

Ordinance No. 123059

Council Bill No. 116595  
Jean Golden

AN ORDINANCE authorizing the Director of the City of Seattle's Fleets and Facilities Department to execute a lease agreement between the City and Morningstar Investments, LLC, d/b/a ChewChews, a Washington limited liability company, for the continued operation of a restaurant establishment in the Seattle Municipal Tower.

Related Legislation File: \_\_\_\_\_

Date Introduced and Referred: <u>7.27.09</u>	To: (committee): <u>Finance + Budget</u>
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: <u>8-10-09</u>	Date Presented to Mayor: <u>8-10-09</u>
Date Signed by Mayor: <u>8.17.09</u>	Date Returned to City Clerk: <u>8.17.09</u>
Published by Title Only <u>✓</u>	Date Vetoed by Mayor:
Published in Full Text <u>2</u>	
Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

### The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by: Jean Golden

#### Committee Action:

Date	Recommendation	Vote
<u>8/06/09</u>	<u>Pass</u>	<u>Y-JG, NL</u>

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

#### Full Council Action:

Date	Decision	Vote
<u>8-10-09</u>	<u>Passed</u>	<u>90</u>

*Law Department*

ORDINANCE 123059

1  
2 AN ORDINANCE authorizing the Director of the City of Seattle’s Fleets and Facilities  
3 Department to execute a lease agreement between the City and Morningstar Investments,  
4 LLC, d/b/a ChewChews, a Washington limited liability company, for the continued  
5 operation of a restaurant establishment in the Seattle Municipal Tower.

6  
7 WHEREAS, Morningstar Investments, LLC, first entered into a lease for its present location in  
8 1992; and

9  
10 WHEREAS, Morningstar Investments, LLC, has continued to be a tenant in SMT since the City  
11 acquired the property in 1996; and

12  
13 WHEREAS, the City and Morningstar Investments, LLC, have agreed to terms for a new lease  
14 for the space currently occupied by Morningstar Investments, LLC; and

15  
16 WHEREAS, City Council approval of this lease is required under Seattle Municipal Code  
17 3.18.160 because the lease term, including the option to extend, exceeds sixty calendar  
18 months; NOW, THEREFORE,

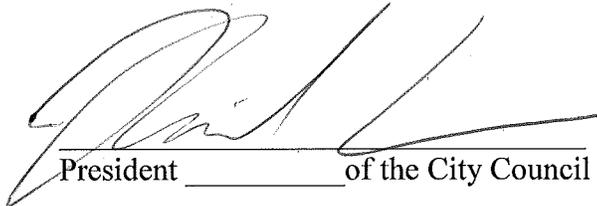
19  
20 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

21  
22 Section 1. As requested by the Director of the Fleets and Facilities Department and  
23 recommended by the Mayor, said Director or designee is hereby authorized to execute, for and  
24 on behalf of the City of Seattle, a lease agreement with Morningstar Investments, LLC, d/b/a  
25 ChewChews, substantially in the form of Attachment “1” attached hereto, and providing for  
26 Morningstar Investments, LLC’s tenancy and occupancy of a portion of the real property located  
27 at 700 Fifth Avenue in Seattle.  
28

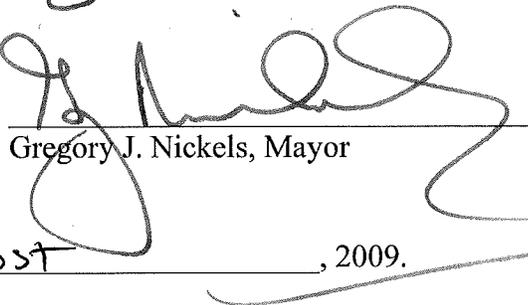


1 Section 2. This ordinance shall take effect and be in force thirty (30) days from and after  
2 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days  
3 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

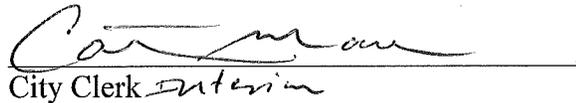
4 Passed by the City Council the 10<sup>th</sup> day of August, 2009, and  
5 signed by me in open session in authentication of its passage this  
6 10<sup>th</sup> day of August, 2009.

7  
8  
9   
10 President \_\_\_\_\_ of the City Council

11 Approved by me this 17<sup>th</sup> day of August, 2009.

12  
13   
14 Gregory J. Nickels, Mayor

15  
16 Filed by me this 17<sup>th</sup> day of August, 2009.

17  
18   
19 City Clerk Interim

20 (Seal)

21  
22 Attachment 1: Seattle Municipal Tower Lease



Attachment 1 to FFD\_ChewChewsSMT\_ORD

**SEATTLE MUNICIPAL TOWER LEASE  
BETWEEN  
THE CITY OF SEATTLE,  
AS LANDLORD,  
AND  
MORNINGSTAR INVESTMENTS, LLC, d/b/a ChewChews  
AS TENANT**



Attachment 1 to FFD\_ChewChewsSMT\_ORD  
**SEATTLE MUNICIPAL TOWER LEASE**  
**BETWEEN**  
**THE CITY OF SEATTLE,**  
**AS LANDLORD,**  
**AND**  
**MORNINGSTAR INVESTMENTS, LLC d/b/a ChewChews**  
**AS TENANT**

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# **SEATTLE MUNICIPAL TOWER LEASE**

THIS LEASE is entered into by and between **THE CITY OF SEATTLE** ("Landlord"), a city of the first class of the State of Washington and **MORNINGSTAR INVESTMENTS, LLC, d/b/a ChewChews** ("Tenant"), a Washington limited liability company organized under the laws of the State of Washington.

Landlord and Tenant covenant and agree as follows:

1. **Lease Data; Exhibits.** The following terms shall have the following meanings, except as otherwise specifically modified in this Lease:

- A. **Building:** Seattle Municipal Tower, 700 Fifth Avenue, Seattle, King County, Washington 98104, situated on real property described more particularly in Subsection 2.A.
- B. **Premises:** A portion of the Building commonly described as Suite 603, consisting of approximately 1,696 Rentable Square Feet located on Building Floor 6 as outlined on the floor plan of the Building attached hereto as Exhibit A (the "Floor Plan of Premises").
- C. **Commencement Date:** Upon the full execution and delivery of this Lease.
- D. **Expiration Date:** The last day of the sixtieth (60<sup>th</sup>) full calendar month following the Commencement Date. For example, if the Commencement Date is May 10, 2009, the Lease shall expire May 31, 2014.
- E. **Base Rent and Additional Charges:** For use and occupancy of the Premises during the Initial Term hereof, Tenant shall pay Landlord Base Rent in the amount stated below, as and when specified in Section 4. Whether or not so designated, all other sums due from Tenant under this Lease shall constitute Additional Charges, payable when specified in this Lease.

<b>LEASE MONTHS</b>	<b>BASE RENT PER RSF</b>	<b>MONTHLY RENT</b>	<b>ANNUAL RENT</b>
01-36	\$12.75	\$1,802.00	\$21,624.00
37-48	\$13.50	\$1,908.00	\$22,896.00
49-60	\$14.25	\$2,014.00	\$24,168.00

- F. **Security Deposit:** \$5,000.00.
- G. **Base Year:** INTENTIONALLY OMITTED.
- H. **Expense Year:** INTENTIONALLY OMITTED.



I. Parking: The license granted pursuant to Section 37 of this Lease is limited to one (1) automobile.

J. Permitted Use: Restaurant offering a menu substantially the same as the menu shown on Exhibit C.

K. Notice Addresses:

To Landlord: c/o CB Richard Ellis, Inc.  
700 Fifth Avenue, Suite 4040  
Seattle, WA 98104

To Tenant: Morningstar Investments, LLC  
700 Fifth Avenue, Suite 603  
Seattle, WA 98104  
Attn: Jong Ho Yang

L. Exhibits: The following exhibits are made a part of this Lease:

Exhibit A - Floor Plan of Premises  
Exhibit B - Rules and Regulations  
Exhibit C - Menu  
Exhibit D - Personal Guaranty

## 2. Premises.

A. Grant. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, those certain premises (the "Premises") located on the floor(s) and having the Rentable Area referenced in Section 1. The Premises are part of the Building which is located on and includes the real property described as follows:

Lots 1, 4, 5, 6, 7 and 8 in Block 29 of addition to the Town of Seattle, as laid out by the claim of C. D. Boren and A. A. Denny and H. L. Yesler (commonly known as C. D. Boren's addition to the City of Seattle), as per Plat recorded in Volume 1 of Plats, Page 25, Records of King County; together with the westerly 1/2 of vacated alley adjoining Lots 1 and 4; and together with all of the vacated alley adjoining Lots 5, 6, 7 and 8; Lots 2 and 3 in Block 29 of addition to the Town of Seattle, as laid out on the claim of C. D. Boren and A. A. Denny and H. L. Yesler (commonly known as C. D. Boren's addition to the City of Seattle), as per plat recorded in Volume 1 of Plats, Page 25, Records of King County; together with the northeasterly 1/2 of vacated alley adjoining; situate in the City of Seattle, County of King, State of Washington.



