

NO. 80411-7

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

Court of Appeals, Division II No. 33910-2II

CHARLES C. HASELWOOD and JOANNE I. HASELWOOD,

Respondents,

v.

RV ASSOCIATES, INC.,

Petitioner,

and

BREMERTON ICE ARENA, INC., a Washington corporation;  
GREGORY S. MEAKIN and DEBORAH A. MEAKIN, husband and  
wife; STIRNCO STEEL STRUCTURES, INC., a Washington  
corporation; FRONTIER BANK, A Washington bank corporation, and  
CITY OF BREMERTON, a municipal corporation.

Defendants.

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*RESPONDENT*  
SUPPLEMENTAL BRIEF OF ~~PETITIONER~~ RV ASSOCIATES, INC.

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## **INTRODUCTION**

The legal right of a person who improves another property to be paid for that improvement has a long history in the State of Washington. Enactment of a construction lien statute was the third piece of legislation enacted by the first Oregon territorial legislature in 1854 when Washington was part of the Oregon Territory. The legislative policy was clear. As the government wanted to encourage development, it provided protection for payment to the people doing the actual work. By creating a legal interest in the improvement to property on behalf of the workers and suppliers until paid, the premise behind the lien statutes is that the value of the improvement to the property belongs to the person who did the work. In this dispute, the lender is asking this Court to turn that logic on its head by denying the value of the improvements to the company that did the work.

## **LIEN STATUTE**

Effective June, 1992 a comprehensive overhaul of the entire lien statute system was enacted. Under the current RCW 60.04, the prior fragmented system was simplified into a single "construction lien" for anyone who provided labor, materials, equipment or professional services of benefit to the property. RCW 60.04 exists today in essentially the same form as it was passed in 1991.

RCW 60.04.900 provides in pertinent part that the provisions of the chapter are to be liberally construed to provide for all parties intended to be protected by their provisions. Liberal construction of the lien statute to protect the person making the improvements dates back to 1893. See Chapter 24, Washington Laws, 1893 (Section 18).

Petitioners Haselwood argue in the instant case that because the improvement created in part by RV Associates is located on public property, the lien cannot attach to the improvement. This argument is devoid of any legal authority and if accepted would radically rewrite the lien statute and decades of Washington precedent.

RCW 60.04.021 clearly provides that the lien attaches to the improvement on the property. In the instant case, the improvements were constructed on property owned by the City of Bremerton pursuant to a long term concession agreement (in essence, a long term lease) attached as Appendix A-1. (*CP 132-137*) Pursuant to this agreement, the developer maintained ownership of the improvements for a fifty year concession term. (*CP 132-137*) The developer paid for the use of the city land by providing the City with periods of free ice time at the arena. (*CP 265*) Otherwise, the developer maintained total ownership of the improvements and exercised complete control of them during the concession term. At

the expiration of the concession term, the improvements are to become City property. (*CP 364, 371*)

The concession agreement also made specific provisions with regard to the protection of the Haselwoods as lenders. Recognizing that the improvements attach to and became part of the realty, Haselwoods recorded on the property an initial deed of trust. (*CP 38-69*) They later recorded a modified deed of trust. <sup>1</sup>

It is clear from the agreement that the parties recognized the improvements were permanent and would ultimately become city property. The parties also recognized that in the interim, the Haselwoods as lenders would be protected for their investment by the recording of a deed of trust on the property. It is disingenuous for the Haselwoods to argue that their interest in the property can be protected by a real property deed of trust but that the interest of the person who actually constructed the improvements has no real property interest.

There are many Washington cases standing for the proposition that where the person requesting the improvement has less than a fee interest, the lien will attach to the extent of the interest of the person ordering the work. RCW 60.04.021. In the instant case, the Bremerton Ice Arena

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<sup>1</sup> During the course of this appeal, Haselwoods have successfully foreclosed on their deed of trust and now have ownership of the ice arena.

ordered the work as the holder and benefactor under its concession agreement with the City. Therefore, the lien of both the Haselwoods and lenders and RV Associates as the creator of the improvement had a lien which attached to the concession interest of Bremerton Ice Arena. *Seattle Assoc. of Credit Men v. Daniels*, 15 Wn. 2d 393, 130 P. 2d 892 (1942); *Stetson-Post Mill Co. v. Brown*, 21 Wash 619, 59 P. 507 (1899); *ZZ Miles Co. v. Gordon*, 8 Wash 442, 336 P. 265 (1894); *Masow v. Fife*, 10 Wash 528, 39 P. 140 (1895).

There is no question that leaseholds are real property interests. RCW 65.04.03. See *Strong v. Clark*, 56 Wn.2d 230, 352 P. 2d 183 (1960); *Thompson v. O'Leary*, 176 Wash. 606, 30 P.2d 661, (1934). Washington law also provides that concession interests are considered leasehold interests. RCW 82.29A.020(1).

In the case *sub judice*, the concession agreement held by Bremerton Ice Arena is now owned by lenders Haselwoods pursuant to Haselwoods' deed of trust foreclosure. Haselwoods continue to own and operate the Bremerton Ice Arena and enjoy the benefits of the improvements made by RV Associates. These facts are not disputed. It is the concession interest originally owned by Bremerton Ice Arena and now Haselwoods upon which RV Associates seeks to foreclose. Clearly, Washington law supports the contractor's right to this remedy.

A different result may have occurred had not the real property been owned by Bremerton. The concession agreement is quite specific as to the obligation of the holder of the concession agreement to make detailed and specified improvements to the lease premises. Specific and detailed specifications as to the improvements to be constructed by the holder of the concession agreement contain within that agreement. In similar situations where the owner of the real property is a private entity, the lien would also attach to the lessor's interest and the owner would also become liable for the improvements. *Bunn v. Bates*, 31 Wn. 2d 315, 319, 196 P. 2d 741, (1948); *Dahlman v. Thomas*, 88 Wash 653, 153 P. 1065 (1950); *Markley v. General Fire Equipment*, 17 Wn. App. 480, 563 P. 2d 1316 (1977)

In summary, the fact that the real property upon which the improvements are located is owned by Bremerton prevents the lien of RV Associates from attaching to Bremerton's concession interest. However, the lien of RV Associates clearly attaches to the concession interest originally owned by Bremerton Ice Arena and now owned Haselwoods. The Court of Appeals was correct in its determination.

Nevertheless, Haselwoods argue that because the concession agreement contains language to the effect that the improvements are the personal property of Bremerton Ice Arena, those improvements do not

attach to the real property. This argument was easily resolved by the Court of Appeals. The ice arena is a permanent structure affixed to the real property and is clearly intended to remain there. In fact, the agreement provides that upon the expiration of the concession agreement, Bremerton will become the owner of the improvements. It is unclear why the agreement between Bremerton and the Ice Arena denotes the improvements to be personal property. However, the reality is that this multi-million dollar structure is not only attached to the real property, it is clearly intended to remain there for decades. There are also many examples contained within the concession agreement itself that belie that the improvements are personal property. For example, Haselwoods are specifically protected as lenders on the project in several respects including encumbrance of the improvements by a deed of trust.

#### **USE OF STOP WORK ORDER**

In the Court of Appeals, Haselwoods argued that RV Associates should have utilized a statutory stop work order to protect themselves. This argument, raised for the first time on appeal, is clever but unsupportable. Had the issue been raised before the trial court, evidence would have been placed into the record establishing that Haselwoods, as the lenders, refused to pay the final billing at completion from all of the

subcontractors who filed liens. A stop work order would not have been effective and would have provided no protection. See RCW 60.04.221.

## **PUBLIC POLICY**

As stated earlier, it is the clearly expressed intent of the legislature that the entities responsible for making improvements to real property need to be protected and compensated for their efforts. A separate statutory scheme enacted by the legislature is designed to provide similar protections to those contractors making improvements on public projects. The prohibition on recording liens on public property is replaced by requirements that a contractor on a public project post a performance and payment bond. RCW 39.08.010. The public entity contracting for the work also retains a percentage of the work and this fund is available for the benefit of unpaid subcontractors and suppliers. RCW 39.08.010

Bremerton has provided none of these protections for those entities that made improvements to the ice arena.<sup>2</sup>

If this Court were to accept the argument of Haselwoods that the contractor's lien, determined to be valid by the trial court, does not attach to the improvements or leasehold interest, the intent of the legislature in enacting both the lien and public works statutes would be frustrated.

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<sup>2</sup> One would also assume that by utilizing this device, Bremerton was able to avoid the other public works statutes, including payment of prevailing wages and benefits. See RCW 39.12.020

Theoretically, public entities could enter into concession agreements or leases with private entities to avoid both the mechanic's lien laws and public works statutes.

### **REMOVAL**

RV Associates requested that the trial court allow its improvements to be removed in the event the court determined that RV Associates could not foreclose on its lien. Pursuant to RCW 60.04.051, after determining that the relation back statute did not apply to the lien of RV Associates because it had not attached to real property, the trial court then denied RV Associates the right to remove its improvements. (*CP 615-738*) The trial court reasoned that because the lien of RV Associates lacked priority over the lenders' deed of trust, it could not remove its improvements. This holding was obviously in error. RCW 60.04.051 allows for a right of removal regardless of priority and is provided as an alternative remedy to a lien foreclosure.

The seminal case on removal is *Hewson Constr. Inc. v. Raintree Corp*, 101 Wn. 2d 819, 685 P. 2d 1062 (1984). RV Associates would rely on the briefing provided to the Court of Appeals on the issue of removal.

