

Ordinance No. 119508

Council Bill No. 112665

AN ORDINANCE granting the Plaza 600 Building L.L.C. permission to maintain and operate a vehicular and pedestrian tunnel under and across the 6th - 7th Avenues Alley, north of Stewart Street, for a ten (10) year term, renewable for two successive ten-year terms, specifying the conditions under which this permit is granted, providing for acceptance of the permit and conditions, and superseding Ordinance 97096.

CF No. _____

Date Introduced:	APR 26 1999	
Date 1st Referred:	APR 26 1999	To: (committee)
Date Re - Referred:		To: (committee)
Date Re - Referred:		To: (committee)
Date of Final Passage:	6-21-99	Full Council Vote: 8-0
Date Presented to Mayor:	6-21-99	Date Approved: 6/29/99
Date Returned to City Clerk:	6/30/99	Date Published: 7/9/99
Date Vetoes by Mayor:		Date Veto Published:
Date Passed Over Veto:		Veto Sustained:

The City of Seattle - Legislative Department
Council Bill/Ordinance sponsored by: _____

Committee Action

6/15-TRANSPORTATION COMMITTEE - PASS 3-0

6-21-99 Full Council Passed

This file is complete and ready for presentation to Full Council. C

Law Department

Law Dept. Review

OMP
Review

City Clerk
Review

ne
The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: McIVER Councilmember

Committee Action:

6/15-Transportation Committee - PASSED

6-21-99 Full Council Passed 8-0 (Excused: Pageler)

This file is complete and ready for presentation to Full Council. Committee: _____
(Initial/Date)

Law Department

Law Dept. Review

OMP
Review

(v)
City Clerk
Review

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TRANSPORTATION

T.O.
F.T.

ORDINANCE 119508

AN ORDINANCE granting the Plaza 600 Building L.L.C. permission to maintain and operate a vehicular and pedestrian tunnel under and across the 6th - 7th Avenues Alley, north of Stewart Street, for a ten (10) year term, renewable for two successive ten-year terms, specifying the conditions under which this permit is granted, providing for acceptance of the permit and conditions, and superseding Ordinance 97096.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Subject to terms and conditions of this ordinance, permission is hereby granted to the Plaza 600 Building L.L.C., its successors and assigns ("Permittee") to maintain and operate a vehicular and pedestrian tunnel under and across the 6th - 7th Avenues Alley, north of Stewart Street. Said tunnel shall be used as a passageway for vehicles and pedestrians in connection with the operation of Permittee's business or any facilities used in connection therewith.

Section 2. The permission herein granted to the Permittee, its successors and assigns shall be for a term of ten (10) years, commencing November 1, 1998 and terminating at 11:59 p.m. on the last day of the tenth year; provided, however, that upon written application of the Permittee at least thirty (30) days before expiration of the term, the City Council may, by resolution, renew the permit for two (2) successive ten (10) year terms, provided further that the total term of the permission as originally granted and thus extended shall not exceed thirty (30) years, subject to the right of The City of Seattle ("City") by ordinance to then revise any of the terms and conditions contained herein.

Section 3. The permit granted hereby is subject to primary and secondary use by the public for travel and utility purposes, and the City expressly reserves the right to require the Permittee to remove the tunnel at Permittee's sole cost and expense in the event that:

1 (a) the City Council determines, by ordinance, that the space occupied by the tunnel is
2 necessary for any primary or secondary public use or benefit, or that the tunnel
3 interferes with any primary or secondary public use or benefit; or

4 (b) The Director of Transportation ("Director") determines that any term or condition
5 of this ordinance has been violated, and such violation is not corrected by the Permittee
6 within thirty (30) days of written notification from the City.

7 A City Council determination that the space is necessary for a primary or secondary public use
8 or benefit shall be conclusive and final.

9
10 Section 4. In the event that the permit is not renewed, or the permission hereby granted
11 extends to its termination in thirty (30) years, or the City orders removal of the tunnel pursuant to
12 the terms of this ordinance, then within ninety (90) days after such expiration, termination or order
13 of removal, or prior to the date stated in an "Order to Remove", as the case may be, the Permittee
14 shall remove the tunnel and shall place all portions of the alley that may have been disturbed for any
15 part of the tunnel, in as good condition for public use as it was prior to construction, and in at least
16 as good condition in all respects as the abutting portions thereof. Whereupon the Director shall
17 issue a certificate discharging the Permittee from responsibility under this ordinance for occurrences
18 after the date of such discharge.

