy of the property by TENANT by right of eminent domain or private purchase in lieu thereof:

29.1 If the whole of the Premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain, or by private purchase in lieu thereof, then this Lease shall automatically terminate as of the date that title shall be taken. If more than twenty-five percent (25%) of the leased area shall be so taken and if the taking renders the remainder thereof unusable for the purposes for which the premises were leased, then LANDLORD and TENANT shall each have the right to terminate this Lease on thirty (30) days notice to the other given within ninety (90) days after the date of such taking.

29.2 If any part of the Premises shall be so taken and this Lease shall not terminate, then the LANDLORD shall, at its own cost and expense, restore the remaining portion of the Premises to the extent necessary to render it reasonably suitable for the purposes for which it was leased, and shall make all repairs to the building of which the Premises form a part to the extent necessary to constitute the building a complete architectural unit; provided, that the costs of such work shall not exceed 1/20th of the proceeds of its condemnation award.

29.3 All compensation awarded or paid upon such a total or partial taking of the leased property shall belong to and be the property of LANDLORD without any participation by TENANT; provided, however, that nothing contained herein shall be construed to preclude TENANT from prosecuting any claim directly against the condemning authority for the cost of removal of the stock, trade fixtures, furniture and other personal property belonging to TENANT; provided, however, that no such claim



shall diminish or otherwise affect LANDLORD's award or award of any mortgagee of the fee interest, if any.

**30. Vacation of Premises - Holding Over.** Upon written notice from LANDLORD given at any time prior to the expiration of the Term, TENANT shall promptly vacate the Premises on or before the last day of the Term, leaving the Premises as described in Section 33. If TENANT holds over after the expiration or earlier termination of the Term without the express written consent of LANDLORD, TENANT will be a TENANT at sufferance only and otherwise subject to the terms, covenants, and conditions herein specified, insofar as applicable. The provisions of this section are in addition to and do not affect LANDLORD's right of re-entry or any other rights of LANDLORD hereunder or as otherwise provided by law. TENANT hereby indemnifies and agrees to hold harmless LANDLORD from all loss, injury, or liability arising from TENANT's failure to surrender the Premises upon the expiration or termination of this Lease.

**31. Brokers.** TENANT warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, and that it knows of no other real estate broker or agent who is or might be entitled to a commission in connection with this Lease. If TENANT has dealt with any other person or real estate broker with respect to leasing or renting space in the Property, TENANT shall be solely responsible for the payment of any fee due to that person or firm, and TENANT shall indemnify and hold LANDLORD harmless from and against any liability in respect thereof.

**32. Successors and Assigns.** Except as otherwise provided in this Lease, all of the covenants, conditions, and provisions of this Lease are binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors, and assigns. If LANDLORD sells or otherwise conveys its title to the Property, then, after the effective date of such sale or conveyance, LANDLORD will have no further liability under this Lease to TENANT except as to matters of liability which have accrued and are unsatisfied as of the date of sale or conveyance, and TENANT must seek performance solely from LANDLORD's purchaser or successor in title. LANDLORD's successor will have all rights of LANDLORD hereunder.

**33. Surrender of Premises.** The voluntary or other surrender of this Lease by TENANT, or a mutual cancellation thereof, shall not work a merger, and will, at the option of LANDLORD, operate as an assignment to it of any or all subleases. TENANT shall on the last day of the Lease term, or upon the sooner termination of the term, peaceably and quietly surrender the Premises to LANDLORD and all the alterations and additions thereto, broom clean. Any of TENANT's property not removed by TENANT upon surrender of the Lease shall become the property of LANDLORD. The delivery of keys to any employee of LANDLORD or to LANDLORD's agent or any employee thereof shall not be sufficient to constitute a termination of this Lease or a surrender of the Premises.

**34. Performance by TENANT.** Except as otherwise expressly provided hereunder, all covenants and agreements to be performed by TENANT under this Lease will be performed by TENANT at TENANT's sole cost and expense. If TENANT fails to pay any sum of money owed to any party other than LANDLORD for which TENANT is liable hereunder, or if TENANT fails to perform any other act on its part to be performed hereunder, and such failure continues for ten days after notice thereof by LANDLORD, LANDLORD may, without waiving or releasing TENANT from its obligations, make any such payment or perform any such other act to be made or performed by TENANT. TENANT shall pay LANDLORD, on demand, all sums so paid by LANDLORD and all necessary incidental costs, together with interest thereon at the lesser of 1½ percent per month or the maximum rate permissible by law, from the date of such payment by LANDLORD.