### **ATTORNEY'S FEES**

Finally, RV Associates is entitled to attorney's fees under RCW 60.04.181(3). The trial court properly determined that RV Associates had

a valid lien on the improvements. It then opined that because the relation-back provisions of the lien statute were inapplicable, the Haselwoods' deed of trust had priority over RV Associates' lien. Finally, the trial court determined that this lack of priority also prevented RV Associates from removing its improvements.

RCW 60.04.181(3) allows for the prevailing party to be awarded its attorney's fees and costs.

The determination by the trial court that RV Associates had a legal and valid lien has not been appealed by the lenders. (*CP 609*) Rather, the lenders assert that the lien of RV Associates lacks priority under RCW 60.04.061 and that the removal statute is inapplicable under RCW 60.04.051. Regardless of the outcome of these arguments, RV Associates has prevailed in establishing its lien and should be awarded attorney's fees on appeal. RAP 18.1.

## CONCLUSION

The Court of Appeals decision should be affirmed.

Respectfully submitted this 2d day of June, 2008.



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**CONCESSION AGREEMENT  
BETWEEN  
CITY OF BREMERTON  
AND  
BREMERTON ICE ARENA, INC.**

**EXHIBIT A-1**

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Exhibit B – Preliminary Building and Site Plans

Exhibit C – Appraisal and Compensation Information

Exhibit D – Quit Claim Deed from United States of America to the City of Bremerton

## CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT ("Agreement") is entered into effective the 9th day of August, 2002 (hereinafter referred to as the "EFFECTIVE DATE"), by and between the CITY OF BREMERTON, a Washington municipal corporation (hereinafter referred to as the "CITY"), and BREMERTON ICE ARENA, INC. a Washington corporation (hereinafter referred to as the "CONCESSIONAIRE"), referred to collectively as the "Parties."

### RECITALS

**WHEREAS**, the CITY is owner of the property commonly known as Eastpark; and

**WHEREAS**, the CITY owns undeveloped land within the confines of the Eastpark available for development of an indoor ice arena facility; and

**WHEREAS**, the CONCESSIONAIRE has the experience, ability, and resources to develop and operate an indoor ice arena facility; and

**WHEREAS**, the Parties intend this Agreement to be a ground and use concession allowing the CONCESSIONAIRE to develop, construct, and operate an indoor ice arena facility, for profit, on certain undeveloped land within the confines of Eastpark and which said land will remain property of the CITY; and

**WHEREAS**, the Parties agree that no joint venture or partnership is formed as a result of this Agreement; and

**WHEREAS**, the CONCESSIONAIRE will be responsible for the design and construction of an indoor ice arena facility, adequate parking and exterior landscaping on the CITY's real property, which visually blend with the setting, which are to be constructed within the confines of Eastpark, and all improvements to the real property will become property of the CITY at the termination of this Agreement; and

**WHEREAS**, the CITY shall have the right to approve the final design of the improvements and shall have a continuing right to approve the exterior color of any structure on the property; and

**WHEREAS**, the CONCESSIONAIRE will be responsible for obtaining all necessary financing for the development and operation of the indoor ice arena facility; and

**WHEREAS**, it is mutually understood by the Parties that any lender who provides the CONCESSIONAIRE, or successor or assign approved by the CITY, financing, re-financing, credit lines or equipment leases, for the development and ongoing operations of the improvements and business operations will require this

Agreement as protection and security for lender ("lender") The term "lender" shall also mean the successors and assigns of the lender; and

**WHEREAS**, the CITY will acknowledge and consent to lender taking a first position security interest in this Agreement and the Improvements, lender taking an assignment of the right, title, claim and interest of CONCESSIONAIRE in this Agreement, lender obtaining the right of substitution for CONCESSIONAIRE, lender taking possession of the concession and improvements, lender operating the indoor ice arena facility pursuant to the terms of this Agreement, and/or lender selling, assigning and/or transferring CONCESSIONAIRE'S interest in this Agreement, the term "CONCESSIONAIRE" shall also mean successors or assigns of CONCESSIONAIRE as approved by the CITY;

**WITNESSETH:**

**NOW, THEREFORE**, in consideration of the promises, covenants, and provisions set forth in this Agreement, the Parties agree as follows:

**ARTICLE 1. GROUND AND USE CONCESSION**

**1.1 Concession of Premises**

CITY hereby grants a ground and use concession to CONCESSIONAIRE of approximately one hundred forty-four thousand four hundred fifty-six square feet (144,456 sq. ft.) of undeveloped land located within the confines of Eastpark (hereinafter referred to as "Concession") on real property legally described in Exhibit A attached hereto and incorporated by reference for development, construction, maintenance, and operation, for profit, of an indoor ice arena facility including building(s), fixtures, appurtenances, parking and exterior landscaping (hereinafter referred to as "Improvements"), and generally shown in the preliminary building and site plan in Exhibit B attached hereto and incorporated by reference. (Collectively referred to as "Premises") (Premises does not include the fee ownership or leasehold interest of the real property upon which the Improvements are located). The CITY represents and warrants that the Premises are currently zoned for the uses contemplated hereunder and no further proceedings are required therefor. CONCESSIONAIRE hereby agrees to the terms and conditions of this Agreement. The Parties agree that the Premises are currently undeveloped with no permanent structures, and that any and all development and construction of improvements to the Premises are owned by CONCESSIONAIRE during the term of this Agreement, subject to any security interest of lender, if any. Upon the expiration of the term(s) of this Agreement pursuant to Article 2, or upon the termination of this Agreement, other than as a result of condemnation proceedings, the then existing improvements on the Premises will become the property of and owned by the CITY subject to lenders rights as set forth in Article 6. The common address of the Premises is 1950 Homer Jones Bremerton WA, 98310.

If in the future, during the term of this concession, a piece of property of comparable worth to the real property described in Exhibit A and the concession

consideration described in Exhibit C and considered a valuable addition to the Bremerton Parks and Recreation inventory becomes available, the CITY would consider a property trade with the CONCESSIONAIRE assuming all the requirements of the Department of Interior and the Quitclaim Deed conveying the property to the CITY and related CITY ordinances are met. The CITY, at its sole discretion, may accept or reject any proposal for such property trade.

### **1.2 Possession, Quiet Enjoyment & Covenants Real**

Except as provided in Articles 3 & 4.3 herein, the CONCESSIONAIRE shall be entitled to exclusive possession of the Premises, except the parking areas, upon commencement of the development and construction of the Improvements as set forth by Article 5.4 herein. Upon taking possession of the Premises, and on performing all the covenants and conditions herein, the CONCESSIONAIRE shall peaceably and quietly have, hold, and enjoy the Premises at all times during the full term of this Agreement. Every covenant in this Agreement shall be deemed and treated to be a covenant running with the Premises during the full term of the Agreement, and shall extend to the heirs, legal representatives, successors, and assigns of the Parties. No change in CITY's ownership of the Premises, or rights to the payments hereunder, however accomplished, shall operate to enlarge the obligations or reduce the rights of CONCESSIONAIRE. No change in CITY's ownership of the Premises shall be binding upon CONCESSIONAIRE for any purpose until CONCESSIONAIRE shall have been given written notice thereof.

### **1.3 CITY Payment to CONCESSIONAIRE**

In addition to the concession granted herein and as an incentive to CONCESSIONAIRE to locate an indoor ice arena facility within the City of Bremerton and to help defray the costs of relocating the facility from the initially proposed site in Kitsap County and in consideration of additional future use of the Premises by the CITY as set forth in Article 3, the CITY shall pay CONCESSIONAIRE \$175,000 as follows: \$100,000 upon issuance of a building permit for the ice arena structure, and \$75,000 upon completion of the roof of the structure.

## **ARTICLE 2. TERM OF AGREEMENT**

### **2.1 Term**

The term of this Agreement shall be 10 years, commencing upon the EFFECTIVE DATE of this Agreement.

### **2.2 Option to Renew**

The CITY agrees to offer the CONCESSIONAIRE four (4) successive ten (10) year options to renew this Agreement, contingent upon CONCESSIONAIRE remaining in full compliance with the terms and conditions of this Agreement and further contingent on the CITY accepting the level of insurance coverage required in Section 8.5.2 for the new 10 year term exercised by CONCESSIONAIRE, which acceptance will not be unreasonably denied. To execute an option for renewal, the CONCESSIONAIRE, not more than 180 days and not less than 60 days prior to the expiration of the term, shall give written notice to the CITY that the CONCESSIONAIRE is exercising the

CONCESSIONAIRE's option for an additional ten (10) year term. The CONCESSIONAIRE's written notice shall include a sworn affidavit that the CONCESSIONAIRE is currently in full compliance with the terms and conditions of this Agreement. The option will become effective upon receipt by the CITY of CONCESSIONAIRE's written notice and sworn affidavit and no further process or documentation will be required, provided, however upon CONCESSIONAIRE's request, the CITY shall provide a written acknowledgement that such option has been exercised and is in effect. If the option(s) to renew are not exercised, then the Agreement shall expire at the conclusion of the expiring term.

### ARTICLE 3. CONSIDERATION

#### 3.1. Consideration for Concession.

##### *3.1.1 Premises Use in Lieu of Cash*

As consideration for the ground and use concession granted by the CITY to the CONCESSIONAIRE and the payment of \$175,000 by the CITY to CONCESSIONAIRE pursuant to Article 1.3, the CONCESSIONAIRE shall provide fair and equitable compensation to the CITY based upon an appraisal of the Premises at the effective date of this Agreement conducted on behalf of the CITY by a certified appraiser pursuant to the Appraisal and Compensation Information described in Exhibit C attached hereto and incorporated by reference. In lieu of cash payments, the annual compensation provided by the CONCESSIONAIRE to the CITY shall be in the form of hours of use of the Premises as established in Exhibit C. Premises use by the CITY shall be governed by Article 3.3 herein. Said kinds of use to be determined at the sole discretion of the CITY, so long as such use is not incompatible with the facility's design purpose(s).

