

# The Seattle Courant

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AN ORDINANCE relating to the Seattle Center Department; authorizing the execution of a ten year facility use agreement with the Women's Basketball Club of Seattle, LLC, for use and occupancy of KeyArena and adjacent areas at the Seattle Center, exempting the agreement from the requirements of Chapter 20.47 of the Seattle Municipal Code; and affirming the findings in Resolution 31039.

Date introduced/referred: January 5, 2009

Status: In Committee

Note: Seattle Storm KayArena Lease

Committee: Parks and Seattle Center

Sponsor: RASMUSSEN

Index Terms: SEATTLE-CENTER, SEATTLE-CENTER-FACILITIES, COLISEUM, BASKETBALL, LEASES

Text

ORDINANCE \_\_\_\_\_

AN ORDINANCE relating to the Seattle Center Department; authorizing the execution of a ten year facility use agreement with the Women's Basketball Club of Seattle, LLC, for use and occupancy of KeyArena and adjacent areas at the Seattle Center, exempting the agreement from the requirements of Chapter 20.47 of the Seattle Municipal Code; and affirming the findings in Resolution 31039.

WHEREAS, in 1999 the Women's National Basketball Association ("WNBA") selected Seattle as the location for one of four expansion teams to begin play in the 2000 season; and

WHEREAS, KeyArena has been the home court of the WNBA team, the Seattle Storm (the "Storm") since its inaugural season in 2000; and

WHEREAS, in 2004, playing in front of a sold-out crowd at KeyArena, the Storm

won the WNBA Championship and brought Seattle its first professional sports championship since 1979; and

WHEREAS, in public celebration of winning the WNBA championship and in front of thousands of fans in a rally at Westlake Center, October 16, 2004 was declared "Seattle Storm" day in Seattle; and

WHEREAS, the Storm continues to contribute to civic pride and community spirit; and

WHEREAS, in February 2008, Force 10 Hoops L.L.C., a locally owned company, purchased the Women's Basketball Club of Seattle ("WBCOS") and the Seattle Storm from the owners of the Seattle Supersonics; and

WHEREAS, in February 2008, with the Mayor's concurrence, the Seattle City Council unanimously adopted Resolution 31039 requesting that the Seattle Center work collaboratively with the new local owners of the Storm to negotiate a long-term lease that would enable the Storm to remain viable playing at KeyArena, while requiring the Storm to provide certain public benefits to the City, the taxpayers, and the residents of Seattle; and

WHEREAS, the Seattle Center Director and WBCOS have negotiated a ten- year agreement that ensures the Storm will use and occupy KeyArena for the playing of its home games, while giving the City the flexibility to pursue future redevelopment of KeyArena; and

WHEREAS, the ten-year agreement further ensures that WBCOS and the Storm will provide certain public benefits to the City and the general public; NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. The City Council hereby affirms and adopts the findings in Resolution 31039 that women's professional basketball provides a valuable contribution to the social and economic environment of Seattle; that women's professional basketball teams have a long history in Seattle and attract an ardent group of fans; and that a women's professional basketball team will be a valued tenant in a City-owned facility, such as KeyArena.

Section 2. The City hereby finds that an agreement that allows for sustainable local ownership of the Storm provides a significant benefit to the City because it improves the Seattle Center's ability to offer affordable public entertainment events; ensures that KeyArena continues to be a venue for the playing and viewing of basketball; enhances the value of the facility to advertisers, suite holders, and sponsors; and supports the vitality of the Seattle Center as a place to delight and inspire the human spirit.

Section 3. As requested by the Seattle Center Director and recommended by the Mayor, the Seattle Center Director or his designee is authorized to execute for and on behalf of the City of Seattle a facility use agreement with the Women's Basketball Club of Seattle, LLC (WBCOS), substantially in the form of the agreement attached hereto as Attachment 1 and identified as "Facility Use Agreement between the City of Seattle and the Women's Basketball Club of Seattle, LLC for the use of KeyArena for Professional Women's Basketball".

Section 4. Seattle Municipal Code Chapter 20.47 shall not apply to the facility use agreement authorized by this ordinance.

Section 5. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 2009, and signed by me in open session in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_

President \_\_\_\_\_ of the City Council

Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2009

\_\_\_\_\_

Gregory J. Nickels, Mayor

Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2009

\_\_\_\_\_

City Clerk

(Seal)

Attachment 1: Facility Use Agreement between the City of Seattle and the Women's Basketball Club of Seattle, LLC for the use of KeyArena for Professional Women's Basketball

RCK

CEN Storm Key Arena Agreement ORD

December 23, 2008

(Ver. 3)

Attachment 1

FACILITY USE AGREEMENT BETWEEN

THE CITY OF SEATTLE

AND

THE WOMEN'S BASKETBALL CLUB OF SEATTLE, LLC

FOR THE USE OF KEY ARENA

FOR PROFESSIONAL WOMEN'S BASKETBALL

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This Facility Use Agreement ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between THE CITY OF SEATTLE ("CITY"), a Washington municipal corporation, acting by and through its Seattle Center Director ("Director"), and THE WOMEN'S BASKETBALL CLUB OF SEATTLE, LLC ("WBCOS"), a Washington limited liability company. This Agreement supersedes, terminates, and replaces a prior agreement titled Facility Use Agreement between the City of Seattle and The Women's Basketball Club of Seattle, LLC entered into on or about May 11, 2007.

RECITALS:

A. WBCOS is the owner and operator of the "Storm" as defined herein.

B. The City is the owner and operator of KeyArena as defined herein.

C. The Parties wish to enter into an agreement that provides for the opportunity for

sustainable, local ownership of the Storm and for the maximum use of KeyArena both now and in the future; and

D. The City wishes to ensure that affordable and quality family entertainment events are offered at KeyArena; and

E. The Parties share a mutual interest in creating an opportunity for women's professional basketball to thrive in Seattle; and

F. The Parties wish to retain the Storm as a long-term tenant at the Premises, as defined below, while providing sufficient flexibility to allow the City to redevelop KeyArena and implement its Century 21 Plan.

IN CONSIDERATION of the mutual promises, covenants, agreements, and performances described herein, and other good and valuable consideration, the parties hereto agree as follows:

## I. DEFINITIONS

All words in this Agreement bearing initial capitals, other than proper nouns, Section headings or words required to be capitalized for proper usage, are defined terms and shall have the meanings specifically assigned to them in the following Subsections and elsewhere in this Agreement. Unless otherwise expressly provided, use of the singular includes the plural and vice versa.

### A. Advertising

"Advertising" means any printed or verbal announcement or display of any kind intended to sponsor or promote, directly or indirectly, the sale or rental of a service, an admission ticket to an event, an interest in a product, commodity or other form of property, or the expression of any

other commercial or noncommercial message other than directional, health or safety messages.

### B. Approval

"Approval" means the prior written consent of a party hereto or a designated representative thereof.

### C. Concession Operations

"Concession Operations" means any and all activity associated with securing, storing, preparing, offering for sale, selling, dispensing or distributing, in any manner, any item of food or beverages in or from any portion of KeyArena.

#### D. Concessionaire

"Concessionaire" means the third party(ies) that are under contract to provide Concession Operations at KeyArena during the Term of this Agreement.

#### E. Day of Game

"Day of Game" means the portion of the calendar day on which a Home Game is scheduled to be played in KeyArena, unless otherwise specifically provided in this Agreement.

#### F. Director

"Director" means the Director of the Seattle Center.

#### G. Exclusive Use Areas

"Exclusive Use Areas" means the Basketball Home Locker Room, Weight Room, Coaches Offices (3), Medical Room, Main Locker Room, Sauna, Showers, Steam Room, Laundry Room, Storage Room at NW Corner, Storage Closet, the WBCOS storage cage behind in-Arena merchandise stands, Mascot Storage, Video Room, Media Room (back portion), Legends Drive, WBCOS suites, office space for ticket administration located in the box office on the east side of KeyArena, and each and every area depicted on the attached Exhibit 1.

#### H. First Avenue North Parking Garage

"First Avenue North Parking Garage" means the multi-deck parking facility at Warren Avenue and Thomas Street, a portion of which facility is made available for use and occupancy by WBCOS as provided in this Agreement.

#### I. Food

"Food" means any item of food or drink, without limitation except for water made available from public drinking fountains or sinks that is sold, given without charge, or in any other manner dispensed in or from KeyArena.

#### J. Home Game

"Home Game" means any professional women's basketball game, including pre-season, regular season, All-Star and post season games, for which the Storm is the host team.

#### K. KeyArena

"KeyArena" means the multi-purpose, public performance facility located at Seattle

Center, together with all City-owned equipment and other appurtenances incorporated therein. In the event KeyArena is redeveloped within the existing footprint of the building, all references herein to KeyArena shall be deemed to include the redeveloped facility.

#### L. License Fee

"License Fee" means the fee WBCOS will pay the City for each Home Game, as further described in Section XI.

#### M. Novelties

"Novelties" means any merchandise, goods, wares, and publications, including merchandise and goods bearing the symbol, mark or name of the WNBA, the Storm or any other WNBA team, but excluding Food.

#### N. Premises

"Premises" means those portions of the KeyArena that are licensed and made available to WBCOS for its use and occupancy under Section VI. of this Agreement.

#### O. Practice Facility

"Practice Facility" means the facility depicted on Exhibit 8 and located at 490 5th Avenue North in Seattle, Washington and commonly known as the Furtado Center.

#### P. Scheduling Window

In years when no summer Olympics are played, "Scheduling Window" means the first Saturday in June through the second Friday in October. In Summer Olympics years, the "Scheduling Window" means the first Friday in May through the first Sunday in August and the first Friday in September through the second Friday in October.

#### Q. Seats

"Seats" means any seats in KeyArena from which Home Games may be viewed.

#### R. South KeyArena Parking Lot

"South KeyArena Parking Lot" means the passenger vehicle parking stalls on the south side of KeyArena in the area depicted on the attached Exhibit 1.

#### S. Storm

"Storm" means the WNBA team owned or operated by WBCOS.

#### T. Suite

"Suite" means those areas designated as such in Exhibit 1.

#### U. Temporary Advertising

"Temporary Advertising" means that Advertising in KeyArena which may only be displayed during Home Games or approved Storm events.

#### V. Third Party Management Company

"Third Party Management Company" means one or more companies with which the City may contract to provide certain services such as the sale of suites, Advertising, event booking, merchandise, concessions or other services or amenities at KeyArena.

#### W. Gross Ticket Receipts

"Gross Ticket Receipts" means the total income WBCOS receives from the sale of tickets for admission to any Home Game played at KeyArena or an alternative venue, whether for cash, barter, exchange or credit or any other method; mail or telephone orders for tickets received or filled on or from the Premises or from an alternative venue; all deposits not refunded to purchasers; and orders for tickets taken although filled elsewhere. "Gross Ticket Receipts" does not include money refunded to, and not merely credited to the account of customers who return or do not accept services sold by or for WBCOS; the Washington State Sales Tax; and any other tax imposed by any government agency directly on admission to a Home Game.

#### X. WBCOS Retail Facility

"WBCOS Retail Facility" means the approximately 5,000 square feet of street-level space, basement and a portion of the second floor as has been customarily used by the WBCOS or its predecessor, commonly known as the "Team Shop" and as depicted on the attached Exhibit 1.

#### Y. WBCOS Suites

"WBCOS Suites" means two suites in KeyArena made available for WBCOS' use as described in Subsection VI.D.

#### Z. WNBA

"WNBA" means the Women's National Basketball Association and its successor or successors, the professional women's basketball league or organization of which the Storm is a member.