**35. Americans with Disabilities Act.** Within ten days after receipt, TENANT shall advise LANDLORD in writing, and provide LANDLORD with copies of (as applicable): (a) any notices alleging violation of the Americans with Disabilities Act of 1990 ("ADA") relating to any portion of the Premises; (b) any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the Premises; or (c) any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Premises. TENANT shall fully comply with the ADA.

**36. Identification of TENANT.** If more than one person executes this Lease as TENANT: (a) each of them is jointly and severally liable for performing all of the terms of this Lease to be performed by TENANT; and (b) the term "TENANT" as used in this Lease means and includes each of them jointly and severally. The act of or notice from, or notice or refund to or signature of any one or more of them, with respect to the tenancy of this Lease, including, but not limited to, any renewal, extension, expiration, termination, or modification of this Lease, is binding upon each and all of the persons executing this Lease as TENANT with the same force and effect as if each and all of them had so acted or so given or received such notice or refund or so signed.

**37. Execution Required.** Submission of this instrument for examination or signature by TENANT does not constitute a reservation of or option for lease, and is not effective as a lease or otherwise until execution by and delivery to both LANDLORD and TENANT.

**38. Time of Essence.** Time is of the essence of this Lease and of every provision hereof.

**39. Quiet Enjoyment.** TENANT, on performing all the covenants and conditions hereof, shall, at all times during the demised term, peaceably and quietly have, hold, and enjoy the leased property, provided however, that no eviction of TENANT for any reason whatever, after LANDLORD shall have conveyed the fee of the leased property, shall be construed as a breach of this covenant, and no action therefor shall be brought against LANDLORD.



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**40. Covenants Real.** Every covenant in this Lease shall be deemed and treated to be a covenant real running with the Premises during the term hereof, and shall extend to the heirs, legal representatives, successors and assigns of the parties. No change in LANDLORD's ownership of the premises, or rights to the rents payable hereunder, however accomplished, shall operate to enlarge the obligations or reduce the rights of TENANT. No change in LANDLORD's ownership in the premises shall be binding upon TENANT for any purpose until TENANT shall have been given notice thereof.

**41. Prior Agreements.** This Lease contains all of the agreements of the parties with respect to any matter covered or mentioned in this Lease, and no prior agreement, letter of intent or understanding pertaining to any such matter will be effective for any purpose. No oral modification of, or amendment to, this Lease shall be effective; however, this Lease may be modified or amended by a written agreement signed by both parties to this Lease.

**42. Recording.** Neither party may record this Lease, nor any memorandum thereof, without the prior consent of the other party.

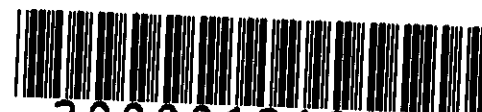
**43. Severability.** Any provision of this Lease which proves to be invalid, void, or illegal will in no way affect, impair, or invalidate any other provision hereof, and such other provisions will remain in full force and effect.

**44. Applicable Law and Venue.** This Lease is made pursuant to and shall be construed in accordance with the laws of the State of Washington. LANDLORD and TENANT hereby agree that venue of any action relating to this Lease will be in Skagit County, Washington.

**45. Hazardous Substances.**

45.1 DEFINITION. As used herein, the term "Hazardous Substance" means any hazardous, toxic, or dangerous substance, waste, or material, which is or becomes regulated under any federal, state, or local statute, ordinance, rule, regulation, or other law now or hereafter in affect pertaining to environmental protection, contamination, or cleanup.

45.2 INFORMATION. TENANT shall keep upon the Premises, in a location accessible to Landlord on request during normal business hours, copies of all reports regarding hazardous or toxic materials in the Premises that TENANT has provided to any governmental agency in the previous quarter. TENANT shall, upon request and at TENANT's expense, provide LANDLORD with a copy of any such report as to which LANDLORD request a copy. In the event of any accident, spill, or other incident involving hazardous or toxic matter that TENANT is required to report to any governmental agency, TENANT shall immediately report the same to the LANDLORD and supply LANDLORD with all information and reports with respect to the same, together with TENANT's clean-up or remediation plan and schedule. If such clean-up or remediation plan is not acceptable to LANDLORD in LANDLORD's sole discretion, LANDLORD may so notify TENANT and, upon 48 hours prior written notice (or



without notice if so required by an emergency) may enter on the Premises to conduct the clean-up or remediation and charge the TENANT the costs thereof as additional rent. All information described herein shall be provided to LANDLORD regardless of any claim by TENANT that it is confidential or privileged, provided that, to the extent such information does not relate to a public hazard within the scope of Engrossed Senate Bill 5362 enacted by the 53<sup>rd</sup> Legislature in the 1993 Regular Session, State of Washington, LANDLORD shall not publish or disclose the information to any third party.