##### *3.1.2 Leasehold Excise Tax*

Pursuant to RCW 82.29A.020(1), concessions fall within the definition of leasehold interest, therefore, even though this agreement is not for a lease, it is still subject to the leasehold tax set forth in Chapter 82.29A RCW. Accordingly, CONCESSIONAIRE agrees to pay, in addition to other taxes and fees pursuant to Article 8.4.2, the leasehold excise tax pursuant to Chapter 82.29A RCW. The tax will be based on the current appraised value of use of the property through this concession agreement (concession rate value) as set forth in Exhibit C in the amount of \$23,112 per year. Since consideration to the City for this property use consists of hours of ice time at the Premises established through a formula based upon the current hourly value of ice time, no adjustments will be made for the property use or value of ice time during the term(s) of this agreement. Therefore, for purposes of assessment and payment of the leasehold tax only, the appraised value of the use of the property (\$23,112) will be adjusted every five years during the term(s) of this agreement based upon the prior five years' Consumer Price Index (CPI) for all urban consumers as published by the United States Department of Labor for Seattle-Tacoma-Bremerton, all items (1982-84-100) For purposes of the CPI adjustment, the base shall be the June 2002 CPI index with adjustments made June to June every five years (ie. June 2002- June 2007). In addition, CONCESSIONAIRE agrees to pay when due, the leasehold excise tax, or any additional assessments thereto,

with respect to any payment or obligation hereunder, which is deemed by the State of Washington to be taxable rent under said chapter and to indemnify and hold the City harmless from the same.

CONCESSIONAIRE shall pay quarterly to the City by the fifteenth day of the month following the end of each quarter, or as otherwise required by the State of Washington, the amount of the leasehold tax owing. The leasehold tax will begin accruing on the beginning of the first full month of issuance of the building permit for the ice arena structure.

### **3.2 Ice arena Equipment/Personal Property Use**

Premises use by the CITY received as consideration for this Agreement does not include the use by the CITY of any of the CONCESSIONAIRE's ice arena equipment or other personal property. Use by the CITY of any of the CONCESSIONAIRE's ice arena equipment or other personal property will be negotiated separately between the CITY and the CONCESSIONAIRE and is outside the scope of this Agreement.

### **3.3 Timing of Consideration Payment**

The consideration paid by the CONCESSIONAIRE in the form of Premises use by the CITY shall commence accruing from the date the Occupancy Permit is issued. It is mutually understood and agreed that the CITY can receive its full annual compensation of hours of Premises use at any time during the 12 month period-beginning with the date CONCESSIONAIRE receives the occupancy permit for use and every 12 month period thereafter. It is mutually understood and agreed to that any CITY hours which are unused in a given year do not accrue or transfer over into a new year unless mutually agreed.

### **3.4 Premises Use by CITY**

#### ***3.4.1. Types of Use***

The hours of Premises use provided by the CONCESSIONAIRE to the CITY in consideration for this Agreement are intended to provide recreational opportunities of a suitable and compatible nature for the residents of the CITY as part of the Parks and Recreation programs. Such Premises use by the CITY shall be without cost to the CITY to the extent of the annual hours of use of the Premises, pursuant to Articles 3.1, 3.2 and 3.3 herein. This will exclude the use of proprietary or sub-concessioned spaces within the facility, including but not limited to management offices, refrigeration and maintenance areas, and fitness club. It is mutually understood that the CITY will, under all reasonable conditions, have the use of the ice surface (CONCESSIONAIRE will provide a clean surface prior to CITY use), party (multi-use) and team rooms, first aid room, lobby and restrooms.

#### ***3.4.2 Maintenance & Utility Costs/Clean-Up After Use***

The CONCESSIONAIRE shall be responsible for all overhead costs, including the utilities and general maintenance, of the Premises during the use of the Premises by the CITY. The CITY agrees to clean-up the Premises after each CITY use.

### *3.4.3 Damage, Claims, & Liability*

The CITY shall be responsible for all damage or claims that may arise out of the Premises use by any of the CITY's employees, agents, guests, or invitees. The CITY, during such periods of use, shall supervise or cause the CITY's employees, agents, guests, or invitees to be supervised. The provisions for mutual indemnity, hold harmless, and liability insurance pursuant to Articles 8.5 & 8.6 herein apply during Premises use by the CITY.

### **3.5 Scheduling Premises Use by CITY**

The CITY and the CONCESSIONAIRE shall meet at least quarterly and other times as necessary, to determine how such Premises use hours shall be allocated to the CITY in the upcoming quarter in accordance with the following provisions. The CITY's use shall be during normal operating hours of the facility, unless otherwise agreed.

#### *3.5.1 Summer Quarter*

The CITY shall have the full discretion to determine which hours of Premises use the CITY intends to use during the Summer quarter (June, July, and August) of each year. At the CITY'S discretion, the CITY has the right to schedule its full annual compensation of hours of premises use during the summer quarter, however, it is mutually understood and agreed to that, unless CONCESSIONAIRE agrees otherwise in advance, the maximum hours the CITY may schedule in a single calendar month is 70 hours.

#### *3.5.2 Fall, Winter, and Spring Quarters*

The CONCESSIONAIRE shall have the full discretion to determine which hours of Premises use the CONCESSIONAIRE may use the Premises during the Fall quarter (September, October, and November), Winter quarter (December, January, and February), and Spring quarter (March, April, and May) of each year. The CONCESSIONAIRE has the right to schedule the CITY'S remaining compensation, if any, of Premises use not previously scheduled by the CITY during the Summer quarter. The CONCESSIONAIRE's discretion to schedule CITY use under this Article is limited to scheduling CITY use during normal business hours.

### **3.6 CITY's Increased Premises Use**

The CITY may increase its hours of Premises use beyond its annual compensation by paying to the CONCESSIONAIRE an hourly rate not to exceed the rate then in effect by the CONCESSIONAIRE for general public use and with scheduling at the discretion of the CONCESSIONAIRE.

## **ARTICLE 4. USE & OPERATION OF PREMISES**

### **4.1 Use of Premises**

#### *4.1.1 Indoor Ice Arena and Recreational Uses*

The CONCESSIONAIRE will use and occupy the Premises throughout the full term of this Agreement for the purpose of providing indoor ice sports, fitness, recreation, and community activities directly related to the operation of an indoor ice arena.

#### *4.1.2 Incidental Uses*

The CONCESSIONAIRE may provide incidental uses in the form of coaching and training services, food and beverage services, and the sale or rental of incidental items directly related to the use of the ice arena facility including, but not limited to, ice sports, fitness and athletic equipment, soap, shampoo, and similar shower supplies, and clothing related to ice arena and fitness pursuits. This includes hiring vendors and/or sub-concessions of interior space of the indoor ice arena facility. CONCESSIONAIRE agrees that no alcohol will be sold or consumed on the premises.

#### *4.1.3 Sub-Concessions*

All sub-concessions will require the prior written consent of the Mayor or designee, which consent will not be unreasonably withheld, and comply with any requirements of the U.S. Secretary of Interior for the granting of concessions on the subject property pursuant to the quitclaim deed, attached hereto as Exhibit D and incorporated by reference, transferring title to the CITY to the real property upon which this concession is granted. THE U.S. SECRETARY OF THE INTERIOR, THROUGH THE NATIONAL PARK SERVICE, CONSENTING TO THIS AGREEMENT, WAIVES ANY RIGHT TO REVIEW AND APPROVE SUB-CONCESSIONS WHICH DO NOT REQUIRE THE APPROVAL OF THE CITY COUNCIL.

#### *4.1.4 Security and Nuisance During Use*

The CONCESSIONAIRE shall take reasonable precautions in securing the Premises during the full term of this Agreement. The CONCESSIONAIRE shall use the Premises for no unlawful purposes and shall not use or occupy the Premises in any manner, which would constitute a public nuisance or violate State or CITY laws.

#### **4.2 Operating Hours**

The availability of recreational opportunities for CITY residents is a material consideration for this Agreement. Accordingly and during the full term of this Agreement, the CONCESSIONAIRE shall continuously conduct and carry on the CONCESSIONAIRE'S permitted uses and shall keep the Premises open for business and cause the CONCESSIONAIRE'S business to be conducted therein during the usual business hours of each and every business day as mutually agreed upon. This provision shall not apply if the Premises should be closed and the business of CONCESSIONAIRE is temporarily suspended on account of weather conditions, power outages, labor strikes, lockouts, or similar causes beyond the reasonable control of CONCESSIONAIRE, or for maintenance, remodeling, repair, or renovation as approved by the CITY in writing (including approvals of any construction schedules.) The CONCESSIONAIRE covenants and agrees to provide sufficient personnel, and to keep the Premises adequately stocked with merchandise, recreational equipment, fixtures, and facilities so as to conduct its business in accordance with sound business practice. The CONCESSIONAIRE, in order to keep its business commitments, shall be in operation in accordance with sound business practice.

### **4.3 Entry by CITY**

CITY may enter the Premises at all reasonable times during normal hours of business operations to inspect; provide services required hereunder; post notices of CONCESSIONAIRE's noncompliance with the provisions of this concession, all without being deemed a constructive eviction. Any person or persons who may have an interest in the purpose of CITY's visit may accompany CITY. CITY has the right to use any and all means that CITY deems proper to open doors and gates in an emergency in order to obtain entry to the Premises. Except in an emergency, 24 hours notice shall be given by the CITY before entry by the CITY into proprietary areas of the facility.