## II. USE

Subject to the terms and conditions herein, the City hereby grants to WBCOS the right to occupy and use the Premises for the presentation and broadcasting of all Storm Home Games during each year of the Term of this Agreement; for Storm practice sessions; and for up to five (5) events annually for purposes of fan generation/appreciation or sponsorship and business development, subject to the conditions in Subsection V.I. The City agrees that WBCOS shall be the sole person or entity entitled to use and occupy the Premises for the presentation of professional women's basketball games for the duration of this Agreement.

The City also hereby grants WBCOS the right to occupy and use the Premises and the WBCOS Retail Facility to sell Novelties directly, or indirectly through one or more third parties, as further described in Subsection X .D and to use the WBCOS Retail Facility for other purposes described in Subsection VI. A.2.

## III. WBCOS' OBLIGATION TO USE KEYARENA

Subject to the scheduling process described in Section V, for the duration of this Agreement, WBCOS shall schedule and ensure that the Storm plays one hundred percent (100%) of its Home Games in KeyArena; provided, in the event the City is unable to guarantee certain dates acceptable to WNBA for post-season Home Games occurring outside of the Scheduling Window, then WBCOS may, in its sole discretion, contract with alternative venues for such games. Notwithstanding the above, WBCOS may schedule pre-season Home Games outside the Seattle area.

## IV. TERM OF AGREEMENT

The Term of this Agreement shall be ten years, commencing on January 1, 2009 and expiring on December 31, 2018 (the "Term").

## V. SCHEDULING OF STORM HOME GAMES AND PRACTICES

### A. Scheduling Window and Procedures

The City will not be required to Approve or confirm WBCOS's schedule requests for any Home Games , including pre-season, regular season and post-season (playoff) games, unless the games occur during the Scheduling Window and the scheduling procedures in this Section V are followed. If the WNBA season moves outside the Scheduling Window at any time during the Term, the parties agree to amend the Scheduling Window to reflect the amended WNBA season, subject to any contractual commitments the City has with other users of KeyArena. The Scheduling Window is based upon the official 2009 WNBA season and playoff schedule.

### B. Storm Priority During Scheduling Window

Subject to the scheduling process described in Section V, during the Scheduling Window the Storm will have priority over other users for all Home Games, provided that the Storm will work with the WNBA to minimize the need to schedule Home Games over the Labor Day weekend. Additionally, subject to the scheduling process requirements in Section V, the City will make KeyArena available to third parties during the Scheduling Window only according to a schedule that ensures that the Storm is able to play all of its Home Games at KeyArena. Nothing restricts the ability of Seattle Center to use KeyArena for other purposes on dates not used by the Storm, provided that the Seattle Center will not permit third party use of any Exclusive Use Areas. Notwithstanding the foregoing, the Storm recognizes that it will not have access to Exclusive Use Areas during times when KeyArena is licensed for use by third parties. During any time period in the Term when the WBCOS Retail Facility is available for WBCOS's use as described in Section VI, WBCOS shall have exclusive access to the WBCOS Retail Facility at all times.

### C. Selection of Regular Season Home Game Dates

If the WNBA season moves outside the Scheduling Window at any time during the Term, the parties agree to amend this Subsection as needed to reflect the amended WNBA season, subject to any contractual commitments the City has with other users of KeyArena.

1. By October 1 of the year immediately preceding each WNBA season during the Term of this Agreement, the Director shall provide WBCOS with a list of a minimum of thirty-two (32) potential "regular season" Home Game dates occurring during the Scheduling Window. The list of regular season Home Game dates shall include a minimum of fourteen (14) Monday - Thursday dates. Any two consecutive weekday dates (Mondays through Thursdays) offered by the Director shall be considered as only one (1) useable date in meeting the required thirty-two (32) minimum dates. The list of regular season Home Game dates shall include a minimum of two (2) Mondays, five (5) Tuesdays, five (5) Thursdays, six (6) Fridays, and six (6) Saturdays.

2. If the WNBA increases the number of regular season Home Games, then the number of potential available dates shall be increased to 160% of the new total number of regular season Home Games, so long as the increased games fall within the Scheduling Window and WBCOS notifies the City of the need for additional dates prior to the City making the annual date offer to WBCOS. If WBCOS requests additional potential dates after the City makes its annual date offer, the City will use its best efforts to provide additional potential dates in light of City commitments to other clients. Additionally, if the WNBA changes its restrictions on consecutive dates, the Director will modify the annual date offer to comply with restrictions on consecutive dates so long as WBCOS notifies the Director of the new requirements prior to the annual date offer.

3. By December 1 of each year for the following season or immediately after the



WNBA finalizes the schedule for the relevant season, whichever occurs later, WBCOS shall notify the Director, in writing, of those dates on the Director's list on which it wishes to license the KeyArena for a regular season Home Game. Such dates shall be known as "Confirmed Dates". Any dates not selected by WBCOS as Confirmed Dates by the later of either December 15 or fifteen days after the WNBA finalizes the schedule for the relevant season shall be deemed relinquished and shall be available for use by other facility licensees.

#### D. Scheduling of Pre-Season Home Games

At any time, WBCOS may ask the Director to hold potential dates for pre-season Home Games. The Director shall hold such requested dates for WBCOS provided that the dates are within the Scheduling Window, and are not already held for or contractually committed to another licensee. At the earliest possible opportunity, but not less than sixty (60) days prior to each potential pre-season Home Game date, WBCOS shall confirm its intention to use KeyArena for such date(s). Any dates not so confirmed shall be deemed released and available for licensing to third parties. Prior to such confirmation, the Director shall notify WBCOS of any third-party requests for use of KeyArena for any date being held for a pre-season Home Game. WBCOS shall have seventy-two (72) hours from the time of the notification to confirm or release the date.

#### E. Scheduling of Post-Season (Playoff) and Championship Home Game Dates

Immediately after the WNBA finalizes the schedule for play-off or championship Home Games for the upcoming season, WBCOS shall notify the Director, in writing, of those dates which it wishes to license the KeyArena for a WBCOS post-season Home Game. Provided such dates are within the Scheduling Window and that KeyArena has not been contractually committed to a third party, the Director shall schedule and reserve the KeyArena for WBCOS' use for such designated dates within the Scheduling Window. The City will use best efforts to accommodate playoff game dates that are outside the Scheduling Window, subject to the City's existing scheduling commitments and "building holds". WBCOS shall have the right to schedule and use the KeyArena for such playoff or championship games for Labor Day Weekend (defined as Friday through Monday of Labor Day Weekend) only in accordance with the terms and conditions contained in Exhibit 6. At the earliest possible opportunity, WBCOS shall confirm its intention to use the KeyArena for any designated date(s). Upon confirmation, each such date shall become a Confirmed Date hereunder.

#### F. All-Star Games

In any year during the Term, if the WNBA would like the Storm to host the annual All-Star Game or similar annual celebration and its related events, then the Director will include these dates, in addition to the potential regular season Home Game dates referenced in Subsection V.C above for the season in which the WNBA All Star

game is to occur in Seattle, provided that the Storm has given the Director written notice prior to the Director making the annual date offer in Subsection V.C above, and provided that these dates are within the Scheduling Window and have not already been contractually committed to a third party. The Storm will notify the Director, in writing, immediately following notice from the WNBA that the Storm has been selected to host the WNBA All-Star Game, but under no circumstances later than one month after the annual date offer for that year.

#### G. Director's Endorsement

The Director shall prepare and issue a written "use date endorsement notice" to WBCOS for each Confirmed Date.

#### H. Use of KeyArena for Storm Practice Sessions

WBCOS may request the use of some or all of the KeyArena basketball floor for a Storm practice session on days when no Home Game is scheduled provided the request is made no more than forty-five (45) days prior to the date of the proposed practice. Such requests shall be granted if: (i) no other user or event has been scheduled to use the portions of the KeyArena necessary for the practicing of professional basketball on such day; (ii) the City does not need to do maintenance, construction or repair work on the KeyArena that would be interfered with by such use or that would interfere with such use; (iii) the KeyArena does not need to be prepared in any respect on such day for any user or event scheduled for any subsequent day and (iv) the facility is already configured for basketball use. Notwithstanding the foregoing, the City shall have the right to cancel a scheduled practice session with at least ten (10) days notice in order to schedule a revenue-generating activity in the KeyArena. In approving a request for a practice session, the Director may impose reasonable restrictions or conditions on WBCOS' use and occupancy of the Premises. WBCOS shall not be required to pay any costs for practicing in the KeyArena when available.

#### I. Use of KeyArena for Non-Home Game Events

In addition to the Home Games, the WBCOS shall be afforded up to five (5) fan generation/appreciation, or sponsorship and business development events per each Storm Season on days when no Home Game is scheduled, provided the request for use of the Premises is made at least thirty (30) days prior to the date of the proposed event. Regardless of how many days prior to the date the request is made, the decision to grant the use shall be at the Director's discretion, and the City will not be obligated to confirm the event any sooner than forty-five (45) days prior to the event. Each of the events must be for the purpose of increasing fan awareness, generating ticket sales, sponsorship or business development related to the Storm, and at least one of the events must be open to the public free of charge. The Director reserves the right to determine the level of City staffing necessary to accommodate the event. In the event the City staffing costs are \$2,500 or less, WBCOS shall be allowed the use

at no charge. In the event the City staffing costs exceed \$2,500, WBCOS shall be responsible for all City staffing costs associated with the event.

## J. Damages

### 1. Applicability

If the parties have otherwise complied with the scheduling requirements in Section V, but the Premises are not available for the playing of any Home Game due to redevelopment or an emergency, the Parties agree that the damages would be difficult to calculate. As a result, the parties agree the measure of damages set forth in this Subsection is a fair and reasonable measure of compensation and is not intended as a penalty.

### 2. Damages for Loss of Use of the Premises for an Entire Season

Consistent with Section XXVII, the City will work to minimize the number of Home Games for which the Premises may be unavailable due to redevelopment. The City will notify WBCOS as soon as possible, but in no event later than July 31, if the Premises will be unavailable for the upcoming season due to redevelopment of KeyArena. As part of that notification, the City will let WBCOS know the nature and schedule of the redevelopment, to the extent it is known at the time notice is given, and will work collaboratively with WBCOS to help secure an alternative venue for the Home Game dates for which the KeyArena will be unavailable. Additionally, for any complete season in which the Premises are unavailable, the City will pay WBCOS the amount by which its Revenue in the immediately preceding complete season exceeds the amount of Revenue WBCOS receives in the season when the Premises are not available for Home Games. As used in this Subsection V.J, "Revenue" means net income WBCOS receives from the following sources only: Ticket Receipts, Concession Sales, Temporary Advertising, and sale of Novelties. If the City fails to provide notice by July 31, in addition to the lost Revenue described in this Subsection, the City will pay WBCOS its actual damages directly resulting from the delay in notice.

### 3. Damages for Loss of Use of Premises for Partial Season or on Confirmed Home Game Days

If the City notifies WBCOS that the Premises will be unavailable for a partial season due to redevelopment of KeyArena, or if WBCOS has complied with the scheduling requirements in Section V and the City fails to make the Premises available for any confirmed Home Game due to an unforeseen emergency that does not qualify as an event of Force Majeure, the City will pay WBCOS for its loss of Revenue on a per game basis calculated by dividing WBCOS' Revenue in the immediately preceding complete season by the number of Home Games in that season, resulting in an average per game amount of revenue. For each Home Game when the Premises are unavailable and WBCOS' Revenue at that Home Game is less than the average per

game Revenue WBCOS received in the preceding season, the City will pay WBCOS the difference. For any Home Game (s) affected that are play-off games, the calculation will be based on the immediately preceding season's play-off game Revenue average, if there was at least one play-off game in that season.