- B. Confirmation of Rentable Square Feet. Landlord and Tenant agree that as of the Commencement Date, the Premises comprise 1,696 Rentable Square Feet.
- C. Condition. The Premises are leased by Landlord and accepted by Tenant in an "as is" condition.
- D. Common Areas. During the Lease Term, Tenant and its licensees, invitees, customers and employees shall have the non-exclusive right to use the Building garage and all entrances, lobbies, elevators, stairs, corridors, restrooms and other public areas of the Building (the "Common Areas") in common with Landlord, other Building tenants and their respective licensees, invitees, customers and employees. Landlord shall at all times have exclusive control and management of the Common Areas and no diminution thereof shall be deemed a constructive or actual eviction or entitle Tenant to compensation or a reduction or abatement of rent.
- E. Alterations. Landlord, in its discretion, may increase, decrease or change the number, locations and dimensions of any hallways, lobby areas, Common Areas and other improvements shown on Exhibit A that are not within the Premises. Landlord reserves the right from time to time (i) to install, use, maintain, repair, relocate and replace pipes, ducts, conduits, wires and appurtenant meters and equipment for service to the Premises or to other parts of the Building in areas above the suspended ceiling surfaces, below the floor surfaces, within the walls and in the central core areas of the Building within the Premises and elsewhere in the Building; (ii) to alter or expand the Building; and (iii) to alter, relocate or substitute any of the Common Areas.
- F. Personal Guaranty. This Lease is made expressly contingent upon the concurrent execution of a personal lease guaranty by Jong Ho Yang in the form attached and incorporated herein as Exhibit D (the "Guaranty"). The Guaranty is provided as the Landlord's security for full performance of Tenant's obligations under this Lease and will remain in effect throughout the Term of the Lease.
- G. Prospective Tenants. Landlord reserves to itself the right to enter the Premises at reasonable hours for purposes of showing the Premises to prospective tenants (i) during the final twelve (12) months of the Lease Term, provided that the Landlord provides twelve (12) hours advance notice and the entry does not substantially interfere with the Tenant's operation of its business, or (ii) after an event of Tenant Default that is not cured within the time specified in Section 20.A. Additionally, at any time during the final nine (9) months of the Lease Term or after an event of Default that is not timely cured, Landlord reserves the right to place signs in, at, and around the Premises for purposes of re-letting the Premises after the expiration or termination of the Term.



3. **Lease Term.**

- A. **Initial Term.** This Lease shall be for a term ("Lease Term") beginning on the Commencement Date and ending on the Expiration Date, unless extended or sooner terminated in accordance with the terms of this Lease. Notwithstanding the foregoing, all provisions of this Lease other than those relating to payment of Base Rent shall become effective upon the first to occur of (a) the date that Tenant or any of its officers, employees, agents or contractors is first present on the Premises, whether for inspection, construction, installation or other purposes; or (b) such other date, if any, as may be specified in an exhibit hereto as the effective date for such provisions.
- B. **Tenant's Option to Extend the Lease Term.** Tenant shall have a one-time right to extend the Lease Term for an additional twenty-four (24) month term at Fair Market Rental Rate, as defined in Subsection 4.B. below. Tenant must exercise the option to extend by providing the Landlord written notice, as provided in Section 30, no less than nine (9) months and no more than twelve (12) months prior to the Expiration Date, time being of the essence. Additionally, in order to validly exercise the option, Tenant must not be in Default of any of its obligations under this Lease at the time Tenant provides notice. Additionally, the Landlord may, in its discretion, terminate the option to extend if Tenant is in Default at any time after providing notice and prior to the commencement of the extended term, unless Tenant cures such Default within the time required in Subsection 21.A.

4. **Rent.**

- A. **Rent During Initial Lease Term.** Tenant shall pay to Landlord at the address and to the account specified by Landlord, without notice or demand or any setoff or deduction whatsoever, in lawful money of the United States (a) one-twelfth (1/12th) of the annual Base Rent specified in Subsection 1.E in advance on the first day of each month and (b) Additional Charges as and when specified elsewhere in this Lease, but if not specified, then within ten (10) days after demand. Base Rent and, if appropriate, as reasonably determined by Landlord, Additional Charges shall be prorated on a daily basis for any partial month within the Lease Term, and for any partial initial month in the Lease Term shall be paid on the first day of the Lease Term.
- B. **Rent During Extended Lease Term.** If Tenant elects to extend the Lease Term pursuant to Section 3.B, the Base Rent for the extended term shall be equal to the Fair Market Rental Rate for the full two-year extended term. "Fair Market Rental Rate" shall mean the annual amount per rentable square foot that a willing, comparable, non-equity lessee would pay, and a willing, comparable lessor of a comparable first-class downtown Seattle office building would accept, in an arms-length transaction, giving appropriate consideration to, among other matters,



annual rental rates per rentable square foot, building services being provided by the lessor, building operating cost escalators, and size and location of premises being leased, tenant improvement allowances and rental concessions. Landlord shall advise Tenant in writing of Landlord's Fair Market Rental Rate within ten (10) days of receiving Tenant's notice pursuant to Subsection 3.B. If Tenant disagrees with such Fair Market Rental Rate, it shall advise Landlord in writing thereof within twenty (20) days after the date of Landlord's notice of the Fair Market Rental Rate. If there is a disagreement on such calculation, the parties shall promptly meet to attempt to resolve their differences. If these differences as to the Fair Market Rental Rate are not resolved within a thirty (30) day period, then the parties shall submit the matter to arbitration in accordance with the terms of Subsection 4.C so that the Fair Market Rental Rate is determined no later than the expiration of the Initial Lease Term.

- C. Arbitration of Fair Market Rental Rate. If the parties are unable to reach agreement on the Fair Market Rental Rate during the period specified in Subsection 4.B, then within ten (10) days thereafter either party may advise the other in writing of the name and address of its arbitrator. Each arbitrator shall be qualified as a real estate appraiser familiar with rental rates in comparable first class Seattle office buildings who would qualify as an expert witness. Within ten (10) days after receipt of such notice from the initiating party (the "Instigator") designating its arbitrator, the other party (the "Recipient") shall give notice to Instigator, specifying the name and address of the person designated by Recipient to act as arbitrator on its behalf who shall be similarly qualified. If Recipient fails to notify Instigator of the appointment of its arbitrator within or by the time above specified, then the arbitrator appointed by Instigator shall be the arbitrator to determine the issue. The duty of the arbitrator(s) shall be to determine the Fair Market Rental Rate. If the two (2) arbitrators are so chosen, the arbitrators so chosen shall meet within ten (10) days after the second arbitrator is appointed and, if within ten (10) days after such first meeting the two arbitrators are unable to agree promptly upon a determination of the Fair Market Rental Rate, they, themselves, shall appoint a third arbitrator, who shall be a competent and impartial person with qualifications similar to those required of the first two arbitrators. If they are unable to agree upon such appointment within five (5) days after expiration of said ten (10) day period, the third arbitrator shall be selected by the parties themselves, if they can agree thereon, within a further period of ten (10) days. If the parties do not so agree, then either party, on behalf of both, may request appointment of such a qualified person by the then presiding judge of King County Superior Court acting in his private non-judicial capacity, and the other party shall not raise any questions as to such judge's full power and jurisdiction to entertain the application for and make the appointment, and the parties agree to indemnify and hold the presiding judge fully and completely harmless from and against all claims arising out of the presiding judge's appointment of an arbitrator. The three (3) arbitrators shall decide the dispute, if it has not been previously resolved, by following the procedure set forth in this section. The arbitrators selected by each of the parties shall state in writing his



determination of the Fair Market Rental Rate supported by the reasons therefore. The arbitrators shall arrange for the simultaneous exchange of such proposed determinations and the delivery of a counterpart copy to each party. The role of the third arbitrator shall be to select which of the two proposed resolutions most closely approximates his own determination of Fair Market Rental Rate. The third arbitrator shall have no right to propose a middle ground or any modification of either of the two proposed determinations. The determination chosen by the third arbitrator as most closely approximating his own determination shall constitute the collective decision of the arbitrators and be final and binding upon the parties.

- (1) In the event of a failure, refusal or inability of any arbitrator to act, his successor shall be appointed by him, but in the case of the third arbitrator, his successor shall be appointed in the same manner as provided for appointment of the third arbitrator. The arbitrators shall attempt to decide the issue within ten (10) days after the appointment of the third arbitrator. Any decision in which the arbitrator appointed by Landlord and the arbitrator appointed by Tenant concur shall be binding and conclusive upon the parties. Each party shall pay the fee and expenses of its respective arbitrator and both parties shall share equally the fee and expenses of the third arbitrator, if any. The attorneys' fees and expenses of counsel for the respective parties and of witnesses shall be paid by the respective party engaging such counsel or calling such witness.
- (2) The arbitrators shall have the right to consult experts and competent authorities with factual information or evidence pertaining to a determination of the Fair Market Rental Rate, but any such consultation shall be made in the presence of both parties with full right on their part to cross examine. The arbitrators shall render their determination in writing and deliver a counterpart copy thereof to each party. The arbitrators shall have no power to modify the provisions of this Lease.

**5. Tenant's Share of Building Operating Costs and Real Property Taxes.**

The Tenant shall not be responsible for the payment of Building operating costs, other than the costs under Section 9.

- 6. Late Charge; Interest.** If Tenant fails to pay any Base Rent or Additional Charge due hereunder within ten (10) days after the due date, a late charge equal to five percent (5%) of the unpaid amount shall be assessed and be immediately due and payable. In addition, interest shall accrue at the rate of eighteen percent (18%) per annum on any Base Rent or Additional Charge that is not paid when due. If Tenant defaults in making any payment of Base Rent or Additional Charges, Landlord shall have the right to require that subsequent Base Rent or Additional Charges payments be made by cashiers or certified check.



