



Resolution 2015-8

Resolution to adopt Lease Agreement between OIPRD and The Funhouse Commons

Resolution 2015-8 September 10, 2015

WHEREAS OIPRD is a municipal organization according to the laws of the State of Washington established for the purpose of providing leisure time activities and recreational facilities for residents, including managing indoor and outdoor recreational and educational programs; and

WHEREAS OIPRD has an established administrative office in The Funhouse Commons building; and

WHEREAS The Funhouse Commons, Landlord, owns the building located at 30 Pea Patch Lane, Eastsound, WA and desires to continue to lease a portion of the property to OIPRD (Lessee) and

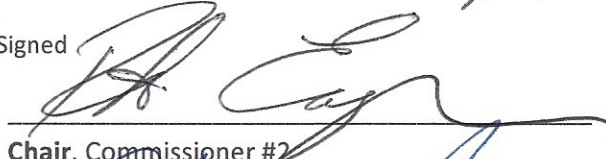
WHEREAS Lessee desires to continue to lease from Landlord for the purposes of housing administrative services, and

WHEREAS Landlord has made improvements to the property as required for a modern office space for the purposes of leasing the property to Lessee,

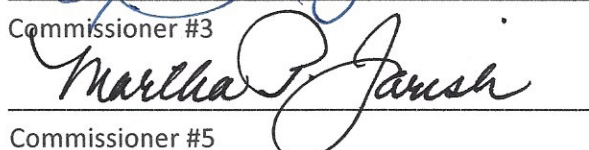
NOW, THEREFORE BE IT RESOLVED, in consideration of terms, conditions and mutual covenants and promises set forth in the Lease Agreement between OIPRD and The Funhouse Commons, and for other good and valuable considerations, the OIPRD Board of Commissioners adopt the Lease Agreement.

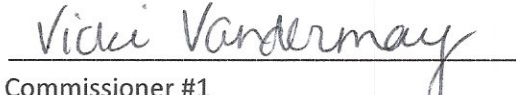
ADOPTED by the Board of the Orcas Island Park and Recreation District, San Juan County, Washington on the 10th day of September, 2015

Signed


Chair, Commissioner #2

Commissioner #3


Commissioner #5


Commissioner #1

Commissioner #4

ORCAS ISLAND PARK AND RECREATION DISTRICT LEASE AGREEMENT

THIS AGREEMENT is entered into by and between the Orcas Island Park and Recreation District (OIPRD), a municipal corporation of the State of Washington ("Lessee"), and Children's Discovery Foundation dba the Funhouse Commons ("Landlord"), a 501(c)(3) non-profit corporation duly established by the laws of the State of Washington (collectively, "the Parties"), for the purpose of leasing from Landlord an office and storage area in the building located at 30 Pea Patch Lane, Eastsound, Washington.

WHEREAS, Landlord owns the Funhouse Building located at 30 Pea Patch Lane, Eastsound, in San Juan County, Washington, and desires to lease the Property to Lessee;

WHEREAS, Lessee desires to lease from Landlord the Property for the purpose of housing the administrative services of OIPRD; and

NOW, THEREFORE, in consideration of the terms, conditions, mutual covenants and promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. PROPERTY. The Property to be leased by Lessee is an office that is approximately 288 square feet and a storage room that is approximately 104 square feet, located at 30 Pea Patch Lane, Eastsound, Washington, on TPN 271412016 ("the Property"). The short legal description for the Funhouse Building is Thomas & Audrey Lavender SP PR Lot 4, Section 14, T 37N, R 2W. The use for the Property shall be administrative office use and storage of supplies and equipment. Lessees shall also share use of a conference room, which schedule will be controlled by Landlord and used on a first-come-first-served basis. Lessees will also share use of the Funhouse bathrooms.

2. TERM.

- 2.1 Two Year Term.** This Lease will commence and be effective on **October 1, 2015** and continue for 2 (two) years, until **October 1, 2017**.
- 2.2 Extended Term.** The Lease may be automatically extended for a second 2-year term ("extended term"), with an option to automatically extend for a third 2-year term, on the same terms and conditions as set forth in this Lease, except for the lease rent shall be adjusted as set forth Section 3. Lessees shall give Landlord their notice of intention to renew the Lease at least 60 (sixty) days prior to the expiration of this Lease. Such extended term(s) will be given under the same terms and conditions that apply throughout this Lease, except the original 2-year lease term set forth in paragraph 2.1, will not apply.

