



City Council, Special Meeting

AGENDA

September 20, 2010

6:30 pm – 9:30 pm
Council Chambers

Call to Order

Roll Call/Pledge of Allegiance

Approval of Agenda

Presentations/Proclamations

- Presentation: Arts Commission

Public Comment

Note: This is an opportunity for the public to address the Council. Three-minutes limit per person or 5 minutes if representing the official position of a recognized community organization.

New Business

1. Council Budget Options
2. 2011/2012 Departmental Budget Reviews – **Administrative Services/City Manager/City Council/Human Services/Non-Departmental/Finance**
3. Stormwater Management Program/NPDES Requirements
4. Draft Basin Plans for Inglewood and Thompson Basins
5. Pine Lake Water Quality Study
6. Agreement: Boys & Girls Club

Council Reports

City Manager Report

Executive Session - If Necessary

Adjournment

Close Regular Meeting

City Council meetings are wheelchair accessible. American Sign Language (ASL) interpretation is available upon request. Please phone (425) 295-0500 at least 48 hours in advance. Assisted Listening Devices are also available upon request.



Parks and Recreation Department

486 - 228th AVENUE NE • SAMMAMISH, WASHINGTON • TEL: 425-836-7900 • FAX: 425-898-0669 • WEB: WWW.CI.SAMMAMISH.WA.US

MEMORANDUM

DATE: September 20, 2010
TO: Ben Yazici, City Manager
FROM: Jessi Richardson, Director of Parks and Recreation
RE: Boys and Girls Club Lease Agreement Update

In preparation for the Study Session on Monday, September 20, I wanted to provide you with an update on the Boys and Girls Club Lease and Joint Use Agreement. For the past seven months City staff have been working with Club staff to develop a lease agreement for the Recreation Center Property (old library building). Needless to say, we have been through several iterations and numerous changes along the way, but are very close to having an agreement that satisfies both parties.

I have attached the most recent version of the agreement. Please note this is not the final agreement as there were several recent changes (mostly related to a change in the City's insurance provider) that the Club has yet to comment on.

My goal at this juncture is to obtain feedback from both you and the City Council so that I may proceed with negotiations. In terms of timing, I would like to present a final agreement for approval at the Council meeting on Tuesday, October 5. This allows approximately two weeks to complete our negotiations. Time is of the essence in finalizing this agreement as the Club would like to proceed with permitting and construction of the new facility.

Although I anticipate we will review this agreement in its entirety at the upcoming council meeting, I wanted to provide you with some of the highlights. They are as follows:

Term of the Lease: 10-years with an option to extend up to 30-years.

Rent: \$1.00 per year in exchange for recreation services provided to the community, maintenance of the facility, and the tenant improvements.

Use Privileges: City maintains the first rights to use (or program) the facility during school hours; the Club has priority use during non-school hours.

Utilities: All utilities are paid by the Club.

Club Maintenance Responsibilities: The Club is responsible for routine maintenance and inspections, janitorial services, landscape maintenance services, maintenance of locks, and security and fire alarm monitoring.

City Maintenance Responsibilities: The City is responsible for major capital repairs as further defined in the agreement.

Dispute Resolution: The agreement establishes a dispute resolution committee, made up of representatives from the City and the Club to handle issues that may arise over the course of this agreement.

Termination: The City may terminate (or choose not to renew the agreement) at the end of ten years with a one-year notice to the Club. If this occurs, the City will compensate the Club based on an amortization formula further described in the agreement. No money will be owned to the Club if the agreement extends for the full thirty years.

Option to Purchase: At the end of the term, and at the discretion of the City, the Club has the option to purchase the building.

Again, this is a fairly brief summary considering the full agreement is 33-pages long. Finally, here are a few additional items that may be of interest to you:

- **Phase I Remodel:** The Club is underway with design of the Phase I project (interior remodel only). Upon approval of the lease agreement, the Club will submit their application for land-use permits and proceed with SEPA. We anticipate the Recreation Center will open the summer of 2011.
- **Phase II Project:** The Club is proceeding with design of the Phase II project (gymnasium addition) as well. Designing both phases concurrently saves the Club considerable design costs and will allow them to proceed with construction of Phase II as soon as the funds are raised. We are uncertain of the timeline for Phase II.
- **Second Access off of Inglewood Hill Road:** The Parks and Recreation Department staff are proceeding with the work required to build the secondary access off of Inglewood Hill Road. Negotiations with the property owners to the west of the Recreation Center (we have to cross a portion of their land to build the driveway) are proceeding and I anticipate having more to report in early October. Our goal is to have the secondary access completed in time for the summer 2011 opening.

DRAFT
LEASE AND JOINT USE AGREEMENT

THIS LEASE AND JOINT USE AGREEMENT (this “Agreement”) is made this ___ day of _____, 2010, by and between the City of Sammamish (the “City”), a Washington municipal corporation, and the BOYS AND GIRLS CLUBS OF KING COUNTY, INC., a Washington nonprofit corporation (the “Club”).

BACKGROUND

The City owns the real property formerly known as the Sammamish branch of the King County Library System, located at 825 228th Ave NE, Sammamish, Washington, legally described in Exhibit A of this Agreement (the “Premises”).

The Club intends to lease the Premises from the City. The Premises are currently improved with a parking lot and a 10,182 square foot building (the “Center”), which the Club intends to remodel and operate as a learning and recreation center for teens.

The City intends to reserve for itself certain rights to use the Premises for City purposes, as further described herein.

This Agreement provides for the leasing of the Premises by the Club and provides a framework for the City and the Club to use the Center on a coordinated basis.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the City and the Club mutually agree as follows:

1. LEASE OF PREMISES.

a. Lease of Premises. In consideration for the commitments set forth herein regarding the City’s use of the Premises and other valuable consideration, the City hereby leases to the Club and the Club leases from the City, as provided below, the Premises.

b. Term. The term of this Agreement (the “Term”) shall be in ten year increments with an option to extend the Agreement up to a maximum total of thirty (30) years. The initial ten year term shall commence on the date that this Agreement is fully executed by the parties (the “Commencement Date”).

Provided that the Club is in possession of the Premises and that this Agreement is not previously cancelled or terminated by either party, by operation of law or pursuant to the terms hereof, and further provided that the Club has faithfully complied with and performed all of the covenants and conditions in this Agreement on its part to be performed, and is not in default of this Lease at the time of exercise of this option, then the City and the Club covenant and agree that the Club shall have the option to extend the term of this Agreement for up to two additional ten-year periods up to the maximum number of thirty years. Extensions shall commence at the expiration of the initial term, and shall be upon the same terms, covenants and provisions herein set forth. The option for each renewal term shall be exercised by the Club giving the City not less than one hundred eighty (180) days written notice of intention to extend the term prior to the expiration of each term of the lease.

c. Premises leased “as-is”. The Premises shall be deemed leased “as is.” The Club has inspected the Premises, is familiar with the present condition of the Premises, and agrees to accept the Premises in the current condition. Notwithstanding the foregoing, the Club shall have no responsibility for or liability for any Hazardous Substances (defined in Section 15 below) existing on the site prior to the Commencement Date, and pursuant to Section 15.b. below, the City has indemnified the Club for any risks associated with such Hazardous Substances.