#### 4. Revenue Share; Mitigation

Nothing in this Section is intended to replace or amend the City's obligation to pay WBCOS its Revenue Share under Subsection X.E. Nothing in this Section is intended to modify or reduce WBCOS' duty to mitigate damages in the event the City is unable to deliver the Premises for any Home Game, and WBCOS will continue to make best efforts to maximize ticket sales and concession revenues at any alternative venue.

#### 5. Total Damages

The damages described in this Section are the full and total damages the City will be obligated to pay WBCOS in the event the Premises are not available to WBCOS for the playing of any Storm Home Game due to redevelopment of KeyArena, or due to an unforeseen emergency that does not qualify as an event of Force Majeure.

### VI. PREMISES, EQUIPMENT AND FIXTURES AVAILABLE FOR USE BY WBCOS

#### A. Premises, Equipment and Fixtures Licensed for Use by WBCOS

##### 1. Exclusive Use Areas

During the Term, WBCOS will have the exclusive right to use and occupy the Exclusive Use Areas depicted on Exhibit 1. In the event of redevelopment of KeyArena, WBCOS will have the exclusive right to use and occupy comparable facilities at KeyArena as determined in the Director's reasonable discretion. The City will not permit any third party user of KeyArena to access or use the Exclusive Use Areas however, WBCOS will not be able to use, access, or occupy the Exclusive Use Areas during such times as KeyArena is licensed for use by a third party.

##### 2. WBCOS Retail Facility

WBCOS shall have the exclusive right to use or lease the WBCOS Retail Facility for the sale of Novelties, and for any other purpose approved by the Director, including Advertising on the interior of the facility, so long as such use is appropriate as a Seattle Center use, and WBCOS shall retain all revenues derived therefrom. In the event the WBCOS Retail Facility is no longer available as a result of construction or redevelopment, the City will ensure that the Storm is permitted to share the use of any facility designed for the purpose of merchandise sales; however, such use is not guaranteed to be exclusive, is not guaranteed to include Advertising rights, and may be limited to sale of Storm and WNBA related merchandise.

### 3. Premises, Equipment and Fixtures Licensed for Use on Home Game Dates

Subject to the Permitted Hours of Use, on each Home Game date, WBCOS shall have the right to exclusive use and to authorize others to use for the presentation and broadcasting of Home Games, those portions of the KeyArena, including equipment and fixtures, that are reasonably necessary for the playing, exhibition, and viewing of, and attendance at, a professional basketball event. Such portions include the audience seating areas (excluding Suites not provided to WBCOS pursuant to this Agreement), the basketball floor, baskets, timing clocks and scoreboards, the ring signage system, courtside rotating signage leased separately by WBCOS, control room (LED and Mo4C and "north bucket"), sound, lighting and public address systems, locker rooms, training room, media room, family room, and any additional areas listed on Exhibit 1 hereto and any comparable facilities developed during the Term for similar purposes.

On each Home Game date, WBCOS shall be permitted to use the KeyArena box office spaces identified in Exhibit 1 and comparable facilities developed during the Term for similar purposes. WBCOS shall not make any alterations to the City's existing ticketing equipment without the Director's Approval and any alterations other than routine maintenance and repair made at WBCOS' request as may be approved by the Director shall be implemented at WBCOS' sole cost and expense.

### 4. Permitted Hours of Use

The Premises shall be available to WBCOS during the following periods:

a) On any Home Game day on which the KeyArena does not have to be converted to or from a non-basketball use, WBCOS shall be permitted to use the Premises beginning at 9:00 a.m. and ending at 11:50 p.m. of that same day.

b) On any Home Game day on which the KeyArena must be converted on that same day to a basketball use from a different use, WBCOS shall be permitted to use the Premises beginning two (2) hours before the starting time of the Home Game scheduled on that day or such earlier time on that same day as the Director shall specify; provided, that for Home Games, Suite holders shall not be admitted to KeyArena until one and one-half (1 1/2) hours before the starting time, and the general public shall not be admitted to the KeyArena until one (1) hour before the starting time for such Home Game; and provided, further, that on such days, no practice session shall commence prior to 11:00 a.m.

c) On any Home Game day on which the KeyArena must be converted on that same day from a basketball use to a different use, WBCOS shall be permitted to use the Premises until one (1) hour after any scheduled Home Game or practice session, or such later time on that same day as the Director shall specify; provided, that any practice session scheduled for such a day shall conclude by 9:00 p.m.

d) WBCOS shall ensure that no Home Game commences before 12:00 p.m. without the prior written approval of the Director. For each season during the Term, one Home Game, as approved in advance by the Director, may begin prior to 12:00, but no earlier than 11:00 am. For that day only, a practice session may commence at 9:00 am.

## 5. Practice Facility

a) Background. Prior to the effective date of this Agreement, WBCOS has had the use of the practice facility described in Exhibit 8 (the "Practice Facility") pursuant to arrangements it had made with the Professional Basketball Club ("PBC"), the previous owner of the Seattle SuperSonics. Additionally, WBCOS assumed the rights, title and Interest of PBC to the Practice Facility effective September 2, 2008. PBC had the right to construct and maintain the Practice Facility at its current site pursuant to a ground lease its predecessor originally entered into with the City on March 14, 1994 (the "PBC Ground Lease"). The City subsequently sold property, a portion of which is subject to the PBC Ground Lease, to the current owner of the property, IRIS Holdings, LLC ("IRIS"). IRIS intends to develop the property that it purchased from the City including that portion of the property that is subject to the PBC Ground Lease. The PBC Ground Lease, as first amended, currently provides that it will terminate on October 31, 2008, at which time the Practice Facility becomes the property of IRIS. The City and WBCOS have secured the right from IRIS to amend the PBC Ground Lease for the Practice Facility until November 30, 2009, upon the terms and conditions set forth in the amended and restated ground lease attached hereto as Exhibit 8 (the "Amended and Restated Ground Lease").

b) Lease of Ground Lease to WBCOS. With the consent of IRIS, the City has entered into the Amended and Restated Ground Lease with WBCOS as the ground lessee so that WBCOS can use the Practice Facility until November 30, 2009. The City shall have no obligation to provide WBCOS with a practice facility after November 30, 2009. WBCOS shall only use the Practice Facility in full compliance with the requirements of the Amended and Restated Ground Lease. WBCOS shall fully perform and discharge its duties and obligations under the Amended and Restated Ground Lease. WBCOS shall not assign its rights or obligations under the Amended and Restated Ground Lease without the written approval of the City which approval may be granted or withheld in the City's sole discretion.

c) New Facility. In addition, any newly constructed or alternative practice facility developed by or on behalf of the City shall also be provided to the Storm and use thereof shall be determined by the Storm and other users in a manner that is satisfactory to all users.

## B. Limited Use of Common Areas

WBCOS is hereby granted the right to use the common areas of the KeyArena

(including but not limited to all lobby, entry, vestibule, balcony, mezzanine, corridor, concourse, passage, ramp, stair, landing, vomitory, elevator and public restroom areas) in common with authorized third parties to access those areas of the KeyArena that have been specifically licensed for use by it under this Agreement. Neither WBCOS nor any of its officers, employees, invitees, contractors or any of their subcontractors shall use any portion of Seattle Center not specifically granted to WBCOS for its use and occupancy hereunder for any purpose, without the Director's Approval.

### C. Public Address Facilities

For each Storm Home Game the City shall provide WBCOS with exclusive access to, and control of, the public address facilities in the KeyArena, which right shall not permit WBCOS to use or allow others to use such public address facilities for any political purpose. Notwithstanding the foregoing, the City reserves the right to use the public address facilities at all times for general safety, health, and legal announcements including but not limited to those for emergency or crowd control purposes.

### D. WBCOS Suites

#### 1. Center Court Suite

During the Term, the WBCOS shall be entitled to use and enjoy one center court Suite, preferably opposite from the scorer's table, to be identified by the Director prior to each calendar year, without additional charge, for the viewing of all Home Games and additional events at KeyArena to which other Suite licensees are granted admission.

#### 2. Additional Suite

If all of the Suites in the KeyArena have not been licensed for use by one or more third parties, WBCOS may also enjoy, without additional charge unless otherwise noted, the use of one additional unlicensed Suite that is specified from time to time by the Director, until all Suites have been licensed for use by one or more third parties. Use of the additional Suite shall be further limited to WBCOS' invitees viewing of the following events:

a. Home Games at no charge.

b. Additional events under the following circumstances (i) the event is included among those presentations in the KeyArena to which admission tickets are offered for sale to the general public and Suite licensees are granted admission without additional charge; and (ii) there is a Suite available within seven (7) calendar days of the event, and; (iii) the Storm pays to the City a fee for the use of said Suite equal to the then-current percentage share of Suite revenue due to the entity entrusted

with the licensing or management of Suites. Additional events do not include presentations such as graduations, religious meetings, or political conventions with respect to which tickets are sold or otherwise distributed to attendees on a restricted basis, or any N.C.A.A. Basketball Tournament games, or competition sanctioned by the United States Olympic Committee, or National Basketball Association All-Star Game, or any presentations that City is contractually precluded from making available for viewing by Suite occupants without an additional charge, and no suite use shall be permitted under this Agreement for any such presentation.

c. WBCOS' use and enjoyment of Suites shall also be conditioned on the WBCOS' compliance with the same terms and conditions applicable to the lessees and occupants of other KeyArena Suites.

#### E. XO and Lexus Clubs

For each regular season confirmed Home Game Date, the City will also reserve either the XO or the Lexus club for WBCOS' use for pre-game, half-time and post-game receptions and viewing of basketball for groups attending Home Games. By May 1 of each year, WBCOS shall notify the Director, in writing, which dates WBCOS will use a club for pre-game receptions or gatherings. WBCOS will reimburse the City no less than \$1250.00 as the minimum fee for each such use. The \$1250.00 fee is intended to include the minimum order for refreshments and light snacks for fifty (50) invitees. WBCOS will reimburse the City for any requested Food or beverage service that exceeds the minimum order for fifty (50) attendees. The fee will be adjusted annually to account for the change in minimum prices charged other users for the use of the clubs.

### VII. TICKET ADMINISTRATION

#### A. ADA

WBCOS agrees to conduct its ticket sales according to the method that Seattle Center uses in KeyArena for concerts. This includes holding one percent (to be adjusted with any changes in the applicable Federal or State ADA laws) of remaining sellable capacity up to game time for ADA seating, in all pricing levels, leaving vacant two rows of seats in front of the following ADA sections:

103/104/106/107/108/110/111/117/118/120/121/122/124/125/202/203/204/205/206/208/209/210/211/212/216/217/218/219/220/222/223/224/225/226, and leaving vacant one row of seats vacated in front of ADA sections 114/127, when being used as wheelchair/disabled accessible seating sections.

Both parties acknowledge that the Seattle Center's current policy is to place a physical barrier/cover over the end of the seating rows that must remain vacant. This practice is expected to continue throughout the term of this contract; however, the City reserves the right to change any policy or procedure as necessary to comply



with the requirements of applicable federal and state ADA laws.

#### B. WBCOS' Responsibilities

Other than what is contained in Subsection VII.A, the City shall have no rights, authority or responsibility with respect to the sale of tickets to Storm Home Games, including but not limited to the printing and distribution of tickets; the undertaking and conducting of group, season, and special package sales; the establishing of any and all prices for basic admission to WBCOS' events and activities at Seattle Center and any service charge(s) thereon; the collecting and counting of receipts; and accounting. WBCOS shall be entitled to all revenues derived from the sale of tickets.