3. **LEASE RENT.**

- 3.1 **First Year.** Lessee agrees to pay Landlord, at Landlord's address set forth below or such other place as Landlord may designate in writing, rental for the Property in the amount of \$420.00 (four hundred and twenty dollars) per month ("Base Rent"), from October 1, 2015 to October 1, 2017 ("First Year"), payable in advance on the 1st day of each and every month during the First Year of the Lease. Payment shall be received on or before the 25th day of the month.
- 3.2 **Other Years.** For each successive calendar year after the First Year, beginning on October 1 of each successive year, Lessees agree to pay Base Rent plus a 2% increase based on the base rate, at the Landlord's discretion.
- 3.3 **Late Fee; Returned Checks.** If rent or other charges are not received by the Landlord within ten days after the rent due date, Lessees must pay a late fee of \$20.00 in addition to the rent, and must pay the same fee for returned checks due to insufficient funds. Lessees agree that the Landlord may require all future payments to be made only by certified check, money order, or cash. Payments received by the Landlord when there are arrears, will be credited first to any outstanding balance, and then applied to the current amount due.

4. **CONDITION OF PROPERTY.**

- 4.1 **Current Condition.** Landlord represents that the Property is clean, neat, and in good repair and suitable for the purpose for which it will be leased, i.e., administrative office purposes. Landlord will provide Lessee a checklist for the Property that shows the current condition of the Property prior to Lessee's occupancy.
- 4.2 **Inspection of Property.** Lessees acknowledge that they have inspected the interior of the Property and have found the Property to be in good working order. Lessees agree to return the Property to the Landlord at the end of the Lease in the same condition it was at the beginning of the Lease, after Landlord completes said damage and repairs, ordinary wear and tear excepted.
- 4.3 **Clean and Neat Condition.** Lessee will at all times keep the leased premises in a neat and clean condition, free and clear of debris and in compliance with all applicable laws.

5. **POSSESSION.**

- 5.1 Lessees may occupy and take possession of the Property anytime after this Lease is fully executed by the Parties. Lessees will yield possession to the Landlord on the last day of the term of this Lease, unless otherwise agreed to by both parties.
- 5.2 Landlord has used his best efforts to give Lessees possession as near to the beginning of the lease term as possible. If the Lease renews and, in the future, the Landlord is unable to timely provide the Property to Lessees, rent will abate for the period of delay.

- 5.3 At the expiration of the term, Lessees will remove their goods and effects and peaceably yield the Property to the Landlord in as good a condition as when delivered to Lessees, ordinary wear and tear excepted.

6. QUIET POSSESSION. The Landlord covenants and warrants that upon performance by Lessees of its obligations hereunder, the Landlord will keep Lessees in exclusive, quiet, peaceable, undisturbed and uninterrupted possession of the Property during the term of this lease.

7. DEFAULT. If default is made in any of the covenants or conditions to be kept, observed and performed by Lessees or Landlord, and such default continues for 30 days after notice in writing by the other party, including by email, without correction, the non-defaulting party may declare the term of the lease ended and terminated by giving the other party written notice of such intention. If possession of the Property is not surrendered by Lessees, Landlord may reenter the Property. The Parties have, in addition to the remedies provided in this Lease, any other right or remedy available to Landlord or Lessees, either in law or equity. Either party will use reasonable efforts to mitigate its damages, which shall offset any rent or other cost owed by Lessees to Landlord. Lessees understand and agree that if Lessees file a petition of bankruptcy or dissolution, it will not release Lessees from the fulfillment of the terms and conditions of the lease agreement.

8. SUBLEASE; ASSIGNMENT.

8.1 Sublease. Lessee may not sublease part of the Property to other persons or entities without the Landlord's express written consent.

8.2 No Assignment. Lessee agrees that it may not assign this Lease to any other person or entity without the Landlord's express written consent.

9. MAINTENANCE.

9.1 The Landlord's obligations for maintenance include:

- ▲ The roof, outside walls, skylights, and other structural parts of the building;
- ▲ The parking lot, driveways, and sidewalks including general maintenance, repair of potholes, and snow and ice abatement or removal;
- ▲ Sewer system(s), water pipes, and other matters related to plumbing;
- ▲ Repair of sinks and toilets, if due to plumbing issues beyond the control of Lessee;
- ▲ Electrical wiring;
- ▲ Heating and cooling systems;
- ▲ All other items of maintenance not specifically delegated to Lessee under this Lease.