2. RENT.

a. In consideration of the value of the Club’s contribution to the recreation needs of the residents of the City, the tenant improvements of the Center, the maintenance and operations of the Center, and subject to the terms of this Agreement, the Club shall pay to the City an annual rent of \$1.00 payable on January 1st of each year of the term of this Agreement and any extensions thereof.

3. TENANT IMPROVEMENT OBLIGATIONS.

a. Remodel of the Center. Subject to the provisions of this Agreement, the Club shall design and implement a remodel of the Center. The remodel of the Center shall be at the sole cost and expense of the Club, with the exceptions noted below in section 3 (b). The Center remodel shall be designed consistent with the [TITLE OF SCHEMATIC] prepared by Wolken Architects dated [REDACTED] as shown in Exhibit B, attached hereto, and the Building Plans prepared by Wolken Architects dated [REDACTED], attached hereto (these documents together, the “Center Design Documents”).

Prior to commencement of the construction work outlined in the Center Design Documents (the “Work”), the Club shall regularly provide the City’s Parks and Recreation Director with reports including, but not limited to, any revisions in the Center Design Documents and the status of any pre-construction activities. Any revisions to the design of the Center including, but not limited to, signage, landscaping, traffic flow and any subsequent plans and specifications for additions or improvements thereto, shall be subject to the timely approval of the City, which approval shall not be unreasonably withheld.

b. City’s Construction of Second Entrance. The City shall exercise its best efforts to obtain property interests necessary for and construct a secondary access driveway to the Premises from Inglewood Hill Road, as shown in Exhibit C prior to December 31, 2011. The secondary access driveway shall be completed at the sole cost and expense of the City. In the event that the City is unable to acquire sufficient property to construct the driveway then, at the City’s option, this agreement to construct the secondary access driveway may be terminated.

c. Compliance with Laws; Permits; Related Appeals. The Club shall abide by all applicable laws, regulations and ordinances in performing the Work, operating the Center and in using the Premises. The Club shall obtain all required licenses, certifications, or other approvals (whether required to be held by the Club as an entity or by the Club’s individual employees, volunteers, subtenants, other agents, or otherwise) required for the Club’s use of the Premises. In addition, the Club agrees to the following:

(i) The Club shall obtain any necessary approvals, building permits and/or certificates of occupancy as may be required by any applicable law or regulation prior to beginning the Work and occupying the Center. The costs of all fees connected with acquiring required approvals, permits and/or certificates shall be the exclusive responsibility of and shall be paid by the Club.

(ii) Without limiting Subsections 3(c)(i) above, the Club shall, at its sole cost and expense, perform all actions necessary to comply with any and all traffic mitigation measures and traffic management requirements that may be required as a condition of the Club’s use of the Premises for the Center and/or the remodel of the Center, except for the costs associated with the secondary driveway access as described in Section 3.c. above.

(iii) Without limiting Subsections 3(c)(i) and (ii) above, if the Club desires to defend any and all appeals filed against the Club in relation to the use of the Premises for the Club’s purposes and/or the remodel of the Center, it shall do so at its sole cost and expense.

d. Project Funding The Work shall be subject to the following funding requirements:

(i) Prior to commencing the Work, the Club shall have secured grants, pledges and other funding or promises of funding equal to one hundred percent (100%) of the Center's projected total project costs or provide a guarantee from a financial institution approved by the City for same. Prior to commencing the Work, the City may, in its sole discretion and at the City's sole expense, require a third-party review to be conducted of the Club's estimated cost to remodel the Center to confirm the adequacy of the Club's fundraising. The third party may be selected by the Club, subject to the approval of the City; or, selected by the City subject to the approval of the Club. The City shall exercise its option to conduct the third-party cost review by providing written notice to the Club of its desire to do so on or prior to the date this Lease is executed.

(ii) The Club shall keep a strict accounting of the actual costs related to the initial development and remodeling of the Center. Such accounting shall identify, by task item, the actual costs expended by the Club or any other party toward site development or construction (the "Total Development Costs"). Upon completion of the Work, the Club shall provide a copy of the Total Development Costs accounting to the City. Because the City is subject to annual audit by the State of Washington, the Club may be called upon to furnish, and shall furnish, to the City or State Auditor, invoices and other financial documentation to substantiate the costs related to the development and remodeling of the Center.

e. Timeliness. Time is of the essence, and the Club shall complete the Work as follows:

(i) The Work shall commence no later than January 1, 2011; provided that, the City may grant extensions as required if the Club demonstrates, in the City's sole discretion, that it has engaged in good faith efforts to raise the funds required to complete the Work or to otherwise complete the tasks necessary to begin the Work and has reasonable expectations for doing so. The length of any extension granted by the City pursuant to this subsection shall be determined by the City, in its sole discretion, based upon the facts and circumstances of the Club's request for such extension.

(ii) If the Club has not commenced the Work by January 1, 2011, and the City determines that the Club has not engaged in good faith efforts to do so within a reasonable time, then the City may terminate the Club's right to use the Premises and this Agreement; provided that, this Agreement shall be extended to the extent of any delay in the completion of the Center caused by an act of God, labor strikes, declarations of or acts of war or

terrorism, or by actions of the City or by any delay caused by permit or land use appeals, including both administrative and judicial appeals, related to the remodel of the Center and use of the Premises as contemplated by this Agreement; and provided further that, the City may grant an extension if the Club demonstrates, in the City's sole discretion, that it has engaged in good faith efforts to complete the Work and has reasonable expectations for meeting such goals. The length of any extension granted by the City pursuant to this Subsection shall be determined by the City, in its sole discretion, based upon the facts and circumstances of the Club's request for such an extension.

(iii) In the event that the Club does not meet the timeliness provisions set forth above, the City may immediately terminate this Agreement, with no obligation to provide notice and/or time to cure and with no obligation to reimburse the Club for costs, and, the Club shall be solely responsible for immediate repayment to the City of all reasonable planning and construction costs expended by the City in preparation for the construction of the Center.

f. Ownership of the Work. The Club shall, for the term of this Agreement, own all improvements constructed by the Club. Upon the termination of this Agreement, all rights and interests in the Premises and any improvements then existing thereon shall become the property of the City.

g. Assignment. Obligations or rights of the Club under this Agreement may not be assigned, subleased, or otherwise transferred by the Club without the prior written consent of the City, which consent shall not be unreasonably withheld.