### **4.4 Health Inspections**

CONCESSIONAIRE shall not knowingly commit or willfully permit to be committed any act or thing contrary to the rules and regulations prescribed by the local board of health, or which shall be contrary to the laws, rules or regulations of any federal, state or municipal authority. CONCESSIONAIRE shall allow the Bremerton-Kitsap County Health Department to make regular and ordinary inspections of the Premises as said health department may deem proper.

### **4.5 Maintenance, Repair, & Improvements**

#### ***4.5.1 Maintenance***

CONCESSIONAIRE shall, at its sole cost and expense, clean and maintain the Premises, and make repairs, restorations, and replacements to all improvements to the Premises, including without limitation the heating, ventilating, air conditioning, mechanical, electrical, and plumbing systems, structural roof, walls, and foundations, roof coverings, sprinkling and irrigation systems, playing surfaces and the fixtures and appurtenances to the Premises as and when needed to preserve them in "first class" condition and repair (less normal wear from use) throughout the full term. CONCESSIONAIRE shall further keep in repair and maintain as necessary all machinery, equipment and facilities necessary for the playing of sports and the comfort of players. CONCESSIONAIRE shall paint the exterior of the buildings (except the metal) with such frequency as may be required to maintain their good, clean appearance. All such repairs, restorations, and replacements will be in quality and workmanship at least equal to the original work or installations. If CONCESSIONAIRE fails to make such repairs, restorations, or replacements, following a notice of default and opportunity to cure as provided for in Articles 6 and 7, CITY may make them at the expense of CONCESSIONAIRE and such expense will be paid by CONCESSIONAIRE within fifteen (15) days after delivery of a statement for such expense.

#### ***4.5.2 Sidewalks and Parking Maintenance***

At its sole cost and expense, CONCESSIONAIRE shall maintain all sidewalks and parking lots on the Premises in good and presentable condition during the full term of this Agreement, shall be responsible for correcting any unsafe conditions, and shall be responsible for the removal of ice and snow from the sidewalks and parking lots as necessary for safe operation of the Premises.

#### *4.5.3 Janitorial and Landscaping Services*

At its sole cost and expense, CONCESSIONAIRE shall keep the Premises clean, and shall provide sufficient janitorial services to maintain a tidy appearance on and about the Premises. CONCESSIONAIRE shall provide landscaping maintenance services such that landscaping on the Premises remains healthy, attractive, and well maintained.

#### *4.5.4 Repair of Damage*

Except that which may be caused by the actions, activities or negligence of the CITY or its agents, representatives, employees, guests or invitees, in the event any damage or injury shall occur to the Premises of any kind or nature whatsoever, CONCESSIONAIRE shall promptly cause said damage or injury to be fully repaired at CONCESSIONAIRE'S own cost and expense. In the event CONCESSIONAIRE fails to accomplish such repairs within fifteen (15) days of receipt of written notice by the CITY, then in that event CITY may, but is not required to, enter the Premises and accomplish such repairs and bill CONCESSIONAIRE who will pay the bill within fifteen (15) days after delivery of a statement for such expense. Any such damage or injury to the Premises caused by the actions, activities or negligence of the CITY or its agents, representatives, employees, guests or invitees shall be promptly repaired by the CITY at its cost and expense.

#### *4.5.6 Improvements*

The CONCESSIONAIRE shall be solely responsible for providing adequate funding for any alterations or improvements as provided in this Agreement and such alterations or improvements shall be made without cost to the CITY.

#### *4.5.7 Alterations of Improvements after Construction*

After such time as the Improvements have been completed and accepted as defined above, the CONCESSIONAIRE shall not make any material alteration to the Premises including any changes to the landscaping, without the CITY'S prior written consent, which consent will not be unreasonably withheld.

### **4.6 Signs**

CONCESSIONAIRE may place and maintain signs upon the Premises in accordance with the sign ordinance of the CITY.

### **4.7 Utilities**

#### *4.7.1 Utility Services and Expense*

The CONCESSIONAIRE will pay for all water, gas, garbage, sewage, electricity, telephone, and other utilities and communications services used by CONCESSIONAIRE on the Premises, whether or not such services are billed directly to CONCESSIONAIRE. CONCESSIONAIRE will also procure, or cause to be procured, without cost to the CITY, any and all necessary permits, licenses, or other authorizations required for the lawful and proper installation and maintenance upon the Premises of utility appurtenances and appliances for use in supplying such utilities and services to and upon the Premises. The CITY, upon request of CONCESSIONAIRE, and at the sole expense

and liability of the CONCESSIONAIRE, will join with CONCESSIONAIRE in any application required for obtaining or continuing any such services, provided that such services do not violate any other applicable provision of this Agreement. The CITY shall not be held liable for any injury, loss, or damage caused by or resulting from any interruption or failure of utility services due to any cause whatsoever, except the CITY's sole negligence. CONCESSIONAIRE shall not be entitled to any offset, reduction, or return of consideration as a result of any interruption or failure of services.

#### *4.7.2 Trash & Garbage*

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

#### **4.8 Parking**

The CONCESSIONAIRE shall develop parking on the real property described in Exhibit A providing a minimum of 155 vehicle parking spaces for CONCESSIONAIRE's non-exclusive use in connection with the Premises, as identified more particularly described in Exhibit B. CITY may use this parking lot for activities of the CITY or its assigns at Eastpark in a manner not inconsistent or interfering with CONCESSIONAIRE's use of the parking lot.

#### **4.9 Hazardous Substances**

##### *4.9.1 Definition*

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

##### *4.9.2 Information*

CONCESSIONAIRE shall keep upon the Premises, in a location accessible to CITY, on request during normal business hours, copies of all reports regarding hazardous or toxic materials in the Premises that CONCESSIONAIRE has provided to any governmental agency in the previous quarter. CONCESSIONAIRE shall, upon request and at CONCESSIONAIRE'S expense, provide CITY with a copy of any such report as to which CITY request a copy. In the event of any accident, spill, or other incident involving hazardous or toxic matter that CONCESSIONAIRE is required to report to any governmental agency, CONCESSIONAIRE shall immediately report the same to the CITY and supply CITY with all information and reports with respect to the same, together with CONCESSIONAIRE'S clean-up or remediation plan and schedule. If such clean-up or remediation plan is not acceptable to CITY in CITY'S sole discretion, CITY may so notify CONCESSIONAIRE and, upon 48 hours prior written notice (or without notice if so required by an emergency) may enter on the Premises to conduct the cleanup and/or remediation and charge CONCESSIONAIRE the costs thereof. For non-emergency cleanup and/or remediation, prior to the CITY exercising its right to cleanup

and/or remediation on the Premises, the parties will mutually agree upon a consultant for determining the method of cleanup and/or remediation. All information described herein shall be provided to CITY regardless of any claim by CONCESSIONAIRE that it is confidential or privileged, provided that the CITY shall not publish or disclose the information to any third party except as pursuant to Chapter 42.17 RCW.

#### **4.9.3 Indemnification**

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

#### **4.10 Risk of Loss**

All personal property of any kind or description whatsoever in the Premises shall be at the CONCESSIONAIRE's sole risk, and CITY shall not be liable for any damage done to, or loss of, such personal property. However, CONCESSIONAIRE is not responsible for losses or claims of damaged or stolen property under the care and control of the CITY during the CITY'S use periods.

### **ARTICLE 5. DESIGN & CONSTRUCTION OF PREMISES**

#### **5.1 Design**

The CONCESSIONAIRE shall retain a licensed architect or licensed professional engineer, registered in the State of Washington, who shall design the indoor ice arena facility and exterior landscaping, which shall visually blend with the setting. The CITY shall have the right to approve the final design of the Improvements and shall have a continuing right to approve the exterior color of any structure on the Premises, which approval shall not be unreasonably withheld. CONCESSIONAIRE shall comply with the Americans with Disabilities Act of 1990 (ADA) in the design, construction, and operation of the Premises.

#### **5.2 Building & Site Plans**

The CONCESSIONAIRE shall retain a licensed architect or licensed professional engineer, registered in the State of Washington, to prepare building and site plans for the Premises, which shall reference the structure, utilities generally, and landscape plan. The CITY shall have the right to approve the final building and site plans, which approval shall not be unreasonably withheld.

### **5.3 Construction/Site Work/Fencing**

The CONCESSIONAIRE shall be solely responsible for all development and construction of the Premises and hold the CITY harmless from any and all claims arising out of the development and construction of the Premises pursuant to Article 8.6 herein, except as may be caused by the sole acts or negligence of the CITY or its agents, representatives or employees. CONCESSIONAIRE shall be responsible for the site work, all required permits and grading. CONCESSIONAIRE shall properly barricade the work area and install signage directing unauthorized person not to enter onto the building site during any phase of development or construction. Unless otherwise agreed fencing shall be placed around the work area. In addition, the building site shall be kept in a clean and organized condition during development periods. CONCESSIONAIRE shall be responsible for site security, traffic and pedestrian warnings at the site during the development and construction phases.

### **5.4 Construction Deadlines**

CONCESSIONAIRE shall be required to commence development and construction of the Premises within nine months of the EFFECTIVE DATE of this Agreement. Commencement of development and construction of the Premises is defined as that date upon which there is physical movement or grading of the soil in preparation for construction of any structure on the Premises. CONCESSIONAIRE shall be required to complete the development and construction of the Premises within eighteen (18) months of the EFFECTIVE DATE of this Agreement. Completion of the development and construction of the Premises is defined as that date upon which all final occupancy permits are obtained by the CONCESSIONAIRE for all structures on the Premises.