#### C. Admissions

WBCOS shall take reasonable steps to ensure that no person with a primary purpose of viewing a Storm Home Game is admitted to any such Home Game at the KeyArena without first presenting an admission ticket.

#### D. Box Office Statement Provided to Director

At the end of each Home Game, WBCOS shall deliver to the Director a box office statement prepared in connection therewith, showing for each such game the number of tickets distributed, by price category, and certified as to accuracy by an authorized employee of agent of WBCOS.

#### E. Non-Storm Event Tickets

If made available by an event promoter and to the extent not in conflict with other City commitments, WBCOS' premium ticket holders and sponsors will have the option to purchase priority tickets for non-Storm events before the general public, up to a total of fifty (50) seats.

### VIII. RECOGNITION OF SEATTLE CENTER LOCATION

WBCOS shall ensure that the words "KeyArena at Seattle Center" appear on all tickets and shall use its reasonable efforts to ensure that the words "KeyArena at Seattle Center" appear in or on advertising material (including but not limited to brochures, signs, and logos) that makes reference to the Storm's Home Games and that is imprinted, published or otherwise produced by or on behalf of WBCOS. In the event KeyArena is renamed during the Term, WBCOS shall replace the word "KeyArena" with the new name of the facility, and WBCOS shall continue to comply with all obligations in this Section.

### IX. SERVICES AND FACILITIES

#### A. Services and Facilities to be provided by City for Storm Home Games

In consideration of the License Fee required by Subsection XI.A of this Agreement, the City shall provide WBCOS with the following services for each Home Game basketball presentation: Seattle Center Event Service Representative(s); set-up and removal of basketball game-associated equipment; peer security for bag checking only; a public first-aid facility in the KeyArena; KeyArena admissions, stage and sound personnel; building technical staff and building security; and cleaning staff. The Director shall determine the necessary level of service after consultation with WBCOS; as of the commencement of this Agreement, the parties agree that the services shall be at the projected average level expressed in labor hours as shown on Exhibit 2, Projected Per Game WNBA Service Levels in Hours, except for services required as a result of activities described in Subsection IX.C. The City and WBCOS shall endeavor to jointly develop operating standards for Home Games in an effort to provide high levels of customer service while also controlling operational cost; however, in the event of any disagreement pertaining to operational issues, the decision of the Seattle Center Director shall be final. In no event shall service levels be less than those customarily provided to the Storm prior to the execution of this agreement, unless there is a material reduction in attendance at Home Games compared to 2008 levels, or otherwise by agreement of the parties. In the event that complaints are made by patrons with regard to quality of service provided by the City under this Section, the Parties will cooperate to evaluate the legitimacy and to remedy in a reasonable manner.

#### B. Services and Facilities to be provided by WBCOS

The License Fee does not include any other personnel or services not specifically enumerated in Subsection IX.A, and WBCOS shall provide at its sole expense or pay the costs of the following: ring signage operator; video operator; courtside rotating signage operator; scoreboard operators; staff required for television and radio broadcasts; Seattle Center Staff required for installation and/or removal of the upper bowl vertical curtain system; scorers; paramedics; ticket sellers; and game officials. WBCOS shall also secure and pay for whatever number of off-duty Seattle Police Department law enforcement officers as WBCOS determines are necessary for player, coach, bench or courtside security. WBCOS shall not engage any other public or private security personnel for the Premises without the Director's Approval.

#### C. Pre-, Mid- and Post-Home Game Activities

The Parties agree that there may be mutual benefits in certain pre- game, mid-game and post-game activities and receptions; however, the License Fee does not include and does not require the City to provide any pre-, mid-, or post Home Game Activity services beyond those described in IX.A and reasonably required for the actual playing of a basketball game and the support needed to reasonably accommodate spectators watching the game. WBCOS may schedule such pre-, mid- and post Home Game activities upon reasonable prior notice to the Director provided they occur within the Day of Game hours of WBCOS' authorized occupancy of KeyArena, as

described in Subsection VI.A.4 above. If the staffing costs for such events are five hundred dollars [\$500] or less for any event, than the WBCOS shall pay no costs. If the staffing costs exceed five hundred dollars [\$500] for any event, WBCOS shall pay all usual and customary costs the City incurs for personnel, services, and equipment that the Director determines is necessary to facilitate each such activity. WBCOS may use the Lexus and XO Clubs for pre-game, mid-game, and post-game activities according to the provisions in Section VI.E.

WBCOS is also granted the right to continue the usual and customary practice of providing pre-game activities and sponsor displays on the adjacent West plaza, subject to the Director's approval. WBCOS shall be responsible for all staffing costs associated with use of the West Plaza .

#### D. Utilities

The License Fee shall include electricity, water, heating, ventilation and air conditioning, sewer and solid waste removal reasonably required for WBCOS' use of the KeyArena as contemplated herein. Additionally, the License Fee shall include the use and maintenance of phones that are available in the Premises for use by any user of the Premises. The City shall repair any malfunction or failure of any utility service provided pursuant to its obligations in this Subsection, and shall be liable for any interruption or impairment of WBCOS' use, enjoyment and occupancy of KeyArena resulting from any such utility system malfunction or failure to repair such service, but only if such malfunction or failure is directly caused by an act or omission of Seattle Center Department personnel. The License Fee does not include, and WBCOS shall pay, charges for cable television service to locker rooms and for all separately metered utilities to the WBCOS Retail Facility.

#### E. Basketball Floor

The City will supply a basketball floor, which WBCOS may utilize. All costs associated with painting, re-painting, finishing, re-finishing, preparing and adding logos to the floor, as well as any changes needed to accommodate the accompanying baskets and courtside seating for WNBA purposes shall be the sole responsibility of WBCOS, unless the costs result from the City's permitted use of the floor by a third party. WBCOS shall ensure that any floor that is utilized contains the words "KeyArena at Seattle Center" in a prominent and television-viewable location unless such display is expressly prohibited by the WNBA, or an equivalent identification on the floor should the City enter into a new naming rights agreement requiring such identification on the floor. The WBCOS shall be able to continue the practice of applying Storm, WNBA, and sponsor logos on the floor to remain for the duration of a season, in its reasonable discretion. The Seattle Center shall ensure that any usage of the floor by another tenant shall not result in additional costs to WBCOS.

#### F. Rotating Courtside Signage

WBCOS shall assume responsibility for the lease and maintenance of the rotating courtside signage in front of the scorer's table. Use of the signage by the Seattle Center or by any other tenant shall be only be with permission of WBCOS, which shall not be unreasonably withheld. If WBCOS permits the Seattle Center or another tenant to use the courtside signage, WBCOS shall have the exclusive right to determine whether to charge rent or provide free of charge, within its discretion. The City shall continue to store the signage on site.

## X. CONCESSION OPERATIONS, NOVELTIES, ADVERTISING, SUITE SALES AND REVENUE SHARING

### A. Concession Operations

#### 1. City's Rights; Selection of Concessionaire

The City reserves the exclusive right to engage in Concession Operations or to contract with third parties to provide Concession Operations at KeyArena. As of the effective date of this Agreement, Concession Operations are governed by a separate contract between the City and a third party Concessionaire. Because quality and costs of concessions at Home Games are of concern to WBCOS, if the City initiates a process during the Term to enter into a new contract for Concession Operations at KeyArena, WBCOS shall have the right to do the following: (i) be a participant in the process for the selection of a Concessionaire with the understanding that the City reserves all decision making rights; and (ii) participate in the evaluation process for the Concessionaire whenever it occurs during the Term.

#### 2. Concession Operations

The City and WBCOS shall meet at least once ninety (90) days after the end of each Storm season to confer regarding the Concessions Operations for the upcoming season. Where there are opportunities to improve the quality of concession operations that in the Director's discretion are affordable and operationally appropriate to do, the City will work directly with the Concessionaire to implement such improvements, including but not limited to:

- (i) the development of Storm-specific products, signage, menu displays and sponsorships;
- (ii) the style and content for Concession-related clubs and seating areas;
- (iii) the number of KeyArena concessions areas, clubs, restaurants, and lounges that are open for any and all Home Games;
- (iv) Storm-specific pricing for Concessions;
- (v) whether or not to continue the trial basis program of "in and out" privileges for

Storm fans at designated KeyArena entrances;

(vi) the sale of alcohol at specific locations for Home Games;

(vii) the use of roving vendors and concomitant technology to provide concessions in the lower bowl of the Arena and which allows fans to order, pay and receive concessions while remaining in their seats;

(viii) development and implementation of a program to gather point of purchase information; and

(ix) the integration of community groups to raise revenue from and participate in concession activities.

### 3. Meetings during Storm Season

During the months in which any Home Game is scheduled, all parties, including, but not limited to, the City, the WBCOS, any Concessionaires, any Third Party Management Company, and any other party operating at the Premises who may impact the WBCOS's use of the Premises shall have a joint bi-weekly meeting to discuss operation of the Premises and to resolve any operational and management conflicts, all in an effort to enable the WBCOS to have use and quiet enjoyment of the Premises and to provide the fans of the Storm with a high quality sporting event experience. Each representative at the weekly meeting shall be an individual with decision-making authority on the day-to-day operations of her respective organization's activities.

### B. Revenue from Concession Operations

During the Term of this Agreement, WBCOS shall be entitled to receive thirty percent (30%) of the gross revenue derived from Concession Operations at Home Games. Concessionaire and the City shall keep accurate books and records and shall make such records available for WBCOS review and inspection upon reasonable advance notice.

### C. Sale of Food outside KeyArena

Subject to the Director's Approval of a specific proposal, WBCOS may contract with vendors to sell Food outside KeyArena in the adjacent plazas during any scheduled Home Game. The Director will not unreasonably withhold Approval of any such proposal, however the Director may condition Approval in his or her discretion. WBCOS will require its vendors to comply with all applicable laws, statutes, ordinances, rules and regulations. Additionally, WBCOS will reimburse the City for additional staffing cost to the Seattle Center associated with the sale of Food outside KeyArena. WBCOS is entitled to keep all revenue derived from the permitted sale of Food.

#### D. Novelties

WBCOS is hereby granted the exclusive right to sell Novelties at the WBCOS Retail Facility without limitation. WBCOS is also granted the exclusive right to sell Novelties at Home Games as has been customarily done by the Storm on the east and west sides of the Premises. WBCOS may propose to sell Novelties at other locations on the Seattle Center Campus, subject to approval by the Director based on availability of space and any other factors in his or her reasonable discretion. WBCOS is entitled to keep all revenue derived from the permitted sale of Novelties.

#### E. WBCOS Revenue Share

Subject to the grant of Advertising rights in Subsection X.F, the City retains the exclusive right to sell Advertising, Suites, and Naming Rights in KeyArena, directly or by its Third Party Management Company. In partial consideration of the enhanced value the City derives from these sales due to the Storm's use of KeyArena for the playing of Home Games for a 10-year term, and in partial consideration of the public benefits provided by WBCOS under Subsection XI.C, the City will pay WBCOS a guaranteed share of revenue in the amount of Three Hundred Thousand Dollars [\$300,000] annually ("WBCOS Revenue Share"). Such payment shall be indexed for inflation pursuant to Section XXX of this Agreement.

