



RESOLUTION NO. 39832

1 A RESOLUTION relating to Point Defiance Park, consenting to and ratifying a lease
2 agreement between the Metro Parks Tacoma and the Tacoma School
3 District for use and occupancy of the Environmental Learning Center (SAMI)
4 premises.

5 WHEREAS, in 1905, the federal government granted fee ownership of Point
6 Defiance Park to the City upon the condition that it be used for no purposes other
7 than a park, and

8 WHEREAS Metro Parks Tacoma manages and operates Point Defiance
9 Park as a public park, and

10 WHEREAS, since 2009, Metro Parks has leased part of the “triangle area”
11 within the northeast corner of Point Defiance Park to Tacoma School District
12 No. 10 (“Tacoma Public Schools”) for its operation of the Science and Math
13 Institute (“SAMI”), a science and math-centered magnet high school, and

14 WHEREAS, in 2016, Metro Parks successfully obtained voter approval for
15 the issuance of \$200 million in bonds, most of which is being used to construct
16 significant improvements within Point Defiance Park, including the triangle area,
17 resulting in displacement of the physical location of SAMI, whereupon Tacoma
18 Public Schools sought to relocate to another part of Point Defiance Park, and

19 WHEREAS, in July 2017, Metro Parks Tacoma and Tacoma Public Schools
20 entered into an Amended and Restated Ground Lease (“Lease”), providing for
21 Tacoma Public School’s construction of a new learning center (“Environmental
22 Learning Center”) to replace SAMI and for joint use by Metro Parks, in substantially
23 the form of the lease agreement attached hereto as Attachment “A,” and
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WHEREAS the Lease is for a term of 50 years, subject to Metro Parks' right to terminate the Lease if necessary, and

WHEREAS it is anticipated that the Environmental Learning Center will be completed in October 2017, after which time Tacoma Public Schools will open the new center and commence operations, and

WHEREAS it is necessary for the City, as fee owner of Point Defiance Park, to consent to and ratify the grant by Metro Parks Tacoma of a leasehold interest to Tacoma Public Schools for SAMI, and

WHEREAS Point Defiance Park will benefit from continued use by Tacoma Public Schools for operation of SAMI as a magnet school, and

WHEREAS continued operation of SAMI within Point Defiance Park provides an exceptional opportunity for personal interpretive and active learning experiences for students when they are still forming their opinions, values, and ethics, and provides a prime opportunity to instill a sense of stewardship for the long-term support of Point Defiance Park and park programs, and

WHEREAS students who have a positive educational experience in a park will become ambassadors of parks and park programs and encourage visits to the park by other students, family, and friends, which could lead to a general increase in community awareness and support for Point Defiance Park, and

WHEREAS making Point Defiance Park a part of Tacoma Public Schools' educational program helps to emphasize the special characteristics of the park and demonstrates the significance of the park in the community, and develops an



1 understanding of why the park is a protected site to be preserved for future
2 generations, and

3 WHEREAS consenting to and ratifying the Lease will ensure that the
4 Tacoma Public Schools will continue to manage and operate SAMI for the term of
5 the Lease, providing benefit to the City, as fee owner of Point Defiance Park, and
6 supporting the park purposes to which Point Defiance Park is dedicated, and

7 WHEREAS the City Council finds that it would be in the public interest to
8 consent to and ratify the Lease upon the conditions as set forth herein; Now,
9 Therefore,

10 BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

11 That the City does hereby consent to and ratify the Amended and Restated
12 Ground Lease between Metro Parks Tacoma and Tacoma Public Schools, attached
13 hereto as Attachment "A"; provided that, such consent is conditioned upon approval
14 and execution by Metro Parks Tacoma and the City of the Consent and Ratification
15 Agreement in substantially the form of the agreement on file in the Office of the City
16 Clerk.
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19 Adopted _____
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21 _____
22 Mayor

23 Attest:
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25 City Clerk

26 Approved as to form:

Chief Deputy City Attorney



ATTACHMENT "A"

Lease Agreement

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**AMENDED AND RESTATED
GROUND LEASE
BY AND BETWEEN
THE TACOMA SCHOOL DISTRICT
AND
THE METROPOLITAN PARK DISTRICT OF TACOMA
FOR
THE POINT DEFIANCE ENVIRONMENTAL LEARNING CENTER**

This Amended and Restated Ground Lease (the "Ground Lease") is made and entered into this ____ day July, 2017 (for reference purposes only), by and between the Tacoma School District No. 10, a political subdivision of the State of Washington (hereinafter the "School District"), and the Metropolitan Park District of Tacoma, a municipal corporation (hereinafter "Metro Parks").

I. RECITALS

A. The School District wishes to lease from Metro Parks and Metro Parks wishes to lease to the School District certain real property located at Point Defiance Park in Tacoma, Washington, consisting of approximately 69,929 square feet and more particularly described in Exhibit "A" and depicted on Exhibit "B" hereto (the "Premises") and adjacent to the Point Defiance Zoo & Aquarium ("PDZA").

B. The School District and Metro Parks are authorized under Chapter 39.34 RCW, the Interlocal Cooperation Act, to enter into leases of real property with each other.

C. Concurrent with the execution of this Ground Lease, the School District and Metro Parks are entering into a ground lease under which the School District is leasing to Metro Parks certain real property on the campus of the School District's First Creek Middle School for Metro Parks' planned eastside community center (the "Eastside Community Center Ground Lease").

D. The School District and Metro Parks desire that, to the greatest extent legally permissible, the monetary consideration that would otherwise be due from the School District to Metro Parks shall be offset by the leasing of the First Creek Middle School site from the School District to Metro Parks, with the expectation that fair rent due under each of the above described leases shall offset the other.

E. The School District and Metro Parks further desire to provide a mechanism by which the parties may jointly use portions of their respective facilities described in this Ground Lease.

II. AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and benefits herein, the parties agree as follows:

1. Property Leased/Condition Precedent/Exchange of Leased Premises.

1.1. Effective July 1, 2016 (the "Effective Date") the School District hereby leases from and Metro Parks hereby leases to the School District the Premises, together with easement rights for ingress and egress to the Premises over and across all existing roadways located within the boundaries of existing Point Defiance Park. In addition to the Premises, Metro Parks further leases to the School District rights of joint usage of those parking areas depicted on Exhibit C hereto ("Parking Areas"). This Ground Lease does not include access to or use of PDZA, which may be addressed by a separate instrument as provided in Section 7 below.