### **5.5 Failure to Meet Construction Deadlines/Time of Essence**

Except as provided in Article 8.15 herein, it is mutually understood and agreed that failure by the CONCESSIONAIRE to meet the development and construction deadlines shall constitute a material breach of this Agreement by the CONCESSIONAIRE and the CITY, at its option, can terminate this Agreement for cause pursuant to Article 7, subject, however, to the provisions of Article 6 below. Time is of the essence with this Agreement.

### **5.6 Stormwater Drainage, Sewer, & Water Lines**

The CONCESSIONAIRE will be responsible for relocating storm drains, sewers, and water lines to the Premises, as required to complete development and construction of the Improvements. The CITY shall provide CONCESSIONAIRE with all pertinent information concerning the location of such existing lines.

### **5.7 Development and Construction Fees & Expenses**

The CONCESSIONAIRE shall be responsible for obtaining and paying for necessary permits, fees, and expenses associated with the development and construction of the Improvements. In addition, CONCESSIONAIRE shall be responsible for any additional costs for inspections billed to the CITY by any government agency, including but not limited to the City of Bremerton, Kitsap County, or the State of Washington.

## **5.8 CONCESSIONAIRE's Development Project**

The development and construction of Improvements on the Premises is CONCESSIONAIRE's development project and is not a CITY public works project. CONCESSIONAIRE is the developer and the CITY is not an owner, partner, joint venturer, nor maintains any other business relationship with the CONCESSIONAIRE regarding the indoor ice arena facility other than as grantor of a concession and user of the Premises. The CITY is not involved with, nor has any responsibilities for, the bidding, contracting or operations of the Premises and will occupy no space in the Premises. The project signage and all literature, advertising by either the CITY or CONCESSIONAIRE shall not indicate in any manner that this is a CITY project, contract, or other misleading statement indicating that this project is a CITY public work project directly or indirectly.

## **5.9 No Liens**

Except liens and encumbrances of any lender pursuant to Article 6 herein, it is mutually understood and agreed that the CONCESSIONAIRE shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of the CITY in the Premises or to charge the rentals payable hereunder for any claim in favor of any person dealing with CONCESSIONAIRE, including those who may furnish materials or perform labor for any construction or repairs, and each such claim shall affect and each such lien shall attach to, if at all, only the right and interest granted to CONCESSIONAIRE by this Agreement. If any such liens are filed, CITY may, without waiving its rights and remedies for breach, and without releasing CONCESSIONAIRE from its obligations hereunder, require CONCESSIONAIRE to post security in form and amount reasonably satisfactory to CITY or cause such liens to be released by any means CITY deems proper, including payment in satisfaction of the claim giving rise to the lien. CONCESSIONAIRE shall pay to CITY upon demand any sum paid by CITY to remove the liens. Further, CONCESSIONAIRE agrees that it will save and hold the CITY harmless from any and all loss, cost, or expenses based on or arising out of the asserted claims or liens, except those of the lender pursuant to the provisions of this Agreement, against this Agreement or against the right, title, and interest of the CITY in the Premises or under the terms of this Agreement, including reasonable attorney's fees and costs incurred by CITY in removing such liens, and in enforcing this paragraph. Additionally, it is mutually understood and agreed that this paragraph is intended to be a continuing provision applicable to future repairs and improvements after the initial construction phase.

## **ARTICLE 6. FINANCING & SECURITY INTERESTS**

### **6.1 Financing - No CITY Obligation**

CONCESSIONAIRE shall be solely responsible for all financing requirements for all construction, maintenance, repairs, or subsequent improvements to the Premises. The CITY shall be under no obligation directly or indirectly to pay for any labor, material, or improvement associated with the facility except as provided herein or mutually agreed upon. The CONCESSIONAIRE shall, in applying and obtaining financing, inform any

lender that the CITY has no financial obligations associated with the construction, maintenance, repairs or subsequent improvements to the Premises.

## **6.2 Security Interest in Premises & Agreement/Consent**

The CITY consents to the grant, transfer, pledge and assignment of any and all right, title, claim, interest of CONCESSIONAIRE in and to this Agreement and in the Premises, including improvements and personal property on the Premises ("Collateral") to lender for financing purposes, including the re-financing of any loans and leasing of equipment. The CITY shall recognize lender's first priority security interest in the Collateral and the CITY hereby subordinates any and all interest of the CITY in said Collateral to lender. CONCESSIONAIRE acknowledges that the CITY will not grant any security interest to any lender in CITY real property nor will the CITY allow any encumbrance of any kind or nature whatsoever upon, or in any manner on its title to CITY real property. In the event of default by CONCESSIONAIRE to lender, in addition to all its rights and remedies available at law and equity, lender may enforce and/or foreclose its security interest/interests in the Collateral. CITY agrees that in connection with any such default, and all without further consent of CITY, lender may:

- a. Acquire CONCESSIONAIRE'S interest in the Collateral either by a deed in lieu of foreclosure or actual foreclosure;
- b. Rent and/or grant a ground and use concession of the Premises subject to this Agreement pending foreclosure of the Collateral by lender;
- c. Assign, sell and/or transfer the Collateral in whole or in part to any person or entity;
- d. Take possession of any or all of the Collateral, obtain right of substitution for CONCESSIONAIRE and operate said Collateral; and/or
- e. Appoint a receiver.
- f. All other rights and remedies at law or in equity.

Any assignment or transfer under Article 6.2 is subject to Article 8.7. Lender shall have no interest in improvements located on the Premises at the time of expiration of the term or terms of this Agreement pursuant to Article 2, at which time, all improvements shall become the property of the CITY.

## **6.3 LENDER'S Reliance on Term and Renewal Options**

The City acknowledges that the CONCESSIONAIRE, in making application for financing, may be required to have an assurance that the terms of this Agreement will extend beyond the term of the financing term. By its signature to this Agreement, the CITY confirms its authority to provide the ten-year Agreement term with four options to extend the ten-year Agreement for a total of fifty years with the renewal options conditioned solely upon the CONCESSIONAIRE maintaining current payments and remaining in full compliance with the terms and conditions of this Agreement. Lender may, but is not obligated to exercise CONCESSIONAIRE's right to renew and extend the terms of this Agreement. Additionally, the CITY acknowledges that, after any original financing commitments by the CONCESSIONAIRE have been satisfied, these financing provisions shall be applicable to all future advances or financing required by the

CONCESSIONAIRE and used solely for the improvements and repairs of the Premises or re-financing such obligations periodically thereafter.

#### **6.4 Surrender of the Collateral**

No surrender of Collateral or the Premises to lender subject to this Agreement or any other act of CONCESSIONAIRE shall be deemed to terminate this Agreement. CITY will not terminate this Agreement voluntarily by agreement with CONCESSIONAIRE unless lender has been previously notified in writing and has consented to the termination in writing. This Agreement shall not be amended or modified unless lender has been previously notified in writing and has consented to such amendment or modification in writing.

#### **6.5 Notice of Default and Lender's Rights**

##### ***6.5.1 Notice of Default***

If CONCESSIONAIRE defaults under this Agreement or if any event occurs which would give CITY the right to terminate, modify, amend or shorten the term of this Agreement, CITY shall take no steps to exercise any right it may have under this Agreement without first giving lender written notice of such default in accordance with Article 6.11 below. A copy of each and every notice of default served or sent by CITY or its agent to or upon CONCESSIONAIRE pursuant to this Agreement shall be sent contemporaneously to lender in accordance with Article 6.11 below. Such notice of default shall specify the event or events of default then outstanding and the time period at the end of which the indicated action would become effective.

##### ***6.5.2 Termination for Monetary Default***

If the notice of default given by CITY to lender relates to a monetary default and CONCESSIONAIRE has not cured such monetary default within 30 days after lender receives the notice and CONCESSIONAIRE'S failure to cure results in CITY desiring to terminate this Agreement, CITY may terminate this Agreement pursuant to Article 7 if such monetary default is not cured by either CONCESSIONAIRE or lender within forty-five (45) days after lender receives the notice of default.

##### ***6.5.3 Termination for Non-Monetary Default***

If the notice of default given by CITY to lender relates to a non-monetary default and CONCESSIONAIRE has not cured, or diligently pursued curing, such non-monetary default within thirty (30) days after lender receives the notice, CITY may terminate this Agreement pursuant to Article 7 if such non-monetary default is not cured by either CONCESSIONAIRE or lender within sixty (60) days after lender receives notice of default.

##### ***6.5.4 Termination due to Bankruptcy***

CITY shall not terminate this Agreement because of CONCESSIONAIRE'S breach of any terms of this Agreement relating to the solvency of CONCESSIONAIRE or the institution of any bankruptcy, insolvency, receivership or related action by or

against CONCESSIONAIRE as long as lender cures any default under this Agreement by CONCESSIONAIRE as provided herein, except that lender shall not be required to cure any defaults relating to solvency of CONCESSIONAIRE.

#### **6.6 Right to Assign**

Lender shall have the right to assign its interest in the Collateral. Upon the purchaser's, assignee's or transferee's assumption of lenders assigned interest and agreement to perform and be bound by all of the terms of this Agreement, lender shall be relieved from further liability under this Agreement. If a lender finances the purchaser, assignee or transferee, said lender shall be subject to all obligations as set forth in this Agreement. Any successor lender shall be bound by the terms and conditions of this Agreement.