19
20 Section 5. The Permittee shall not commence reconstruction, relocation, readjustment or
21 repair of the tunnel except under the supervision of, and in strict accordance with plans and
22 specifications approved by the Director. The Director in his/her judgment may order such
23 reconstruction, relocation, readjustment or repair of the tunnel at the Permittee's own cost and
24 expense because of the deterioration or unsafe condition of the tunnel, grade separations, or the
25 installation, construction, reconstruction, maintenance, operation or repair of any and all municipally
26 owned public utilities.

1 Section 6. After notice to the Permittee, and failure of the Permittee to correct said unsafe
2 or risk prone condition within the time stated in such notice, the Director may order the tunnel
3 closed if the Director deems that it has become unsafe or creates a risk of injury to the public. In a
4 situation in which there is an immediate threat to the health or safety of the public, notice is not
5 required.

6
7 Section 7. Notwithstanding termination or expiration of the permission granted, or closure
8 or removal of the tunnel the Permittee shall remain bound by its obligation under this ordinance
9 until:

- 10 (a) the tunnel and all its equipment and property are removed from the alley;
11 (b) the area is cleared and restored in a manner and to a condition satisfactory to the
12 Director; and
13 (c) the Director certifies that the Permittee has discharged its obligation herein.

14 Provided, that upon prior notice to the Permittee and entry of written findings that such is in the
15 public interest, the Director may, in his/her sole discretion, excuse the Permittee, conditionally or
16 absolutely, from compliance with all or any of the Permittee's obligations to remove the tunnel and
17 its property and restore disturbed areas.

18
19 Section 8. The tunnel shall remain the exclusive responsibility of the Permittee. The
20 Permittee, by acceptance of this ordinance and the permission hereby granted, does release the City
21 from any and all claims resulting from damage or loss to its own property and does covenant and
22 agree for itself, its successors and assigns, with The City of Seattle, to at all times protect and save
23 harmless The City of Seattle from all claims, actions, suits, liability, loss, costs, expense or damages
24 of every kind and description (excepting only such damages that may result from the sole negligence
25 of the City), which may accrue to or be suffered by any person or persons and/or property or
26 properties, including without limitation, damage or injury to the Permittee, its officers, agents,
27 employees, contractors, invitees, tenants and tenants' invitees, licensees or its successors and
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1 assigns, by reason of the maintenance, operation or use of said tunnel, or any portion thereof, or by
2 reason of anything that has been done, or may at any time be done, by the Permittee, its
3 successors or assigns, by reason of this ordinance, or by reason of the Permittee, its successors or
4 assigns, failing or refusing to strictly comply with each and every provision of this ordinance; and if
5 any such suit, action or claim be filed, instituted or begun against the City, the Permittee its
6 successors or assigns, shall, upon notice thereof from the City, defend the same at its sole cost and
7 expense, and in case judgment shall be rendered against the City in any suit or action, the Permittee,
8 its successors or assigns, shall fully satisfy said judgment within ninety (90) days after such action or
9 suit shall have been finally determined, if determined adversely to the City. Provided that if it is
10 determined by a court of competent jurisdiction that RCW 4.24.115 applies to this ordinance, then
11 in the event claims or damages are caused by or result from the concurrent negligence of:

12 (a) the City, its agents, contractors or employees;

13 (b) the Permittee, its agents, contractors, employees or its successors or assigns, this
14 indemnity provision shall be valid and enforceable only to the extent of the negligence of the
15 Permittee or the Permittee's agents, contractors, employees or its successors or assigns.