7. **Security Deposit.** The Tenant had deposited \$5,000 as Security Deposit to the Landlord under its prior landlord-tenant relationship with the Landlord, and the Landlord hereby acknowledges that it has in its possession the full amount of the Security Deposit to be credited to the Tenant's account under this Lease. The Tenant is not required under this Lease to deposit any additional Security Deposit with the Landlord, except as otherwise provided in this Section. This sum shall belong to Landlord and shall constitute partial consideration for the execution of this Lease, subject only to repayment when required in this section. Landlord shall pay Tenant the remaining balance thereof, without any liability for interest thereon, within thirty (30) days after the expiration or prior termination of the Lease Term, or any extension thereof, if and only if Tenant has fully performed all of its obligations under the terms of this Lease. Landlord shall be entitled to withdraw from the deposit the amount of any unpaid Base Rent or Additional Charges or other amounts not paid to Landlord when due, and Tenant shall immediately redeposit an amount equal to that so withdrawn within ten (10) days after the Landlord's demand therefore.

8. **Tenant's Operations.**

A. **Use of Premises.** Tenant shall use the Premises only for the Section 1 Permitted Use. As Landlord's willingness to enter into this Lease with Tenant was predicated, in part, on the nature of Tenant's business, and the compatibility of such business with other tenants in the Building, Tenant shall not use or permit the use of the Premises for any other business, or purpose, or under any other name, without Landlord's prior written consent. Tenant shall promptly comply, at its sole cost and expense, with the Exhibit B rules and regulations and other such rules and regulations relating to the use of the Premises, Building and Common Areas as Landlord, from time to time, may promulgate. Tenant shall maintain the Premises in a clean, orderly and neat fashion to conform to the high standards of the Building, permitting no objectionable odors to be emitted from the Premises and shall neither commit waste nor permit any waste to be committed thereon. Tenant shall not permit any accumulation of trash on or about the Premises. Tenant shall not create or contribute to the creation of a nuisance in either the Premises or the Building, and Tenant shall not engage in or permit any action that will disturb the quiet enjoyment of any other tenant in the Building.

B. **Unlawful Use.** Tenant shall not use or permit the Premises or any part thereof to be used for any purpose in violation of any municipal, county, state or federal law, ordinance or regulation, or for any purpose offensive to the standards of the community of which the Building is a part. Tenant shall promptly comply, at its sole cost and expense, with all laws, ordinances and regulations now in force or hereafter adopted relating to or affecting the condition, use or occupancy of the Premises including but not limited to all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington and The City of Seattle, including the Seattle Municipal Code ("SMC"), notably SMC Ch. 14.04, 14.10, 20.45, and rules, regulations, orders, and directives of the associated administrative agencies and their officers.



- C. Liens and Encumbrances. Tenant shall keep the Premises and Building free and clear of, and shall indemnify, defend and hold Landlord harmless from, any and all, liens and encumbrances arising or growing out of any act or omission, or breach of this Lease or its use, improvement or occupancy of the Premises by Tenant or any of its principals, officers, employees or agents. If any lien is so filed against the Premises or Building, Tenant shall either cause the same to be fully discharged and released of record within ten (10) days after Landlord's demand therefore or within such period, provide Landlord with cash or other security acceptable to Landlord in an amount equal to one and one-half (1½) times the amount of the claimed lien as security for its prompt removal. Landlord shall have the right to disburse such security to cause the removal of the lien if a judgment is entered against Tenant in the lien proceeding, if such lien causes difficulties for Landlord in connection with its financing of the Building, if Tenant is otherwise in default under this Lease or if Landlord otherwise deems such necessary, in Landlord's sole discretion.
- D. Hazardous Substances. Tenant shall not, without Landlord's prior written consent, keep on or about the Premises or Building any substance designated as, or containing any component now or hereafter designated as hazardous, dangerous, toxic or harmful and/or subject to regulation under any federal, state or local law, regulation or ordinance ("Hazardous Substances"), except customary office supplies in normal quantities handled in compliance with applicable laws. With respect to any Hazardous Substances stored with Landlord's consent, Tenant shall promptly, timely and completely comply with all governmental requirements for reporting and record keeping; submit to Landlord true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities; within five (5) days after Landlord's request therefore, provide evidence satisfactory to Landlord of Tenant's compliance with all applicable governmental rules, regulations and requirements; and comply with all governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment and disposal of Hazardous Substances. Any and all costs incurred by Landlord and associated with Landlord's inspections of the Premises and Landlord's monitoring of Tenant's compliance with this Subsection 8.D, including Landlord's attorneys' fees and costs, shall be Additional Charges and shall be due and payable to Landlord within ten (10) days after Landlord's demand therefore. Tenant shall be fully and completely liable to Landlord for any and all cleanup costs and expenses and any and all other charges, expenses, fees, fines, penalties (both, civil and criminal) and costs imposed with respect to Tenant's use, disposal, transportation, generation and/or sale of Hazardous Substances in or about the Premises or Building. Tenant shall indemnify, defend and hold Landlord and lenders to Landlord ("Lender") harmless from any and all of the costs, fees, penalties, charges and expenses assessed against, or imposed, upon Landlord, and Lender (as well as Landlord's and Lender's attorneys' fees and



costs) as a result of Tenant's use, disposal, transportation, generation and/or sale of Hazardous Substances.

9. **Utilities and Services.**

- A. **Tenant's Responsibility.** Tenant shall be solely responsible for and shall promptly pay when due all charges for electricity and telephone, which shall be separately metered and supplied to the Premises, and for all other utilities that are separately metered and supplied to the Premises. Tenant shall be solely responsible for arranging and paying for water and sewer, garbage removal and janitorial service for the Premises and for the installation and maintenance of the heating, ventilation, and air conditioning unit servicing the Premises.
- B. **Services.** As long as Tenant is not in default under this Lease, Landlord shall cause the Common Areas of the Building to be maintained in reasonably good order and condition, except for damage occasioned by any act or omission of Tenant or any of Tenant's officers, contractors, agents, invitees, licensees or employees, the repair of which shall be paid for by Tenant.
- (1) **Additional Service.** The Building standard mechanical system is designed to accommodate heating loads generated by lights and equipment using up to 4.2 watts per square foot. Tenant shall obtain Landlord's prior written consent before installing lights and equipment in the Premises that, in the aggregate, exceed such amount. Landlord may refuse to grant such consent unless Tenant agrees to pay (1) the costs incurred by Landlord for installation of supplementary air conditioning capacity or electrical systems as necessitated by such equipment or lights and (2) in advance, on the first day of each month during the Lease Term, the amount estimated by Landlord as the excess cost of furnishing electricity for the operation of such equipment or lights above normal Building levels and the amount estimated by Landlord as the cost of operation and maintenance of supplementary air conditioning units as necessitated by Tenant's use of such equipment or lights. Landlord shall be entitled to install, operate and maintain at Tenant's sole cost a monitoring/metering system in the Premises to measure the added demands on electricity, heating, ventilation and air conditioning systems, resulting from such equipment and lights and from Tenant's after-hours requirements, and Tenant shall pay Landlord the cost thereof in advance on the first day of each month.
- (2) **Interruption.** Landlord shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption or failure of services due to any cause whatsoever, including, but not limited to, electrical surges, or from failure to make any repairs or perform any maintenance. No temporary interruption or failure of such services incident to the making of repairs, alterations or improvements or due to accident, strike or conditions or events beyond Landlord's reasonable



control shall be deemed an eviction of Tenant or to relieve Tenant from any of Tenant's obligations hereunder or to give Tenant a right of action against Landlord for damages. Tenant acknowledges its understanding that there will be Landlord-planned utility outages affecting the Building and that such outages may interfere, from time to time, with Tenant's use of the Premises. Landlord shall endeavor to provide Tenant with 48 hours prior notice of any Landlord-planned electricity outage in the Building but shall not be liable to Tenant for Landlord's failure to provide such notice. Landlord has no obligation to provide emergency or backup power to Tenant. The provision of emergency or backup power to the Premises or to enable the equipment therein to properly function shall be the sole responsibility of Tenant.

10. **Licenses and Taxes.** Tenant shall be liable for, and shall pay prior to delinquency, all license and excise fees and occupation taxes covering the business conducted on the Premises and all personal property taxes and other impositions levied with respect to all personal property located at the Premises.
11. **Delivery of Premises.** Landlord shall deliver the Premises to Tenant in an "AS IS" condition.
12. **Alterations by Tenant.** Tenant shall not make any alterations, additions or improvements in or to the Premises without first submitting to Landlord professionally prepared plans and specifications for such work and obtaining Landlord's prior written approval, which may be conditioned upon Tenant's compliance with standard terms and conditions applicable to other tenants making alterations or improvements in the Building. Tenant covenants that it will cause all alterations, additions and improvements to the Premises to be completed at Tenant's sole cost and expense by a contractor approved by Landlord and in a manner that (a) is consistent with the Landlord-approved plans and specifications and any conditions imposed by Landlord in connection therewith; (b) is in conformity with first-class, commercial standards; (c) includes acceptable insurance coverage for Landlord's benefit; (d) does not affect the structural integrity of the Building or any of the Building's systems; (e) does not disrupt the business or operations of any adjoining tenant; and (f) does not invalidate or otherwise affect the construction or any system warranty then in effect with respect to the Building. Tenant shall secure all governmental permits and approvals and comply with all other applicable governmental requirements and restrictions; and reimburse Landlord for all expenses incurred in connection therewith. Except as provided in Section 15 with regard to concurrent negligence, Tenant shall indemnify, defend and hold Landlord harmless from and against all losses, liabilities, damages, liens, costs, penalties and expenses (including attorneys' fees, but without waiver of the duty to hold harmless) arising from or out of the performance of such alterations, additions and improvements, including, but not limited to, all which arise from or out of Tenant's breach of its obligations under terms of this Section 12. All alterations, additions and improvements (expressly including all light fixtures; heating, ventilation and air conditioning units; floor, window and wall coverings; and electrical wiring), except Tenant's moveable trade fixtures and



appliances and equipment not affixed to the Premises and cabling and wiring for computers, telephones and other electronic equipment, shall immediately become the property of Landlord without any obligation on its part to pay for any of the same. These improvements remain Landlord's and Tenant shall not remove all or any portion thereof on the termination of this Lease except as specifically directed by Landlord in writing. Within ninety (90) days after the completion of any alteration, addition or improvement to the Premises, Tenant shall deliver to Landlord a full set of "as-built" plans of the Premises showing the details of all alterations, additions and improvements made to the Premises.