9.2 In regards to snow or ice removal on the parking lot or sidewalk, Lessee will notify Landlord by phone or in writing when snow or ice needs to be removed or abated for the safe ingress and egress of Lessee. Landlord agrees to address such issues, to the extent practicable, within five (5) working days.

9.3 Lessee's obligations for maintenance include maintaining all of Lessee's office spaces in a clean and habitable condition, excepting normal wear and tear, and maintaining all Lessee's office equipment, Lessee's trade fixtures and improvements, internal light bulbs, phone systems, internet systems, and other utilities or services contracted for by Lessee. All other maintenance obligations shall be Landlord's, unless mutually agreed to by the Parties.

10. UTILITIES AND SERVICES. Lessee is responsible for its own phone and internet service, and other business-related services. Landlord will pay for building utility costs such as sewer, electricity water, and other utility costs.

11. ALTERATIONS AND IMPROVEMENTS. Lessee, at Lessee's expense and with the Landlord's express written consent, may remodel, redecorate, and make additions, improvements, or replacements to all or any part of the Property from time to time as Lessee may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials. Lessee has the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Property, and fasten the same to the Property. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Lessee at the commencement of the lease term or placed or installed on the Property by Lessee thereafter, will remain Lessee's property free and clear of any claim by the Landlord. Lessee has the right to remove the same at any time during the term of this lease, provided that all damage to the Property caused by such removal is repaired by Lessee at Lessee's expense.

12. PROPERTY TAXES. The Landlord will pay, prior to delinquency, all general real estate taxes and installments of special assessments due during the lease term on the Property, and all personal property taxes with respect to the Landlord's personal property, if any, on the Property. Lessee is responsible for paying all personal property taxes with respect to Lessee's personal property at the Property.

13. PROPERTY INSURANCE

- 13.1 Lessee will maintain liability insurance for bodily injury, death, and property damage with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate and will furnish the Landlord with proof of such coverage upon request. Landlord will receive advance written notice from the insurer prior to any termination of such insurance policies.
- 13.2 If the Property or any other part of the building is damaged by fire or other casualty resulting from any act or negligence of Lessee or any of Lessee's agents, officers, employees or invitees, rent is not to be diminished or abated while such damages are under repair, and Lessee will be responsible for the costs of repair not covered by insurance. If the Property is damaged for any other reason, including fire and Acts of God, through no fault of Lessee, then Landlord shall be solely responsible and liable for the repair and cost of such damage.

14. SIGNS. Lessee may place on the Property, at locations selected by Lessee, any signs which are permitted by applicable zoning ordinances or county code, and are appropriate to the rest of the property. Landlord may refuse consent to any proposed signage that is in the Landlord's opinion too unattractive, or otherwise inconsistent with or inappropriate to the Property or use of any other tenant. Landlord will assist and cooperate with Lessee in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for Lessee to place or construct the foregoing signs. On termination of the Lease Lessee will remove any such signs and restore the property to its pre-sign condition.

15. LANDLORD'S RIGHT OF ENTRY.

15.1 Landlord, with 24 hours written notice, has the right during the term of this Lease to enter during reasonable hours to inspect the Property, make repairs or improvements, or to show prospective buyers and/or tenants the property. As provided by law, in the event of an emergency, Landlord reserves the right to enter the Property without notice. It is required that the Landlord have a working set of keys and/or security codes to gain access to the Property. Therefore, Lessee will not change locks, install additional locks, bolts, or security systems without the written consent of the Landlord. Unauthorized installation or changing of any locks will be replaced at Lessee's expense. Landlord will provide Lessee with a lockable office door with deadbolt and two complete sets of keys for entry to all doors necessary for entrance. Lessee is responsible for any and all damages that may occur as a result of forcible entry during an emergency where there was an unauthorized placement of a lock.

15.2 During the last three months of this lease, or any extension of this lease, the Landlord is allowed to display the usual "For Rent" signs and show the Property to prospective tenants, if Lessee has not opted to renew this Lease.

16. PARKING. Lessee is entitled to reasonable use of the parking lot directly outside the Funhouse Building. No parking spaces are assigned, and Lessee and its customers or guests may use the parking lot, in a manner consistent with Lessee's reasonable and necessary use of the Property.