5. CITY'S USE PRIVILEGES.

a. As additional consideration for this Agreement, the Club hereby agrees that the City shall have rights to use the Premises as follows:

(i) The City shall have first rights to use the Premises and the equipment therein during the hours of each day that both public high schools and middle/junior high schools are in session (hereafter designated as "School Hours"); provided that the City shall not have access to those offices and staff areas of the Premises reserved for exclusive use by the Club as approved by the Center Operation Committee (created in Section 12(a) below) or the sound recording studio that the Club intends to install on the Premises; and provided further that the Club shall have exclusive use of those areas of the Center that are approved in advance by the Center Operating Committee. The City shall exercise its first rights to use the Premises by providing to the Club a six-month schedule showing the dates and hours and identifying the

specific space within the Center that it has reserved (the “City Reservation Schedule”). The City Reservation Schedule shall be provided to the Club no less than 30 days prior to the date it goes into effect. Any space or time not identified on the City Reservation Schedule shall be available to the Club for its own use or for letting out to third parties.

(ii) The City may also use the Premises during non-School Hours from time to time, and free of charge, with the permission of the Club. Such permission shall not be unreasonably denied by the Club. The City shall not have access to those offices and staff areas of the Center reserved for exclusive use by the Club as approved by the Center Operation Committee.

(iii) The Club shall have the right to use the Center during School Hours provided such use does not interfere with the City’s use of the Premises, and provided that the Club’s use is for purposes connected with the operation of the Center, unless otherwise agreed by both parties.

b. Program Use. Programs or activities that are inconsistent with City policies or City Council directive shall not be provided in the Center or elsewhere on the Premises. Upon written notice of such objection by the City, the Club shall temporarily modify or defer implementing such objectionable programs or activities to meet the City’s concerns until the parties have resolved the dispute through the procedures provided in Section 12. If new programs or activities are to be introduced in the Center outside the annual review process, described in Section 12 below, the Club shall provide at least two weeks advance notice of such programs or activities pursuant to Section 27 below, and if the City objects to the program or activity, the parties shall use their best efforts to resolve such agreements. However, if the parties are unable to do so, the modification or deferral process set forth in this Subsection 5(b)(i) shall apply to such new programs or activities in the Center.

6. IMPROVEMENTS.

a. Alterations/Additions/Improvements. During the course of any term of this Agreement, the Club shall be permitted to make, at its own expense, any alterations, additions or improvements to the Center or Premises consistent with the programs offered by it, subject to the City’s approval, as described in Section 2. The Club may remove, subject to City approval, any alteration or improvement made by the Club upon termination of this Agreement; provided that, it leaves the Premises and the Center in a safe and clean condition. Any addition or improvement made to the Center by the Club and not removed shall, upon termination of this Agreement, become the property of the City without cost to the City. Nothing shall be removed or altered that will affect the structural integrity of the Center.

b. Removal of Personal Property. At the expiration of the term or termination of this Agreement, the Club shall surrender the Premises and the Center to the City in a safe and clean condition and remove the Club's personal property. The Club shall remove all personal property within fourteen (14) days of the expiration of the term or termination of this Agreement or it shall be considered abandoned and become the property of the City. The City may dispose of such property by any reasonable means and may charge the Club for the City's disposal costs.

7. CONSTRUCTION BOND. Prior to commencing construction and/or remodel of the Center, the Club shall procure from its contractor, for delivery to the City, a good and sufficient performance and labor and materials payment bond in the amount of 100% of the awarded contract as security for the faithful performance and payment of all his/her obligations under the specifications. Bond shall be in a form acceptable to the City. Said bond shall name the City and the Club as the co-obligee(s). Surety shall be licensed to conduct business in the State of Washington and are named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department.

8. UTILITIES. The Club shall construct and maintain any and all utilities and associated facilities required for the Center and shall be responsible for payment of all utility expenses associated with the operation of the Center and the Premises. For purposes of this Agreement, the term "utilities: shall include telephone, internet and cable, heat, light, water, surface water, gas, power, sewer, and for all other public utilities which shall be used in or charged against the Center and the Premises during the term of this Agreement.

9. MAINTENANCE AND REPAIR COSTS.

a. Routine Maintenance and Inspections.

(i) The Club shall assume responsibility for routine maintenance of the Center and the Premises. For purposes of this Subsection, "routine maintenance" shall include maintenance of all items that are not Major Capital Improvements, as defined below. Except to the extent of the City's responsibilities in Subsection d. below, the Club shall keep the Premises in accordance with the laws of the State of Washington and in accordance with all directions, rules and regulations of the health officer, fire marshal, building inspector, or other proper officer of any pertinent and authorized public authority, at the sole cost and expense of the Club. Provided, if the Club can demonstrate to the City's satisfaction that City program attendees

caused damage to the Center, the City shall pay the actual repair expenses for damage to the Center and Premises.

b. Janitorial Services. The Club, at its own expense, shall provide janitorial services for the Center and the Premises and shall keep the Premises in a safe and clean condition, free of accumulations of dirt, rubbish, hazardous environmental contaminants, and unlawful obstructions, and shall maintain the landscaping and the Premises exterior entranceways and walkways in a safe and clean condition. Janitorial services shall include the interior and exterior of the Center.

c. Landscape Maintenance. The Club shall ensure that the landscaping on the Premises is maintained in a manner consistent with other City properties and shall be responsible for any costs related thereto. The lawn and landscaping shall be irrigated in a manner such that the grass and landscape are kept in a healthy condition throughout the year. All diseased or dead plant material shall be replaced in-kind within one growing season. The Club shall be responsible for performing regular maintenance of the existing irrigation system, including seasonal inspection and winterizing. The City shall be responsible for major repairs or replacement of the irrigation system in the event of system breakage or failure, provided however that the Club will contribute up to a maximum of \$1,000 per calendar year toward such repair or replacement costs, not to exceed \$2,500 over the term of the Lease.

d. Major Capital Maintenance and Repair. The City shall be responsible for maintaining the following elements of the Premises in good condition and repair, and if necessary replacing the same if worn or obsolete and no longer serving their intended functions (the following are referred to herein as a “Major Capital Improvements”): Center roof; exterior cladding; structural elements; heating, ventilation and air conditioning; plumbing other than remediation of stopped drains and toilets; electrical, with the exception of changing light bulbs; exterior pavement and sidewalks; fire suppression/sprinkler system, and the backflow prevention assembly.

e. Locks. The Club shall maintain the locks at the facility and provide one complete master set of keys to the City for the purposes of inspection and emergency.

f. Security and Fire Alarm Monitoring. The Club shall provide security system monitoring and fire alarm monitoring for the Center.