16
17 Section 9. For as long as the Permittee, its successors and assigns, shall exercise any
18 permission granted by this ordinance and until the tunnel is entirely removed from its location as
19 described in Section 1 or until discharged by order of the Director of Seattle Transportation as
20 provided in Section 7 of this ordinance, the Permittee shall obtain and maintain in full force and
21 effect, at its own expense, insurance policies which protect the City from any all claims and risks in
22 conjunction with:

23 (a) reconstruction, operation, maintenance, use or existence of the tunnel permitted by this
24 ordinance and of any and all portions of the tunnel;

25 (b) the Permittee's activity upon or the use or occupation of the area described in Section 1
26 of this ordinance, as well as;

27 (c) any and all claims and risks in conjunction with and activity performed by the Permittee
28 by virtue of the permission granted by this ordinance.

1 Minimum insurance requirements shall be an occurrence form policy of commercial general liability,
2 placed with a company admitted and licensed to conduct business in Washington State. Minimum
3 policy limits shall be \$2,000,000 per occurrence, \$4,000,000 annual aggregate. Coverage shall
4 specifically name the tunnel exposure. Coverage shall add by endorsement The City of Seattle, its
5 elected and appointed officers, officials, employees and agents as additional insured. Coverage
6 shall contain a Separation of Insureds Clause indicating essentially that "except with respect to the
7 limits of insurance, and any rights or duties specifically assigned in this coverage part to the first
8 named insured, this insurance applies as if each named insured were the only named insured, and
9 separately to each insured against whom claim is made or suit is brought". Evidence of current
10 coverage shall be submitted to the City in the form of a copy of the full insurance policy with all
11 endorsements attached thereto, and is a condition to the validity of this permit.

12 Whenever in the judgment of the Risk Manager of The City of Seattle, such insurance filed pursuant
13 to the provisions hereof shall be deemed insufficient to fully protect The City of Seattle, the
14 Permittee shall, upon demand by the Risk Manager, furnish additional insurance in such amount as
15 may be specified by the Risk Manager.

16
17 Section 10. The Permittee shall require that any and all of its contractors performing
18 construction work on the premises as contemplated by this permit, name The City of Seattle as an
19 additional insured on all policies of public liability insurance, and shall include in all contract
20 documents a provision extending construction indemnities and warranties granted to Plaza 600
21 Building L.L.C.

22
23 Section 11. Within sixty (60) days after the effective date of this ordinance the Permittee
24 shall deliver to the Director of Transportation for filing with the City Clerk a good and sufficient
25 bond in the sum of Twenty-Five Thousand Dollars (\$25, 000.00) executed by a surety company
26 authorized and qualified to do business in the State of Washington conditioned that the Permittee
27 will comply with each and every provision of this ordinance and with each and every order of the
28 Director pursuant thereto; provided, that if the Mayor of the City of Seattle in his/her judgment

1 shall deem any bond or bonds filed to be insufficient and demand a new or additional bond, the
2 Permittee shall furnish a new or additional bond in such amount as the Mayor may specify to be
3 necessary to fully protect the City. Said bond shall remain in effect until such time as the tunnel
4 is entirely removed from its location as described in Section 1, or until discharged by order of the
5 Director as provided in Section 7 of this ordinance.

6
7 Section 12. The Permittee, its successors and assigns shall not assign, transfer, mortgage,
8 pledge or encumber any privileges conferred by this ordinance without the consent of the City
9 Council by resolution. If permission is granted, the assignee or transferee shall be bound by all
10 terms and conditions of this ordinance. The permission conferred by this ordinance shall not be
11 assignable or transferable by operation of law.

12
13 Section 13. The Permittee, its successors and assigns, shall pay to The City of Seattle such
14 amounts as may be justly chargeable by said City as costs of inspection of said tunnel during
15 reconstruction, repair, annual structural inspections, and at other times deemed necessary to ensure
16 the safety of the tunnel, under the direction of the Director of Transportation and in addition shall
17 promptly pay to the City in advance upon statements rendered by the Director of Transportation an
18 annual fee for the privileges granted and exercised hereunder of Two Thousand Eight Hundred
19 Seven Dollars (\$2,807.00) for each of the first five years of the permit. The fee will then be
20 evaluated by the City and a new fee will be established by resolution of the City Council for each
21 succeeding five years of the permit. All payments shall be made to the City Finance Director for
22 credit to the General Fund.