1.2. Access to the Premises is depicted on Exhibit D and is subject to such reasonable restrictions as adopted, in writing, by Metro Parks.

1.3. The School District's obligations under this Ground Lease are expressly conditioned upon the School District (or its subtenant) (i) obtaining all necessary approvals for the construction of permanent improvements on the Premises from the City of Tacoma, Pierce County, State of Washington and any other governmental entity with jurisdiction; and (ii) obtaining adequate state and local funding, in the School District's sole discretion, for the construction of the School District's planned improvements on the Premises.

2. Term.

2.1. The term of this Ground Lease shall be for fifty (50) years, commencing on July 1, 2016 and terminating on June 30, 2066.

2.2. Metro Parks may terminate this Ground Lease and recapture the Premises prior to the termination date if the Premises become necessary for park or recreation purposes. In the event that Metro Parks exercises this right and terminates this Ground Lease early, such termination shall be subject to the terms

and conditions in Section 25 below. Metro Parks must provide advance written notice of its intent to terminate in accordance with the following:

Lease Year	Advance Written Notice Required
2018	9 Years
2019	8 Years
2020	7 Years
2021	6 Years
2022-2061	5 Years

2.3. This Ground Lease shall automatically terminate if the Eastside Community Center Ground Lease is terminated for any reason or as provided in Section 25 below. Provided, however, that the School District may not terminate the Eastside Community Center Lease so long as any NMTC financing, as provided in Section 24 below, is in place.

3. Use of Premises.

3.1. The Premises shall be used only as an educational facility for the purposes of environmental and education programming and activities for grades pre-school through twelfth grade participation, as well as to hold events that are directly related to environmental and educational programming and shall not be used for any other purpose. The School District shall at its own cost and expense obtain all licenses and permits necessary for its use of the Premises or any portion thereof. In the event that the School District obtains NMTC financing as provided in Section 24, if there is a default on such financing and the NMTC financing lender takes over the Premises (pursuant to an assignment, sublease or otherwise), the new operator of the Premises shall be subject to Metro Parks' approval, in its discretion, not to be unreasonably withheld, conditioned or delayed. The replacement operator shall be subject to all of the restrictions in this Ground Lease.

3.2. The School District shall not allow the use of drones or other powered flying devices on the Premises or portion thereof unless otherwise approved in writing by Metro Parks and proof of appropriate insurance.

3.3. The School District shall not conduct activities on the Premises that materially interfere with the operation of PDZA.

4. Condition of the Premises. Neither Metro Parks nor its agents have made any representations or warranties whatsoever with respect to the condition of the Premises or any improvements thereto, or its fitness or availability for any particular use, and Metro Parks shall not be liable for any latent or patent defect thereon. Use of the Premises by the School District shall be conclusive evidence that the School District accepts the Premises "AS IS," and "IN ITS PRESENT CONDITION," and "WITHOUT ANY WARRANTIES WHATSOEVER."

5. Rent.

5.1. Exchange of Leases. The parties recognize that the fair market rental rate for the Premises is equal to the fair market rental rate for the property Metro Parks leases from the School District pursuant to the Eastside Community Center Ground Lease. Therefore, so long as both this Ground Lease and the Eastside Community Center Ground Lease are in effect, no rent shall be due.

5.2. Assessments / Taxes. The School District shall pay any assessments, and any taxes and governmental fees imposed by agencies other than Metro Parks as hereafter provided, including and without limitation, any real and personal property taxes and leasehold excise tax.

6. Improvements

6.1. Metro Parks acknowledges that the School District (or its sublessee) intends to construct a new capital facility upon the Premises similar to the plans and specifications attached as Exhibit G (the "Initial Tenant Improvements"). Given the possibility of joint use of these improvements by Metro Parks, the District and Metro Parks agree to cooperate on design elements to facilitate joint use and compatibility of the Initial Tenant Improvements with Metro Parks' existing improvements at Point Defiance Zoo. Metro Parks shall cooperate in the development of the Premises consistent with Exhibit E; provided, however, material changes and additions to the Initial Tenant Improvements, which affect the site plan or compatibility of appearance shown on Exhibit E shall not proceed without Metro Parks' prior written approval, which shall not be unreasonably withheld, conditioned or delayed.

6.2. During construction of the Initial Tenant Improvements, the School District shall invite Metro Parks' staff to attend the regularly scheduled construction meetings.

6.3. Upon completion of the Initial Tenant Improvements, the School District shall have the right to make further improvements on any portions of the Premises, subject to Metro Parks' prior written approval, which shall not be unreasonably withheld or delayed.

6.4. Any and all tenant improvements made by the School District on the Premises shall be at the sole cost and expense of the School District. Metro Parks shall have no responsibility whatsoever with respect to any such tenant improvements, permitting costs or other costs of development. Except to the extent of the School District's tenant improvements, the School District shall have no responsibility whatsoever with respect to any improvements owned by Metro Parks located outside of the Premises. The School District shall obtain all required

approvals and permits from the City of Tacoma and any other State or local governmental agency, department or entity with jurisdiction for all School District tenant improvements.

6.5. Construction of any tenant improvements on the Premises shall be performed in a careful and workmanlike manner and in compliance with all applicable laws and codes. Construction work shall follow the City of Tacoma Noise Ordinance. Work shall not be performed between 10:00 P.M. to 7:00 A.M. to avoid conflicts with PDZA operations unless otherwise approved by Metro Parks.

6.6. During and after construction of the Initial Tenant Improvements fencing must be installed around the perimeter of the Premises by the School District to provide security and safety. All fencing must be consistent with the Association of Zoos & Aquarium's (AZA's) requirements related to zoos and zoo accreditation.

6.7. During construction of any tenant improvements upon the Premises, the School District will maintain the Premises in a safe and clean manner and will not unreasonably interfere with Metro Parks surrounding park and PDZA operations.

6.8. Following construction of the Initial Tenant Improvements, the School District will remove all rubbish and debris and complete the landscaping as depicted in Exhibit E.