10. SECURITY AND STAFFING OF CENTER.

a. Security and Staffing During Exclusive City Use. During hours that the City or the City's employees, agents, contractors or licensees are using the Center and the Club is not using the Center, the City shall be solely responsible for staffing and monitoring of activities within and around the Premises so as to avoid the risk of property damage or personal injury and to ensure that the Premises and all equipment therein are being used in a legal and safe manner.

b. Security and Staffing During Exclusive Club Use. During hours that the Club or its employees, agents, contractors or licensees are using the Center and the City is not using the Center, the Club shall be solely responsible for staffing and monitoring of activities within and around the Premises so as to avoid the risk of property damage or personal injury and to ensure that the Premises and all equipment therein are being used in a legal and safe manner.

c. Security and Staffing During Hours of Shared Use. During periods when both the City and the Club are using the Center, each party shall have staff on site who shall be responsible for overseeing the activities of their own program participants, unless otherwise approved by both parties.

11. ADDITIONAL CLUB COMMITMENTS. In further consideration of this Agreement, the Club agrees to make reasonable efforts to provide recreational programs on the Premises in addition to the youth programs that are intended to serve the broader Sammamish community. Such programs must be agreed to by both the Club and the City, and the Club shall have no obligation to provide additional recreational programs that compromise the Club's teen/youth programming, impose significantly greater operating costs on the Club, or put the Club at additional risk for liability.

12. COORDINATION OF USES; DISPUTION RESOLUTION.

a. Center Operating Committee. The Club and the City acknowledge there is a potential for disagreement between the parties regarding the appropriateness of future programs and activities offered through the Center and regarding implementation of this Agreement. The City and the Club agree to use their best efforts to resolve such disagreements on a collaborative basis through the "Center Operating Committee" as established herein and, if necessary, to make use of the dispute resolution procedures in Subsection 12(b).

(i) In addition to the annual review of joint use programs and activities by the designated representatives of both parties ("Designated Representatives") as provided in Subsection 12(c) below, the Club and the City shall appoint members to a "Center

Operating Committee” who shall confer, at a minimum, on a semi-annual basis in an attempt to resolve any issues and to ensure that the use of the Center and Premises takes place on a coordinated basis. The Center Operating Committee shall be convened as frequently as necessary to discuss coordination issues and questions of interpretation of this Agreement with the goal of resolving potential disputes quickly and efficiently. The Center Operating Committee shall include an equal number of members from the Club and the City and, at a minimum, shall consist of the City of Sammamish Parks and Recreation Director and the Club’s Branch Executive Director. In the event any dispute cannot be resolved by the Center Operating Committee, the matter shall be immediately referred to the Designated Representatives identified in 12(a)(ii).

(ii) The Designated Representatives, who shall be denoted in writing by the City Manager and the President/CEO of the Club, will meet at least once a year to consider staffing levels and staff qualifications, problems, planned programs, disputes and conflicts, changes in design, development, operation, maintenance, scheduling, and other policy issues resulting from the operation of the Center. The meeting shall also include a description by the Club of the type and contents of programs, functions and activities planned for the Center during the next twelve months. If the Designated Representatives are unable to reach a solution on a particular matter, it will be referred to the City Manager and the President/CEO of the Club.

(iii) Prior to the annual meeting of the Designated Representatives, the Center Operating Committee will prepare a proposed schedule for use of the Center in the ensuing year for approval by the Designated Representatives. Once approved, the schedule will be substantially modified only when agreeable to both parties.

(iv) At least once per year the Designated Representatives shall convene a joint meeting of the City of Sammamish Youth Board and the Boys & Girls Club Keystone or teen leadership Board to discuss programs, facility improvements, funding, and any other issues of interest to the youth advisory groups. Additional meetings may be scheduled as deemed necessary.

b. Dispute Resolution. If either party claims that the other party has breached any term of this Agreement, or if one of the parties elects to trigger the dispute resolution process in anticipation of or as a part of the annual review, or in the event of disputes or disagreements under this Agreement, the following procedures shall be followed if and when informal communications, such as telephone conversations, fail to satisfy the claiming party and the Center Operating Committee has determined that it cannot resolve the dispute,:

(i) The claiming party's Designated Representative shall provide a written notice to the other party's Designated Representative of the alleged breach. The notice shall identify the act or omission at issue and the specific term(s) of this Agreement that the complaining party alleges was violated.

(ii) The responding party's Designated Representative shall respond to the notice in writing within fifteen (15) working days. The response shall state that party's position as well as what, if any, corrective action the responding party agrees to take.

(iii) The complaining party shall reply in writing, indicating either satisfaction or dissatisfaction with the response. If satisfied, any corrective action shall be taken within fifteen (15) days of receipt of the responding party's reply unless otherwise mutually agreed. If dissatisfied, the complaining party shall call an in-person meeting. Otherwise, the matter shall be considered closed. The meeting shall occur within a reasonable period of time and shall be attended by the Designated Representative of each party, and such others as the parties may invite.

(iv) If the issue is not resolved within thirty (30) days, then either party may require, in writing, that the matter shall be reviewed in a non-binding, structured mediation process developed on a cooperative basis by the parties, and the parties shall consider in good faith any recommendations or settlements arising from such process.

(v) All of the steps preceding shall be a prerequisite to either party suing under this Agreement for breach, specific performance, or any other relief related to this Agreement, except that either party may seek an injunction to prevent irreparable harm.

13. INDEMNIFICATION/HOLD HARMLESS.

a. Club's Indemnification/Hold Harmless. The Club shall protect, defend, indemnify, and hold harmless the City, its officers, officials, employees, and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments, attorney's fees, and/or costs of any kind whatsoever (together, "Claims"), arising out of or in any way resulting from acts or omissions of the Club, its officers, employees, agents, and/or subcontractors, in the remodel, operation, oversight, staffing or other use of the Premises. The Club's obligations under this Section shall include, but not be limited to:

(i) the duty to promptly accept tender of defense and provide defense to the City, its officers, officials, employees, and agents at the Club's own expense;

(ii) indemnification for such claims whether or not they arise from the sole negligence of the Club or the concurrent negligence of the Club and another party (other than the City);

(iii) the duty to indemnify and defend the City, its officers, officials, employees, or agents from any claim, demand, and/or cause of action brought by or on behalf of any of the Club's employees or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the Club's immunity under Washington's Industrial Insurance Act, Chapter 51 RCW, as respects the City, its officers, officials, employees and agents only, and only to the extent necessary to provide the City, its officers, employees and agents, with a full and complete indemnity and defense of claims made by the Club's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

In the event that the City including its officers, officials, employees and agents, incurs attorney's fees and/or costs in the defense of claims for damages within the scope of this Section, such fees and costs shall be recoverable from the Club. In addition, the City, including its officers, officials, employees and agents, shall be entitled to recover from the Club attorney's fees and costs incurred to enforce the provisions of this Section 13.