23
24 Section 14. The Permittee shall deliver its written acceptance of the permission conferred
25 by this ordinance and its terms and conditions to the Director of Transportation within sixty (60)
26 days after the effective date of this ordinance. The acceptance shall be filed with the City Clerk. If
27 no such acceptance is received by then, the privileges provided by this ordinance shall be deemed
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declined or abandoned; and the permission extended, contingent upon its acceptance, deemed
lapsed and forfeited.

Section 15. This ordinance shall take effect and be in force thirty (30) days from and
after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10)
days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

PASSED by the City Council of the City of Seattle this 21st day of
June, 1999, and signed by me in open session in authentication of its passage this
____ day of _____, 1999.

Sue Arnold
President _____ of the City Council

Approved by me this 29th day of June, 1998.

Paul Schell
Mayor

Filed by me this 30th day of June, 1998.

Gini Donfeld
acting City Clerk

(Seal)

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE
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**PLAZA 600 BUILDING LLC
SUITE 300
1809 SEVENTH AVENUE
SEATTLE, WA 98101-1313**

City of Seattle
Seattle Transportation, Street Use
Seattle Municipal Building
Room 708
600 Fourth Avenue
Seattle, WA 98104-1879
Attn. Mr. C. Frederick White

HAND DELIVERED

Re: Tunnel in the 6th/7th Avenue Alley - Ordinance Renewal

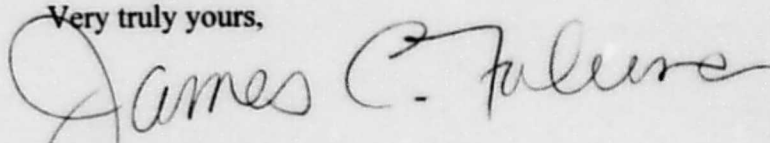
Dear Mr. White:

Thank you for your letter of August 16, 1999. Pursuant to Sections 11 and 14 of the Ordinance, Plaza 600 Building LLC hereby accepts the permission conferred by Ordinance 119508 and the terms and conditions thereof.

Our insurance broker, Mr. Ed Fugo of Kibble & Prentice, will provide you with the bond and insurance information which you requested.

Please direct all future correspondence to me at the above address.
Thank you.

Very truly yours,


James C. Falconer
President

cc. D. Mark Houtchens
cc. Copy filed with Clerk of the City of Seattle

FILED
CITY OF SEATTLE
99 SEP 22 PM 2:15
CITY CLERK

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**PLAZA 600 BUILDING LLC
SUITE 300
1809 SEVENTH AVENUE
SEATTLE, WA 98101-1313**

City of Seattle
Seattle Transportation, Street Use
Seattle Municipal Building
Room 708
600 Fourth Avenue
Seattle, WA 98104-1879
Attn. Mr. C. Frederick White

HAND DELIVERED

FILED
CITY OF SEATTLE
99 SEP 15 AM 10:11
CITY CLERK

Re: Tunnel in the 6th/7th Avenue Alley - Ordinance Renewal

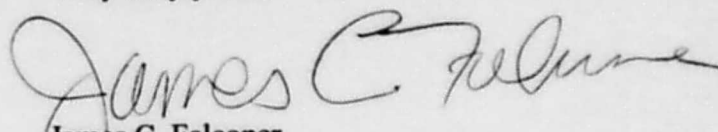
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cc. D. Mark Houtchens
cc. Copy filed with Clerk of the City of Seattle

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City of Seattle

Paul Schell, Mayor

Seattle Transportation

Daryl R. Grigsby, Director

April 20, 1999

The Honorable Sue Donaldson, President
Seattle City Council
1100 Municipal Building
Seattle, Washington 98104

VIA: Mayor Paul Schell

Subject: Plaza 600 Building L.L.C. Vehicular and Pedestrian Tunnel Across
the Sixth - Seventh Avenues Alley

Honorable Members:

Ordinance 97096, approved in 1968, granted the Vance Corporation permission to construct, maintain and operate a vehicular and pedestrian tunnel under and across the 6th - 7th Avenues Alley, north of Stewart Street. The permission granted, which was renewable up to a maximum of thirty years, has now expired. Mr. Robert I. Heller, on behalf of the permittee, requests that a new ordinance be granted, by the City Council, to allow for the continued use and maintenance of the tunnel, and also, that the name be changed to Plaza 600 Building L.L.C.