#### F. Advertising

1. WBCOS or its designee is hereby granted the exclusive right to sell, grant, license and present Temporary Advertising on Home Game Days at or from the following portions of the lower bowl: the rotating signage leased by WBCOS from a third party, the basketball floor, backboards, basketball goal supports' padding, player benches, 24 second clock, press table, scorer's table, team and trainer equipment, visiting team and trainer equipment, video portion of jumbotron, the concrete walls in the lower bowl, the seats and seatbacks in the lower and upper bowl, the blimp and similar devices approved by the building manager, media room, family room, and the curtain. WBCOS may present Temporary Advertising in any other area of the lower bowl with the prior approval of the Director, and may present Temporary Advertising in the above locations during other WBCOS events unless the Center's configuration or set up of the lower bowl for a specific event otherwise precludes it. In addition, WBCOS is also granted the right to sell and present Temporary Advertising on ring signage areas, it being understood that the City retains the right to present Advertising on ring signage areas on Home Game Days, including the right to run promotional Advertising for upcoming KeyArena events, as long as such advertising does not conflict with WBCOS' Temporary Advertising agreements. WBCOS shall ensure that no less than ten (10) % of the available ring signage time for each Home Game remains available to the City. The City reserves the right to continue to present Advertising on permanent displays existing in the lower bowl at the commencement of the Term, and WBCOS shall not cover over the City's

Advertising. The parties will work collaboratively with respect to the presentation of Advertising in the ring signage area. WBCOS is entitled to keep all revenue derived from WBCOS' sale of Temporary Advertising as granted in this Subsection.

2. The City reserves the right to enter into Advertising agreements with third parties for any or all portions of KeyArena and during all times that are not included in the Temporary Advertising rights granted to WBCOS. The City reserves the right to enter into, or to grant another tenant the right to enter into, a naming rights or title sponsorship agreement that grants exclusive representation throughout KeyArena to the naming rights partner, such that the City, its Third Party Management Company, and WBCOS or its designee will be limited or prohibited from entering or renewing Advertising agreements with competing sponsors. The City and its Third Party Management Company will work collaboratively with WBCOS to maximize revenues for both parties in the execution of Advertising contracts that could incorporate the WBCOS Temporary Advertising elements on Home Game Days (defined above). The City shall provide WBCOS comparable space for Temporary Advertising if existing space is reduced as a result of redevelopment.

3. WBCOS or its designee is hereby granted the exclusive right to sell and present Advertising on the interior of the WBCOS Retail Facility. The parties agree that the WBCOS Retail Facility is not considered part of the Premises for the purposes of the City's Advertising and Naming Rights or Title Sponsorship contracts; however, WBCOS will work collaboratively with the City and its Third Party Management Company to maximize revenues for both parties in the execution of Advertising contracts that could incorporate advertising elements on the interior of the WBCOS Retail Facility that are visible on the exterior. WBCOS shall be entitled to keep all revenue derived from its sale of WBCOS Retail Facility interior Advertising as granted in this Subsection.

4. WBCOS has requested the right to list the name of game sponsors, on Home Game Days only, on the exterior KeyArena LED sign on the First Avenue Plaza. At the time of this Agreement, the Seattle Center is reviewing and developing sign policies and procedures, and this request will be granted in the future only if it is determined to be consistent with laws, regulations and adopted Seattle Center policies applicable to all signage at Seattle Center.

#### G. Additional Sources of Revenue Available to Storm

At anytime during the Term, the Storm may present the Director with proposals for additional revenue opportunities on the Seattle Center campus and at KeyArena; while the Director will review any proposal in good faith, approval of such proposals shall remain in the sole discretion of the Director.

#### H. Exclusive Video Production, Broadcast and Cablecast Transmission Rights

WBCOS hereby reserves and retains, for itself, the exclusive use and control of all

rights to all Home Games played in the Arena, including exclusive rights to preserve, transmit, or reproduce for hearing or viewing such games by whatever means or processes now exist or may hereafter be developed for such preservation, transmission, or reproduction including, but not limited to, radio and television broadcasting, motion picture and still photography, videotaping and closed circuit pay-per-view and any and all forms of cablecasting, electronic transmission and information technology without any limitation.

## XI. CONSIDERATION DUE TO CITY FROM WBCOS

### A. License Fee

WBCOS shall pay the City Five Thousand Dollars (\$5,000) for use of the Lower Bowl at KeyArena for each Home Game (the "License Fee"). If the Storm requests the use of any portion of the upper bowl for any Home Game, the Storm will reimburse the City the additional costs that result from opening those sections of the upper bowl, not to exceed Two Thousand Dollars (\$2,000) per Home Game. After the 2009 season, the License Fee shall be adjusted annually prior to each season by the then-current percentage amount of the cost of living adjustment ("COLA") that the City pays to its represented employees; however, in the event that the COLA increases by more than 5% in any calendar year, the License Fee increase will be capped at 5% annually. For example only, if the City raises labor compensation rates by 2.4% from the 2009 to 2010 calendar year, the above License Fee will increase by 2.4%, rounded up to the nearest dollar, in the 2010 season; if the City raises labor compensation rates by 6% from the 2009 to 2010 calendar year, the License Fee will increase by 5%, rounded to the nearest dollar, in the 2010 season. There will be no reductions in WBCOS Fees during the term of this Agreement without a reduction in service levels, which must be agreed to in writing by both parties to take effect.

### B. Cancellation Fee

WBCOS shall pay the City a fee of Five Thousand Dollars (\$5,000) for each confirmed Home Game it cancels with less than sixty (60) days' notice to the City. Additionally, the WBCOS Revenue Share will be reduced by a prorata amount if WBCOS cancels any confirmed Home Game. In consideration of administrative costs and potential inconvenience to the City resulting from cancellation, WBCOS will pay the City the cancellation fee regardless of whether the City is able to provide a replacement event at KeyArena for such cancelled Home Game date. Notwithstanding the foregoing, no Cancellation Fee shall be due if the cancellation results from causes beyond the control of WBCOS or the WNBA.

### C. Additional Consideration

The City is entering into this Agreement with WBCOS, in part, because the Storm Home Games enhance the offerings of Seattle Center and draw people to the Seattle Center campus and lower Queen Anne business district. WBCOS will also provide



additional public benefits every year of the Term as follows: (i) a program where one thousand tickets per season will be provided at no cost to local non-profits to distribute to children who might otherwise be unable to afford to attend a Storm game; (ii) a significant community service program per season, including for example, clinics with players teaching the importance of healthy and active lifestyles to young people and partnering with non-profit organizations to improve literacy, involving players, coaches, staff and owners and the WNBA; (iii) an environmental sustainability program, where WBCOS will help public and private agencies working together to educate the public about steps individuals can take to contribute to a healthier environment; and (iv) a ticket pricing structure that will ensure at least five hundred [500] tickets are priced no greater than \$15 per game [indexed for inflation pursuant to Section XXX of this Agreement], so that a broad cross-section of the community is always able to attend Storm games. Tickets distributed by non-profits in compliance with item (i) above will be subject to the admissions tax exemption in SMC 5.40.053.

## XII. Reporting, Invoicing and Timing of Payments

WBCOS shall deliver to the City, in care of the Seattle Center Accounting Office, 305 Harrison Street, Seattle, Washington 98109, or such other address as the Director may specify from time to time, all sums due the City hereunder, together with an accounting worksheet in a form subject to the Director's Approval, that separately identifies the amount of each such payment and the source thereof by reference to the pertinent Subsection of this Agreement requiring such payment.

### A. Payments Due Monthly

On or before the fifth (5th) day of each month during the Term hereof, the City will invoice WBCOS for the aggregate amount of the KeyArena fixed License Fees specified in Section XI above and any additional costs that have become due and payable as a consequence of WBCOS' use of KeyArena during the preceding calendar month.

### B. Payments Due After Invoice

WBCOS shall pay all other amounts due the City pursuant to this Agreement within thirty (30) days following receipt of the City's invoice therefore.

### C. Annual Reconciliation

Within thirty (30) days after the last game of each season of each year during the Term, WBCOS shall provide the City with the report of Gross Ticket Receipts described in Subsection XII.D, below. Thereafter, the Director shall perform a reconciliation, taking into consideration the Gross Ticket Receipts; any cancellation fees due from WBCOS; any Liquidated Damages due WBCOS under Section V.J, the number of events for which a vertical curtain use credit is due per Subsection XV.A;

the amounts owed by the City to WBCOS for concession revenue pursuant to Subsection X.B and the WBCOS Revenue Share pursuant to Subsection X.E above, and any outstanding miscellaneous charges or credits otherwise due upon presentation of any invoice. Any credits for the use of the vertical curtain system will be applied to any outstanding charges owed by WBCOS. The Director will present WBCOS with an invoice for any remaining amounts due, and WBCOS shall pay the City any undisputed amounts within thirty (30) days after receipt of invoice. In the event that the total amount of credit due to WBCOS exceeds the amount of outstanding charges, within thirty (30) days the City will pay WBCOS that amount by which the credit exceeds the outstanding charges.

#### D. WBCOS' Report of Revenues and Public Benefits

Within thirty (30) days after the final game of each season of each year under this Agreement, WBCOS shall deliver to the Director a written report detailing the amount of Gross Ticket Receipts generated by WBCOS from the sale of Storm Home Game admission tickets in that calendar year. Said reports shall show revenues on both an aggregate and a per-Home Game basis. Additionally, WBCOS shall provide the Director with a summary describing the public benefits WBCOS provided in compliance with the public benefit requirements under Subsection XI.C.

#### E. Delinquencies, Invoicing Service Charge & Interest

All payments shall be delinquent if not paid on the date due by either party. The amount of each month's delinquency shall be subject to an invoicing service charge of Fifty Dollars (\$50.00) and shall also bear interest at a rate of one percent (1%) per month from the date of the delinquency until it is paid. Payments made after a delinquency shall be applied first to accrued interest and then to the principal sum due.

#### F. Books and Records; Audit

##### 1. Obligation to Keep Records

a. WBCOS' Obligation. WBCOS shall keep true, accurate, complete and auditable records and receipts relating to revenues WBCOS receives from its use and occupancy of the Premises, including Gross Ticket Receipts, Advertising, sale of Novelties, Concession Operations, records relating to all revenues WBCOS receives from Home Games played in an alternative venue in the event the Premises are unavailable, including Gross Ticket Receipts, Advertising and Concession Operations, and records relating to public benefits WBCOS is required to provide under this Agreement. Such records shall be distinguishable from the records pertaining to other business activities of WBCOS.

b. City's Obligation. The City shall keep true, accurate, complete and auditable records and receipts relating to costs incurred in providing any service or performing

any work for which compensation or reimbursement is sought hereunder. Such records shall be separate from the records pertaining to other business activities of the City.

c. Records Retention. All records to be kept pursuant to this Agreement shall be retained in King County, Washington, for at least thirty-six (36) months after the close of the fiscal year in which they were generated or issued, and shall be retained for six full years following the fiscal year in which the records were generated.

## 2. City Audits

WBCOS shall permit the City, from time to time during regular WBCOS working hours, as the Director or City Auditor deems necessary, to inspect and audit in King County, Washington, those books and records WBCOS is required to keep under Subsection XII.F.1, including the numbers of complimentary tickets and credentials issued for admission to any KeyArena Home Game or special event and the amount of Gross Ticket Receipts received or receivable therefrom. WBCOS shall supply the City with, or shall permit the City to make, copies of any such books and records or any portion thereof, upon the City's request.

## 3. WBCOS' Audits

The City shall permit WBCOS' auditor, from time to time during regular City working hours, as WBCOS' auditor reasonably deems necessary, to inspect and audit in King County, Washington, those Seattle Center books and records that pertain to revenues received and costs incurred and billed to WBCOS pursuant to this Agreement. The City shall supply WBCOS' auditor or WBCOS with, or shall permit WBCOS' auditor or WBCOS to make, copies of any such books and records and any portion thereof, upon WBCOS' auditor's or WBCOS' request.