b. Club's Contractor Indemnification/Hold Harmless. The Contractor(s) selected by the Club to perform the remodel shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

c. City's Indemnification/Hold Harmless. The City shall protect, defend, indemnify, and hold harmless the Club, its officers, officials, employees, and agents, from any and all Claims, arising out of or in any way resulting from acts or omissions of the City, its officers, officials, employees, agents, and/or subcontractors, in the remodel, operation,

oversight, staffing or other use of the Premises. The City's obligations under this Section shall include, but not be limited to:

(i) the duty to promptly accept tender of defense and provide defense to the Club, its officers, officials, employees, and agents at the City's own expense;

(ii) indemnification for such claims whether or not they arise from the sole negligence of the City or the concurrent negligence of the City and another party (other than the Club);

(iii) the duty to indemnify and defend the Club, its officers, officials, employees, and agents from any claim, demand, and/or cause of action brought by or on behalf of any of the City's employees or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the City's immunity under Washington's Industrial Insurance Act, Chapter 51 RCW, as respects the Club, its officers, officials, employees and agents only, and only to the extent necessary to provide the Club, its officers, employees and agents, with a full and complete indemnity and defense of claims made by the City's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

In the event that the Club including its officers, officials, employees and agents, incurs attorney's fees and/or costs in the defense of claims for damages within the scope of this Section, such fees and costs shall be recoverable from the City. In addition, the Club, including its officers, officials, employees and agents, shall be entitled to recover from the Club attorney's fees and costs incurred to enforce the provisions of this Section 13.

c. Concurrent Liability. The responsibility for any Claims arising out of the joint or concurrent acts or omissions of the Club and the City shall be borne by each party in proportion to their respective contribution to the Claim, and no right of indemnification shall exist for either party beyond the extent of the Claim caused by its own negligence or intentional misconduct.

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

14. INSURANCE.

a. Club's Insurance Obligations. The Club agrees to maintain Commercial General Liability insurance acceptable to the City covering injuries to persons and damage to property, with the City added as an Additional Insured covering all of the activities pertaining to this Agreement. In addition, the Club shall maintain property insurance covering the

replacement costs of all improvements installed as part of the Work in form acceptable to the City. By requiring such insurance coverage, the City shall not be deemed to, or construed to, have assessed the risks that may be applicable to the Club in this Agreement. The Club shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits or broader coverage than is herein specified.

(i) Scope and Limits of Insurance. Coverage shall be at least as broad as:

(A) Property Insurance: ISO Causes of Loss – Special Form, including Theft, as part of the Commercial Property Insurance insuring the improvements installed as part of the Work in an amount sufficient to cover the entire replacement cost thereof, without coinsurance.

(B) General Liability: Insurance Services Office form number (CG00 01 Ed. 12-07) covering Commercial General Liability, with a limit of not less than \$1,000,000 combined single limit per occurrence, \$3,000,000 aggregate. The policy shall include but not be limited to:

- (1) coverage for Premises and operations;
- (2) contractual liability (including specifically liability assumed herein);
- (3) Employers Liability (“Stop-Gap” coverage).

(C) Automobile Liability: Insurance Services Office form number (CA 00 01 Ed. 03-06) Covering Business Automobile Coverage, symbol 1 “any auto”; or the combination of symbols 2, 8, and 9, for a limit of not less than \$1,000,000 combined single limit per occurrence.

(D) Workers’ Compensation: Workers’ Compensation coverage, as required by the Industrial Insurance Act of the State of Washington statutory limits.

ii. Deductibles. The deductible of the insurance coverage shall not limit or apply to the City and shall be the sole responsibility of the Club.

iii. Other Insurance Provisions. The insurance coverages required by this Agreement are to contain or be endorsed to contain the following provisions where applicable:

(A) Liability Coverages.

(1) The City, its officers, officials, employees, and agents are to be added as Additional Insured as respects: liability arising out of activities by or on behalf of the Club in connection with this Agreement.

(2) To the extent of the Club's negligence, insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by the City, its officers, officials, employees, and agents shall not contribute with the Club's insurance or benefit the Club in any way.

(3) The Club's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(B) All Policies. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days' prior written notice has been given to the City.

(C) Acceptability of Insurers. Unless otherwise consented to by the City, insurance coverage is to be placed with insurers with a Best's rating of no less than AVIII, or, if not rated by Best's, with minimum surpluses the equivalent of Best's surplus size VIII.

(D) Verification of Coverage. The Club shall furnish the City with certificates of insurance and endorsements required by this Agreement. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms approved by the City and are to be received and approved by the City prior to the commencement of activities associated with this Agreement. The City reserves the right to require complete certified copies of all required policies at any time.

(E) Application of Insurance Proceeds. In case of any insurance policies as described in Subsection 14.a.(i)(A), the application of the proceeds from damage or loss to property shall be applied as follows: for the purposes of defraying the cost of repairing, restoring, replacing and/or rebuilding the Center and other improvements on the Premises as provided in Subsection 26.a unless the Club elects termination pursuant to

Subsection 26.c. in which case the City shall be included as a “Loss Payee as its interests may appear” on the Club’s property insurance covering the improvements.

All insurance required to be carried by the Club pursuant to this Section 14.a. is referred to herein as the “Club’s Insurance.”

b. Club’s Contractor Obligations. The Contractor(s) selected by the Club to perform the Remodel shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees or subcontractors.

(i) No Limitation. Contractor’s maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City’s recourse to any remedy available at law or in equity.

(ii) Scope and Limits of Insurance. The Contractor shall obtain insurance of the types described below:

(A) Automobile Liability. Insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

(B) Commercial General Liability. Insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Contractor’s Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

(C) Workers’ Compensation coverage. As required by the Industrial Insurance laws of the State of Washington.

(iii) Minimum Amounts of Insurance. Contractor shall maintain the following insurance limits:

(A) Automobile Liability Insurance: a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

(B) Commercial General Liability insurance: shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

(iv) Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

(A) The Contractor's insurance coverage shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

(B) The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

(v) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

(vi) Verification of Coverage. Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work.

(vi) Subcontractors. Contractor shall ensure that each subcontractor of every tier obtain at a minimum the same insurance coverage and limits as stated herein for the Contractor. Upon request the City, the Contractor shall provide evidence of such insurance.

c. City's Insurance Obligations. The City agrees to maintain Commercial General Liability insurance covering injuries to persons and damage to property, , covering all of the activities pertaining to this Agreement. In addition, the City shall maintain property

insurance covering the replacement costs of the Center (excluding improvements installed as part of the Work) in form acceptable to the City. The City agrees to provide an Evidence of Coverage Letter to the Club naming the required coverages. By requiring such insurance coverage, the Club shall not be deemed to, or construed to, have assessed the risks that may be applicable to the City in this Agreement. The City shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits broader coverage than its herein specified.