17. DAMAGE, DESTRUCTION, CONDEMNATION.

17.1 If the Property is damaged or destroyed by fire, or other casualty to the extent that enjoyment of the dwelling unit is substantially impaired, the Landlord may in its sole discretion elect to repair the Property, or either party may terminate the lease upon thirty (30) days written notice to the other party. If the Property is condemned or cannot reasonably be repaired, this lease will terminate upon twenty (20) days written notice by either party. Lessee will give the Landlord immediate notice of any substantial damage to the Property.

17.2 If any legally constituted authority condemns the building or such part thereof which makes the Property unsuitable for leasing, this Lease will cease when the public authority takes possession, and the Landlord and Lessee will account for rent as of that date. Such termination will be without prejudice to the rights of either party to recover compensation from the condemning authority for any loss or damage caused by the condemnation. Neither party has any rights in or to any award made to the other by the condemning authority.

18. **TERMINATION.**

18.1 **Termination by Landlord.** Upon the failure of Lessee to pay rent when due, Landlord may serve a Notice of Default upon the Lessee requiring payment of rent in full within ten (10) calendar days from service of the Notice or surrender of the premises and termination of this Lease.

18.2 **Default by Landlord.** In the event of any default by Landlord, Lessee, before exercising any rights that it may have at law to cancel this Lease, must first send notice by registered or certified mail or hand delivery to Landlord, and shall have offered Landlord ten (10) calendar days in which to correct and cure the default or commence a good faith effort to cure such default.

18.3 **Voluntary Termination.** Upon the express written agreement of both parties, this Lease may be terminated prior to the end of the lease term. A voluntary termination will be effective on the last calendar day of the month in which the agreement to terminate is made. Lessee shall pay all rent and other costs due under this Agreement up to the date of termination.

19. **ABANDONMENT.** If Lessee vacates the Property before the end of the lease term without written permission from the Landlord, the Property is then considered to be abandoned thirty (30) days after written notice of such abandonment is sent to Lessee. After the thirty-day notice period, Lessee will be in default of this Lease. Under these circumstances, Lessee may be responsible for damages and losses to the extent provided by state, federal or local law, caused by Lessee's abandonment.

20. **MECHANICS' LIEN.** Neither Lessee, nor anyone claiming through Lessee, has the right to file mechanics' liens or any other kind of lien on the Property, and the filing of this lease constitute notice that such liens are invalid. Further, Lessee agrees to (1) give actual advance notice to any contractors, subcontractors or suppliers of goods, labor, or services that such liens will not be valid, and (2) take whatever additional steps necessary in order to keep the Property free of all liens resulting from construction done by or for Lessee.

21. **MEDIATION; ARBITRATION.**

21.1 **Mediation.** The Parties shall attempt to resolve any controversies or disputes arising out of or relating to this Lease informally or through a good faith attempt at mediation. Each party will pay its own attorneys'

fees and costs, and the Parties shall equally bear the expense of the mediator (50/50). Mediation will occur in San Juan County on Orcas Island, Washington, unless expressly agreed to in writing by the Parties. If mediation fails or would be futile, the Parties shall resolve the matter through final and binding arbitration.

- 21.2 Arbitration. Any controversies or claims arising out of the terms of this Lease or its interpretation shall be subject to final and binding arbitration pursuant to RCW Chapter 7.04A, and settled in accordance with applicable Washington law. Arbitration shall occur in San Juan County, and the parties shall equally bear the expense of the arbitrator (50/50). Each party shall bear his or her own attorneys' fees and costs, unless otherwise ordered by the arbitrator. The judgment upon award shall be entered in San Juan County superior court.

22. SALE OF PREMISES. In the event the Property is sold, Landlord shall use its best efforts to ensure that the new owner shall continue this Lease. This Lease shall bind Landlord's heirs, successors, and assigns. In the event that after use of all best efforts, Landlord is not able to obtain the new owner's consent to continue this Lease with Lessee, Landlord may terminate this lease, on sixty days written notice to Lessee that the Property has been sold. Landlord shall pay to Lessee two months' rent for mitigation of damages due to early termination of the Lease.