6.9. Immediately after the completion of each improvement, addition, or alteration to the Premises, the School District shall deliver to Metro Parks a complete paper or electronic set of reproducible drawings reflecting the final "as-built" condition of said improvement, addition or alteration, together with paper or electronic copies of all maintenance and operation manuals necessary for the repair and maintenance of any architectural, mechanical or electrical building system or piece of equipment installed on the Premises that is all or part of such improvement, addition or alteration. Electronic sets shall be in a format accessible by a standard program, i.e. Adobe Acrobat, and in a CADD format.

6.10. Upon the expiration or termination of this Ground Lease, all of the improvements constructed by the School District on the Premises shall become the property of Metro Parks.

7. Joint Use of Facilities. With the intent of maximizing public resources, the School District is agreeable to making the improvements to the Premises available for use by Metro Parks. Due to the uncertainty as to which improvements will be constructed and when, as well as the availability of those improvements and the changing needs of the parties over time, the specific joint uses of the Premises and its improvements cannot

be determined at this time and are likely to change over time. To avoid the necessity of frequently amending this Ground Lease to reflect those joint uses and changes to those joint uses, the parties agree any joint use, and the cost sharing associated therewith, will be reflected in a separate instrument (a "Joint Use Agreement"). The School District's Superintendent and Metro Parks' Executive Director, as the chief executive officers of their respective agencies, are authorized to prepare, negotiate, execute and implement such Joint Use Agreements as they mutually agree are necessary to implement the policy directives of maximizing public resources and collaboration to provide services to support the community.

8. Utilities.

8.1. The School District shall, at its sole cost and expense, arrange for the furnishing of all utilities, including electricity, water, sewer, telephone or other utility necessary for the operation of the School District's improvements, and the School District covenants and agrees to pay all charges therefore directly, to the applicable public utility or governmental authority furnishing such service to the Premises, the amounts due for such services as indicated by meters measuring the School District's consumption thereof.

8.2. Metro Parks shall not be liable in any way to the School District for any failure or defect in the supply or character of any utilities furnished to the Premises by reason of any requirement, act or omission of the utility providing such service or for any other reason.

8.3. Except as set forth elsewhere in this Ground Lease (including, without limitation, in Section 1), Metro Parks shall not be required to furnish any services or utilities of any nature to the Premises during the term of this Ground Lease and the School District hereby assumes full and sole responsibility for the supply of and payment for all utilities and services.

9. Maintenance and Repairs.

9.1. The School District shall at its sole cost and expense keep the improvements on the Premises in good condition, repair and maintenance.

9.2. The Parking Areas shall be maintained by Metro Parks; provided, however, the School District shall be solely responsible for any extraordinary wear and tear caused by any activity of or use of those areas by the School District, its students, guests, licensees or invitees. Maintenance of the Parking Areas shall be further addressed in the Joint Use Agreement specified in Section 7 above.

10. Damage to the Premises. In the event that any improvements to the Premises constructed at the expense of the School District are destroyed or injured, in whole or in part, by fire, flood, earthquake, or other casualty, then the School District shall

rebuild and restore those improvements to the Premises, or such part thereof as may be injured, within a reasonable period of time following the occurrence of such a casualty.

11. Supervision of the Premises. The School District shall assume all supervisory duties for its activities on or use of the Premises, including the Parking Areas.

12. Compliance with Applicable Laws, Regulations and Rules. The School District shall not knowingly commit or willfully permit to be committed on the Premises any act or thing contrary to the law, rules or regulations of any applicable federal, state or local governmental authority, including but is not limited to Tacoma Municipal Code Chapter 8.27 (the Park Code).

13. Surrender at End of Term. Unless otherwise agreed to by the parties in writing, the School District shall surrender the Premises at the expiration of the term by removing those improvements specified by Metro Parks to be removed, which may be some or all of the tenant improvements.

14. Assignment and Subletting. Except as provided in Section 24 below, the School District shall not have the right, voluntarily or involuntarily, to assign, convey, transfer, mortgage or sublet the whole or any part of the Premises under this Ground Lease. This prohibition applies to assignments, subleases and other transfers by which the School District transfers any interest, including partial or indirect interests, in the leasehold created hereby (e.g., transfer to a co-district or to an entity in which the School District has a beneficial interest).

15. Insurance. At all times during the term of this Ground Lease or any extension thereto, the School District shall, at its sole cost and expense and as additional consideration, maintain in full force and effect the following insurance:

15.1. Public liability insurance with a minimum coverage of Two Million Dollars payable to any one person for personal injury or death arising out of any one event, Two Million Dollars for all such personal injuries or death resulting out of one occurrence arising from use of the Premises. The School District and Metro Parks agree to re-evaluate coverage amounts every five (5) years to update both the coverage amounts and types of coverage required to then existing commercially reasonable coverage limits.

15.2. Fire and extended coverage insurance covering all structures and all improvements made by the School District to the Premises and all personal property of the School District within the Premises in the amount of the full replacement value thereof.

15.3. All insurance required under this Ground Lease shall include public liability and property damage coverage for any construction activities conducted by the School District on the Premises.

15.4. All insurance required of the School District may be provided through private insurers authorized to transact business in the State of Washington and with a company acceptable to Metro Parks, or in the alternative through a State authorized risk pool.

16. Indemnification/Hold Harmless.

16.1. Metro Parks shall not be liable to the School District or the School District's officers, directors, trustees, employees, agents, contractors, servants, guests, invitees or visitors (collectively, "The School District Parties"), or to any other person for any damage, expense, loss or liability, including injury to person or damage to property on or about the Premises, resulting from and/or caused in part or whole by the act or omission of the School District, its employees, agents, servants, guests, invitees, and visitors, or of any other person entering upon the Premises, or caused by the condition of the Premises, or due to any other cause unless caused by the gross negligence or willful misconduct of Metro Parks, and the School District hereby releases Metro Parks from any such liability.