(i) Scope and Limits of Insurance. Coverage shall be at least as broad as:

(A) Property Insurance: ISO Causes of Loss – Special Form, including Theft, as part of the Commercial Property Insurance insuring the Center in an amount sufficient to cover the entire replacement cost thereof, without coinsurance other than the insurance covering the improvements installed by the Club described in Subsection a. above.

(B) General Liability: Insurance Services Office form number (CG00 01 Ed. 12-07) covering Commercial General Liability, with a limit of not less than \$1,000,000 combined single limit per occurrence, \$3,000,000 aggregate. The policy shall include but not be limited to:

- (1) coverage for Premises and operations;
- (2) contractual liability (including specifically liability assumed herein);
- (3) Employers' Liability ("Stop-Gap" coverage).

(C) Automobile Liability: Insurance Services Office form number (CA 00 01 Ed. 03-06) Covering Business Automobile Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9, for a limit of not less than \$1,000,000 combined single limit per occurrence.

(D) Workers' Compensation: Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington statutory limits.

ii. Deductibles. The deductible of the insurance coverage shall not limit or apply to the Club and shall be the sole responsibility of the City.

iii. Other Insurance Provisions. The insurance coverages required by this Agreement are to contain or be endorsed to contain the following provisions where applicable:

(A) Liability Coverages.

(1) The City will provide the Club with an Evidence of Coverage Letter naming the required liability coverages.

(2) To the extent of the City's negligence, insurance coverage shall be primary insurance as respects the Club, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by the Club, its officers, officials, employees, and agents shall not contribute with the City's insurance or benefit the City in any way.

(3) The City's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(B) All Policies. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days' prior written notice has been given to the Club.

(C) Verification of Coverage. The City shall furnish the Club with the Evidence of Coverage Letter required by this Agreement. The Evidence of Coverage Letter is to be signed by a person authorized by that insurer to bind coverage on its behalf. The Club reserves the right to require complete certified copies of all required policies at any time.

(D) Application of Insurance Proceeds. In case of any insurance policies as described in Subsection 14.b.(i)(A), the application of the proceeds from damage or loss to property shall be applied as follows: for the purposes of defraying the cost of repairing, restoring, replacing and/or rebuilding the Center and other improvements on the Premises as provided in Subsection 26.a. unless the City elects termination pursuant to Subsection 26.b.

All insurance required by this Section 14.b. shall be referred to herein as the "City's Insurance".

(E) Waiver of Subrogation. The Club and the City hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any

hazard covered by property insurance on or in connection with the premises or said building. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

15. HAZARDOUS SUBSTANCES.

a. Club Activities and Indemnification. The Club shall not, without first obtaining the City's prior written approval, generate, release, spill, store, deposit, transport, or dispose of (collectively "Release") any hazardous substances, sewage, petroleum products, radioactive substances, medicinal, bacteriological, or disease-producing substances, hazardous materials, toxic substances, or any pollutants or substances defined as hazardous or toxic as defined by applicable federal, state, and local laws, regulations, or agencies in any reportable quantities ("Hazardous Substances") in, on or about the Premises. In the event, and only in the event, that the Club Releases such Hazardous Substances on or about the Premises under the provisions of this Section 15, the Club agrees that such Release shall occur safely and in compliance with all applicable federal, state, and local laws and regulations. The Club shall indemnify, hold harmless, and defend the City from any and all claims, liabilities, losses, damages, cleanup costs, response costs, and expenses, including reasonable attorney's fees arising out of or in any way related to the Release by the Club, or any of its agents, representatives, employees, or authorized users.

b. City Representations, Activities and Indemnification. The City represents and warrants that to the best of its knowledge, no Hazardous Material has been or shall be discharged, dispersed, released, stored, treated, generated, disposed of, or allowed to escape on, under, or from the Premises prior to the Commencement Date. The City has not and shall not generate, release, spill, store, deposit, transport, or dispose of (collectively "Release") any hazardous substances, sewage, petroleum products, radioactive substances, medicinal, bacteriological, or disease-producing substances, hazardous materials, toxic substances, or any pollutants or substances defined as hazardous or toxic as defined by applicable federal, state, and local laws, regulations, or agencies in any reportable quantities ("Hazardous Substances") in, on or about the Premises. The City shall indemnify, hold harmless, and defend the Club from any and all claims, liabilities, losses, damages, cleanup costs, response costs, and expenses, including reasonable attorney's fees arising out of or in any way related to the Release by the City, or any of its agents, representatives, employees, or authorized users, or the presence of such Hazardous Substances in, on or about the Premises or migrating through or emanating from the Premises prior to the Commencement Date.

16. RIGHT OF INSPECTION. The City shall have the right to inspect the Premises and the Center during reasonable hours at any time during the term of this Agreement to insure compliance with the provisions of this Agreement. When reasonably necessary for such purposes, the City may temporarily alter access to the Premises. Mutual prior consent is required for any such closures extending beyond two days.

17. LIENS. The Club covenants and agrees that it shall not during the term of this Agreement suffer or permit any lien, charge, security interest or encumbrance (collectively, "Liens") to be attached to, upon or against the Premises, or any portion thereof, or any rent payable under this Agreement for any reason, including without limitation, Liens arising out of the possession, use, occupancy, construction, repair, or rebuilding of the Premises or by reason of the furnishing of labor, services, materials or equipment to the Premises of the Club. Notwithstanding the foregoing, the Club shall have the right to contest in good faith the validity of any lien or claim against the Premises so long as, if requested to do so by the City, the Club posts a bond or other adequate security in an amount equal to one hundred twenty-five percent (125%) of the amount of the lien or claim being contested. The Club shall, defend, indemnify, and hold the City harmless from and against all claims arising out of or relating to any such Lien, except to the extent such Lien arises from the acts or omissions of the City. The City shall provide written notice of any such claims to the Club within five (5) days after the City receiving notice thereof, and the Club shall defend such claims at its sole cost by counsel reasonably satisfactory to the City. Notwithstanding the Club's obligation to defend the City as stated herein, the City shall retain the right to participate in said defense. The Club's obligations pursuant to this Section 17 shall survive the expiration or earlier termination of this Agreement.

18. SIGNS AND NAMING.

a. Signs. All signs or symbols placed anywhere externally on the leased Premises shall be subject to the prior approval of the City, which shall not be unreasonably withheld. If any signs are permitted by the City, such signs shall be removed by the Club at the termination of the Agreement. All signs shall meet all applicable zoning codes of the City of Sammamish.

b. Naming. Before naming the Center or any room, space, or area within the Center, the Club shall obtain the approval of the City, which approval shall not be unreasonably withheld.