Mr. Heller has reviewed the terms and conditions of the draft ordinance, which contains a proposed annual fee of \$2,807.00, and found them to be acceptable.

I recommend that the City Council approve the enclosed draft ordinance, granting the Plaza 600 Building L.L.C. permission to continue the maintenance and use of the existing tunnel.

Please contact Ray Allwine at 684-5270, if you have any questions or concerns.

Respectfully Submitted,

Daryl R. Grigsby, Director

DRG/rha

Enclosures

cc: Vincent H. Brown, Street Use Division Manager, SEATRAN
Ray Allwine, Street Use Supervisor, SEATRAN
Street Use Central Files

Seattle Municipal Building, 600 Fourth Avenue, Room 708, Seattle, WA 98104-1879
Tel: (206) 684-7623, TTY/TDD: (206) 684-4009, Fax: (206) 684-5180

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Graham & James LLP/Riddell Williams P.S.



April 12, 1999

Ray Allwine
Seattle Transportation Department
600 Fourth Avenue, Suite 501
Seattle, WA 98104

Re: Vance Tunnel Ordinance

Dear Ray:

I have now received the insurance information and I am forwarding this to you, attached. Note that the Certificate of Liability Insurance issued to certificate holder City of Seattle states that the City and its employees and officials, etc., are "additional insureds" with respect to Vance Corporation's operations regarding the Plaza 600 Building LLC and the underground tunnel. Please review this material and call me to confirm that it meets the City's needs for preparation of the tunnel license ordinance.

As I understand the process, you will then proceed with preparation of the tunnel ordinance and presentation of the ordinance to the City Council. Following approval of the ordinance, I will draft a "letter of acceptance" on behalf of the licensee, which I send to you as formal acceptance of the ordinance.

Thank you for your assistance.

Sincerely,

Robert I. Heller
of
GRAHAM & JAMES LLP/RIDDELL WILLIAMS P.S.

RIH/df
Our File: 43732-1
Enclosure
Cc: Jim Falconer (w/encl.)

Attorneys

1001 Fourth Avenue Plaza
Suite 4500
Seattle, WA
98154-1065
Tel (206) 624 3600
Fax (206) 389 1708

Direct tel
(206) 389 1580

Internet
rheller@gj.com

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TIME AND DATE STAMP

SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY
THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

Richard J. McLean _____

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO: _____



PRESIDENT'S SIGNATURE

C. S. 20.28

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STATE OF WASHINGTON - KING COUNTY

107854
City of Seattle, City Clerk

—SS.

No. **ORD IN FULL**

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:ORD 119508/FULL

was published on

07/15/99

The amount of the fee charged for the foregoing publication is the sum of \$ _____, which amount has been paid in full.

Subscribed and sworn to before me on

07/15/99

Notary Public for the State of Washington,
residing in Seattle

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Affidavit of Publication

City of Seattle

ORDINANCE NO. 119508

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(a) the City Council determines, by ordinance, that the space occupied by the tunnel is necessary for any primary or secondary public use or benefit, or that the tunnel interferes with any primary or secondary public use or benefit; or

(b) the Director of Transportation ("Director") determines that any term or condition of this ordinance has been violated, and such violation is not corrected by the Permittee within thirty (30) days of written notification from the City.

A City Council determination that the space is necessary for a primary or secondary public use or benefit shall be conclusive and final.

Section 4. In the event that the permit is not renewed, or the permission hereby granted extends to its termination in thirty (30) years, or the City orders removal of the tunnel pursuant to the terms of this ordinance, then within ninety (90) days after such expiration, termination or order of removal, or prior to the date stated in an "Order to Remove", as the case may be, the Permittee shall remove the tunnel and shall place all portions of the alley that may have been disturbed for any part of the tunnel, in as good condition for public use as it was prior to construction, and in at least as good condition in all respects as the abutting portions thereof. Whereupon the Director shall issue a certificate discharging the Permittee from responsibility under this ordinance for occurrences after the date of such discharge.