16.2. The School District hereby releases and shall defend, indemnify and hold harmless Metro Parks and Metro Parks' officers, directors, trustees, employees, agents, contractors, servants, guests, invitees or visitors (collectively, "Metro Parks Parties") from claims, suits, actions, or liabilities for any damage, expense, loss or liability, including injury to person or damage to property, that arises out of (a) any activity, work, condition or thing permitted or suffered to exist or done at the Premises or portion thereof; (b) the negligence or willful misconduct of any of the School District Parties; and (c) any breach or default by the School District in the performance of any obligation on the School District's part to be performed under this Ground Lease. This indemnity does not apply (i) to claims, suits, actions or liabilities to the extent they are caused by the negligent acts or omissions or willful misconduct of Metro Parks, its agents, employees, contractors or invitees, or (ii) to the indemnity in Section 17 regarding Hazardous Materials. In the absence of comparative or concurrent negligence on the part of any Metro Parks Parties, the foregoing indemnity shall also include reasonable costs, expenses and attorney's fees incurred in connection with any indemnified claim or incurred by Metro Parks in successfully establishing the right to indemnity (including in any bankruptcy proceeding). The School District shall at Metro Parks' request assume the defense of any claim subject to this indemnity. Metro Parks agrees to cooperate fully with the School District and the School District's counsel in any matter where the School District elects to defend, provided the School District promptly reimburses Metro Parks for reasonable costs and expenses incurred in connection with its duty to cooperate. When the claim is caused by the joint negligence or willful misconduct of any of the School District Parties and Metro Parks, the School District's duty to indemnify and defend shall be proportionate to the School District's allocable share of any joint negligence or willful misconduct.

16.3. The indemnification obligations contained in this Section shall not be limited by any worker's compensation, benefit or disability laws, and the indemnifying party hereby waives any immunity that said indemnifying party may have under the Industrial Insurance Act, Title 51 RCW and similar worker's compensation, benefit or disability laws.

16.4. THE PARTIES ACKNOWLEDGE BY THEIR EXECUTION OF THIS GROUND LEASE THAT EACH OF THE INDEMNIFICATION PROVISIONS OF THIS GROUND LEASE (SPECIFICALLY INCLUDING BUT NOT LIMITED TO THOSE RELATING TO WORKER'S COMPENSATION BENEFITS AND LAWS) WERE SPECIFICALLY NEGOTIATED AND AGREED TO BY THE PARTIES AND SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS GROUND LEASE.

17. Hazardous Materials.

17.1. The term "Hazardous Materials" refers to any substances, materials and wastes that are or become regulated as hazardous or toxic substances under any applicable local, state or federal law, regulation or order. The term "Hazardous Materials" shall not include any equipment or products utilized in normal school operations.

17.2. Portions of the Point Defiance area have been designated as a superfund site due to the contamination caused by Asarco, which contamination may be present at the Premises. The School District acknowledges this possibility and accepts the Premises "as-is" and Metro Parks is not required to remove and/or remediate any Hazardous Materials on, under, in, above, to, or from the Premises. The School District hereby releases the Metro Parks Parties from any claims, suits, actions, or liabilities for any damage, expense, loss or liability, including injury to person or damage that arises out of or is related to any Hazardous Materials on, under, in, above, to, or from the Premises. The School District shall defend, indemnify and hold Metro Parks and the Metro Parks Parties harmless from claims, suits, actions, or liabilities for any damage, expense, loss or liability, including injury to person or damage to property, by the School District, it's officers, directors, trustees, employees, agents, contractors, servants, students, guests, invitees or visitors that arises out of the School District's use and/or occupancy of the Premises for any reason and that is related to any Hazardous Materials on, under, in, above, to, or from the Premises.

17.3. The School District shall not cause or permit the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials on, under, in, above, to, or from the Premises or portion thereof except as such Hazardous Materials are (i) used, stored and disposed of in conformance with manufacturer recommendations and all applicable legal requirements, (ii) are used in connection with the School District's permitted use

as specified above; and (iii) used in normal school operations. Provided, however, that the provisions of this Section 17.3 and the provisions of Section 17.4 below do not apply to any Hazardous Materials present on, under, in, above, to, or from the Premises or portion thereof prior to the School District's occupancy so long as the School District does not cause or contribute to the exposure, release or discharge of such preexisting Hazardous Materials.

17.4. In the event of a failure by the School District to comply with the requirements of Section 17.3 above, the following shall apply:

17.4.1. the School District shall indemnify, defend and hold the Metro Parks Parties harmless from and against (a) any loss, cost, expense, claim, or liability arising out of any investigation, monitoring, clean-up, containment, removal, storage, or restoration work (collectively "Remedial Work") relating to Hazardous Materials required by, or incurred by Metro Parks or any entity or person with a reasonable belief that such work is required by any applicable federal, state or local law, governmental agency, or political subdivision, and (b) any claims of third parties for loss, injury, expense, or damage arising out of the presence, release or discharge of any Hazardous Material on, under, in, above, to, or from the Premises;

17.4.2. if any Remedial Work is required under any applicable federal, state or local law during the term of this Ground Lease, the School District shall perform or cause to be performed the remedial work in compliance with such law, regulation or order; and

17.4.3. all Remedial Work shall be performed by one or more contractors under the supervision of a consulting engineer, each selected by the School District and approved in advance in writing by Metro Parks. If the School District does not commence the Remedial Work in a timely fashion or does not diligently prosecute the Remedial Work to completion, Metro Parks may, but shall not be required to cause the remedial work to be performed, subject fully to the indemnification of this paragraph.

17.5. THE PARTIES ACKNOWLEDGE BY THEIR EXECUTION OF THIS GROUND LEASE THAT EACH OF THE RELEASE AND INDEMNIFICATION PROVISIONS OF THIS GROUND LEASE RELATING TO HAZARDOUS MATERIALS WERE SPECIFICALLY NEGOTIATED AND AGREED TO BY THE PARTIES AND SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS GROUND LEASE.

18. Condemnation. If all of the Premises is taken for any public or quasi-public use under government law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof (collectively, "Taking"), this Ground Lease shall terminate when the physical taking of the Premises occurs and Metro Parks shall have no liability

to the School District for its loss of use of the Premises or portion thereof. If any part of the Premises is subject to a Taking, the School District may terminate this Ground Lease or continue this Ground Lease as to the remaining premises but without abatement of any of the School District's obligations hereunder as to the remaining premises. Metro Parks shall receive the entire award for any Taking of the Premises or portion thereof; provided, however, that the School District shall be entitled to any portion of such award in an amount equal to the value of its improvements and unexpired leasehold interest in the Premises.