19. PERSONAL PROPERTY TAXES. The Club shall pay promptly when due all taxes assessed during the term of this Agreement upon the Club's fixtures, furnishings, equipment, and stock in trade, upon the Club's leasehold interest under this Agreement, or upon

any other personal property situated in or upon the leased Premises. In the event any governmental authority, during the term of this Agreement shall levy any tax upon rentals, this Lease or any part thereof, then the Club shall promptly pay such charge.

20. REAL PROPERTY TAXES. In the event that either party is determined to be subject to real property taxes, the taxed party shall be solely responsible for such assessments.

21. LEASEHOLD EXCISE TAX. As the Premises and the Center are publicly owned property, the Agreement is subject to a leasehold excise tax under Ch. 82.29A RCW. Upon taking possession, the Club shall complete the necessary paperwork to receive an exemption from the leasehold excise tax. In the event the State of Washington makes any demand upon the City for payment of any tax resulting from the Club's use or occupancy of the Premises, including but not limited to any leasehold interest created thereby under RCW 82.29A, the Club shall indemnify the City for all sums expended by the City or withheld by the State from the City in connection with such taxation.

22. GENERAL TAXES. The Club shall pay, before delinquency, all taxes, levies, and assessments of whatever kind or nature are imposed or become due during the term of this Agreement and arise from any activity on or use of the Premises pursuant to this Agreement.

23. ASSIGNMENT. Neither party shall assign or sublet its rights or responsibilities under this Agreement without authorization from the other party, which authorization shall not be unreasonably withheld. Neither assignment nor sublease shall relieve the Club from its liability or obligations under this Agreement. A consent to one assignment or subletting shall not be deemed a consent or waiver to any subsequent assignment or subletting.

24. SEVERABILITY. If any term of this Agreement is held invalid or unenforceable, the remainder of this Agreement will not be affected but will continue in full force.

25. NON-WAIVER. Failure of either party to insist upon the strict performance of any term of this Agreement will not constitute a waiver or relinquishment of any party's right to thereafter enforce such term.

24. INTEGRATION. This writing contains all terms of this Agreement. It replaces all prior negotiations and agreements. Modifications must be in writing and be signed by each party's authorized representative.

25. TERMINATION.

a. Termination for City Purposes.

(i) Notwithstanding any other provision of this Agreement if, after the tenth anniversary of the Commencement Date, the City determines in good faith that it needs the Premises for City purposes, the City shall have the option to terminate this lease prior to the end of the term (the “City Early Termination Option”); provided that the City shall not exercise the City Early Termination Option until it has first considered the suitability of other available property in the City for the identified City purpose. The City shall exercise reasonable discretion in making determinations regarding the suitability of such other sites.

(ii) As a condition to exercising the City Early Termination Option, the City will provide the Club with at least one (1) year prior written notice. The City Early Termination Option shall be in addition to any rights of the City to terminate the Agreement provided elsewhere in this Agreement or as otherwise permitted by law.

(iii) If the City exercises the City Early Termination Option, the City shall pay to the Club an amount equal to the Total Development Costs minus the Amortized Value (as defined below). If the City exercises the City Early Termination Option prior to the twentieth anniversary of the Commencement Date, the City shall pay to the Club an amount equal to the payment calculated above multiplied by 120%.

b. Termination for Default. The parties are required to follow the dispute resolution process in Section 12 prior to taking steps under this Subsection to terminate for default. Only after pursuing the steps in Section 12, shall each party have the right to terminate this Agreement in the event the other party is in default of any material term or condition of this Agreement. In such event, the non-defaulting party shall provide the other party thirty (30) days’ advance written notice specifying the basis for such determination. If the other party thereafter fails to commence reasonable steps within the thirty-day period to remedy the default, then this Agreement shall be deemed terminated; provided, however, that if the nature of the default is such that it cannot be remedied within ninety (90) days, then the Agreement shall not terminate so long as the party in default is proceeding promptly to remedy the default and does so within such additional period as may be agreed upon by the parties. This clause shall not be invoked by either party for purposes other than default. Such termination shall be subject to the following terms and conditions:

(i) If the City terminates this Agreement for default, the City shall take immediate possession of the Center and shall have no obligation to reimburse the Club in any amount. Thereafter:

(A) The Club shall be obligated to reimburse the City for the Operating Funds (as defined above) commencing as of the date that the City terminates this Agreement; provided that, the City shall use good faith efforts to identify an acceptable alternative tenant to operate the Center and, if such tenant assumes operation of the Center at any point during the period that the Club is required to provide the Operating Funds, the Club shall be relieved of its obligation to provide the Operating Funds owing for the period following the date that such alternative tenant assumes operation; and provided further that, the Club shall have no obligation to provide the Operating Funds if the Club has not fully remodeled the Center prior to termination; and

(B) If, at the time this Agreement is terminated pursuant to this Subsection, the Club has not fully remodeled the Center on the Premises, the Club shall be required to compensate the City for all reasonable planning and construction costs expended by the City in preparation for the remodel of the Center and any additional costs reasonably incurred by the City.

c. Termination by Club Without Cause. The Club may terminate this Agreement without cause by providing at least twelve (12) months written notice to the City of the Club's intent to terminate pursuant to this provision. Such termination shall be subject to the following terms and conditions:

(i) The City shall not be obligated to pay any amount to the Club for any purpose and shall immediately take possession of the Premises and the Center upon the Club's termination of this Agreement.

(ii) If, at the time that the Club terminates this Agreement without cause, the Club has not fully remodeled the Center on the Premises, the Club shall be solely responsible for immediate repayment to the City of all reasonable planning and construction costs expended by the City in preparation for the remodel of the Center and any additional costs reasonably incurred by the City to restore the Premises to the condition existing immediately prior to the Commencement Date.

d. Disposition of Fixtures. In the event of termination, subject to City approval, the Club may remove any improvements, additions, or fixtures erected in or attached to the Center as provided above in Section 7; provided that, the Club is not then in default and the removal will not cause permanent injury to the structure of the Center or the Premises.

e. Amortized Value. The phrase “Amortized Value” shall mean the amortized value of the Total Development Costs and the cost of any capital repairs paid for by the Club during the term of this Agreement, as determined using a 30-year straight line amortization formula. The amortization schedule for the Total Development Costs shall commence as of the date of the Club receives its certificate of occupancy for the rehabilitated Center. The amortization schedule for each Major Capital Repair shall begin the date such Major Capital Repair is placed in service.

g. Example City Early Termination Option Payment. The following calculation is intended to demonstrate the method by which the Amortized Value payment to the Club would be calculated in the event of the City exercising the City Early Termination Option.