**13. Care of Premises.**

- A. General Obligation. Tenant shall take good care of the Premises and shall reimburse Landlord for all damage done to the Building or Premises that results from any act or omission of Tenant or any of Tenant's officers, contractors, agents, invitees, licensees or employees, including, but not limited to, cracking or breaking of glass. If Tenant fails to take good care of the Premises, Landlord, at its option, may do so, and in such event, upon receipt of written statements from Landlord, Tenant shall promptly pay the entire cost thereof as an Additional Charge. Landlord shall have the right to enter the Premises for such purposes. Landlord shall not be liable for interference with light, air or view. All normal repairs necessary to maintain the Building in a reasonable condition, as determined by Landlord, shall be performed under Landlord's direction and at its expense, except as otherwise provided herein. Except as provided in Section 19, there shall be no abatement or reduction of rent arising by reason of Landlord's making of repairs, alterations or improvements.
- B. Prohibition Against Installation or Integration of Any Work of Visual Art on Premises Without Landlord's Consent. Landlord reserves to and for itself the right to approve or disapprove of the installation or integration on or in the Premises of any "work of visual art," as that term is defined in the Visual Artists Rights Act of 1990, as now existing or as later amended, and to approve or disapprove of each and every agreement regarding any such installation or integration. Tenant shall not install on or integrate into, or permit any other person or entity to install on or integrate into, the Premises any such work of visual art without the prior, express, written consent of Landlord.
- C. Tenant's Indemnification of Landlord Against Liability under Visual Artists Rights Act of 1990. Tenant shall protect, defend, and hold Landlord harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of (a) the installation or integration of any work of visual art on or into the Premises; (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any breach of Subsection 13.B of this Lease; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended; by Tenant or any of its officers, employees or agents. This indemnification obligation shall exist regardless of whether



Landlord or any other person employed by Landlord has knowledge of such installation, integration, or removal or has consented to any such action or is not required to give prior consent to any such action. The indemnification obligation of this subsection shall survive the expiration or earlier termination of this Lease.

**14. Surrender of Premises.**

- A. General Matters. At the expiration or sooner termination of the Lease Term, Tenant shall return the Premises to Landlord in the same condition in which received (or, if altered, then the Premises shall be returned in such altered condition unless otherwise directed by Landlord pursuant to Section 12), reasonable wear and tear excepted. Prior to such return, Tenant shall remove its moveable trade fixtures and appliances and equipment and other personal property that have not been attached to the Premises, and shall repair any damage resulting from their removal. In no event shall Tenant remove floor coverings; heating, ventilating and air conditioning equipment; lighting equipment or fixtures; or floor, window or wall coverings unless otherwise specifically directed by Landlord in writing. Tenant's obligations under this Section 14 shall survive the expiration or termination of this Lease. Tenant shall indemnify Landlord for all damages and losses suffered as a result of Tenant's failure to remove voice and data cables, wiring and communication lines and moveable trade fixtures and appliances and to redeliver the Premises on a timely basis.
- B. Cable and Wiring. Notwithstanding any provision to the contrary in this Lease, on or by the respective Expiration Date for each portion of the Premises leased by Tenant, or if this Lease is terminated before the Expiration Date, within fifteen (15) days after the effective termination date, whichever is earlier, Tenant shall remove all voice and data communication and transmission cables and wiring installed by or for Tenant to serve any telephone, computer or other equipment located in that portion of the Premises, which wiring and cabling shall include all of the same located within the interior and exterior walls and through or above the ceiling or through or below the floor of such portion of the Premises or located in any Building equipment room, vertical or horizontal riser, raceway, conduit, channel, or opening connecting to the portion of the Premises to be vacated and surrendered to Landlord as of such Expiration Date or earlier termination date. Tenant shall leave the mud rings, face plates and floor boxes in place.
- C. Personal Property. Landlord may, at its election, retain or dispose of in any manner any of Tenant's moveable trade fixtures, appliances, equipment, and other personal property that Tenant does not remove from the Premises on expiration or within ten (10) days after termination of the Term as allowed or required by the provisions of this Lease by giving ten (10) days notice to Tenant. Title to any such trade fixtures, appliances, equipment, and other personal property that Landlord elects to retain or dispose of on expiration of such ten (10) day period shall vest in Landlord. Tenant waives all claims against Landlord for any damage to Tenant resulting from Landlord's retention or disposition of any such trade



fixtures, appliances, equipment, and other personal property. Tenant shall be liable to Landlord for Landlord's reasonable costs for storing, removing and disposing of Tenant's trade fixtures and personal property.

**15. Waiver; Indemnification.**

- A. Tenant's Indemnification. Except as otherwise provided in this section, Tenant shall indemnify, defend (using legal counsel acceptable to Landlord) and save Landlord, officers, agents, employees and contractors, Lenders and other tenants and occupants of the Building harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including Landlord's personnel and overhead costs and attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to, any property arising out of or in connection with (i) Tenant's occupation, use or improvement of the Premises, or that of any of its employees, agents or contractors, (ii) Tenant's breach of its obligations hereunder, or (iii) any act or omission of Tenant or any subtenant, licensee, assignee or concessionaire of Tenant, or of any officer, agent, employee, guest or invitee of any of the same in or about the Building. Tenant agrees that the foregoing indemnity specifically covers actions brought by its own employees. This indemnity with respect to acts or omissions during the Lease Term shall survive termination or expiration of this Lease. The foregoing indemnity is specifically and expressly intended to, constitute a waiver of Tenant's immunity under Washington's Industrial Insurance Act, RCW Title 51, to the extent necessary to provide Landlord with a full and complete indemnity from claims made by Tenant and its employees, to the extent of their negligence. Tenant shall promptly notify Landlord of casualties or accidents occurring in or about the Premises.
- B. Release of Claims. Tenant hereby fully and completely waives and releases all claims against Landlord for any losses or other damages sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon the Premises, including but not limited to any defect in or failure of Building equipment; any failure to make repairs; any defect, failure, surge in, or interruption of Building facilities or services; any defect in or failure of Common Areas; broken glass; water leakage; the collapse of any Building component; or any act, omission or negligence of co-tenants, licensees or any other persons or occupants of the Building.
- C. Limitation of Tenant's Indemnification. In compliance with RCW 4.24.115 as in effect on the date of this Lease, all provisions of this Lease pursuant to which Landlord or Tenant (the "Indemnitor") agrees to indemnify the other (the "Indemnitee") against liability for damages arising out of bodily injury to Persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including



the Building, (i) shall not apply to damages caused by or resulting from the sole negligence of the Indemnitee, its agents or employees, and (ii) to the extent caused by or resulting from the concurrent negligence of (a) the Indemnitee or the Indemnitee's agents or employees, and (b) the Indemnitor or the Indemnitor's agents or employees, shall apply only to the extent of the Indemnitor's negligence; PROVIDED, HOWEVER, the limitations on indemnity set forth in this section shall automatically and without further act by either Landlord or Tenant be deemed amended so as to remove any of the restrictions contained in this section no longer required by then applicable law.

D. **LANDLORD AND TENANT ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF SECTION 12 AND THIS SECTION 15 WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.**

16. **Insurance.**

A. Minimum Insurance Coverages and Limits of Liability.

(1) Prior to the commencement of any Premises use under this Lease, Tenant shall secure and shall thereafter maintain, in full force and effect, at no expense to Landlord, and throughout the entire Lease Term, minimum insurance coverages and limits of liability as specified below:

(a) **Commercial General Liability (“CGL”)** Insurance, written on an ISO form CG 0001 or equivalent, including:

Premises/Operations  
Products/Completed Operations  
Personal/Advertising Injury  
Contractual Liability  
Stop Gap/Employers Contingent Liability  
Independent Contractors  
Host Liquor Liability  
Tenant/Fire Legal

Such insurance must provide a minimum limit of liability of one million (\$1,000,000) each occurrence combined single limit bodily injury and property damage (CSL), except:

\$1,000,000	Each Offense Personal & Advertising injury
\$1,000,000	Each Accident/Disease per Employee
\$ 500,000	Tenant/Fire Legal Liability

The minimum limit of liability may be evidenced with primary CGL insurance or any combination of Primary CGL insurance and



Excess/Umbrella liability insurance.