## 4. Over- & Underpayments

Each party shall notify the other of the amount of any overpayment or underpayment found during any audit. Any overpayments shall be applied, first, as a credit against any fees and charges subsequently due to the party giving notice or, if none, refunded.

## XIII. PARKING

### A. South KeyArena Parking Lot

WBCOS, at no additional cost, shall be entitled to full use of the South KeyArena Parking Lot for parking for WBCOS' players, staff and other special designees on Home Game dates. For other approved Storm event dates (including practice sessions), such parking shall be provided if available. For any events scheduled on Labor Day Weekend, parking may not be available in any amount, in order to

accommodate the need for shared use. The City will ensure that the Storm is provided comparable parking if the South Lot is impacted as part of a redevelopment.

#### B. First Avenue North Parking Garage

The Director shall issue to WBCOS annually, at no cost, 500 permits authorizing parking by WBCOS' players, staff and ticket holders in the City's First Avenue North Parking Garage for Home Games. In the event that WBCOS chooses to resell such parking on an individual Home Game basis, WBCOS shall not charge more than the City's then current rate for parking at Seattle Center parking lots.

#### XIV. NO NUISANCES OR OBJECTIONABLE ACTIVITY

WBCOS shall not knowingly permit any excessive or objectionable noise, odor, dust, vibration, or similar substance or condition to remain on or be emitted from the Premises and shall not create any nuisance in or adjacent to the Premises and the City shall not knowingly permit or create the same; provided, that noise emanating from the audience or game-related events during a Home Game shall not be subject to this provision. Neither the City, in or about the Premises on any Home Game date, nor WBCOS, shall do anything on the Premises that will create a danger to life or limb, except such dangers as are the usual and necessary result of basketball playing or practicing.

#### XV. IMPROVEMENTS, ADDITIONS, AND ALTERATIONS TO PREMISES BY OR FOR WBCOS

##### A. Vertical Curtain System

WBCOS owns the vertical curtain system in KeyArena. WBCOS will pay all labor costs associated with raising and lowering the vertical curtain system for its Home Games and any other WBCOS use of the Premises. The City has the unrestricted right to use the vertical curtain system or to permit third parties to use the vertical curtain system during other events in the Premises, provided, the City shall repair any damage to the vertical curtain system caused by the City or by third parties. The City will apply a \$350.00 credit to WBCOS' account for each time the curtain is used for an event other than Storm events or Home Games. This credit will be applied at the time of the Director's annual reconciliation described in Subsection XII.C.

##### B. No Representation Created by Approval

The Director's Approval of WBCOS' vertical curtain system design shall not constitute an opinion or representation by the City as to its compliance with any law, code or ordinance.

##### C. Improvements, Additions and Alteration to Premises

WBCOS shall make no material additions, alterations, improvements or modifications to the Premises or the WBCOS Retail Facility without the Director's prior Approval of the plans, which shall not be unreasonably withheld or delayed.

## XVI. MAINTENANCE

### A. City Maintenance Responsibilities

The City shall maintain the Premises and City-owned equipment therein, in a neat, clean, safe and sanitary condition, and in a good state of repair that is at all times equal or superior to the conditions existing at the start of the Term.

### B. WBCOS' Maintenance Responsibilities

The City shall not be responsible for providing or performing any maintenance, repair or servicing of any of WBCOS' improvements, equipment or other personal property, and the maintenance, repair or servicing of all of the same shall be WBCOS' sole responsibility and shall be undertaken at WBCOS' sole expense. WBCOS shall be responsible for all maintenance of the Exclusive Use Areas, except for the utilities provided by the City, which will be maintained by the City. Upon the expiration or termination of this Agreement, WBCOS shall return the Exclusive Use Areas to the City in the same condition or better as when it took occupancy of the Exclusive Use Areas, normal wear and tear excepted.

### C. WBCOS' Responsibility for Damage

Neither WBCOS nor any of its officers, employees, contractors, agents or invitees shall damage or in any manner deface any portion of the Premises or cause or allow anything to be done whereby any portion of the Premises is defaced or damaged in any manner. If such damage or defacement occurs, then the City will notify WBCOS of the same and if the City elects to perform maintenance, repair, or renovation occasioned thereby, it shall invoice WBCOS for the reimbursement of such expenses, which reimbursement shall be paid as provided in Subsection XII.A.

## XVII. CITY'S CONTROL OF BUILDINGS AND GROUNDS

### A. City's Control of KeyArena

The City shall at all times maintain overall supervision and control of KeyArena, including the Premises. The Director shall have the right to use whatever means the Director deems proper to enter the Premises, with the exception of Exclusive Use Areas, at any time and for any purpose, without liability to WBCOS except for any failure to exercise due care for WBCOS' property. With regard to Exclusive Use Areas and the WBCOS Retail Facility, the Director shall take reasonable steps to obtain the permission of WBCOS prior to entering, unless there is an emergency.

The WBCOS shall have reasonable access to the Exclusive Use Areas on non-Home Game dates at all reasonable times after prior notice, provided WBCOS shall have access to the WBCOS Retail Facility at all times.

#### B. City's Control of Other Seattle Center Buildings and Grounds

The City reserves the exclusive right, without liability of any kind, to do any and all of the following throughout the term of this Agreement:

1. Increase, reduce, and change in any manner whatsoever the number, appearance, dimensions, and locations of the Seattle Center walks, buildings, landscaping, parking, and service areas, and make improvements, alterations, and additions to the Seattle Center facilities.

2. Regulate all traffic within and adjacent to the Seattle Center.

3. Impose a reasonable charge for admission to the Seattle Center; provided, however, the City will ensure that WBCOS' ticketed patrons entering Seattle Center for the sole purpose of attending a WNBA game are not charged any admission fee.

4. Erect, display and remove promotional exhibits and materials and permit special events to occur in and on the Seattle Center grounds, buildings, and facilities including the Premises.

5. Promulgate, from time to time, reasonable rules and regulations regarding the use and occupancy of any area of Seattle Center.

6. Determine the days and hours the Seattle Center and various

business operations conducted thereon shall be open to the public.

7. Other than as specifically set forth herein and other than with regard to the WBCOS Retail Facility, the City reserves the right to determine the size, number, and type and identity of concessions, stores, businesses and operations being conducted or undertaken at Seattle Center and to operate and authorize others to engage in any and all forms of concession activity at the Seattle Center and in any facility thereof, as the Director deems appropriate.

#### XVIII. COMPLIANCE WITH LAW

WBCOS, at its sole cost and expense, shall conform and comply with, and shall take reasonable steps to ensure that every person it admits to any Seattle Center facility abides by and complies with, all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City of Seattle; rules and regulations of the Seattle Center, Fire, and Police Departments, and the Seattle- King County Department of Public Health, and their respective successors; and licenses, permits

and any directives issued by any authorized official thereof. Specifically, WBCOS shall comply with all of the following requirements:

#### A. Licenses

WBCOS shall obtain all licenses, permits and authorizations required by law and conform to all applicable requirements of any authorized person acting in connection therewith.

#### B. Taxes

WBCOS shall pay, before delinquency, all taxes, levies, and assessments arising from its activities in, on, or involving occupancy and use of the Premises including, but not limited to, taxes arising out of the occupancy of, or activity or business conducted in or from the Premises; taxes levied on WBCOS' property, equipment, improvements on or made to the Premises or any portion thereof; and taxes levied on WBCOS' interest in this Agreement and any leasehold interest recognized by Ch. 82.29A of the Revised Code of Washington. If the State of Washington makes any demand upon the City for the remittance of leasehold excise taxes payable by WBCOS as a consequence of WBCOS' occupation of the Premises or withholds funds due to the City to enforce collection of such leasehold excise taxes, WBCOS shall immediately pay the same together with all interest and penalties assessed in connection therewith, or, at its sole expense, shall contest such action and indemnify the City for all sums expended by the City or withheld from the City by the State in connection with such taxation; provided that WBCOS shall not be deemed to be in default as long as WBCOS, in good faith, is contesting the validity or amount of any such taxes.

#### C. Non-discrimination

Both parties shall comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and The City of Seattle, including but not limited to Chapters 14.04, 14.10, 20.42, and 20.45 of the Seattle Municipal Code and the Americans with Disabilities Act, as they may be amended, and all rules, regulations, orders, and directives of the associated administrative agencies and their officers.

#### D. Attendance and Safety Standards

The Seattle Fire Chief or his/her designee shall have the authority to determine, in the reasonable exercise of his/her discretion, the number of persons that may be admitted to, and safely and freely move about in the Premises. The WBCOS shall not sell or issue Home Game tickets or credentials for admission to KeyArena in an aggregate number that exceeds the Seattle Fire Chief's determined number for the same. The City shall not admit to KeyArena more people than the number so determined by the Seattle Fire Chief. No sidewalk, grounds area, entry, passage, vestibule, hall, elevator, abutting street, doorway, or any other way of access to the

Premises shall be obstructed by WBCOS or used for any purpose other than for ingress and egress to the Premises.

#### E. Enforcement

If WBCOS or its authorized representative is informed of any violation of any law, Charter provision, ordinance, rule, regulation, license, permit, or authorization committed by WBCOS or any person admitted to a Home Game, WBCOS immediately shall desist from and/or take reasonable measures to prevent or correct such violation.

### XIX. SURRENDER OF PREMISES

#### A. Surrender and Delivery

Upon the expiration or termination of this Agreement, WBCOS shall surrender and promptly deliver to the Director all keys WBCOS and any of its officers, agents, and employees may have acquired in the course of performing this Agreement.

#### B. Removal of WBCOS' Property

1. Upon expiration of the Term of this Agreement, at the request of the Director if necessary to accommodate renovations of KeyArena, or if this Agreement is terminated, within thirty (30) days after the termination date, WBCOS shall remove, at its sole expense, all trade equipment and personal property owned or installed by WBCOS on or in the Premises. Except as may be permitted by the Director, fixtures, other than WBCOS' vertical curtain, shall not be removed.

2. In removing any trade equipment or personal property, WBCOS shall take due care to not injure or damage the Premises. If any damage or injury occurs, WBCOS shall be liable to, and shall reimburse the City for, the cost of making such repairs to the Premises as may be necessary to restore the same to their condition as of the commencement date of this Agreement, ordinary wear and tear excepted, which reimbursement shall be paid as provided in Subsection XII. A, hereof.

#### C. Storage of WBCOS' Property

If WBCOS fails to remove trade equipment and other personal property owned by WBCOS on or by the time specified in Subsection XIX. B, the City may, but shall not be required to, remove such material from the Premises and store the same, all at WBCOS' expense; and if the City removes or arranges for the storage of such material, WBCOS shall reimburse the City for all costs incurred in connection with such removal or storage, including any administrative costs, which reimbursement shall be paid as provided in Subsection XII. B hereof.

### XX. SUBCONTRACTING, ASSIGNMENTS AND TRANSFERS OF OWNERSHIP



## INTERESTS

### A. Director's Prior Consent for Subcontracting and Assignments

Local ownership of the Storm franchise is an important factor in the City's willingness to enter into this Agreement. As a result, WBCOS will not subcontract, transfer or assign this Agreement to another person or entity without the Director's prior written approval, except, as consistent with this Agreement, WBCOS may subcontract with other parties for the sale of Temporary Advertising or Novelties or use of the WBCOS Retail Facility.