Work received certificate of occupancy in December, 2011;
City terminates Agreement in 2036

Total Development Costs = \$2,000,000
 $\$2,000,000/30 = \$66,666$
 $\$66,666 \times 25 \text{ years in service} = \underline{\$1,666,666}$

Capital repair paid for by the Club in 2031 = \$200,000
 $\$200,000/30 = \$6,666$
 $\$6,666 \times 5 \text{ years in service} = \underline{\$33,333}$

Amortized Value = $\$1,666,666 + \$33,333 = \underline{\$1,699,999}$

Payment to Club equals the Total Development Costs minus Amortized Value for a total payment of \$300,000.

Note: Pursuant to Section 25.a.(iii) above, if calculation were done for a termination prior to the 20th anniversary but after the 15th anniversary of the Commencement Date, the City’s payment would equal $\$300,000 + (\$300,000 \times 20\%) = \$360,000$

26. DESTRUCTION.

a. Insured Damage to City-Insured Property. If the Premises are damaged or destroyed by any casualty covered by the City's Insurance, the City shall repair such damage as soon as reasonably possible, to the extent of the available proceeds, and this Agreement shall continue in full force and effect.

b. Substantial Damage to City-Insured Property – Insufficient Proceeds. If the Premises are damaged or destroyed by any casualty covered by the City's Insurance to the extent of twenty-five percent (25%) or more of the replacement value of the City-insured portion of the Premises during the last twenty-four (24) months of the term of this Agreement, then the City may, at the City's option, either (I) repair such damage as soon as reasonably possible, in which event this Agreement shall continue in full force and effect, or (II) cancel and terminate this Agreement as of the date of the occurrence of such damage by giving the Club written notice of City's election to do so within ninety (90) days after the date of the occurrence of the damage.

c. Insured Damage to Club-Insured Property. If the Premises are damaged or destroyed by any casualty covered by the Club's Insurance, the Club shall repair such damage as soon as reasonably possible, to the extent of the available proceeds, and this Agreement shall continue in full force and effect. Alternatively, the Club may, at its option, elect not to restore the Club-insured portions of the Center, subject to the Club providing the City with written notice of such election within four (4) weeks of the receipt of the proceeds of the Club Insurance. Upon an election by the Club not to restore pursuant to this paragraph, in which case, this Agreement shall terminate.

27. CLUB OPTION TO PURCHASE.

a. At the discretion of the City, at the end of the Term the Club shall have the option to purchase the Property for a price equal to Fair Market Value established pursuant to the following procedures: each party shall select an MAI appraiser, with at least 10 years of experience valuing commercial properties, who shall conduct its appraisal based on a the price a willing buyer would pay a willing seller for the Premises; and Fair Market Value shall be the average of the two appraisals. The Club shall exercise its option to purchase the Premises by notifying the City, in writing, of its desire to do so no sooner than 180 days and no later than 90 days prior to the end of the Term. The Fair Market Value determination shall be made within 60 days following the Club's notice to the City. The Club shall not have a right to exercise this option if at the time the Club seeks to exercise its option or at anytime thereafter the Club is in material default under the terms of this Lease.

b. If the Club notifies the City that it elects to purchase the Property, as set forth in the preceding subsection, the parties shall enter into a contract of purchase and sale forthwith

c. If the Club shall give notice of intent not to purchase, or shall give no notice within the time herein provided, the City may accept other purchase offers and proceed with the sale thereunder.

28. NOTICES. Each notice or other communication which may be or is required to be given under this Agreement shall be in writing and shall be deemed to have been properly given when delivered personally during normal business hours to the party to whom such communication is directed, or three (3) days after being sent by regular mail, to the appropriate party at the following address:

If to the Club: President/CEO
Boys and Girls Clubs of King County
603 Stewart Street, No. 300
Seattle, Washington 98101-1313

If to the City: City Manager
City of Sammamish
801 228th Avenue SE
Sammamish, WA 98075

and to: Parks and Recreation Director
City of Sammamish
801 228th Avenue SE
Sammamish, WA 98075

29. JURISDICTION, VENUE, AND GOVERNING LAW. The parties hereto, their successors and assigns, hereby consent to the jurisdiction and venue of the King County Superior Court, State of Washington, for the determination of any dispute that may arise pursuant to the terms of this Agreement and other agreements contained herein to the extent not resolved pursuant to Section 12 above. All the rights and remedies of the respective parties shall be governed by the provisions of this instrument and by the laws of the State of Washington as such laws relate to the respective rights and duties of school City's and the Club.

30. SECTION HEADINGS. The paragraph headings used in the Agreement are for the convenience of the parties. In the event of a conflict between a paragraph heading and the text of a particular paragraph, the written text shall prevail.

31. HEIRS AND SUCCESSORS. Subject to the provisions hereof pertaining to assignment and subletting, the covenants and agreements of this Agreement shall be binding upon the heirs, legal representatives, successors, and assigns of any or all of the parties hereto.

32. ADMINISTRATION. The Club and the City anticipate that terms of this Agreement may need to be modified in the future. The Club President/CEO and the City Manager are hereby authorized to approve mutually agreed upon written amendments to this Agreement and to supplement this Agreement where necessary to improve the administration of this Agreement and the collaboration between the parties.

33. COUNTERPARTS. The parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

IN WITNESS, both the City and the Club have caused this Agreement to be executed by authorized officers.

CITY OF SAMMAMISH

By _____
Its _____

Date: _____

BOYS AND GIRLS CLUBS OF KING COUNTY

By _____
Its _____

Date: _____

EXHIBIT A

Legal Description of the Property

The East Half of the Southeast Quarter of the Southeast Quarter of the Southeast Quarter of Section 28, Township 25 North, Range 6 East, Willamette Meridian, in King County, Washington;

Except the East 42 feet thereof conveyed to King County for 228th Ave N.E. by deed recorded under recording number 7502260463; and

Except the North 335.02 feet thereof; and

Except that portion thereof conveyed to King County by deed recorded under recording number 9801281344.

(Being known as a portion of parcel B of King County boundary line adjustment number L97L0115, recorded under recording number 9709249017, in King County, Washington.)

EXHIBIT B

Center Schematic

After Recording Return To:

Susan Boyd
Kantor Taylor Nelson & Boyd
1501 Fourth Avenue, Suite 1610
Seattle, WA 98101

LEASE AND JOINT USE AGREEMENT

Grantor: City of Sammamish

Grantee: The Boys & Girls Clubs of King County

Legal Description:

The East Half of the Southeast Quarter of the Southeast Quarter of the Southeast Quarter of Section 28, Township 25 North, Range 6 East, Willamette Meridian, in King County, Washington;

Except the East 42 feet thereof conveyed to King County for 228th Ave N.E. by deed recorded under recording number 7502260463; and

Except the North 335.02 feet thereof; and

Except that portion thereof conveyed to King County by deed recorded under recording number 9801281344.

(Being known as a portion of parcel B of King County boundary line adjustment number L97L0115, recorded under recording number 9709249017, in King County, Washington.)

Assessor's Property Tax Parcel Account Number: 2825069033