- (b) **Business Automobile Liability** insurance including coverage for owned, non-owned, leased or hired vehicles, written on an ISO form CA 0001 or equivalent, with a minimum limit of liability of \$1,000,000 CSL.
- (c) **Statutory Workers' Compensation** insurance securing Tenant's liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington.
- (d) **"All Risks" Property** insurance under which the Tenant's furniture, trade fixtures, equipment and inventory, are insured throughout the Lease Term in an amount equal to the replacement cost thereof, against the following hazards: (i) loss from the perils of fire and other risks of direct physical loss, not less broad than provided by the insurance industry standard "Causes of Loss - Special Form (ISO form CP 1030 or equivalent); (ii) loss or damage from water leakage or sprinkler systems now or hereafter installed in or on the Premises; (iii) loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks or similar apparatus now or hereafter installed on the Premises; (iv) loss from business interruption or extra expense, with sufficient coverage to provide for the payment of rent and other fixed costs during any interruption of Tenant's business. Landlord shall be named as an additional insured under such policy.

B. General Requirements Regarding Tenant's Insurance (excluding Statutory Worker's Compensation); Adjustments.

- (1) The CGL and Business Automobile Liability insurance shall include the City of Seattle as an additional insured for primary and non-contributory limits of liability.
- (2) The limits of liability specified herein are minimum limits only and shall not be interpreted as limiting the liability of Tenant or any of Tenant's insurers. Where Landlord is required to be an additional insured under CGL, Business Automobile and Excess/Umbrella Liability insurance, it shall be an additional insured for the total limits of liability maintained by Tenant, whether any such limits are primary, excess, contingent or otherwise.
- (3) Coverages shall not be cancelled without a least thirty (30) days prior written notice, except ten (10) days notice with respect to cancellation for non-payment of premium, unless otherwise specified in Revised Code of Washington (RCW) 48.18.290 (Cancellation by Insurer).



- (4) All insurance policies required hereunder shall be subject to approval by the Landlord's Risk Manager as to company, form and coverage. All policies shall be issued by a company rated A-:VII or higher in the then-current A. M. Best's Key Rating Guide and licensed to do business in the State of Washington or issued as a surplus line by a Washington surplus lines broker, and shall be primary to and non-contributory with any other applicable insurance.
- (5) Any liability self-insured retention must be disclosed to, and shall be subject to approval by, the Landlord's Risk Manager. The cost of any liability claim payments falling within the deductible of Tenant's liability insurance shall be the responsibility of Tenant.
- (6) Coverage and/or limits may be altered or increased as necessary to reflect type of or exposure to risk. Landlord shall have the right to periodically review the appropriateness of such coverage and limits in view of inflation and/or changing industry conditions and to require an increase in such coverage or limits upon ninety (90) days' prior written notice.

C. Evidence of Insurance.

- (1) As Evidence of the CGL and All Risks Property insurance coverage secured and maintained by Tenant, on or before the Commencement Date, and thereafter, not later than five (5) days prior to the expiration or renewal date of each such policy, Tenant shall deliver to Landlord at its address as specified in Subsection 1.K hereof with an electronic copy to be faxed to (206) 470-1270 or emailed as an attachment in an Adobe PDF file format to riskmanagement@seattle.gov:
  - (a) A copy of each required policy's declarations page, showing the insurer, policy period, limits of liability and the Schedule of Forms and Endorsements specifying;
  - (b) A copy of the CGL policy provision documenting the City of Seattle as an additional insured for primary and non-contributory limits of liability;
  - (c) A copy of the CGL policy provision stating that the coverages provided by such policy to Landlord or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to the Landlord at its address as specified in or provided pursuant to Subsection 1.K hereof; and



- (d) Pending receipt of the documentation specified in Subsection 16.C(1) hereof, a current binder of coverages evidencing compliance with the provisions herein.
- (2) Upon Tenant's written request, Landlord will provide Tenant with evidence of the property insurance maintained by Landlord in compliance with this Lease.
- D. Reconstruction Following Loss. Tenant shall proceed with reasonable diligence as soon as sufficient funds are available therefore, to prepare plans and specifications for, and thereafter to carry out, all work necessary (a) to repair and restore the Premises and all improvements made thereto that have been damaged by any insured casualty to their former condition, or (b) to replace the Premises and all improvements made thereto with a facility of a quality and usefulness for the activities contemplated in this Lease that is at least equivalent to, or more suitable than, the Premises and improvements that were damaged or destroyed.
- E. Waiver of Subrogation. Landlord and Tenant waive all subrogation rights against each other, any contractors, architect, architects' consultants, service providers, and all of their respective subcontractors, for damages caused by fire or other perils to the extent such damages are covered by property insurance secured and maintained in accordance with this Section 16 or other property insurance applicable to the Premises, except such rights as they have to proceeds of such insurance held by Landlord and Tenant as fiduciaries. If Tenant's negligence, or that of its employees, contractors or agents, causes loss or damage to the Premises or the Building, Tenant will reimburse the City any out of pocket amount paid under its property insurance deductible. Tenant shall require a similar waiver of subrogation from every contractor performing any work on the Premises. This waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, whether or not the person or entity paid the insurance premium directly or indirectly, and whether or not the person or entity has an insurable interest in the property damaged unless such waiver would invalidate such property insurance.
- F. Assumption of Risk. The placement and storage of its personal property in the Premises shall be the responsibility, and at the sole risk, of Tenant.
17. Assignment or Sublease. Tenant shall not sublet or encumber the whole or any part of the Premises, nor shall this Lease or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court or otherwise without the prior written consent of Landlord, which consent shall not be withheld unreasonably. The granting of consent to a given transfer shall not constitute a waiver of the consent requirement as to future transfers. In lieu of giving its consent, Landlord shall have the right to terminate the Lease as to the portion of the Premises affected by the action for which Landlord's consent is requested and recover possession thereof from Tenant within



twenty (20) days following written notice thereof to Tenant. All costs incurred by Landlord in separating the remainder of the Premises from the area so retaken shall be paid by Tenant as an Additional Charge. Any assignment or sublease, without Landlord's prior written consent, at Landlord's option, shall be void. No assignment or sublease shall release Tenant from primary liability hereunder. Each assignment and sublease shall be by an instrument in writing in form satisfactory to Landlord. If Tenant assigns its interest in this Lease, or sublets the Premises, then the Base Rent shall be increased, effective as of the date of such assignment or subletting, to the higher of (i) the rentals payable by the assignee or sublessee pursuant to such assignment or sublease, or (ii) the Base Rent then being charged by Landlord for comparable space in the Building; provided, however, in no event shall the base monthly rent, after such assignment or subletting, be less than the Base Rent specified in Section 1. If Tenant assigns its interest in this Lease or sublets the Premises, Tenant shall pay to Landlord any and all consideration received by Tenant for such assignment or sublease. If Tenant is a corporation, then any transfer of this Lease by merger, consolidation or liquidation, or any direct or indirect change, in the ownership of, or power to vote the majority of, Tenant's outstanding voting stock, shall constitute an assignment for the purposes of this Lease. If Tenant is a partnership, then a change in general partners in or voting or decision-making control of the partnership shall also constitute an assignment. Tenant shall also pay all legal fees and other costs incurred by Landlord in connection with Landlord's consideration of Tenant's request for approval of assignments or subleases, including assignments for security purposes, up to \$750.

18. **Assignment by Landlord.** If Landlord sells or otherwise transfers the Building, or if Landlord assigns its interest in this Lease, other than an assignment solely for security purposes or a transfer in foreclosure or a deed in lieu of foreclosure, such purchaser, transferee, or assignee thereof shall be deemed to have assumed Landlord's obligations under this Lease arising after the date of such transfer, and Landlord shall thereupon be relieved of all liabilities under this Lease arising thereafter, but this Lease shall otherwise remain in full force and effect. Tenant shall attorn to Landlord's successor.
19. **Destruction.** If the Premises are rendered partially or totally untenable by fire or other casualty, and if the damage is repairable within six (6) months from the date of the occurrence, then if insurance proceeds are available to pay the full cost of the repairs, Landlord shall repair the Premises with due diligence; otherwise Landlord may elect to terminate this Lease. Base Rent shall be abated in the proportion that the untenable portion of the Premises bears to the whole thereof, as determined by Landlord, for the period from the date of the casualty to the completion of the repairs, unless the casualty results from or is contributed to by the negligence of Tenant or any of its officers, contractors, agents, invitees, guests or employees or Tenant's breach of this Lease. If thirty percent (30%) or more of the Building Rentable Area is destroyed or damaged, then regardless of whether the Premises are damaged or not, Landlord may elect to terminate this Lease. Landlord shall advise Tenant of Landlord's election to repair or terminate by giving notice to Tenant thereof within thirty (30) days after the occurrence. In the event of damage by casualty, Tenant shall, at its sole cost and expense, repair all damage to its own personal property and to all improvements that Tenant has made to the



Premises. Landlord shall not be liable to Tenant for damages, compensation or other sums for inconvenience, loss of business or disruption arising from any repairs to or restoration of any portion of the Building or Premises.