19. Mechanic's Liens. Except as provided in Section 24 below, the School District shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature upon, or in any manner to bind, the interest of Metro Parks in the Premises in favor of any person dealing with the School District, including those who may furnish materials or perform labor for any construction or repairs, and each such lien shall attach to, if at all, only the leasehold interest granted to the School District by this instrument. The School District will pay or cause to be paid all sums due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Premises on which any lien is or can be validly and legally asserted against its leasehold interest in the Premises or the improvements thereon. The School District will discharge, by bond or otherwise, any mechanic's lien filed against the Premises or part thereof for work claimed to have been done for, or materials claimed to have been furnished to the School District within thirty (30) days after filing. The School District will indemnify, defend and hold Metro Parks harmless from any and all loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the right, title and interest of Metro Parks in the Premises or under the terms of this Ground Lease.

20. Inspection. Metro Parks shall have the right to inspect the Premises from time to time for the purpose of determining the School District's compliance with provisions of this Ground Lease.

21. Default. The following events are deemed to be events of default by the School District under this Ground Lease:

21.1. If the School District shall be in default of the performance of any obligations of this Ground Lease, and if such default is not cured within sixty (60) days after written notice thereof is given by Metro Parks to the School District; or if such default should be of such a nature that it cannot be cured completely within such sixty (60) day period, if School District shall not have promptly commenced within such sixty (60) day period or shall not thereafter proceed with reasonable diligence and in good faith to remedy such default;

21.2. If the Premises becomes abandoned or deserted by the School District for a period of three or more consecutive years;

21.3. If this Ground Lease shall be assigned or the Premises sublet other than in accordance with the terms of this Ground Lease and such default is not cured with ninety (90) days after written notice to the School District;

22. Remedies.

22.1. If any of the events of default set forth in Section 21 are not cured within the period stated above, then Metro Parks may immediately or at any time thereafter recover the Premises in the manner provided by law.

22.2. The School District agrees to pay as additional consideration any and all sums which may become due by reason of the failure of the School District to comply with all the covenants of this Ground Lease and any and all damages, costs and expenses which Metro Parks may suffer or incur by reason of any default of the School District.

22.3. Without in any way limiting the above remedies in the event of default, if the School District defaults in the performance of any covenant or condition under this Ground Lease required to be performed by the School District, then Metro Parks may, at its option and upon twenty (20) days' prior written notice to the School District, or without notice if in Metro Park's opinion an emergency exists, perform such covenant or condition for the account and at the expense of the School District.

22.4. The statement of specific remedies as set forth above is not exclusive, and Metro Parks shall, at its option, have available any and all other remedies for default available to it under the laws of the State of Washington.

22.5. The School District's default as provided herein shall not cause a termination of the Eastside Community Center Ground Lease.

23. Quiet Enjoyment. Metro Parks warrants title and quiet enjoyment of the Premises.

24. NMTC Funding. The School District (or its sublessee) may seek funding for the tenant improvements on the Premises through the New Markets Tax Credit (NMTC) Program as provided in the Community Renewal Tax Relief Act of 2000 (26 USC §45D). To the extent necessary or required to qualify for and receive such funding, Metro Parks agrees to the following:

24.1. The School District may sublease the Premises to a non-profit corporation that is qualified as a §501(c)(3) tax exempt organization managed by a board in which Metro Parks and the School District are the majority (a "Subtenant"), and such Subtenant is subject to all of the terms and conditions in

this Ground Lease. The School District may obligate a Subtenant to perform the School District's obligations under this Ground Lease.

24.2. The School District may permit the subleasehold interest referenced in Section 24.1 above and the tenant improvements on the Premises as security for the NMTC funding, which may be in the form of a leasehold deed of trust lien or assignment. If there is a default on such financing and the NMTC financing lender or any successor, assignee, designee, or purchaser thereof (each, in such capacity, "Successor Subtenant") takes over the Premises (pursuant to an assignment, sublease or otherwise), the Successor Subtenant may sublease the Premises to a new operator of the Premises, provided that the new operator of the Premises shall be subject to Metro Parks' approval, not to be unreasonably withheld, conditioned or delayed. The replacement operator shall be subject to all of the terms and conditions in this Ground Lease. Except with regard to NMTC funding, the School District shall not use the real property as security nor is the School District allowed to assign this Ground Lease for purposes of granting a security interest. However, the Subtenant and any Successor Subtenant may encumber its subleasehold interest in the Premises as security for financing of the tenant improvements on the Premises, consistent with the requirements of this Section.

24.3. The School District shall have any security interest promptly released upon the repayment in full or other discharge of any NMTC Program funding.

24.4. Use of the NMTC Program for funding as contemplated by this Section 24 is intended to be one-time only.

25. Early Termination. In the event that Metro Parks determines the Premises are necessary for its park and recreation purposes and exercises its right to early termination, Metro Parks shall provide to the School District written notice delivered not less than the timeframe specified in Section 2.2 above. Metro Parks shall further have the obligation to pay to the School District a reimbursement amount determined by the following methods and terms:

25.1. As used in this Section the following definitions shall apply:

"Fair Market Value" shall mean as of the date of notice of termination, the fair market value of the improvements constructed on the Premises and by the School District, not including furniture, fixtures and equipment or the value of land, as determined by a licensed real estate appraiser using generally accepted appraisal methods.

"Demolition Cost" shall mean the estimated cost, as determined by Metro Parks, of demolishing all or a portion of the improvements constructed on the Premises and by the School District; provided that such demolition must

be reasonably necessary for Metro Parks to use the Premises for Metro Parks' intended purpose.

25.2. Within two (2) years of the termination date, Metro Parks shall obtain an estimate of the Fair Market Value of the improvements through a licensed real estate appraiser using generally accepted appraisal methods. The Fair Market Value shall be reduced by the Demolition Cost and the resultant amount shall be the reimbursement amount due the School District. Provided, however, that the School District may, within ninety (90) days after receipt of Metro Parks' appraisal, provide its own appraisal to Metro Parks.

25.3. If the School District does not agree to the reimbursement amount as determined by Metro Parks' appraiser, the School District may retain its own appraiser at its own cost to develop its own reimbursement amount estimate. If the parties are then unable to agree on a sum between their respective estimates, then the reimbursement amount shall be determined by binding arbitration in accordance with the laws of the State of Washington. The parties shall mutually agree upon an impartial arbitrator; and failing agreement, either party may apply to the Presiding Judge of the Pierce County Superior Court for the appointment of such an arbitrator with due notice being given to the other party. The parties shall share equally the arbitrator's fees. Except for sharing the arbitrator's fees, each side shall pay its own costs and fees, including any attorney fees in any arbitration.