Section 5. The Permittee shall not commence reconstruction, relocation, readjustment or repair of the tunnel except under the supervision of, and in strict accordance with plans and specifications approved by the Director. The Director in his/her judgment may order such reconstruction, relocation, readjustment or repair of the tunnel at the Permittee's own cost and expense because of the deterioration or unsafe condition of the tunnel, grade separations, or the installation, construction, reconstruction, maintenance, operation or repair of any and all municipally owned public utilities.

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(a) the tunnel and all its equipment and property are removed from the alley;

(b) the area is cleared and restored in a manner and to a condition satisfactory to the Director; and

(c) the Director certifies that the Permittee has discharged its obligation herein.

Provided, that upon prior notice to the Permittee and entry of written findings that such is in the public interest, the Director may, in his/her sole discretion, excuse the Permittee, conditionally or absolutely, from compliance with all or any of the Permittee's obligations to remove the tunnel and its property and restore disturbed areas.

Section 8. The tunnel shall remain the exclusive responsibility of the Permittee. The Permittee, by acceptance of this ordinance and the permission hereby granted, does release the City from any and all claims resulting from damage or loss to its own property and does covenant and agree for itself, its successors and assigns, with The City of Seattle, to at all times protect and save harmless The City of Seattle from all claims, actions, suits, liability, loss, costs, expense or damages of every kind and description (excepting only such damages that may result from the sole negligence of the City), which may accrue to or be suffered by any person or persons and/or property or properties, including without limitation, damage or injury to the Permittee, its officers, agents, employees, contractors, invitees, tenants and tenants' invitees, licensees or its successors and assigns, by reason of the maintenance, operation or use of said tunnel, or any portion thereof, or by reason of anything that has been done, or may at any time be done, by the Permittee, its successors or assigns, by reason of this ordinance, or by reason of the Permittee, its successors or assigns, failing or refusing to strictly comply with each and every provision of this ordinance; and if any such suit, action or claim be filed, instituted or begun against the City, the Permittee its successors or assigns, shall, upon notice thereof from the City, defend the same at its sole cost and expense, and in case judgment shall be rendered against the City in any suit or action, the Permittee, its successors or assigns, shall fully satisfy said judgment within ninety (90) days after such action or suit

named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought. Evidence of current coverage shall be submitted to the City in the form of a copy of the full insurance policy with all endorsements attached thereto, and is a condition to the validity of this permit.

Whenever in the judgment of the Risk Manager of The City of Seattle, such insurance filed pursuant to the provisions hereof shall be deemed insufficient to fully protect The City of Seattle, the Permittee shall, upon demand by the Risk Manager, furnish additional insurance in such amounts as may be specified by the Risk Manager.

Section 10. The Permittee shall require that any and all of its contractors performing construction work on the premises as contemplated by this permit, name The City of Seattle as an additional insured on all policies of public liability insurance, and shall include in all contract documents a provision extending construction indemnities and warranties granted to Plaza 600 Building L.L.C.

Section 11. Within sixty (60) days after the effective date of this ordinance the Permittee shall deliver to the Director of Transportation for filing with the City Clerk a good and sufficient bond in the sum of Twenty-Five Thousand Dollars (\$25,000.00) executed by a surety company authorized and qualified to do business in the State of Washington conditioned that the Permittee will comply with each and every provision of this ordinance and with each and every order of the Director pursuant thereto; provided, that if the Mayor of the City of Seattle in his/her judgment shall deem any bond or bonds filed to be insufficient and demand a new or additional bond, the Permittee shall furnish a new or additional bond in such amount as the Mayor may specify to be necessary to fully protect the City. Said bond shall remain in effect until such time as the tunnel is entirely removed from its location described in Section 1, or until discharged by order of the Director as provided in Section 7 of this ordinance.

Section 12. The Permittee, its successors and assigns shall not assign, transfer, mortgage, pledge or encumber any privileges conferred by this ordinance without the consent of the City Council by resolution. If permission is granted, the assignee or transferee shall be bound by all terms and conditions of this ordinance. The permission conferred by this ordinance shall not be assignable or transferable by operation of law.