#### **6.7 Disposition of Insurance**

Should the Collateral suffer any loss which is covered by casualty insurance, and the insurance proceeds are used to restore any improvements made by CONCESSIONAIRE, CITY agrees that CONCESSIONAIRE and lender shall have the right to such proceeds so long as none of CITY'S property, utilities or other services therein are damaged or such damages are repaired. In the event the CITY'S land is substantially damaged and CONCESSIONAIRE'S improvements have been repaired, CITY shall only participate in the insurance proceeds to the extent necessary to repair and restore CITY'S land and any of CITY'S improvements on or in the ground to the same condition the land was at the commencement of this Agreement, or in the same condition at the time of the casualty. Other than as described herein, CITY shall have no claim to insurance proceeds that are attributable to CONCESSIONAIRE'S interest in the Collateral.

#### **6.8 Right to Participate in Litigation**

Lender shall have the right to participate in any litigation, arbitration or dispute directly affecting the Collateral or interest of CONCESSIONAIRE or lender therein, including, without limitation, any suit, action, arbitration proceeding, condemnation proceeding or insurance claim. CITY, upon instituting or receiving notice of any such litigation, arbitration or dispute will promptly notify lender of the same.

#### **6.9 Incorporation of Lender's Protection Provisions**

Lender shall be a beneficiary of all rights of CONCESSIONAIRE herein including but not limited to the warranty, indemnity, hold harmless, choice of law and venue, costs and attorney's fees as provided herein.

#### **6.10 Right to Remove Collateral**

In the event lender exercises its rights under its Collateral and realizes upon the Collateral, CITY agrees that lender is entitled to remove the Improvements on the Premises, including but not limited to building facility, furniture, movable trade fixtures and equipment, from the Premises at any reasonable time and that the Collateral shall remain personal property even though the trade fixtures may be affixed to or placed upon

the Premises. In the event lender so realizes on its Collateral, CITY waives any right, title, claim, lien or interest in the Collateral.

### **6.11 Notices**

All notices, copies of notices, consents or other communications to lender given under this Agreement to lender must be in writing and shall be effective when received. Such communications shall be given in person to an officer of lender, addressed to lender at an address as provided by lender. CONCESSIONAIRE shall keep the CITY informed of the name, address, and telephone number of any current lender or lenders for the purpose of the CITY providing notice to the same under this Agreement.

### **6.12 Lenders Change in Loan Terms**

It is understood that current or future lenders may require terms or conditions on loans for future or additional financing needs of CONCESSIONAIRE, which may require changes to the terms or conditions of this Agreement. In such case, the CITY will give reasonable consideration to such changes to this Agreement, and may, at its sole discretion, accept or reject the same. Any modifications to this Agreement are subject to approval of the U.S. Secretary of Interior pursuant to Article 8.21.

## **ARTICLE 7. TERMINATION**

### **7.1 Failure to Perform**

#### *7.1.1 Obligation to Perform*

Nothing herein shall imply any duty upon CITY to do any work, which under any provision of this concession CONCESSIONAIRE may be required to perform, and the performance thereof by CITY shall not constitute a waiver of CONCESSIONAIRE's default. CITY shall not in any event be liable for inconvenience, annoyance, and disturbance in its activities in Eastpark.

#### *7.1.2 Payments to Other Parties*

Except as otherwise expressly provided hereunder, all obligations of the CONCESSIONAIRE under this Agreement will be performed by CONCESSIONAIRE at CONCESSIONAIRE's sole cost and expense. If CONCESSIONAIRE fails to pay any sum of money owed to any party other than CITY for which CONCESSIONAIRE is liable hereunder, or if CONCESSIONAIRE fails to perform any other act on its part to be performed hereunder, and such failure continues for ten days after notice thereof by CITY, CITY may, without waiving or releasing CONCESSIONAIRE from its obligations, make any such payment or perform any such other act to be made or performed by CONCESSIONAIRE. CONCESSIONAIRE shall pay CITY, on demand, all sums so paid by CITY and all necessary incidental costs, together with interest thereon at the lesser of 1½ percent per month or the maximum rate permissible by law, from the date of such payment by CITY, provided, however, CONCESSIONAIRE shall have the right to contest any such obligation, upon such terms and conditions as the CITY may reasonably insist, in order to protect its interests herein.

## **7.2 Default and Termination.**

This Agreement and the concession granted herein may be terminated for default as follows:

### ***7.2.1 CITY's Default***

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

### ***7.2.2 CONCESSIONAIRE's Default***

The occurrence of any one or more of the following events constitutes a default under this Agreement by CONCESSIONAIRE: (1) CONCESSIONAIRE shall be in default of the performance of any covenants, conditions, or provisions of this Agreement, other than the covenants for the payment of consideration required by this Agreement, where such failure continues for a period of thirty (30) days after written notice is given by CITY provided that if the nature of CONCESSIONAIRE's obligations is such that more than thirty (30) days are reasonably required for cure, CONCESSIONAIRE will not be in default if CONCESSIONAIRE commences to cure within thirty (30) days of CITY's notice and thereafter diligently pursues completion and completes performance within a reasonable time; or (2) CONCESSIONAIRE shall be adjudged a bankrupt, make a general assignment for the benefit of creditors, or take the benefit of any insolvency act, or if a permanent receiver and trustee in bankruptcy shall be appointed for CONCESSIONAIRE's estate and such appointment is not vacated within thirty (30) days; or (3) Premises become vacant or deserted for a period of thirty (30) days; or (4) if this Agreement shall be assigned or the Premises concessioned other than in accordance with the terms of this AGREEMENT and such default is not cured within twenty (20) days after written notice to CONCESSIONAIRE; or (5) CONCESSIONAIRE shall fail to make any payment when due, or fail to make any other payment required hereunder when due, when that failure is not cured within thirty (30) days after mailing of written notice thereof by CITY; or (6) CONCESSIONAIRE shall fail to comply with the same concession agreement term or covenant on three occasions during any 10 year term, even if such breach is cured within the applicable cure period. The CITY's right to terminate pursuant to this Article for failure of CONCESSIONAIRE to cure a default is subject to the lender's right to cure pursuant to Articles 6.5.2 and 6.5.3.

### ***7.2.3 Default for Other Cause***

Subject to lender's interest(s) as provided in Article 6, this Agreement may be immediately terminated for other cause by a party if the other party substantially fails to perform its obligations under this Agreement, through no fault of the terminating party, and the non-performing party does not commence correction of the failure of performance within thirty (30) days of the terminating party's sending notice to the non-performing party.

#### **7.2.4 Bankruptcy**

Subject to lender's interest(s) as provided in Article 6, the Parties agree that if the CONCESSIONAIRE is adjudged bankrupt, either voluntarily or involuntarily, then this AGREEMENT, at the option of the CITY, may be terminated effective on the day and at the time the bankruptcy petition is filed.

#### **7.3 Remedies Are Cumulative**

Remedies under this Agreement are cumulative; the failure to exercise on any occasion any right shall not operate to forfeit such remedy.

#### **7.4 Destruction of Premises & Use of Insurance Proceeds**

Unless otherwise mutually agreed by the Parties, in the event the Improvements on the Premises are destroyed or injured by fire, earthquake, or other casualty, then CONCESSIONAIRE shall proceed to rebuild and restore the Improvements, or such part thereof as may be injured as aforesaid. In the event of any loss covered by the insurance policies described and required pursuant to Article 8.5.1 herein, unless this Agreement shall be terminated as provided herein, the proceeds of such insurance policies shall be used by CONCESSIONAIRE first to rebuild and restore the Premises and replace the improvements which may be damaged or destroyed by such casualty.

#### **7.5 Duties upon Termination**

Upon termination of this agreement, and unless otherwise arranged, CONCESSIONAIRE shall remove from the Eastpark all its personal property, goods, and effects. In the event that the CONCESSIONAIRE fails to perform this duty at termination, the CITY may cause such removal to be made and said personal property, goods, and effects to be stored, the cost and expense to be paid by the CONCESSIONAIRE. It is mutually understood and agreed that the real property constituting the Premises of this Agreement is the real property of the CITY and that all improvements to said real property shall revert to the CITY at the termination of this Agreement, subject to the rights of lender as provided in this Agreement in the event of termination for default.

#### **7.6 Eminent Domain**

The following rules shall govern the rights and duties of the Parties in the event of interference with the possession of the Premises by CONCESSIONAIRE by right of eminent domain or private purchase in lieu thereof.

##### **7.6.1 Rights of Termination**

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

eminent domain, a fair value shall be placed on this Agreement as if it had not been terminated and the Premises with the compensation thereof awarded solely to CONCESSIONAIRE, or lender pursuant to its security interest, if any.

#### ***7.6.2 Non-Termination***

If any part of the Premises shall be so taken and this Agreement is not terminated, then, if the CITY is exercising its right to eminent domain, the CITY shall, at its own cost and expense, restore the remaining portion of the Premises to the extent necessary to render it reasonably suitable for the purposes for which it was concessioned. Otherwise, the Parties shall resort and share in the compensation on the basis of their interests and losses.

#### ***7.6.3 Compensation***

The compensation awarded or paid upon such a total or partial taking of the Premises and/or this Agreement shall belong to and be apportioned between the CITY and CONCESSIONAIRE in accordance with their respective interests as determined by a court of competent jurisdiction. Additionally, CONCESSIONAIRE may prosecute any claim directly against the condemning authority for the costs of removal of the goodwill, stock, trade fixtures, furniture and other personal property belonging to CONCESSIONAIRE. CITY shall have no claim to condemnation proceeds that are attributable to CONCESSIONAIRE's interest in the Collateral, nor shall CONCESSIONAIRE or lender have any interest in CITY's condemnation proceeds; if any.