25.4. Immediately upon transfer of possession from the School District to Metro Parks, this Ground Lease and all duties and obligations of each party under this Agreement shall terminate.

25.5. If Metro Parks terminates this Ground Lease pursuant to this Section 25, the Eastside Community Center Ground Lease shall automatically terminate. Provided, however, that the Eastside Community Center Lease shall not terminate so long as any NMTC financing is in place.

25.6. If there is no NMTC financing in place and the Eastside Community Center Ground Lease is terminated by the School District pursuant to the Early Termination provision therein, and thus resulting in a termination of this Ground Lease, Metro Parks shall still be required to pay to the School District the reimbursement amount as computed by this Section 25, reduced by fifty percent (50%).

26. ADA Compliance/Non-Discrimination.

26.1. All School District improvements to the Premises shall comply with the requirements of the Americans with Disabilities Act of 1990 as now in effect or hereafter amended, and all rules and regulations issued thereunder (hereinafter

collectively referred to as the "ADA") and all similar state and local laws or regulations.

26.2. The School District shall comply with all the federal, state, and local non-discrimination laws, ordinances, regulations and policies, which are otherwise applicable to the School District. Accordingly, no person shall, on the ground of race, creed, color, religion, national origin, age, sex, marital status, sexual orientation, sexual identity, pregnancy, or the presence of any sensory, mental, or physical disability, be unlawfully excluded from participation in, be denied the benefits of, or be otherwise subjected to illegal discrimination under any employment with or activity of the School District and its agents under this Ground Lease.

27. Notice. Any notice required to be given by any party to the other pursuant to the provisions of this Ground Lease or any law, present or future, shall be in writing and shall be deemed to have been duly given or sent if either delivered personally or deposited in the United States mail, postage prepaid, registered or certified, return receipt requested, addressed as follows or to such other address as either party may designate to the other in writing from time to time:

The School District: Tacoma School District
601 South 8th
Tacoma, WA 98401
Attention: Superintendent

Metro Parks: Metropolitan Park District of Tacoma
4702 South 19th
Tacoma, WA 98404
Attention: Executive Director

28. Attorneys' Fees. Except where expressly allocated otherwise in this Ground Lease, in any action in any forum (including any appeals) brought to enforce any provisions of this Ground Lease, the prevailing party shall be entitled to recover from the other party all reasonable costs and reasonable attorneys' fees incurred by the prevailing party.

29. Construction. This Ground Lease shall not be construed more favorably to one party over another, notwithstanding the fact one party, or its attorney, may have been more responsible for the preparation of this document.

30. Nonwaiver of Breach. The failure of a party to insist upon strict performance of any of the covenants and agreements of this Ground Lease or to exercise any option herein contained in any one or more instances shall not be construed to be a waiver or relinquishment of any such, or any other, covenant or agreements; but the same shall be and remain in full force and effect.

31. Successors. The terms, covenants and conditions herein contained shall accrue to the benefit of the successors and assigns of the parties hereto.

32. Governing Law. This Ground Lease is made pursuant to and shall be construed in accordance with the laws of the State of Washington.

33. Complete Agreement. This Ground Lease fully integrates the understanding of the parties. It supersedes and cancels all prior negotiations, correspondence and communication between the parties with respect to the Premises. No oral modification of or amendment to this Ground Lease shall be effective; however, this Ground Lease may be modified or amended by written agreement signed by all the parties hereto.

34. Paragraph Headings, Gender and Number. Paragraph headings are not to be construed as binding provisions of this Ground Lease; 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 appropriate in the context.

35. No Agency/Joint Venture. Nothing herein is intended to nor shall create an agency, partnership or joint venture agreement, arrangement or relationship between the School District and Metro Parks.

36. Survival. All obligations of the School District hereunder not fully performed as of the expiration or earlier termination of this Ground Lease shall survive such expiration or termination.

37. Time. Time is of the essence of this Ground Lease with respect to the performance of every provision in which time of performance is a factor.

38. Severability. The invalidity of any provision of this Ground Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

39. Recording. Either party may record this Ground Lease or a memorandum thereof if required to obtain NMTC funding.

40. Exhibit List:

Exhibit A – Legal Description of the Premises

Exhibit B – Depiction of the Premises

Exhibit C – Depiction of the Parking Areas

Exhibit D – Access to the Premises

Exhibit E – Initial Tenant Improvements

IN WITNESS WHEREOF, the parties hereto have executed this Ground Lease on the date opposite their respective signatures.

TACOMA SCHOOL DISTRICT NO. 10

**METROPOLITAN PARK DISTRICT
OF TACOMA**

By: _____
Joshua Garcia
Deputy Superintendent
Date: _____

By: _____
Shon Sylvia
Executive Director
Date: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Joshua Garcia is the person who appeared before me, and said person acknowledged that he signed this instrument and on oath stated that he was authorized to execute the instrument and acknowledged it as the Deputy Superintendent for the Tacoma School District No. 10, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: July _____, 2017.



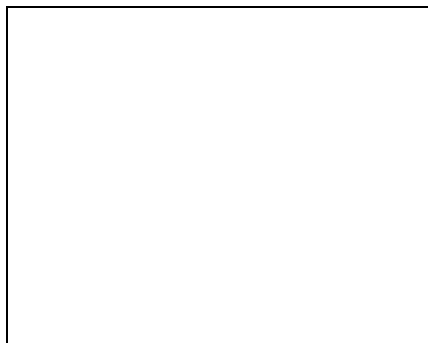
Notary Public
Print Name _____
My commission expires _____

(Use this space for notary stamp/seal)

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that Shon Sylvia is the person who appeared before me, and said person acknowledged that he signed this instrument and on oath stated that he was authorized to execute the instrument and acknowledged it as the Executive Director of Metropolitan Park District of Tacoma, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: July _____, 2017.



Notary Public
Print Name _____
My commission expires _____

(Use this space for notary stamp/seal)

EXHIBIT A
LEGAL DESCRIPTION OF THE PREMISES

A portion of Point Defiance Park consisting of approximately 69,929 square feet, situated in Tacoma, Pierce County, Washington.