**20. Eminent Domain.**

A. Taking. If all of the Premises are taken by Eminent Domain, this Lease shall terminate as of the date Tenant is required to vacate the Premises and all Base Rent and Additional Charges shall be paid to that date. The term "Eminent Domain" shall include the taking or damaging of property by, through or under any governmental or statutory authority, and any purchase or acquisition in lieu thereof, whether the damaging or taking is by government or any other person. If a taking of any part of the Premises by Eminent Domain renders the remainder thereof unusable for the business of Tenant, in the reasonable judgment of Landlord, the Lease may, at the option of either party, be terminated by written notice given to the other party not more than thirty (30) days after Landlord gives Tenant written notice of the taking, and such termination shall be effective as of the date when Tenant is required to vacate the portion of the Premises so taken. If this Lease is so terminated, all Base Rent and Additional Charges shall be paid to the date of termination. Whenever any portion of the Premises is taken by Eminent Domain and this Lease is not terminated, Landlord, at its expense, shall proceed with all reasonable dispatch to restore, to the extent of available proceeds and to the extent it is reasonably prudent to do so, the remainder of the Premises to the condition they were in immediately prior to such taking, and Tenant, at its expense, shall proceed with all reasonable dispatch to restore its personal property and all improvements made by it to the Premises to the same condition they were in immediately prior to such taking. The Base Rent and Additional Charges payable hereunder shall be reduced from the date Tenant is required to partially vacate the Premises in the same proportion that the Rentable Area taken bears to the total Rentable Area of the Premises prior to taking.

B. Award. Landlord reserves all right to the entire damage award or payment for any taking by Eminent Domain, and Tenant waives all claim whatsoever against Landlord for damages for termination of its leasehold interest in the Premises or for interference with its business. Tenant hereby grants and assigns to Landlord any right Tenant may now have or hereafter acquire to such damages and agrees to execute and deliver such further instruments of assignment as Landlord, from time to time, may request. Tenant, however, shall have the right to claim from the condemning authority all compensation that may be recoverable by Tenant on account of any loss incurred by Tenant in moving Tenant's merchandise, furniture, trade fixtures and equipment, provided, however, that Tenant may claim such damages only if they are awarded separately in the eminent domain proceeding and not out of or as part of Landlord's damages.

**21. Default by Tenant.**



- A. Definition. If Tenant violates or breaches or fails to keep or perform any covenant, term or condition of this Lease, or if Tenant or any guarantor of Tenant's obligations under this Lease ("Guarantor") files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for Tenant's or Guarantor's assets or if Tenant or Guarantor makes an assignment for the benefit of creditors, or if Tenant or Guarantor is adjudicated insolvent, Tenant shall be deemed in default hereunder (a "Default"). If a Default continues for or is not remedied within three (3) days (or, if no default in the rent is involved, within ten (10) days) after written notice thereof has been given by Landlord to Tenant specifying the Default, then Landlord shall have the following nonexclusive rights and remedies, at its option: (i) to declare the Lease Term hereof ended and to reenter the Premises, take possession thereof, and remove all persons therefrom, for which actions Tenant shall have no claim thereon or hereunder; (ii) to cure such default on Tenant's behalf and at Tenant's sole expense and to charge Tenant for all costs and expenses incurred by Landlord in effecting such cure as an Additional Charge; (iii) without declaring this Lease terminated, to reenter the Premises and to occupy the whole or any part thereof for and on account of Tenant and to collect any unpaid Base Rent and Additional Charges that have become payable or that may thereafter become payable; or (iv) even though it may have reentered the Premises, to elect at any time thereafter to terminate this Lease and all of the rights of Tenant in or to the Premises.
- B. Reentry. If Landlord reenters the Premises under option (iii) of Subsection 21.A, Landlord shall not be deemed to have terminated this Lease or the liability of Tenant to pay any Rent thereafter accruing as it becomes due, or to have terminated Tenant's liability for damages under any of the provisions hereof, by any such reentry or by any action, in unlawful detainer or otherwise, to obtain possession of the Premises, unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease; and Tenant shall be liable for and shall reimburse Landlord upon demand for all costs and expenses of every kind and nature incurred in retaking possession of the Premises and all other losses suffered by Landlord as a consequence of Tenant's default. In the event of any entry or taking possession of the Premises, Landlord shall have the right, but not the obligation, to remove therefrom all or any part of the personal property located therein and may place the same in storage at a public warehouse at the expense and risk of Tenant.
- C. Termination. If Landlord elects to terminate this Lease pursuant to the provisions of options (i) or (iv) of Subsection 21.A, Landlord may recover from Tenant as damages, the following: (i) the worth, at the time of award, of any unpaid Rent that had been earned at the time of such termination; plus (ii) the worth, at the time of award, of the amount by which the unpaid Rent that would have been earned after termination until the time of award exceeds the amount of the Rent loss Tenant proves could have been reasonably avoided; plus (iii) the worth, at the time of award, of the amount by which the unpaid Rent for the balance of the Lease Term after the time of award exceeds the amount of the Rent loss that



Tenant proves could be reasonably avoided; plus (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom, including but not limited to, any costs or expenses incurred by Landlord in retaking possession of the Premises, including reasonable attorneys' fees therefore; maintaining or preserving the Premises after such default; preparing the Premises for reletting to a new tenant, including repairs or alterations to the Premises for such reletting; leasing commissions; and any other costs necessary or appropriate to relet the Premises; and (v) such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of Washington. As used in items (i) and (ii) of this Subsection 21.C, the "worth, at the time of award" shall be computed by allowing interest at the interest rate specified in Section 6 of this Lease. As used in item (iii) above, the "worth, at the time of award" shall be computed by using the then-applicable discount rate quoted by the Federal Reserve Bank of San Francisco or its successor. For purposes of this Section 21 only, the term "Rent" shall be deemed to be the Base Rent required to be paid by Tenant pursuant to the terms of this Lease.

D. Adequate Security. If a petition is filed by or against Tenant or Guarantor under any provision of the Bankruptcy Code or successor act, Tenant shall post a cash bond with Landlord equal to six (6) months' Base Rent and Additional Charges to provide Landlord with adequate security for Tenant's performance of its obligations under this Lease.

22. **Landlord's Remedies Cumulative; Waiver**. Landlord's rights and remedies hereunder are not exclusive, but cumulative, and Landlord's exercise of any right or remedy due to a default or breach by Tenant shall not be deemed a waiver of, or alter, affect or prejudice any other right or remedy that Landlord may have under this Lease or by law or in equity. Neither the acceptance of rent nor any other act or omission of Landlord at any time or times after the happening of any event authorizing the cancellation or forfeiture of this Lease shall operate as a waiver of any past or future violation, breach or failure to keep or perform any covenant, agreement, term or condition hereof or to deprive Landlord of its right to cancel or forfeit this Lease, upon the written notice provided for herein, at any time that cause for cancellation or forfeiture may exist, or be construed so as to estop Landlord at any future time from promptly exercising any other option, right or remedy that it may have under any term or provision of this Lease.

23. **Default by Landlord; Lender Protection**.

A. Landlord's Cure Period. Landlord shall be in default if Landlord fails to perform its obligations under this Lease within sixty (60) days after its receipt of notice of nonperformance from Tenant; provided, that if the default cannot reasonably be cured within the sixty (60) day period, Landlord shall not be in default if Landlord commences the cure within the sixty (60) day period and thereafter diligently pursues such cure to completion.



- B. Notice to Lender and Lender's Cure Period. In the event of any uncured default by Landlord that would entitle Tenant to terminate this Lease, Tenant shall not terminate this Lease or pursue any other remedy unless Tenant has notified Lender of the nature and extent of the default, at least sixty (60) days in advance of the proposed effective date of such termination. During said sixty (60) day period Lender shall be entitled to commence to cure the default. If the default is not susceptible of cure with due diligence within said sixty (60) day period, the Lease shall not be terminated if the Lender shall have commenced to cure the default within said sixty (60) day period and pursues the cure with due diligence thereafter. If the default is one that is not susceptible to cure by the Lender within said sixty (60) day period because the Lender is not in possession of the Building, such sixty (60) day period shall be extended to include time needed to obtain possession thereof by the Lender by power of sale, judicial foreclosure or such other legal action required to recover possession provided that such avenues are pursued with due diligence.
24. Attorneys' Fees. If either party retains the services of an attorney in connection with enforcing the terms of this Lease, or if suit is brought for the recovery of Base Rent or Additional Charges due under this Lease or for the breach of any covenant or condition of this Lease or for the restitution of the Premises to Landlord and/or eviction of Tenant during the Lease Term or after the expiration thereof, the substantially prevailing party therein will be entitled to recover from the other party the substantially prevailing party's reasonable attorneys' fees, witness fees and other court costs incurred in connection therewith. If Landlord prevails and has been represented by the Seattle City Attorney, its attorneys' fees shall be computed on the basis of those of a private attorney in downtown Seattle who practices in a firm having at least as many attorneys as are employed in the Seattle City Attorney's Office, and who has experience comparable to the Landlord's attorney.
25. Access by Landlord. Landlord and its agents shall have the right to enter the Premises at any time to examine the same, and to show them to prospective purchasers, lenders or tenants, and to make such repairs, alterations, improvements, additions or improvements to the Premises or Building as Landlord may deem necessary or desirable. If Tenant is not personally present to permit entry and an entry is necessary in an emergency, Landlord may enter the same by master key or may forcibly enter the same, without rendering Landlord liable therefore. Nothing contained herein shall be construed to impose upon Landlord any duty of repair or other obligation not specifically stated in this Lease. Tenant shall change the locks to the Premises only through Landlord and upon paying Landlord for all costs related thereto.
26. Holding Over. Unless otherwise agreed in writing by the parties hereto, any holding over by Tenant after the expiration of the Lease Term, whether or not consented to by Landlord, shall be construed as a tenancy from month-to-month on the terms and conditions set forth herein, except for Base Rent, which shall be increased to one and one-half (1½) times the Base Rent in effect during the last month of the Lease Term



immediately preceding the holdover period. Any holdover tenancy may be terminated by either party by written notice delivered to the other party not later than twenty (20) days prior to the end of month. If Tenant fails to surrender the Premises upon the expiration or termination of this Lease, Tenant shall indemnify, defend and hold harmless Landlord from all losses, damages, liabilities and expenses resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant arising out of such failure.