45.3 **INDEMNIFICATION.** TENANT agrees to hold harmless, protect, indemnify, and defend LANDLORD from and against any damage, loss, claim, or liability, INCLUDING Attorney's fees and costs, resulting from TENANT's use, disposal, transportation, generation, and/or sale of any Hazardous Substances. LANDLORD agrees to hold harmless, protect, indemnify, and defend TENANT from and against any damage, loss, claim, or liability, including attorney's fees and costs, resulting from (a) Hazardous Substances existing on the Premises as of the Commencement Date of this Lease; or (b) Hazardous Substances thereafter used, disposed of, or generated on the Premises by the LANDLORD. These indemnities will survive the termination of this Lease, whether by expiration of the Term or otherwise.

46. **Possession.** TENANT shall be entitled to possession of the Premises as of the effective date of this Lease.

47. **Other Documents.** Each party undertakes to execute such additional or other documents as may be required to fully implement the intent of this agreement.

48. **Paragraph Headings, Gender, and Number.** Paragraph headings are not to be construed as binding provisions of this Lease; they are for the convenience of the parties only. The masculine, feminine, singular and plural of any word or words shall be deemed to include and refer to the gender and number appropriate in the context.

49. **Counterparts.** This Lease may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

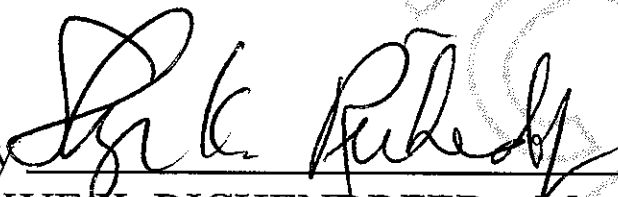
50. **Nonwaiver of Breach.** The failure of LANDLORD to insist upon strict performance of any of the covenants and agreements of this Lease, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such rights, or any other covenants or agreements, but the same shall be and remain in full force and effect.

51. **Construction.** Nothing contained herein shall create the relationship of principal and agent or of partnership or of joint venture between the parties hereto, and neither the method of computation of rent nor any other provision contained herein shall be deemed to create any relationship between the parties hereto other than the relationship of Lessor and TENANT.

**52. Attorney's Fees, Costs.** In any action brought to enforce any provision of this Lease, including actions to recover sums due or for the breach of any covenant or condition of this Lease, or for the restitution of the Premises to LANDLORD or eviction of TENANT during the term or after expiration thereof, the substantially prevailing party shall be entitled to recover from the other party all reasonable costs and reasonable attorney's fees incurred, including, without limitation, the fees of accountants, appraisers, and other professionals, at trial, on appeal, or without resort to suit..

**IN WITNESS WHEREOF** the parties have hereunto set their hands on the day and year first above written.

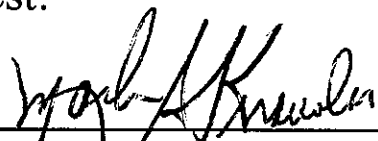
**LANDLORD:**  
CITY OF MOUNT VERNON


By   
SKYE K. RICHENDRFER, Mayor

**LESSEE:**  
SKYDOME ENTERPRISES, INC.

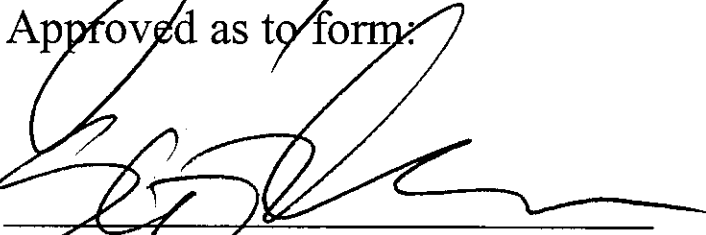
By   
Its President

Attest:

  
MARK S. KNOWLES, Finance Director

  
LARRY OJOS, Parks and Recreation Director

Approved as to form:

  
SCOTT G. THOMAS, City Attorney



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Kathy Hill, Skagit County Auditor

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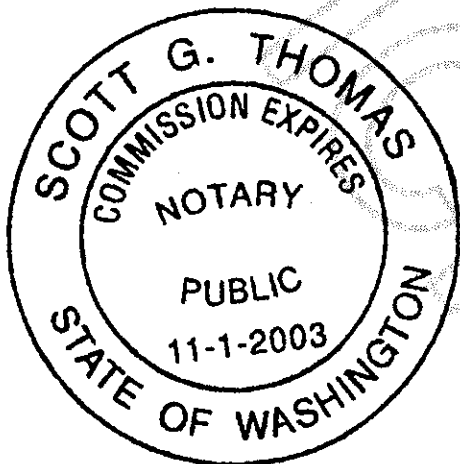
STATE OF WASHINGTON )

) ss.

COUNTY OF SKAGIT )

On this 19th day of JANUARY, 2000, before me personally appeared SKYE K. RICHENDRFER, to me known to be the individual who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned

Given under my hand and official seal the day and year last above written.



[Signature]  
NOTARY PUBLIC in and for the State of Washington, residing at MOUNT VERNON

My Commission Expires: 11-1-2003

Printed name: SCOTT G. THOMAS

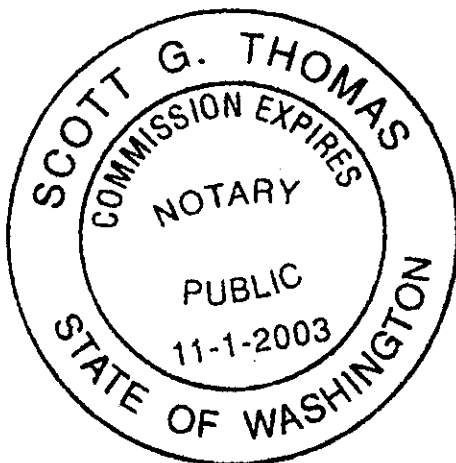
STATE OF WASHINGTON )

) ss.

COUNTY OF SKAGIT )

On this 19th day of JAN, 2000, before me personally appeared DENNIS SOBCHUK, to me known to be the individual who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned

Given under my hand and official seal the day and year last above written.



[Signature]  
NOTARY PUBLIC in and for the State of Washington, residing at MOUNT VERNON

My Commission Expires: 11-1-2003

Printed name: SCOTT G. THOMAS



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Kathy Hill, Skagit County Auditor

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EXHIBIT "A"

**Legal Description for the City of Mount Vernon  
Bakerview Park Lease**

That portion of the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 16, Township 34 North, Range 4 East, W.M., described as follows:

Commencing at the Southeast corner of said subdivision as shown on survey recorded in Book 7 of Surveys, Page 33, under Auditor's File No. 8702230031, records of Skagit County, Washington;

thence North  $00^{\circ} 18' 10''$  East 723.02 feet along the East line of said subdivision;

thence North  $89^{\circ} 41' 50''$  West 72.13 feet to the TRUE POINT OF BEGINNING;

thence North  $37^{\circ} 51' 12''$  West 280.00 feet;

thence South  $52^{\circ} 08' 48''$  West 275.00 feet;

thence South  $37^{\circ} 51' 12''$  East 280.00 feet;

thence North  $52^{\circ} 08' 48''$  East 275.00 feet to the TRUE POINT OF BEGINNING.

SUBJECT TO and TOGETHER WITH easements, reservations, restrictions, covenants, and other instruments of record.



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## **EXHIBIT "B"**

### **Design, Construction, and Operation Requirements**

1. Building A will comply with all applicable local and state codes and regulations.
2. The size of Building A will be approximately 22,000 square feet, all as described in the attached exhibit "E."
3. The design of Building A shall include landscaping adequate to screen or otherwise enhance the appearance of the building, and an attractive entry area, all as described in the attached exhibit "E."
4. TENANT shall install a minimum of thirty [30] parking spaces for activities conducted on the Property, including striping, car stops, and handicapped accessible parking stalls, all as described in the attached exhibit "D."
5. TENANT shall grade the site to accommodate Building A and the parking area, all as described in the attached Exhibit "E."
6. TENANT shall be solely responsible for all permit fees, impact fees, and other fees, and obtaining all applicable permits from all government agencies. TENANT shall pay from its own funds all costs of construction.
7. TENANT shall be solely responsible for the cost of all architectural, engineering, and surveying fees.