EXHIBIT A

PROJECT ADDRESS
5715 NORTH ANIMAL LOOP ROAD
TACOMA, WA 98465-2099

PIERCE COUNTY TAX PARCEL NUMBER
0221103000

LEGAL DESCRIPTION
SECTION 14 TOWNSHIP 21 RANGE 02 QUARTER 34 : 4 GOVT LOTS 1, 2 & 3 14 21 2E D 2, 3 & 4 GOVT LOTS 1, 2 & 3 & S 1/2 OF SW ALSO 15 21 2E D 1, 2, 3 & 4 GOVT LOT 1, 2, 3, 4, 5 & 6 & E 1/2 OF SW BEING POINT DEFIANCE PARK 647.86 ACS ML

JURISDICTION REFERENCE
CITY OF TACOMA

ZONING DESIGNATION
R1 - ONE FAMILY DWELLING
S4 - SHORELINE POINT DEFIANCE NATURAL

LOT AREA
28,220,694 SF / 647.86 ACRES

PROJECT BOUNDARY AREA
65,276 SF / 1.50 ACRES

**EXHIBIT B
DEPICTION OF THE PREMISES**

EXHIBIT B:

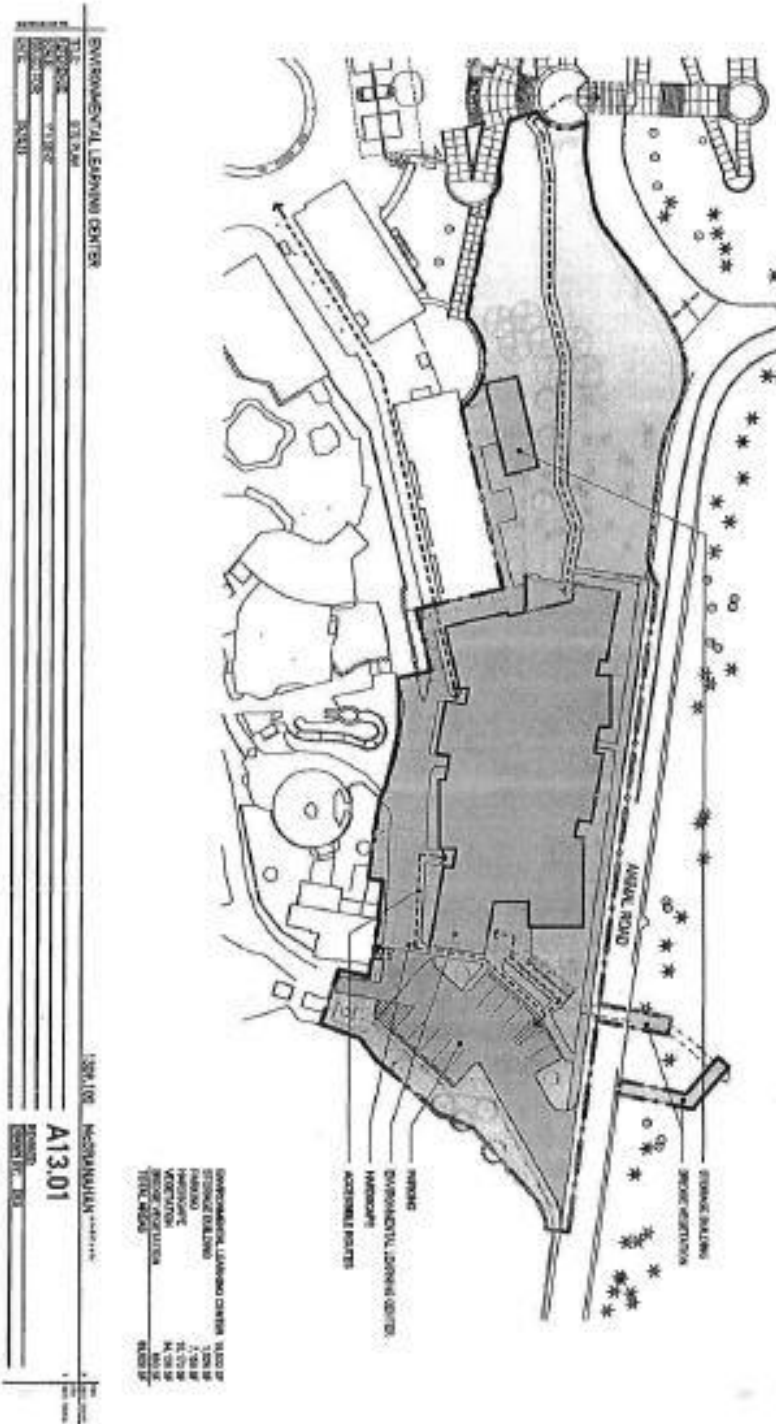
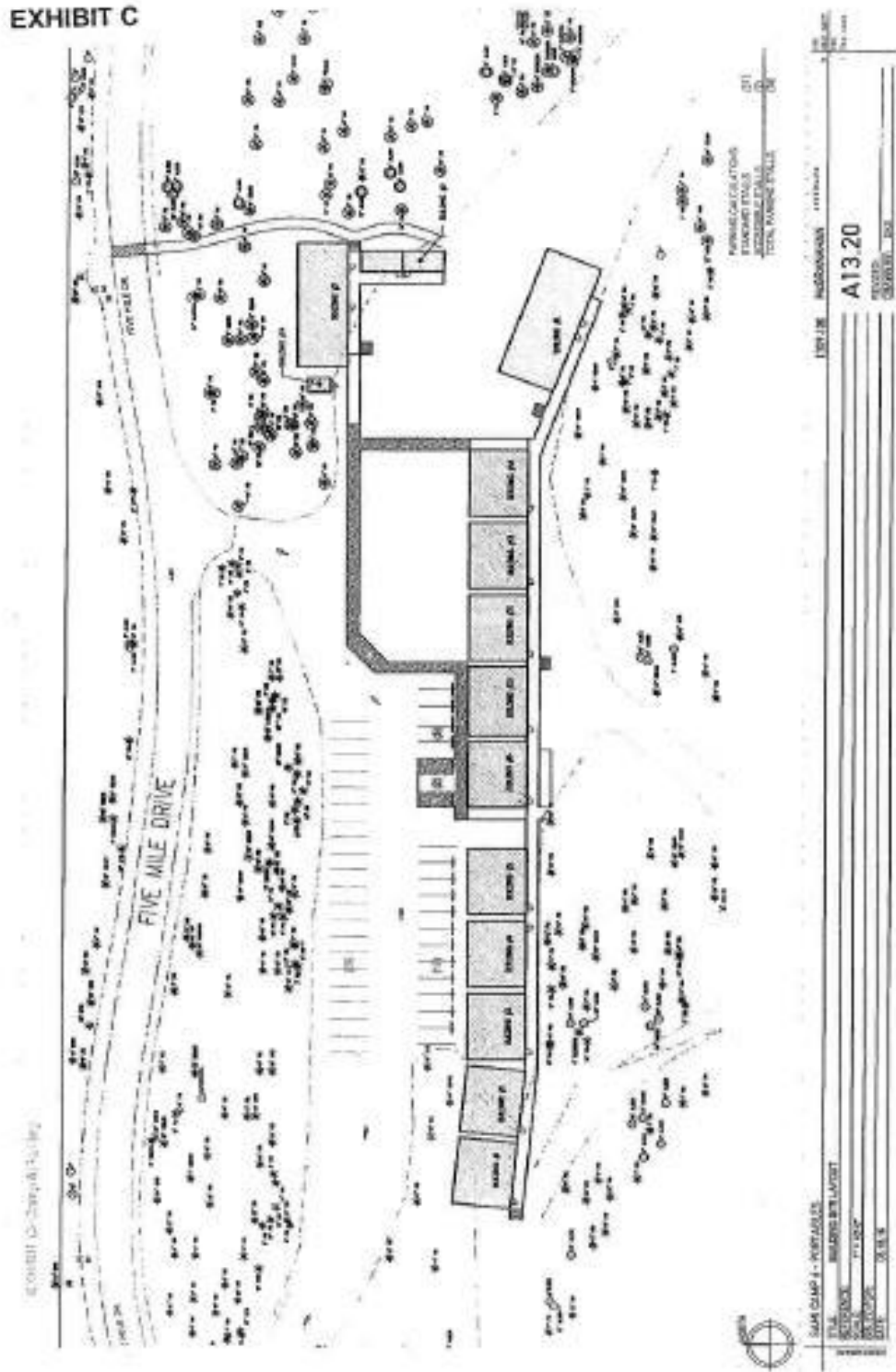
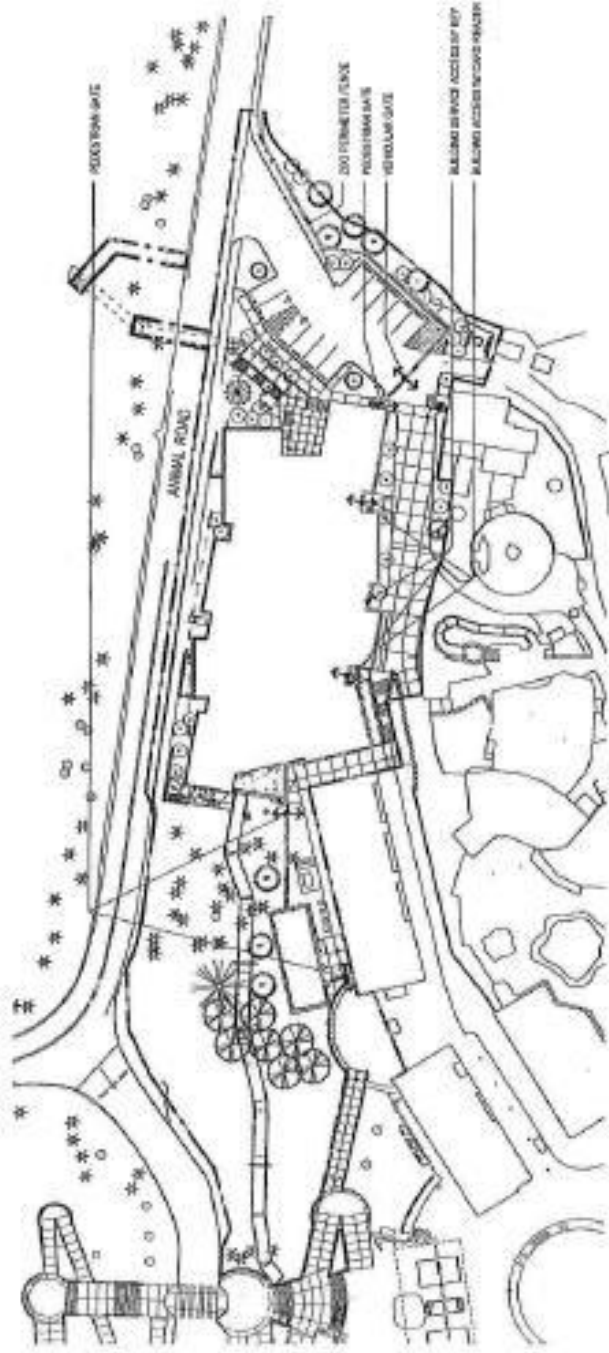


EXHIBIT C DEPICTION OF THE PARKING AREAS



**EXHIBIT D
ACCESS TO THE PREMISES**

EXHIBIT D



PROJECT	ENVIRONMENTAL LEARNING CENTER
DATE	2012/08/08
SCALE	1"=100'
DESIGNER	SKULS
DATE	07/15
NO. OF SHEETS	1
TOTAL SHEETS	1
DATE	07/15
PROJECT NO.	1004-100
CLIENT	MACDONALDIAN
PRICE	A13.00
STATUS	ISSUED FOR PERMIT

EXHIBIT E
INITIAL TENANT IMPROVEMENTS

Exhibit E

Initial Tenant Improvements

Environmental Learning Center Bid Set Drawings Issued May 9, 2016, Sheets G.0.00 – E10.03

Project Manual Bid Set Division 00-14 Volume 1 of 2 Issued May 9, 2016

Project Manual Bid Set Division 21-23 Volume 2 of 2 Issued May 9, 2016

Addendum #1 Drawings and Specifications Issued May 20, 2016

Addendum #2 Drawings and Specifications Issued May 27, 2016