27. **Lease Subordinate to Mortgages.** This Lease shall be automatically subordinate to all of Landlord's mortgages or deeds of trust that heretofore and hereafter affect the Premises or Building; to any sale and leaseback; to any and all advances made or to be made thereunder; to the interest on the obligations secured thereby; and to all renewals, modifications, consolidations, replacements or extensions thereof; all provided that for so long as Tenant is not in default hereunder beyond the applicable Section 21 cure period, Tenant shall have continued enjoyment of the Premises and the rights provided under this Lease, free from any disturbance or interruption by reason of any exercise of remedies by Lender under or in connection with its deed of trust or mortgage. This subordination shall be self operative, and no further instrument of subordination shall be necessary to effect such subordination. Tenant, nevertheless, shall execute such instrument of subordination as may be required by any Lender if such instrument of subordination carries out the terms of this Section 27. In the event of sale or foreclosure of any such mortgage or deed of trust, or exercise of the power of sale thereunder, or in the event of a transfer in lieu of foreclosure, Tenant shall attorn to the purchaser (or transferee) of the Building at such foreclosure or sale and recognize such purchaser (or transferee) as Landlord under this Lease if so requested by such purchaser (or transferee). Such attornment shall be self operative and no further instrument need be executed to effect such attornment. If any Lender elects to have this Lease superior to its mortgage or deed of trust and gives notice of its election to Tenant, then this Lease shall thereupon become superior to the lien of such mortgage or deed of trust, whether this Lease is dated or recorded before or after the mortgage or deed of trust.
28. **Estoppel and Other Certificates.** As a material inducement to Landlord to enter into this Lease, Tenant covenants that it shall, within ten (10) days of the receipt thereof, acknowledge and deliver to Landlord (a) any subordination or non-disturbance or attornment agreement or other instrument that Landlord may require to carry out the provisions of Section 27, and (b) any estoppel certificate requested by Landlord from time to time in the commercially reasonable standard form of Landlord or any mortgagee or beneficiary of such deed of trust certifying, to the extent such be true that (i) Tenant shall be in occupancy, (ii) this Lease is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as modified and stating the modification(s), (iii) Base Rent and Additional Charges have been paid only through a certain specified date, (iv) Tenant has no offset, defense or claim against Landlord and (v) such other matters as Landlord may reasonably request. Tenant's failure to deliver an estoppel certificate within the ten (10) day period shall be deemed its confirmation of the accuracy of the information supplied by Landlord to the prospective lender or purchaser.



Tenant acknowledges and agrees that Landlord and others will be relying and are entitled to rely on the statements contained in such estoppel certificates.

29. **Quiet Enjoyment.** If Tenant fully complies with and promptly performs all of the terms, covenants and conditions of this Lease on its part to be performed, it shall have quiet enjoyment of the Premises throughout the Lease Term, subject, however, to matters of record on the day hereof and to those matters to which this Lease may be subsequently subordinated.
30. **Notices.** Any notice, demand or request required hereunder shall be given in writing to the party's address set forth in Subsection 1.K hereof by any of the following means: (a) personal service; (b) commercial or legal courier; or (c) registered or certified, first class mail, postage prepaid, return receipt requested. Such addresses may be changed by notice to the other parties given in the same manner as above provided. Notices shall be deemed to have been given upon the earlier of actual receipt, as evidenced by the deliverer's affidavit, the recipient's acknowledgment of receipt, or the courier's receipt, except in the event of attempted delivery during the recipient's normal business hours at the proper address by an agent of a party or by commercial or legal courier or the U.S. Postal Service but refused acceptance, in which case notice shall be deemed to have been given upon the earlier of the day of attempted delivery, as evidenced by the messenger's affidavit of inability to deliver stating the time, date, place and manner in which such delivery was attempted and the manner in which such delivery was refused, or on the day immediately following deposit with such courier or, if sent pursuant to subsection (c), forty-eight (48) hours following deposit in the U.S. mail.
31. **Successors or Assigns.** All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon Landlord, Tenant and, subject to the terms of Section 17, their respective heirs, administrators, executors, successors and permitted assigns, and upon any person or persons coming into ownership or possession of any interest in the Premises by operation of law or otherwise.
32. **Tenant Authority and Liability.** Tenant warrants that this Lease has been duly authorized, executed and delivered by Tenant, and that Tenant has the requisite power and authority to enter into this Lease and perform its obligations hereunder. Tenant covenants to provide Landlord with evidence of its authority and the authorization of this Lease upon request. All persons and entities named as Tenant herein shall be jointly and severally liable for Tenant's liabilities, covenants and agreements under this Lease.
33. **Brokers' Commission.** Landlord represents that CB Richard Ellis, Inc. has represented it in connection with this Agreement. Tenant represents that it was not represented by a broker for purposes of this Agreement. Each party shall be responsible for its own broker's commission. The Landlord shall defend, indemnify and hold the Tenant harmless from any claims for broker's fees made by any entity or person in connection with providing broker's services to Landlord in connection with this Lease. The Tenant will defend, indemnify and hold the Landlord harmless from any claims for broker's fees



made by any entity or person in connection with providing broker's services to Tenant in connection with this Lease.

34. **Partial Invalidity.** If any court determines that any provision of this Lease or the application hereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease, or application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.
35. **Recording.** Tenant shall not record this Lease without the prior written consent of Landlord. However, upon Landlord's request, both parties shall execute a memorandum of this Lease, in a form customarily used for such purpose of recordation. The memorandum shall describe the parties, the Premises and the Lease Term and shall incorporate the other terms of this Lease by reference.
36. **Financial Statements.** Within ten (10) days after Landlord's request therefore, Tenant shall deliver to Landlord a financial statement for Tenant's prior quarter and fiscal year. Tenant shall certify the accuracy of such statements. Landlord may make these financial statements available to potential lenders or purchasers, but shall otherwise preserve their confidentiality except in connection with legal proceedings between the parties or as otherwise directed by court rule or order.
37. **Parking.** Tenant shall have a license to use up to the number of parking spaces specified in Subsection 1.I on an unassigned basis at the prevailing monthly rates established by the Building garage, subject to such reasonable rules and regulations as may be established from time to time by Landlord or its parking operator. Monthly parking charges shall be payable in advance on the first day of each month as Additional Charges. Tenant may reduce the number of parking spaces licensed to it after giving Landlord thirty (30) days prior written notice of the reduction; provided that no such reduction shall be effective until Tenant surrenders to Landlord the key cards, stickers or other identification materials used to provide garage access for the parking spaces surrendered.
38. **Relocation.** Landlord reserves the right without Tenant's consent, on thirty (30) days prior notice to Tenant, to substitute other space within the Building (the "Substitute Premises") for the Premises, provided that the Substitute Premises: (a) are situated on a floor in the Building; (b) contain at least the same Rentable Area as the Premises; (c) contain comparable tenant improvements; and (d) are made available to Tenant at the then-current monthly Base Rental rate for such space. If the substitution occurs prior to the date Tenant initially occupies the Premises, then Landlord shall reimburse Tenant for the necessary and reasonable costs incurred by Tenant in planning for the space in the initial Premises, which expenses have been previously approved by Landlord and have no benefit to Tenant in the Substitute Premises. If Tenant is occupying the Premises at the time Landlord gives notice of any such relocation, Landlord shall pay the cost of moving Tenant, its property and equipment to the Substitute Premises and shall, without cost or expense to Tenant, improve the Substitute Premises with improvements substantially



similar to those located in the Premises. All of the other terms, covenants and conditions of the Lease shall remain unchanged and in full force and effect, except that Section 1 and Exhibit A shall be revised to identify the Substitute Premises, to state the Rentable Area of the Substitute Premises and to make the change, if any, in Base Rent.