### B. Transfer of Ownership

1. WBCOS' Delivery of Instrument of Assumption and Agreement. WBCOS shall not assign this Agreement to a purchaser as part of a sale of all or substantially all of its assets ("Sale Transaction") or as part of a transaction which would change the controlling interest of WBCOS, without obtaining the Director's prior written consent. The Director's prior written consent shall not be unreasonably withheld or delayed if the purchaser/assignee or new owners of WBCOS are a Local Group (at least fifty-one percent (51%) of the individuals in such group maintain their primary residence in the State of Washington), but the Director's prior written consent may be withheld in the Director's sole discretion if the purchaser/assignee or new owners of WBCOS are a Non-Local Group. In the event of a Sale Transaction, WBCOS shall cause to be delivered to the Seattle Center Director, immediately after the closing of such transaction, an instrument, in writing, executed by the purchaser/assignee, in which such person or entity agrees to assume and to perform all of the terms and provisions of this Agreement to the extent the same are then unperformed.

2. Release of WBCOS upon Director Approval of Total Assumption of WBCOS' Obligations by Other Party. Upon the delivery by WBCOS of an instrument of assumption and agreement as contemplated in Subsection XX.B.1, executed by the assignee, grantee, purchaser, or transferee in a Sale Transaction acquiring this Agreement from WBCOS and approved by the Director, and provided the transferee assumes all obligations of this Agreement, then each and every obligation of WBCOS hereunder shall become null and void as to WBCOS and WBCOS shall have no further direct or indirect liability or obligation hereunder to the extent of that assumption.

## XXI. WARRANTIES AND REPRESENTATIONS

### A. Franchise

WBCOS hereby warrants and represents to the City that WBCOS holds a valid effective WNBA franchise that permits and authorizes WBCOS to operate a professional women's basketball team in and from the Seattle Center and WBCOS is authorized to enter into this Agreement, and such representation shall continue for

the duration of this Agreement.

## B. Relationship with WNBA

WBCOS hereby warrants and represents that this Agreement has been approved by the WNBA President or appropriate WNBA authority. WBCOS is subject to all WNBA rules, regulations, and agreements of the WNBA as they presently exist or as they may from time to time be entered into, amended or adopted, with respect to owning and operating a WNBA franchise, however, nothing in the WNBA Constitution, rules, regulations or Bylaws will relieve WBCOS of its obligations under this Agreement.

## XXII. DISPUTE RESOLUTION

### A. Mediation

The City and WBCOS will each make best efforts to resolve any dispute as expeditiously as possible through negotiations at the lowest possible decision-making level. In the event the negotiations are unsuccessful after thirty (30) days, both parties will then attempt to resolve the dispute through a conference including the President & CEO of WBCOS and the Director to be held within the following thirty (30) days. If the subsequent negotiations are unsuccessful, both parties will participate in good faith in the mediation process described below prior to either party initiating an arbitration under Subsection XXII. B or a lawsuit. In such event, the dispute will be referred to a mutually agreeable mediator or organization experienced in alternative dispute resolution for resolution within thirty (30) days of a written request for mediation submitted by either party. The parties agree to participate in good faith in at least four hours of non-binding mediation in an effort to resolve their dispute and to equally share the costs of the mediation process.

The positions expressed and the mediator's recommendations and/or findings shall not be admissible in evidence in any subsequent arbitration or legal proceeding, and such positions, recommendations and/or findings shall be maintained as confidential by the Parties to the extent permitted by law.

### B. Arbitration

If a dispute is not finally resolved by negotiation and mediation pursuant to the terms of Subsection XXII.A, and if the dispute is a claim for a sum equal to or less than One Hundred Thousand Dollars (\$100,000), which shall be indexed for inflation pursuant to Section XXX of this Agreement, then the City and WBCOS agree to submit such dispute ("Dispute") to binding arbitration.

Any Dispute that is subject to arbitration under this Section shall be finally settled by binding arbitration within ninety (90) days after the conclusion of the mediation, pursuant to the Commercial Arbitration Rules then in effect of the American

Arbitration Association (or the rules of another agreed service), except as otherwise provided below. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

(a) The place of the arbitration shall be Seattle, Washington.

(b) The arbitration shall be conducted before one neutral third party arbitrator mutually selected by the parties.

(c) The arbitrator shall state his or her findings and conclusions in writing, unless unanimously requested not to do so by the parties to the Dispute.

### XXIII. DEFAULT AND REMEDIES THEREFOR

#### A. Default by WBCOS

1. Event of Default. "WBCOS Default" means WBCOS' failure to do any of the following:

(i) pay the City any monetary obligation under this Agreement when it comes due; (ii) materially comply with its obligation to provide public benefits under Subsection XI.C; or (iii) perform any other obligation required under this Agreement.

2. Notice to Cure. The Director shall notify WBCOS in writing of any WBCOS Default and WBCOS shall have a reasonable period to cure such WBCOS Default, which period shall not exceed thirty (30) days from the date the Director provides notice. If WBCOS' Default is not susceptible of cure within thirty (30) days, WBCOS will not be in Default provided WBCOS commences to cure the WBCOS Default within the thirty (30) day period and diligently pursues the same to completion.

3. City's Rights upon WBCOS' Failure to Cure the WBCOS Default. If WBCOS fails to cure its WBCOS Default as required in Subsection XXIII.A.2, in addition to any other remedies available to it under this Agreement or in law, the City may terminate this Agreement upon fifteen (15) days' notice to WBCOS and without any further proceedings under any of the following circumstances:

a) WBCOS fails to cure any WBCOS default of which it had notice within the time specified in Subsection XXIII.A.2 unless WBCOS is diligently pursuing the same to completion as contemplated in Subsection XXII.A.2 above.

b) WBCOS fails to comply, within thirty (30) days after notice of such failure from the City, with all of the requirements of Section XXIV hereof (including Exhibit 5), regarding insurance.

c) WBCOS fails to pay the City, in a timely manner, under Subsection XXIII.A.2 any undisputed amount due under this Agreement unless WBCOS is diligently pursuing

the same to completion as contemplated in Subsection XXIII.A.2 above.

In addition to the remedies stated above, if WBCOS is in WBCOS Default, the City may re-enter the Premises, and lease or license the Premises to others for any date and receive rent and license fees therefor, all as if this Agreement has not been made.

## B. Default by City

1. Event of Default. The City will be in Default ("City Default") if it fails to perform any term, obligation, covenant, warranty or representation it is required to perform under this Agreement.

2. Notice to Cure. WBCOS shall notify the Director in writing of any City Default and the City shall have a reasonable period to cure such default, which period shall not exceed thirty (30) days from the date the WBCOS provides notice, unless such City Default is not susceptible of cure within thirty (30) days, in which event the City shall not be in default provided the City commences to cure the City Default within the thirty (30) day period and diligently pursues the same to completion.

3. WBCOS' Rights upon Failure to Cure City Default. In addition to any other remedies available to it under this Agreement or in law, WBCOS may terminate this Agreement upon fifteen (15) days' notice to the City and without any further proceedings under any of the following circumstances:

a) The City fails to cure any City Default of which it had notice within the time specified in Subsection XXIII.B.2 , unless the City commences the cure within the time specified and diligently pursues the same to completion.

b) The City fails to pay WBCOS, in a timely manner under Subsection XXIII.B.2, any undisputed amount due under this Agreement unless the City is diligently pursuing the same to completion as contemplated in Subsection XXIII.B.2 above.

## XXIV. LIABILITY FOR BODILY INJURY AND PROPERTY DAMAGE INSURANCE

WBCOS shall obtain and maintain insurance as described in Exhibit 5 in full force and effect throughout the term of this Agreement, and shall otherwise fully comply with requirements of Exhibit 5. The City reserves the right to adjust or otherwise modify the insurance requirements in Exhibit 5 for the last five (5) years of this Agreement, subject to commercially reasonable standards and with reasonable notice to WBCOS, provided such modifications are then available in the marketplace at a commercially reasonable cost.

## XXV. INDEMNIFICATION

### A. WBCOS to Indemnify City

WBCOS shall defend, indemnify and hold the City and its officers, employees and agents harmless from any and all losses, claims, actions, and damages suffered by any person or entity arising out of: any negligent, reckless, or intentional act or omission of WBCOS or any of its agents, employees, invitees, concessionaires, contractors and any of their subcontractors in connection with WBCOS' use or occupancy of the Premises; any grant by WBCOS of advertising rights for display advertising within the KeyArena; and from any damages arising out of any breach or default in the performance of any obligation on WBCOS' part to be performed under the terms of this Agreement or any breach of any representation or warranty made by WBCOS hereunder. If, as a result of any such act, omission or breach, any suit or action is brought against the City, WBCOS, upon notice of the commencement thereof, shall defend the same at no cost and expense to the City, and promptly satisfy any final judgment adverse to the City; provided, that if the City determines that one or more principles of governmental or public law are involved, the City retains the right to participate in its defense at no additional cost to WBCOS, however the City's participation will not reduce or limit WBCOS' obligation to indemnify the City as required in this Subsection. Nothing contained in this Subsection shall be construed as requiring WBCOS to indemnify the City against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from negligence, reckless or intentional conduct attributable solely to the City or its officers, employees, or agents. In the event of any liability arising from the concurrent negligent acts, omissions, or breach of the WBCOS and the City, WBCOS' duty to indemnify shall apply to the extent of WBCOS' fault or breach. The indemnification provided in this Subsection shall survive the expiration or earlier termination of this Agreement.

#### B. City to Indemnify WBCOS

The City shall defend, indemnify and hold WBCOS harmless from any and all losses, claims, actions, and damages suffered by any person or entity arising out of any negligent, reckless, or intentional act or omission of the City or any of its agents, employees, invitees, or contractors, concessionaires, vendors or Third Party Management Company, and any of their subcontractors in connection with the City's use or occupancy of the Premises or other portions of Key Arena and from damages arising out of a breach or default in the performance of any obligation on the City's part to be performed under the terms of this Agreement or any breach of any representation or warranty made by the City hereunder. If, as a result of any such act or omission or breach, any suit or action is brought against WBCOS, the City, upon notice of the commencement thereof, shall defend the same at no cost and expense to WBCOS, and promptly satisfy any final judgment adverse to WBCOS. Nothing contained in this Subsection shall be construed as requiring the City to indemnify WBCOS against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from negligence, reckless or intentional conduct attributable solely to WBCOS or any of its officers, employees, concessionaires, contractors, or agents. In the event of any liability arising from the

concurrent negligent acts, omissions, or breach by the City and the WBCOS, the City's duty to indemnify shall apply to the extent of the City's fault or breach. The indemnification provided for in this Subsection shall survive the expiration or earlier termination of this Agreement.

## XXVI. FORCE MAJEURE

Whenever a party's performance under this Agreement is prevented by an act of nature; war-like operations; civil commotion; riot; labor dispute including a strike or walkout, but not a lockout; sabotage; Federal or State regulation or control; or other unforeseeable conditions beyond reasonable control of such party, performance of such affected obligation shall be suspended for the duration of such condition but shall not be excused except by agreement of the parties.

## XXVII. REDEVELOPMENT

### A. Redevelopment Impacts

The City will keep WBCOS reasonably informed of the City's efforts to redevelop KeyArena or have an NBA or NHL team as a tenant at KeyArena. The parties acknowledge that it is not feasible to redevelop KeyArena without impact on WBCOS, including some potential negative impacts; however, in the event of redevelopment, the City will use its best efforts to minimize negative financial and operational impacts of renovation and construction projects on WBCOS, subject to the City's other financial and policy considerations. The parties recognize that a redeveloped KeyArena and additional tenants can be beneficial to both parties, and share the goal of a successful long-term tenancy for WBCOS.