Section 13. The Permittee, its successors and assigns, shall pay to The City of Seattle such amounts as may be justly chargeable by said City as costs of inspection of said tunnel during reconstruction, repair, annual structural inspections, and at other times deemed necessary to ensure the safety of the tunnel, under the direction of the Director of Transportation and in addition shall promptly pay to the City in advance upon statements rendered by the Director of Transportation an annual fee for the privileges granted and exercised hereunder of Two Thousand Eight Hundred Seven Dollars (\$2,807.00) for each of the first five years of the permit. The fee will then be evaluated by the City and a new fee will be established by resolution of the City Council for each succeeding five years of the permit. All payments shall be made to the City Finance Director for credit to the General Fund.

Section 14. The Permittee shall deliver its written acceptance of the permission conferred by this ordinance and its terms and conditions to the Director of Transportation within sixty (60) days after the effective date of this ordinance. The acceptance shall be filed with the City Clerk. If no such acceptance is received by then, the privileges provided by this ordinance shall be deemed declined or abandoned; and the permission extended, contingent upon its acceptance, deemed lapsed and forfeited.

Section 15. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council of the City of Seattle this 21st day of June, 1999, and signed by me in open session in authentication of its passage this 21st day of June, 1999.

SUE DONALDSON, President of the City Council.

Approved by me this 29th day of June, 1999.

PAUL SCHELL, Mayor.

Filed by me this 30th day of June, 1999.

(Seal) ERNIE DORNFIELD, Acting City Clerk.

Publication ordered by JUDITH PIPPIN, City Clerk.

Date of official publication in Daily Journal of Commerce, Seattle, July 15, 1999.

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condemned public use or benefit, or that the tunnel interferes with any primary or secondary public use or benefit; or

(b) The Director of Transportation ("Director") determines that any term or condition of this ordinance has been violated, and such violation is not corrected by the Permittee within thirty (30) days of written notification from the City.

A City Council determination that the space is necessary for a primary or secondary public use or benefit shall be conclusive and final.

Section 4. In the event that the permit is not renewed, or the permission hereby granted extends to its termination in thirty (30) years, or the City orders removal of the tunnel pursuant to the terms of this ordinance, then within ninety (90) days after such expiration, termination or order of removal, or prior to the date stated in an "Order to Remove", as the case may be, the Permittee shall remove the tunnel and shall place all portions of the alley that may have been disturbed for any part of the tunnel, in as good condition for public use as it was prior to construction, and in at least as good condition in all respects as the abutting portions thereof. Whereupon the Director shall issue a certificate discharging the Permittee from responsibility under this ordinance for occurrences after the date of such discharge.

Section 5. The Permittee shall not commence reconstruction, relocation, readjustment or repair of the tunnel except under the supervision of, and in strict accordance with plans and specifications approved by the Director. The Director in his/her judgment may order such reconstruction, relocation, readjustment or repair of the tunnel at the Permittee's own cost and expense because of the deterioration or unsafe condition of the tunnel, grade separations, or the installation, construction, reconstruction, maintenance, operation or repair of any and all municipally owned public utilities.

Section 6. After notice to the Permittee, and failure of the Permittee to correct unsafe or risk prone condition within the time stated in such notice, the Director may order the tunnel closed if the Director deems that it has become unsafe or creates a risk of injury to the public. In a situation in which there is an immediate threat to the health or safety of the public, notice is not required.

Section 7. Notwithstanding termination or expiration of the permission granted, or closure or removal of the tunnel the Permittee shall remain bound by its obligation under this ordinance until:

(a) the tunnel and all its equipment and property are removed from the alley;

(b) the area is cleared and restored in a manner and to a condition satisfactory to the Director; and

(c) the Director certifies that the Permittee has discharged its obligation herein.

Provided, that upon prior notice to the Permittee and entry of written findings that such is in the public interest, the Director may, in his/her sole discretion, cause the Permittee, conditionally or absolutely, from compliance with all or any of the Permittee's obligations to remove the tunnel and its property and restore disturbed areas.