### **ARTICLE 8. GENERAL CONDITIONS**

#### **8.1 Relationship of Parties**

##### ***8.1.1 CONCESSIONAIRE Independent Contractor Status***

The Parties intend that an independent relationship shall be created by this Agreement. Nothing contained herein shall create the relationship of principal and agent or of partnership or of joint venture between the parties hereto, and neither the method of computation of consideration nor any other provision contained herein shall be deemed to create any relationship between the parties hereto other than the relationship of CITY as granting a ground and use concession to the CONCESSIONAIRE. CONCESSIONAIRE has the experience, ability, and resources to develop and operate an indoor ice arena facility and is performing independent functions and responsibilities within its field of expertise. CONCESSIONAIRE and its personnel are independent contractors and not employees of the CITY. No agent, employee, servant, or representative of the CONCESSIONAIRE shall be deemed to be an employee, agent, servant or representative of the CITY. CONCESSIONAIRE and its personnel have no authority to bind the CITY or to control the CITY's employees. As an independent contractor, CONCESSIONAIRE is responsible for its own management. The CITY's administration and enforcement of this Agreement shall not be deemed an exercise of managerial control over CONCESSIONAIRE or its personnel.

*8.1.2 No Third Party Rights Created*

It is mutually understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other party except as provided by Article 6 herein.

*8.1.3 No Joint Venture/Partnership*

It is mutually understood and agreed that no joint venture or partnership formed as a result of this Agreement.

*8.1.4 City Administration of Agreement*

This agreement shall be administered, on behalf of the City, by the Director of Parks and Recreation or other person designated by the Mayor.

**8.2 Notices**

Except as provided in Article 6 herein, any notice required or permitted hereunder must be in writing and will be effective upon the earlier of personal delivery or three days after being mailed by certified mail, return receipt requested, addressed to CONCESSIONAIRE or to CITY at the address for that party designated herein. Either party may specify a different address for notice purposes by written notice to the other, except that CITY may in any event use the Premises as CONCESSIONAIRE's address for notice purposes. Each of the below noted addressees shall be responsible for notifying the other addressees of any changes of address and all notices will be effective when delivered to the last known address provided by said addressee. All notices shall be delivered to the following addresses:

CITY

City of Bremerton  
Attn: Director of Parks and Recreation  
680 Lebo Boulevard  
Bremerton, WA 98310

CONCESSIONAIRE

Bremerton Ice Arena, Inc.  
Attn: Greg Meakin, President  
P.O. Box 1044  
Bremerton, WA 98337

LENDER

Charles C. Haselwood  
Joanne L. Haselwood  
P.O. Box 4999  
Bremerton, WA 98312

With a copy to:

Gary T. Chrey  
Shiers Chrey Cox Digiovanni & Zak, LLP  
600 Kitsap Street, Suite 202  
Port Orchard, WA 98366

### **8.3 Reports & Information**

When requested by the CITY, CONCESSIONAIRE shall furnish periodic reports and documents on matters related to CONCESSIONAIRE's performance under this Agreement. The reports and documents shall be furnished in the time and form requested. CONCESSIONAIRE shall maintain accounting records in accordance with Generally Accepted Accounting Principles (GAAP).

### **8.4 Permits, Licenses, Taxes, & Fees**

#### *8.4.1 Permits, Licenses, & Other Documents*

The CONCESSIONAIRE shall possess a current Bremerton Business License and shall obtain all regulatory licenses and permits, including all construction and building permits, necessary to fulfill CONCESSIONAIRE's obligations under this Agreement at CONCESSIONAIRE's sole expense. Each party agrees to execute such additional or other documents as may be required to fully implement the intent of this Agreement.

#### *8.4.2 Taxes & Fees*

As an independent contractor, the CONCESSIONAIRE shall be solely responsible for all taxes, fees and charges incurred, including but not limited to license fees, business and occupation taxes, workers' compensation and unemployment benefits, all federal, state, regional, county and local taxes and fees, including leasehold excise tax pursuant Chapter 82.29A RCW, ad valorem taxes, taxes imposed on personal property, all other assessments for improvements or benefits which are assessed on the Premises, income taxes, property taxes, permit fees, operating fees, surcharges of any kind that apply to any and all persons, facilities, property, income, equipment, materials, supplies or activities related to the CONCESSIONAIRE's use of the Premises and obligations under this Agreement.

### **8.5 Insurance**

#### *8.5.1 Fire, Earthquake, & Casualty Insurance*

The CONCESSIONAIRE agrees that, at all times during the full term of this Agreement and at its own expense, CONCESSIONAIRE shall, at its sole cost and expense, maintain in full force and effect adequate fire, earthquake, and other casualty coverage covering the Premises and its contents, including all personal property and improvements. Such policy shall include a replacement cost endorsement. CONCESSIONAIRE will shall obtain and file with the CITY's Risk Manager a Certificate of Insurance evidencing such coverage. All such insurance coverage shall include a ten-day cancellation notice to CONCESSIONAIRE and the CITY. Adequacy of coverage is defined as insurance sufficient to restore the Premises to its pre-casualty condition.

#### *8.5.2 Liability Insurance*

Prior to the commencement date of this Agreement, CONCESSIONAIRE, at its own expense shall obtain and file with the CITY's Risk Manager a Certificate of Insurance evidencing general comprehensive liability insurance coverage ("CGL")

providing coverage of at least \$2,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage. This Certificate of Insurance shall be subject to approval by the CITY's Risk Manager as to company, terms and coverage, and said approval shall not be unreasonably withheld. The CGL shall name the CITY as an additional insured and must fully protect the CITY from any and all claims and risks and losses in connection with any activities or omissions by the CONCESSIONAIRE by virtue of this Agreement. The CGL policy shall remain in full force and effect at the CONCESSIONAIRE's sole expense for liability for property damage or personal injury that may occur in connection with activities or omissions by the CONCESSIONAIRE, and provide coverage for the full term of this Agreement. CONCESSIONAIRE shall insure that the CITY's Risk Manager is given thirty-calendar days prior written notice, by certified mail, of any cancellation, lapse, reduction or modification of such insurance.

### ***8.5.3 Release and Waiver of Subrogation***

Any policy of insurance carried by either CITY or CONCESSIONAIRE pursuant to any obligation under this Agreement, shall, to the extent available, contain a waiver of subrogation clause on the part of the insurer. Such waiver shall apply to damages to adjacent property. Notwithstanding any other provision of this Agreement, neither CITY nor CONCESSIONAIRE shall be liable to the other party or to any insurance company (by subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or tangible personal property of the other occurring in or about the Premises or Eastpark, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees, if such loss or damage is covered by insurance issued by an insurance carrier authorized or licensed by the Insurance Commissioner of the State of Washington to issue lines of insurance, benefiting the party suffering such loss or damage or was required under the terms of this Agreement to be covered by insurance by the party covering the loss.

## **8.6 Hold Harmless, Indemnification, & Industrial Insurance**

### ***8.6.1 Hold Harmless & Indemnification***

Each party hereto agrees to be responsible and assumes liability for its own wrongful or negligent acts or omissions, or those of its officers, agents, or employees to the fullest extent required by law. Each party agrees to save, indemnify, defend, or hold the other party harmless against all liability, loss, damages, and expenses, including costs and attorney's fees, resulting from actions, claims and lawsuits arising or alleged to have arisen, in whole or in part, out of or in consequence of the acts or failures to act of the other party, its employees, its subcontractors, its agents, or its assigns, which arise in any way out of the performance of this Agreement. In the case of negligence of both the CITY and the CONCESSIONAIRE, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each party, and each party shall have the right to seek contribution from the other party in proportion to the percentage of negligence attributable to the other party.

### *8.6.2 Industrial Insurance*

The Parties have specifically negotiated CONCESSIONAIRE's waiver of its immunity under Title 51 RCW, which is hereby waived for purposes of CONCESSIONAIRE's indemnification and hold harmless of the CITY, including the duty to defend. This provision shall be inapplicable to the extent such action, claim, or lawsuit is judicially found to arise solely from the acts or failures to act of the CITY.

### **8.7 Successors & Assigns**

The CITY and CONCESSIONAIRE each agree to be bound to the other party in respect to all covenants, agreements, and obligations contained in this contract. Except as provided in Article 6 herein, neither party shall assign the contract in part or as a whole, without the written consent of the other, which consent shall not be unreasonably withheld. Except as provided in Article 6 herein, the CONCESSIONAIRE shall not subcontract any of the Premises, services, facilities, or equipment, or delegate any of its duties under this Agreement without the prior written approval of the CITY, which approval shall not be unreasonably withheld. The CITY acknowledges that the CONCESSIONAIRE shall be authorized to sub-concession areas within the Premises to food and beverage purveyors, equipment sales, and similar supporting concessions as set forth in Article 4.1.3. When requested, approval by the CITY of a subcontract or assignment shall not be unreasonably withheld. In the event of an assignment, subcontracting, or delegation of duties, the CONCESSIONAIRE shall remain responsible for the full and faithful performance of this Agreement and the assignee, subcontractor, or other obligor shall also become responsible to the CITY for the satisfactory performance of the services, facilities, or equipment assumed. The CITY may condition approval upon the delivery by the assignee, subcontractor, or other obligor of its covenant to the CITY to fully and faithfully complete the requirements or responsibility undertaken under this Agreement. Notwithstanding the foregoing, provided CONCESSIONAIRE is not in default, the CONCESSIONAIRE may assign its interest in this Agreement without seeking CITY's consent to a parent or subsidiary. Except as otherwise provided herein, all of the covenants, conditions, and provisions of this Agreement are binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors, and assigns. IN THE EVENT THE CONCESSIONAIRE SEEKS CONSENT OF THE CITY OF AN ASSIGNMENT OF THIS AGREEMENT IN ITS ENTIRETY, SUCH ASSIGNMENT SHALL REQUIRE THE PRIOR NOTIFICATION AND REVIEW, APPROVAL OR WAIVER OF THE U.S. SECRETARY THROUGH THE NATIONAL PARK SERVICE, WHO, BY CONSENTING TO THIS AGREEMENT WAIVES THE RIGHT TO REVIEW AND CONSENT TO AN ASSIGNMENT OF THIS AGREEMENT WHICH IS LESS THAN AN ASSIGNMENT IN ITS ENTIRETY.

