



201108150131
Skagit County Auditor

8/15/2011 Page 1 of 7 3:56PM

After recording return document to:

City of Mount Vernon
P O Box 809
910 Cleveland Avenue
Mount Vernon, WA 98273-0809

LAND TITLE OF SKAGIT COUNTY 139105-0

Document Title: Amendment to Lease
Grantor: CITY OF MOUNT VERNON, a municipal corporation
Grantee: The Skagit Valley Family YMCA, a Washington non-profit corporation
Legal Description: Portion of SW ¼ of SE ¼, 16-34-4 E W.M.
Tax Parcel Numbers: 340416-4-011-0007 / P116780

THIS SECOND AMENDMENT TO LEASE is entered into this 1st day of August, 2011, by and between the CITY OF MOUNT VERNON, a Washington municipal corporation (hereinafter designated as the "LANDLORD"), and the SKAGIT VALLEY FAMILY YMCA, a Washington non-profit corporation (hereinafter, the "TENANT").

WITNESSETH:

WHEREAS, The LANDLORD entered into a Lease Agreement dated January 1, 2000 with S.K.Y. DOMES ENTERPRISES, INC., a Washington corporation through which S.K.Y. DOMES ENTERPRISES agreed to construct and operate for the term of the lease a recreational facility commonly referred to as the Sports Center for the term of the lease, which term was for 30 years and commencing on January 1, 2000; and

WHEREAS, pursuant to Resolution No. 721, on November 13, 2003, the Mount Vernon City Council unanimously approved an assignment of the Lease from S.K.Y. DOMES ENTERPRISES, Inc., to the SKAGIT VALLEY FAMILY YMCA, which assignment entailed a change in the operation and management of the Sports Facility to the YMCA; and

WHEREAS the Lease was assigned by S.K.Y. DOMES ENTERPRISES to the SKAGIT VALLEY FAMILY YMCA, the current Tenant; and

WHEREAS the parties subsequently amended the lease agreement by written amendment dated July 12, 2006, which amendment was recorded with the Skagit County Auditor under recording No. 200702160128; and

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7/27/2011

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

AUG 15 2011

Amount Paid \$
Skagit Co. Treasurer
By *[Signature]* Deputy

WHEREAS the LANDLORD has found that the City of Mount Vernon will receive true and fair value for the amendments described herein through the continued availability of recreational opportunities for Mount Vernon residents and families; and

WHEREAS, the Parties desire to further amend the Lease Agreement as set forth herein.

NOW THEREFORE, the Parties hereby modify the terms of the Lease Agreement as follows.

A. Section 1.3 of the Agreement is hereby amended to read as follows:

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: YMCA
c/o Chief Executive Officer
215 East Fulton Street
Mount Vernon WA 98273

Leasehold First Mortgagee
People's Bank
PO Box 233
Lynden WA 98264



B. Section 23 of the Agreement is hereby amended to read as follows

23. TENANT's Default.

23.1 EVENTS OF DEFAULT. As used in this paragraph 23, the term "LEASEHOLD FIRST MORTGAGEE" means any financial institution holding a first deed of trust against TENANT's leasehold estate in the Premises when such financial institution has been approved by LANDLORD pursuant to paragraph 18 of this Agreement. 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 to TENANT AND TO ANY LEASEHOLD FIRST MORTGAGEE; 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 shall provide five (5) additional business days written notice to any LEASEHOLD FIRST MORTGAGEE. Thereafter, 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.

23.7 As used in the following subparagraphs (a), (b) and (c), the term "Leasehold First Mortgagee" means any financial institution holding a first deed of trust against Tenant's leasehold estate in the Premises; the term "Curable Default" means any event of default which can be cured by the payment of money or can otherwise be reasonably cured by a Leasehold First Mortgagee; and the term "Incurable Default" means any non-monetary event of default which cannot be reasonably cured by a Leasehold First Mortgagee.

(a) If this Lease is terminated by Landlord for an Incurable Default, or if this Lease is rejected in a bankruptcy of Tenant, then, subject to the further conditions of subparagraph (c) below, and provided that the Leasehold First Mortgagee or its purchaser, assignee, or transferee, as the case may be, at the time of such Lease termination, has cured any Curable Defaults and is keeping current the rent and all other money sums otherwise due under the Lease, the Landlord shall execute and deliver a new lease of the Premises to the Leasehold First Mortgagee or its purchaser, assignee, or transferee, as the case may be, for the remainder of the Term, containing the same covenants, agreements, terms, provisions, options and limitations as are contained herein;



(b) If the leasehold estate under this Lease is transferred to the Leasehold First Mortgagee or its purchaser, assignee, or transferee, as the case may be, pursuant to, in lieu of or following a foreclosure upon such leasehold estate by the Leasehold First Mortgagee, then, subject to the further conditions of subparagraph (c) below, and provided that the Leasehold First Mortgagee or its purchaser, assignee, or transferee, as the case may be, at the time of such transfer, has cured any Curable Defaults and is keeping current the rent and all other money sums otherwise due under the Lease, the Landlord shall execute and deliver a consent to such transfer and the transferee shall execute and deliver an assumption of the Lease, in form and content reasonably satisfactory to Landlord.


(c) As a condition to any new lease under subparagraph (a) above or consent to transfer under subparagraph (b) above, any purchaser, assignee, or transferee of the Leasehold First Mortgagee shall provide to Landlord reasonable evidence of their financial responsibility, and that the future use of the Premises would be consistent, in Landlord's reasonable judgment, with the provisions of this lease and transferee is both capable and qualified to operate and maintain recreational facilities open to the public in Landlord's reasonable judgment.

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


LANDLORD:
CITY OF MOUNT VERNON

By 
BUD NORRIS, Mayor

Attest:


ALICIA D. HUSCHKA, Finance Director

LESSEE:
YMCA


ROBERT SHRUMM, CEO
By _____, President


LARRY OTOS, Parks and Recreation Director

Approved as to form:


KEVIN ROGERSON, City Attorney



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