23. HOLDOVER. If Lessee maintains possession of the Property for any period after the termination of this lease (referred to as "Holdover Period"), Lessee will pay the Landlord lease payment(s) during the holdover period at a rate equal to 120% of the most recent rate preceding the holdover period (if less, the maximum amount allowed by law). Such holdover will constitute a breach of this Lease. Landlord may, at its sole discretion, allow Lessee a month-to-month extension of this Lease. During the Holdover Period, Landlord may evict Lessee at any time, pursuant to applicable state or local law.

24. INDEMNIFICATION. To the extent permitted by law, the Parties agree to indemnify, hold harmless, and defend the other party from and against any and all losses, claims, liabilities, and expenses, including reasonable attorneys' fees, if any, which the other party may suffer or incur in connection with either party's possession, use or misuse of the Property.

25. DANGEROUS MATERIALS. Lessee will not keep or have on the Property any article or thing of a dangerous, flammable, or explosive character that might substantially increase the danger of fire on the Property, or that might be considered hazardous by a responsible insurance company, unless the prior written consent of the Landlord is obtained and proof of adequate insurance protection is provided by Lessee to the Landlord.

26. PEACEFUL ENJOYMENT. So long as Lessee pays the rent set forth in this Lease and otherwise complies with the terms and conditions of this Lease, Lessee shall have peaceful and quiet enjoyment and occupancy of the leased premises.

27. **SUCCESSORS.** The provisions of this lease extend to and are binding upon the Landlord and Lessee, and their respective legal representatives, successors and assigns.

28. **WAIVER.** No waiver of any default of the Landlord or Lessee hereunder is implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver affects any default other than the default specified in the express waiver, and only for the time and to the extent therein stated. One or more waivers by the Landlord or Lessee should not be construed as a waiver of a subsequent breach of the same covenant, term, or condition.

29. **LEGAL COMPLIANCE.** Lessee will comply with all applicable laws, orders, ordinances now or hereafter pertaining to Lessee's use of the Property. The Landlord will comply with all laws, orders, and ordinances now or hereafter affecting the Property.

30. **CUMULATIVE RIGHTS; SEVERABILITY.** The rights of the parties under the Lease are cumulative, and will not be construed as exclusive unless otherwise required by law. Notwithstanding such cumulative rights, to the extent allowed by law, if any part of this lease agreement is not valid, enforceable, binding or legal, it will not cancel or void the rest of this Lease. The remainder of the Lease will continue to be valid and enforceable by the Landlord to the maximum extent of the laws and regulations set forth by local, state and federal governments.

31. **FINAL AND ENTIRE AGREEMENT.** This Lease terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Lease may be modified only by a further writing that is duly executed by both parties. By signing this Lease, Lessee certifies that they have read, understood and agree to comply with all of the terms and conditions of this Lease.

32. **COUNTERPARTS.** This Lease may be executed in multiple counterparts, each of which shall be one and the same Lease and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

33. **AUTHORITY.** The Parties executing this Lease represent that they have the authority from their Board or Commission to bind their Board or Commission to any and all terms and conditions of this Lease.

34. **NOTICES.**

34.1 Any notice required by the terms of this lease will be in writing, and be made by email, U.S. Mail, or hand delivery. Notices for the Parties will be sent to:

To the Funhouse Commons:

Jill Blankenship, Chairperson
30 Pea Patch Lane
Eastsound, WA. 98245
Phone: 360-376-7177
Email: krista@thefunhouse.org

To OIPRD:

Chairperson, OIPRD
P.O. Box 575
Eastsound, WA.
Phone: 360-376-7275
Email: marciaw@oiprd.org

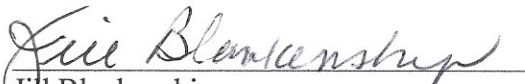
34.2 Notice may be given by either party to the other in any manner provided for by law, or in any of the following: regular mail, personal delivery, or email.

35. **GOVERNING LAW.** The law under which this agreement will be governed, construed and interpreted will be those of the State of Washington, San Juan County. Venue for any action under this Lease shall be in San Juan County.

36. **RECORDATION.** This Lease will be recorded by Lessee with the San Juan County Auditor.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed effective the day and year first set forth above.

CHILDREN'S DISCOVERY FOUNDATION dba THE FUNHOUSE COMMONS


Jill Blankenship
Chair, Children's Discovery Foundation

9/14/15
Date

ORCAS ISLAND PARKS AND RECREATION DISTRICT


Bob Eagan
Commissioner, Orcas Island Parks and Recreation District

9/10/15
Date