### B. Comparable Premises After Any Redevelopment

Should any significant alteration or redevelopment diminish the City's ability to provide a portion of the Premises provided to WBCOS herein, upon completion of the alteration or redevelopment, the City shall provide the WBCOS a portion of the renovated premises with equivalent operational value.

## XXVIII. MISCELLANEOUS PROVISIONS

### A. Captions

The titles of Sections are for convenience only and do not define or limit the contents.

### B. Amendments

No modification or amendment of the provisions of this Agreement shall be effective unless written and signed by an authorized representative of each of the parties hereto. The parties hereto expressly reserve the right to modify this Agreement from

time to time by mutual agreement.

#### C. Remedies Cumulative

Rights under this Agreement are cumulative; any failure to exercise on any occasion any right shall not operate to forfeit such right on another occasion. Each party shall also have any other remedy given by the law. The use of one remedy shall not be taken to exclude or waive the right to use another.

#### D. No Waiver

No action, other than a notice by one party to the other specifically stating that such notice has the effect of a waiver, shall constitute a waiver of any particular breach or default of such other party, and only the Director, personally, shall be authorized to provide such a notice for or on behalf of the City. Any notice of waiver is to be strictly construed and will not waive WBCOS' failure to fully comply with any other term, condition, or provision of this Agreement not expressly waived, irrespective of any knowledge any City officer, employee, or agent may have of any breach or default of, or noncompliance with, such other term, condition, or provision. No waiver of full performance by either party shall be construed, or operate, as a waiver of any subsequent Default of any of the terms, covenants and conditions of this Agreement. The payment or acceptance of fees or charges for any period after a Default shall not be deemed a waiver of any right, nor deemed an acceptance of defective performance.

#### E. Limited Effect of Approval by Director

Action of the Director pursuant to or in implementation of this Agreement does not constitute any official action by any other City department or official that may be required by law, City Charter, ordinance, rule or regulation before WBCOS may rightfully commence, suspend, enlarge, or terminate any particular undertaking.

#### F. No Relationship

In no event shall the City be construed to be a partner, associate, joint venturer of WBCOS, or any party associated with WBCOS, with respect to the undertakings authorized by this Agreement. WBCOS is not an agent of the City for any purpose whatsoever hereunder. The WBCOS shall not create any obligation or responsibility on behalf of the City or bind the City in any manner.

#### G. Power of City

Nothing contained in this Agreement shall be considered to diminish the governmental or police powers of the City.

#### H. Binding Effect

The provisions, covenants and conditions of this Agreement apply to bind the parties, their legal representatives, successors, and assigns.

#### I. Invalidity of Particular Provisions

Should any term, provision, condition or other portion of this Agreement or the application thereof be held to be inoperative, invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

#### J. Applicable Law; Venue

This Agreement shall be construed under the Law of the State of Washington. Venue for any action brought hereunder shall be in the Superior Court for King County, Washington.

#### K. Assignment by City

The City may assign some or all of its obligations or rights hereunder to a Third Party Management Company, but such assignment will not relieve the City of any of its obligations to WBCOS under this Agreement.

#### L. Incorporation of Exhibits; Entire Agreement

The following exhibits are incorporated and made a part of this Agreement:

Exhibit 1. Premises Licensed for Use

Exhibit 2. Projected Per Game WNBA Service Levels in Hours

Exhibit 3. Personnel Rates Addendum

Exhibit 4. Equipment and Services Addendum

Exhibit 5. Insurance

Exhibit 6. Agreement Concerning Use of KeyArena during Labor Day Weekend

Exhibit 7. Exhibit 7 was deleted and is no longer applicable to this Agreement.

Exhibit 8. Amended and Restated Ground Lease and Practice Facility Exhibit

This Agreement, including the exhibits, as well as the periodic use date endorsement notices issued by the City, all of which, by this reference, are incorporated herein,



constitute all of the covenants, promises, agreements, and conditions between the parties regarding the terms and conditions of WBCOS' use of the KeyArena under this Agreement.

## XXIX. NOTICES

Any notices or communication to be given by one party to the other under this Agreement must be in writing, which shall include electronic communication if receipt is verified by both parties. Such notices or communications shall be delivered or sent to the following respective addresses, or to such other addresses as the parties from time to time may specify in writing:

If to the City: If to WBCOS:

Seattle Center Director WBCOS President & CEO

The City of Seattle Furtado Center

305 Harrison Street 490 5th N

Seattle, WA 98109 Seattle, WA 98109

## XXX. INFLATION ADJUSTMENT

Other than with regard to the License Fee in Section XI.A, dollar amounts set forth in this Agreement shall, where specified, be periodically adjusted for inflation (each such adjustment an "Inflation Adjustment") using an adjustment factor that is equal to the percentage increase (if any) in the CPI Index published for the latest month prior to the date on which the Inflation Adjustment is being made over the CPI Index published for the latest month prior to the date of this Agreement. As used in this Agreement, the term "CPI Index" shall mean the Consumer Price Index for Seattle-Tacoma- Bremerton, WA, All Urban Consumers, All Items, published every other month by the United States Department of Labor, Bureau of Labor Statistics, in which 1982-84 equals 100. The CPI Index for any month shall be deemed to be the latest version of the CPI Index that is published as of the date on which the Inflation Adjustment is made. If the CPI Index is hereafter converted to a different standard reference base or is otherwise revised, Inflation Adjustments shall thereafter be made with the use of such conversion factor, formula or table for converting the CPI Index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then with the use of such conversion factor, formula or base as may be published by Prentice Hall, Inc., or, failing such publication, by any other nationally recognized publisher of similar statistical information. In the event the CPI Index and/or a conversion factor shall cease to be published, then, for the purposes of this Agreement, there shall be substituted such other inflation index as City shall select in order to obtain substantially the same result as would have been obtained if the CPI Index had not been discontinued or

revised.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by having their authorized representatives affix their signatures in the spaces below.

WOMEN'S BASKETBALL CLUB OF SEATTLE, LLC THE CITY OF SEATTLE

By: By: \_\_\_\_\_

Anne Levinson Robert Nellams

Chairperson Seattle Center Director

STATE OF WASHINGTON )

)ss.

COUNTY OF KING )

On this day of , 2009, before me personally appeared Anne Levinson, to me known to be the Chairperson of The Women's Basketball Club of Seattle, LLC, the limited liability company that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and further that said officer has the authority to sign on behalf of said corporation.

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

\_\_\_\_\_  
\_\_\_\_\_

(Signature) (Print or type name)

NOTARY PUBLIC in and for the State of Washington, residing at \_\_\_\_ .

My appointment expires .

STATE OF WASHINGTON )

)ss.

COUNTY OF KING )

On this day of , 2009, before me, the undersigned, a Notary Public in and for the

State of Washington, duly commissioned and sworn, personally appeared Robert Nellams, to me known to be the Seattle Center Director, who executed the foregoing instrument, and acknowledge said instrument to be the free and voluntary act and deed of The City of Seattle, for the uses and purposes herein mentioned, and on oath stated that she authorized to execute said instrument.

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

\_\_\_\_\_  
\_\_\_\_\_

(Signature) (Print or type name)

NOTARY PUBLIC in and for the State of Washington, residing at \_\_\_\_ .

My appointment expires .

Exhibit 1. Premises Licensed for Use

Exhibit 1

Exhibit 2. Projected Per Game WNBA Service Levels in Hours

Exhibit 2

Exhibit 3. Personnel Rates Addendum

Exhibit 3

Exhibit 4. Equipment and Services Addendum

Exhibit 4

Exhibit 5. Insurance

Exhibit 5

Exhibit 6. Agreement Concerning Use of KeyArena during Labor Day Weekend

EXHIBIT 6

Agreement Concerning Use of KeyArena during Labor Day Weekend

In order to accommodate the needs of The City of Seattle ("City"), and The Women's Basketball Club of Seattle, LLC, ("Licensee") and accommodate the annual

Bumbershoot Festival held on the Seattle Center Grounds during Labor Day Weekend the parties hereby agree to the following terms for the use of KeyArena over Labor Day Weekend as part and parcel of this Facility Use Agreement.

Licensee shall have the right to schedule and use the KeyArena for playoff or championship games over Labor Day weekend (defined as Friday through Monday of Labor Day Weekend each year during the term of this Facility Use Agreement) only in accordance with the terms and conditions contained in Section V.E of this Facility Use Agreement and here in this Exhibit 6.

1. Licensee shall use KeyArena only for events that are part of official WNBA playoff basketball games. If Licensee does not use KeyArena for the stated purposes during the applicable period, it shall not have any right to use the facility for any other event. If Licensee does not require the use of KeyArena for the specified purpose, the City shall have the unrestricted right to schedule the facility for other events, including but not limited to Bumbershoot events, and the City shall receive and retain all revenues therefrom.

2. Licensee's use of KeyArena for playoff games is subject to all of the terms and conditions, including fees, as are contained in this Facility Use Agreement.

3. WNBA playoff games over Labor Day Weekend are limited to lower bowl seating only and that portion of the Upper Bowl that can be opened with approval of the Fire Marshall without adversely affecting the Bumbershoot Festival grounds use plan. It is understood that any expansion of seating beyond the lower bowl on these dates will require mutual agreement between the City, Bumbershoot (One Reel, Inc.) and the Licensee since any expansion into the upper bowl will affect use of the grounds for the 2009 and future Bumbershoot Festivals. If mutual agreement between the parties is reached to expand seating to the upper bowl and, as a result thereof, the City and/or Bumbershoot must perform landscape work or build alternate staging necessary to allow the placement of a stage over the current "planter area" in the Northwest Courtyard for the Bumbershoot Festival, Licensee shall pay any and all costs associated with this conversion.

4. The Bumbershoot concert stage in the Northwest courtyard, or any other activity that they may plan, shall continue to operate during any and all WNBA playoff games.

5. WNBA television crews and vehicles shall have access to the KeyArena and the South Courtyard Parking Lot during Labor Day weekend, but Licensee acknowledges and agrees that it will have to share the space with Bumbershoot for the staging of equipment or vehicles in the KeyArena South Courtyard Parking Lot and agrees to cooperate with the City and Bumbershoot staff to coordinate such usage.

6. All entry to the KeyArena for the Labor Day Weekend WNBA playoff games shall be through the west side of the KeyArena unless a patron also holds a ticket to the

Bumbershoot Festival.

7. Egress from the KeyArena following the WNBA playoff games shall be through the west and south exits only, with patrons moving in a westerly direction and not onto Seattle Center grounds unless they hold a Bumbershoot ticket. WNBA patrons can exit the east side of the KeyArena if they purchase a Bumbershoot ticket.

8. Licensee agrees to promote a special entry to Bumbershoot, unless some other offer is agreed to by the parties, through the following: distribution of flyers at entry gates at all WNBA games over Labor Day Weekend; video board with public address advertisement several times at each game over Labor Day Weekend to be spaced out such that they run before, during and after each game; live announcements; allowing for Bumbershoot to staff one interior east side booth to sell special entry tickets during and after each Labor Day Weekend game at no charge to Bumbershoot or the City.

9. Licensee agrees to allow Bumbershoot to provide half-time entertainment (i.e. a breakdance squad) to the Storm as part of a half-time promotion for Bumbershoot provided that the entertainment is approved by Licensee's management to meet quality standards and is in line with the usual and customary compensation for Licensee's halftime entertainment.

Exhibit 6 to Att. 1 to Storm Ordinance

Exhibit 7. Exhibit 7 was deleted and is no longer applicable to this Agreement.

Exhibit 8. Amended and Restated Ground Lease and Practice Facility Exhibit

Exhibit 8 Fiscal Note