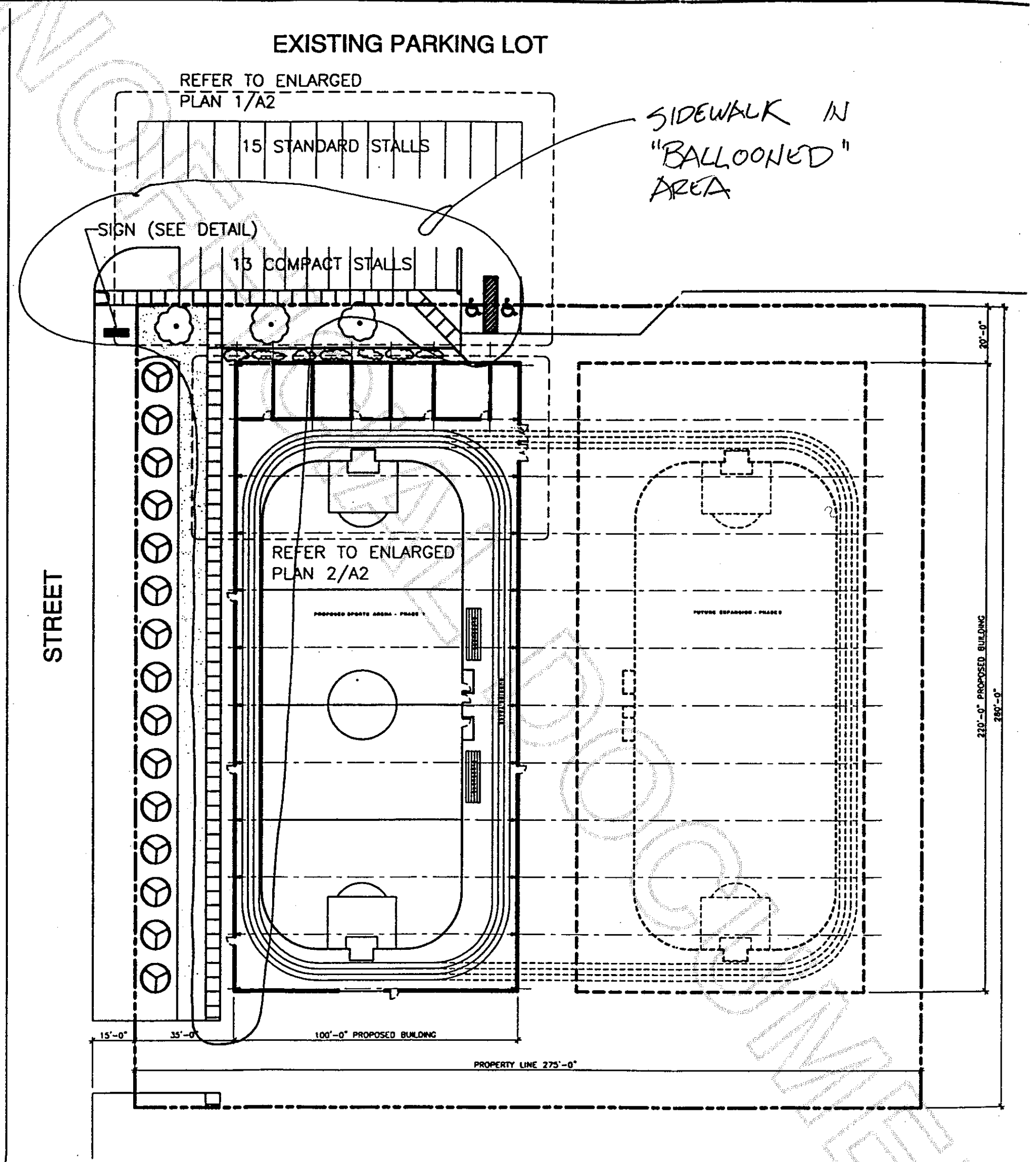


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EXHIBIT "C" Sidewalks



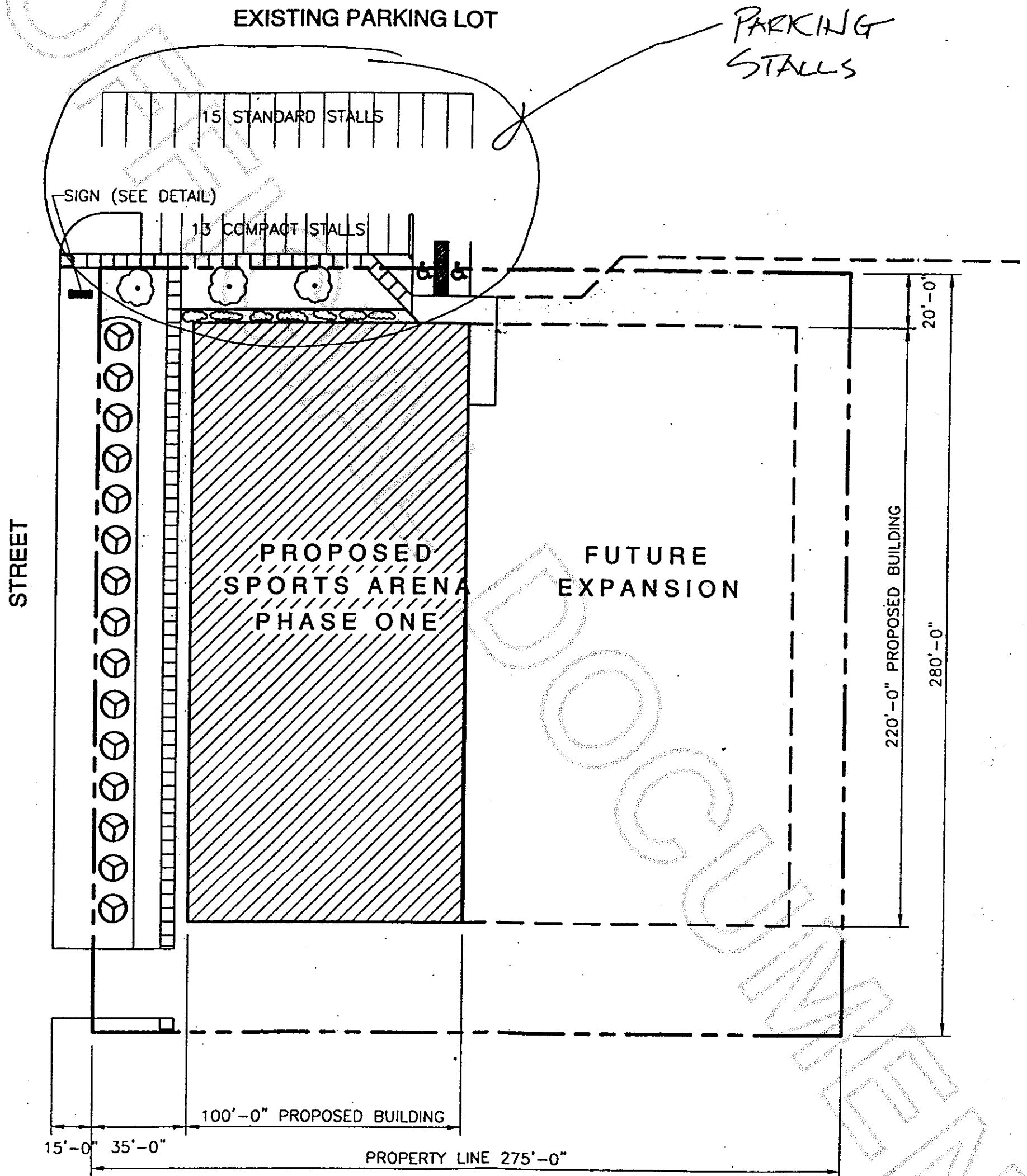
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EXHIBIT "D" Parking Areas



## **Exhibit "F" –Building "A" Use Standards**

1. The Premises shall be used primarily for the purpose of providing indoor athletic opportunities, including soccer, football, lacrosse, volley ball, field hockey, track and field, and similar sporting events. Such athletic events shall be given priority over all other events, and need not be approved by the LANDLORD's representative.
2. The Premises may be used for other recreational opportunities, including trade shows, craft shows, antique shows, flea markets, auctions, banquets, direct TV events, 4-H events, car shows, group meetings, graduations, parties, church functions, fundraisers, concerts, preschool activities, and school classes, provided that the TENANT shall first secure approval from the LANDLORD's representative.
3. In scheduling events, preference shall always be afforded to Mount Vernon residents, provided that such preference shall not extend to superceding an event already scheduled by a nonresident when that nonresident has submitted a nonrefundable deposit in order to reserve time for the event.



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