### **8.8 Compliance with Laws**

The CONCESSIONAIRE, its officers, employees, and agents shall comply with applicable federal, state, county, and local laws, statutes, rules, regulations, and ordinances, in performing its obligations under this Agreement. Such compliance shall include abiding by all applicable federal, state and local policies to ensure equal employment opportunity based on ability and fitness to all persons regardless of race,

creed, color, national origin, religion, sex, physical handicaps or age. The CONCESSIONAIRE shall comply with applicable laws pertaining to employment practices and employee treatment. Conditions of the Federal Occupational Safety and Health Act of 1970 (OSHA), the Washington Industrial Safety and Health Act of 1973 (WISHA), and standards and regulations issued under these Acts must be complied with. The CONCESSIONAIRE agrees to indemnify and hold harmless the City from all damages assessed for the CONCESSIONAIRE's failure to comply with the Acts and Standards issued thereunder. The CONCESSIONAIRE is also responsible for meeting all pertinent local, state and federal health and environmental regulations and standards applying to any operation in the performance of this Agreement.

### **8.9 Nondiscrimination**

Parties shall not discriminate in employment or services to the public on the basis of race, color, national origin, sex, religion, age, marital status, or disability, except for employment actions based on bona fide occupational qualification.

### **8.10 Choice of Law & Venue**

This Agreement shall be interpreted according to the laws of the State of Washington. Any judicial action to resolve disputes arising out of this Agreement shall be brought in Kitsap County Superior Court.

### **8.11 Costs & Attorneys' Fees**

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

### **8.12 Modification**

This Agreement may only be modified by written instrument signed by both Parties. The Director of Parks and Recreation has the authority to interpret and make minor modifications to this agreement, relative to the use or operation of the Premises, consistent with its purpose and intent. Any major modifications or modifications having a financial impact on the City shall require City Council approval. All modifications to this Agreement are subject to approval of the U.S. Secretary of Interior pursuant to Article 8.21.

### **8.13 Change in Law/Renegotiation**

The Parties agree that changes in federal, state or local laws or regulations that materially modify the terms and conditions of the Agreement and result in a detrimental change in circumstances or a material hardship for either party in performing this Agreement may be the subject of a request by a requesting party to renegotiate this Agreement or negotiate Agreement amendments and the responding party agrees to renegotiate fairly with the requesting party.

#### **8.14 Force Majeure**

Provided that all other requirements of this Agreement are met, any party shall not be deemed to be in default and shall not be liable for failure to perform under this Agreement if that party's performance is prevented or delayed by acts of God including landslides, lightning, forest fires, storms, floods, freezing and earthquakes, civil disturbances, acts of the public enemy, wars, blockades, public riots, breakage, explosions, accident to machinery, equipment or materials, unavailability of required materials, governmental restraint or other causes, whether of the kind enumerated or otherwise, which are not reasonably within the control of that obligated party ("Force Majeure"). If as a result of a Force Majeure event, an obligated party is unable wholly or partially to meet its obligations under this Agreement, it shall give the other party promptly written notice of the Force Majeure event, describing it in reasonable detail. The obligated party's obligations under this Agreement shall be suspended, but only with respect to the particular component of obligations affected by the Force Majeure and only for the period during which the Force Majeure exists.

#### **8.15 Waiver**

Failure to enforce any provision of this Agreement shall not be deemed a waiver of that provision. No waiver of any right or obligation of either party hereto shall be effective unless in writing, specifying such waiver, executed by the party against whom such waiver is sought to be enforced. Waiver of any right or power arising out of this Agreement shall not be deemed waiver of any other right or power.

#### **8.16 Illegal Provisions - Severability**

Should any part of this Agreement be found void, illegal, or unenforceable, the balance of the Agreement shall remain in full force and effect.

#### **8.17 Article Headings, Gender, & Number**

Article paragraph headings are not to be construed as binding provisions of this concession; they are for the convenience of the Parties only. The masculine, feminine, singular and plural of any word or words shall be deemed to include and refer to the gender and number appropriate in the context.

#### **8.18 Entire Agreement**

This Agreement and its Exhibits constitutes the entire agreement between the Parties, and the Parties acknowledge that there are no other agreements, written or oral, that have not been set forth in the text of this Agreement.

#### **8.19 Counterparts**

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

#### **8.20 Recording**

Upon the execution of this Agreement the CITY will cause a memorandum of this Agreement to be recorded with the land use records of Kitsap County, Washington.

**8.21 Approval of Agreement**

This Agreement is subject to the approval of the U.S. Secretary of the Interior pursuant to the Quitclaim Deed transferring title to the CITY to the real property upon which this concession is granted.

**8.22 Duplicate Originals**

This document is executed in duplicate original.

IN WITNESS WHEREOF, this Agreement has been entered into between the City of Bremerton and Bremerton Ice Arena, Inc. as of the 9th day of August, 2002.

**BREMERTON ICE ARENA, INC.**

a Washington Corporation

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

Greg Meakin, President

**CITY OF BREMERTON**

a Washington municipal corporation

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

Cary Bozeman, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Roger Lubovich, City Attorney

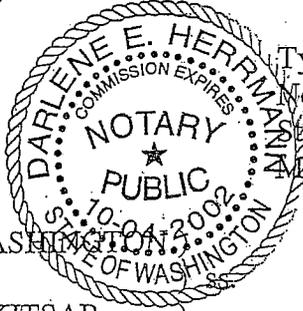
**LIST OF EXHIBITS**

- Exhibit A – Legal Description of Premises
- Exhibit B – Preliminary Building and Site Plans
- Exhibit C – Appraisal and Compensation Information
- Exhibit D – Quit Claim Deed from United States of America to the City of Bremerton

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KITSAP )

I certify that I know or have satisfactory evidence that Cary Bozeman is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the CITY OF BREMERTON to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Given under my hand and official seal this 9th day of August, 2002.



Type/Print Name DARLENE E HERRMANN  
Notary Public in and for the  
State of Washington residing at Bremerton  
My Commission expires 10/4/02

STATE OF WASHINGTON )  
COUNTY OF KITSAP )

On this 9th day of August, 2002, before me personally appeared Greg Meakin, to me known to be the President of BREMERTON ICE ARENA, INC. a Washington corporation,, that executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute and in fact executed said instrument on behalf of the corporation.

Given under my hand and official seal this 9th day of August, 2002.



Type/Print Name DARLENE E HERRMANN  
Notary Public in and for the  
State of Washington residing at Bremerton  
My Commission expires 10/04/02

**EXHIBIT A**  
**Legal Description of Premises**

THAT PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 24 NORTH, RANGE 1 EAST, W.M., IN THE CITY OF BREMERTON, KITSAP COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT A CONCRETE MONUMENT MARKING THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 12; THENCE NORTH 2°01'25" EAST ALONG THE EAST LINE THEREOF 460.48 FEET; THENCE NORTH 81°50'04" WEST 49.07 FEET TO THE TOP OF A BANK AND THE POINT OF BEGINNING; THENCE CONTINUING NORTH 81°50'04" WEST 238.24 FEET TO THE BACK OF AN EXISTING SIDEWALK; THENCE SOUTH 7°45'25" WEST ALONG SAID SIDEWALK 34.99 FEET; THENCE NORTH 82°00'54" WEST 181.62 FEET; THENCE SOUTH 7°59'06" WEST 174.03 FEET; THENCE SOUTH 59°45'59" EAST 174.78 FEET TO THE BACK OF AN EXISTING SIDEWALK BEING A POINT ON A CURVE WHOSE CENTER POINT BEARS NORTH 57°19'12" WEST 229.36 FEET; THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 35°26'41" FOR AN ARC DISTANCE OF 141.89 FEET; THENCE SOUTH 32°16'28" EAST 106.04 FEET; THENCE SOUTH 78°02'26" EAST 226.39 FEET TO THE SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 12; THENCE SOUTH 87°55'14" EAST ALONG SAID LINE 7.60 FEET TO THE TOP OF A BANK; THENCE NORTHERLY ALONG SAID TOP OF BANK TO THE POINT OF BEGINNING;

EXCEPT THAT PORTION LYING WITHIN HOMER R. JONES DRIVE, BEING A 43 FOOT WIDE STRIP, MORE OR LESS, AS MEASURED BETWEEN BACKS OF EXISTING SIDEWALKS;

TOGETHER WITH A NONEXCLUSIVE 10-FOOT WIDE RIGHT OF ENTRY FOR CONSTRUCTION, MAINTENANCE AND REPAIR OF ADJACENT FACILITIES, THE SOUTH LINE OF WHICH IS DESCRIBED AS FOLLOWS:

COMMENCING AT A CONCRETE MONUMENT MARKING THE SOUTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 12; THENCE NORTH 2°01'25" EAST ALONG THE EAST LINE THEREOF 460.48 FEET; THENCE NORTH 81°50'04" WEST 49.07 FEET TO THE TOP OF A BANK AND THE POINT OF BEGINNING OF THIS LINE; THENCE CONTINUING NORTH 81°50'04" WEST 238.24 FEET TO THE BACK OF AN EXISTING SIDEWALK AND THE POINT OF TERMINATION OF THIS LINE.