Section 8. The tunnel shall remain the exclusive responsibility of the Permittee. The Permittee, by acceptance of this ordinance and the permission hereby granted, does release the City from any and all claims resulting from damage or loss to its own property and does covenant and agree for itself, its successors and assigns, with The City of Seattle, to at all times protect and save harmless The City of Seattle from all claims, actions, suits, liability loss, costs, expenses or damages of every kind and description (including only such damages that may result from the sole negligence of the City), which may arise to or be suffered by any person or persons using the alley or property, including without limitation, damage or injury to the Permittee, its officers, agents, employees, contractors, invitees, tenants and tenants' invitees, businesses or its successors and assigns, by reason of the maintenance, operation or use of said tunnel, or any part thereof, or by reason of anything that has been done, or may at any time be done, by the Permittee, its successors or assigns, by reason of this ordinance, or by reason of the Permittee, its successors or assigns, failing or refusing to strictly comply with each and every provision of this ordinance; and if any such suit, action or claim be filed, instituted or begun against the City, the Permittee its successors or assigns, shall upon notice thereof from the City, defend the same at its sole cost and expense, and in case judgment shall be rendered against the City any suit or action, the Permittee, its successors or assigns, shall fully satisfy said judgment within thirty (30) days after such action or suit shall have been finally determined, if determined adversely to the City. Provided that if it is determined by a court of competent jurisdiction that RCW 4.34.115 applies to this ordinance, then in the event claims or damages are caused by or result from the concurrent negligence of:

(a) the City, its agents, contractors or employees;

(b) the Permittee, its agents, contractors, employees or its successors or assigns, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Permittee or the Permittee's agents, contractors, employees or its successors or assigns.

Section 9. For as long as the Permittee, its successors and assigns, shall exercise any permission granted by this ordinance and until the tunnel is entirely removed from its location as described in Section 1 or until discharged by order of the Director of Seattle Transportation as provided in Section 7 of this ordinance, the Permittee shall obtain and maintain in full force and effect, at its own expense, insurance policies which protect the City from any all claims and risks in connection with:

(a) reconstruction, operation, maintenance, use or existence of the tunnel permitted by this ordinance and of any and all portions of the tunnel;

(b) the Permittee's activity upon or the use or existence of the area described in Section 1 of this ordinance, as well as;

(c) any and all claims and risks in connection with and activity performed by the Permittee by virtue of the permission granted by this ordinance.

Minimum insurance requirements shall be an occurrence form policy of commercial general liability, placed with a company admitted and licensed to conduct business in Washington State. Minimum policy limits shall be \$2,000,000 per occurrence, \$4,000,000 annual aggregate. Coverage shall specifically name the tunnel owners. Coverage shall add by endorsement The City of Seattle, its elected and appointed officers, officials, employees and agents as additional insured. Coverage shall contain a Separation of Interests Clause indicating essentially that "except with respect to the limits of insurance, and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each

able by said City as costs of inspection of said tunnel during reconstruction, repair, annual structural inspections, and at other times deemed necessary to ensure the safety of the tunnel, under the direction of the Director of Transportation and in addition shall promptly pay to the City in advance upon statements rendered by the Director of Transportation an annual fee for the privileges granted and exercised hereunder of Two Thousand Eight Hundred Seven Dollars (\$2,807.00) for each of the first five years of the permit. The fee will then be evaluated by the City and a new fee will be established by resolution of the City Council for each succeeding five years of the permit. All payments shall be made to the City Finance Director for credit to the General Fund.

Section 14. The Permittee shall deliver its written acceptance of the permission conferred by this ordinance and its terms and conditions to the Director of Transportation within sixty (60) days after the effective date of this ordinance. The acceptance shall be filed with the City Clerk. If no such acceptance is received by then, the privileges provided by this ordinance shall be deemed declined or abandoned; and the permission extended, contingent upon its acceptance, deemed lapsed and forfeited.

Section 15. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.84.050.

Passed by the City Council of the City of Seattle this 31st day of June, 1999, and signed by me in open session in authentication of its passage this 31st day of June, 1999.

SUE DONALDSON, President of the City Council.

Approved by me this 30th day of June, 1999.

PAUL SCHELL, Mayor.

Filed by me this 30th day of June, 1999.

JOHN E. DORNFIELD, Acting City Clerk.

Publication ordered by JUDITH PIPPIN, City Clerk.

Date of official publication in Daily Journal of Commerce, Seattle, July 15, 1999.

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