39. **Liability of Landlord.** Tenant shall look solely to rents, issues and profits from the Building for the satisfaction of any judgment or decree against Landlord, whether for breach of the terms hereof or arising from a right created by statute or under common law. Tenant agrees that no other property or assets of the Landlord or any partner in or of Landlord shall be subject to levy, execution or other enforcement procedures for satisfaction of any such judgment or decree; no partner in or of Landlord shall be sued or named as a party in any suit or action (except as may be necessary to secure jurisdiction over the partnership); no service of process shall be made against any partner in or of Landlord (except as may be necessary to secure jurisdiction over the partnership); no judgment will be taken against partner in or of Landlord; no writ of execution will ever be levied against the assets of any partner in or of Landlord; and these covenants, limitations and agreements are enforceable both by Landlord and by any partner in or of Landlord. References in this Section 39 to a partner in or of Landlord shall mean and include all past, present and future partners of The City of Seattle and any subsequent owner of the Building.
40. **Force Majeure.** Landlord shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to any cause beyond its reasonable control, including, but not limited to an act of Nature, act of civil or military authority, fire, flood, windstorm, earthquake, strike or labor disturbance, civil commotion, delay in transportation, governmental delay, or war.
41. **Counterparts.** This Lease may be executed by the parties in counterparts, which, taken together, constitute the entire Lease.
42. **Name of Building.** Landlord reserves the right to change the name of the Building. Tenant agrees that such change shall not require amendment of this Lease or affect in any way its obligations under this Lease, and that, except for the name change, all terms and conditions of this Lease shall remain in full force and effect.
43. **Headings.** The section headings used in this Lease are used for purposes of convenience and do not alter in any manner the content of the sections.
44. **Context.** Whenever appropriate from the context, the use of any gender shall include any other or all genders, and the singular shall include the plural, and the plural shall include the singular.
45. **Execution by Landlord and Tenant; Approval of Lender.** Landlord shall not be deemed to have made an offer to Tenant by furnishing Tenant with a copy of this Lease with particulars inserted. No contractual or other rights shall exist or be created between Landlord and Tenant until all parties hereto have executed this Lease and, if Landlord so



directs, until it has been approved by Lender and fully executed copies have been delivered to Landlord and Tenant. Within ten (10) days after a request from Landlord therefore, Tenant shall consent to the making of such reasonable changes herein as may be requested by Lender, so long as such changes do not increase Base Rent and Additional Charges due from Tenant hereunder or otherwise materially alter Tenant's rights hereunder.

46. **Time of Essence; Time Calculation Method.** Time is of the essence with respect to this Lease. Except as otherwise specifically provided, any specified period of 5 days or less shall not include a Saturday, Sunday or legal holidays as defined in RCW 1.16.050. Any specified period of more than 5 days shall refer to calendar days; provided, that if the final day for any action required hereunder is a Saturday, Sunday or legal holidays as defined in RCW 1.16.050, such action shall not be required until the next succeeding day that is not a Saturday, Sunday or legal holiday. Any reference in this Lease to the word "month" means "calendar month."
47. **Entire Agreement; Applicable Law.** This Lease and the Exhibits attached hereto, and by this reference incorporated herein, set forth the entire agreement of Landlord and Tenant concerning the Premises and Building, and there are no other agreements or understanding, oral or written, between Landlord and Tenant concerning the Premises and Building. Any subsequent modification or amendment of this Lease shall be binding upon Landlord and Tenant only if reduced to writing and signed by them. This Lease shall be governed by, and construed in accordance with the laws of the State of Washington.
48. **Negotiated Agreement.** The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year indicated below.

**LANDLORD:**

**THE CITY OF SEATTLE**

**TENANT:**

**MORNINGSTAR  
INVESTMENTS, LLC  
d/b/a ChewChews**

By: \_\_\_\_\_  
Brenda Bauer  
Director, Fleets & Facilities Department

By: \_\_\_\_\_  
Jon Ho Yang  
Member and Manager, Morningstar  
Investments, LLC, d/b/a ChewChews



STATE OF WASHINGTON )  
 ) ss. (Acknowledgement for Lessor, The City of Seattle)  
COUNTY OF KING )

On this \_\_\_\_ day of \_\_\_\_\_, 2009, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared **Brenda Bauer**, known to me to be the Fleets & Facilities Director of **THE CITY OF SEATTLE**, the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the purposes therein mentioned, and on oath stated that she was authorized to execute said instrument.

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

\_\_\_\_\_  
[Signature] [Printed Name]  
NOTARY PUBLIC in and for the State of Washington residing at \_\_\_\_\_.  
My commission expires \_\_\_\_\_.

STATE OF \_\_\_\_\_ )  
 ) ss. (Acknowledgement for Tenant)  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, before me, a Notary Public in and for the State of \_\_\_\_\_, duly commissioned and sworn, personally appeared **Jong Ho Yang**, to me known to be the **Member** and **Manager of Morningstar Investments, LLC d/b/a ChewChews**, the entity that executed the foregoing Lease as Tenant; and acknowledged to me that \_\_\_ signed the same as the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and that \_\_\_\_\_ was authorized to execute said Lease for said entity.

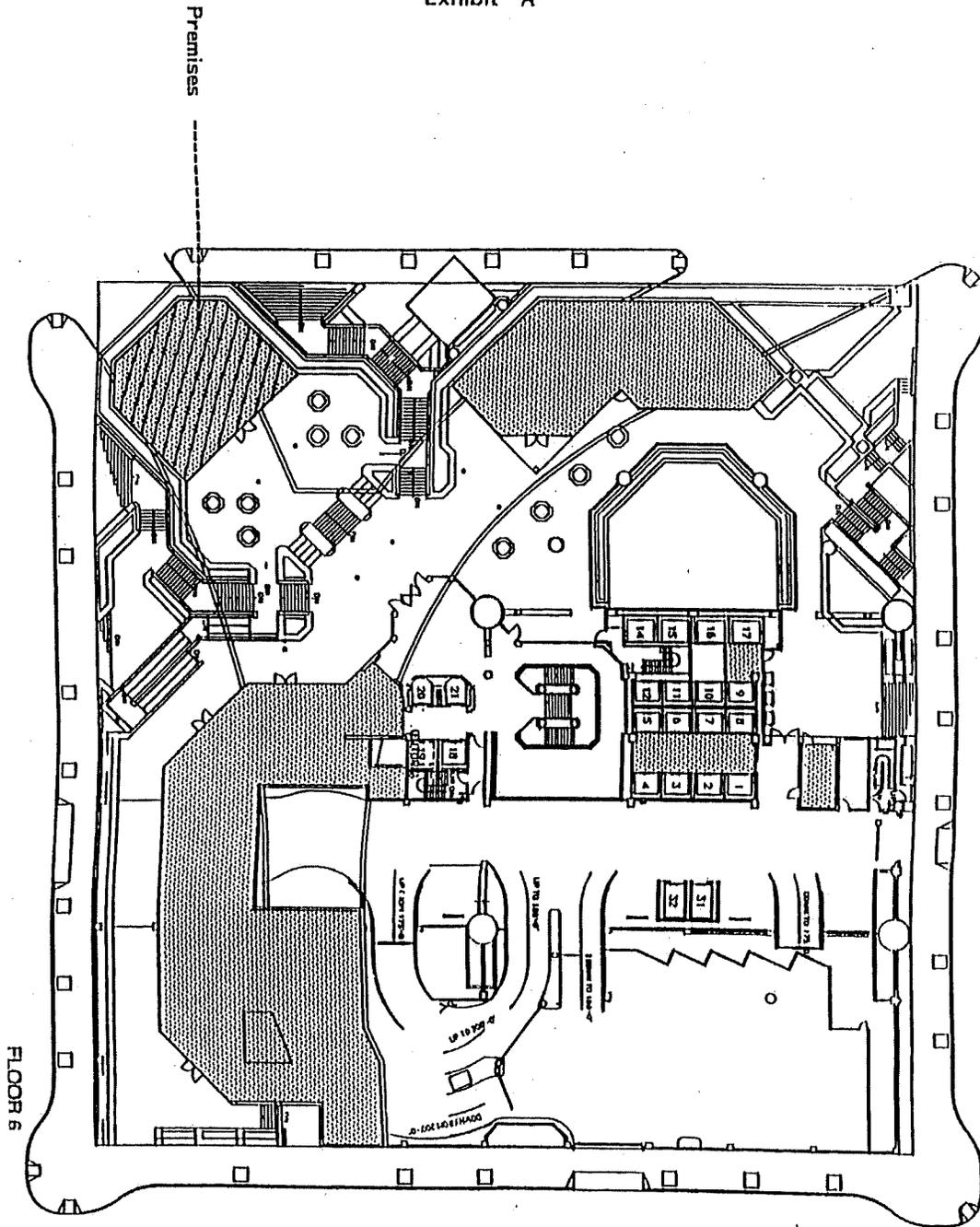
I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

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

\_\_\_\_\_  
[Signature] [Printed Name]  
NOTARY PUBLIC in and for the State of \_\_\_\_\_ residing at \_\_\_\_\_.  
My commission expires \_\_\_\_\_.



Exhibit "A"



**EXHIBIT B**  
**TO**  
**SEATTLE MUNICIPAL TOWER LEASE**

**RULES AND REGULATIONS**

1. Except as specifically provided in the Lease to which these Rules and Regulations are attached, no sign, placard, picture, advertisement, name or notice shall be installed or displayed on any part of the outside or inside of the Building without the prior written consent of Landlord. Landlord shall have the right to remove, at Tenant's expense and without notice, any sign installed or displayed in violation of this rule. All approved signs or lettering on doors and walls shall be printed, painted, affixed or inscribed at the expense of Tenant by a person approved by Landlord.
2. No curtains, draperies, blinds, shutters, shades, screens or other coverings, hangings or decorations shall be attached to, hung or placed in, or used in connection with any window of the Building without the prior written consent of the Landlord, which Landlord may withhold in its sole and absolute discretion. In any event, with the prior written consent of Landlord, such items shall be installed on the office side of Landlord's standard window covering and shall in no way be visible from the exterior of the Building. Tenant shall not alter or remove any exterior window glass of the Building for any reason.
3. Tenant shall not obstruct any sidewalks, halls, passages, exits, entrances, elevators or stairways of the Building. The halls, passages, exits, entrances, elevators, escalators and stairways are not open to the general public, but are open, subject to reasonable regulation, to Tenant's business invitees. Landlord shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Landlord would be prejudicial to the safety, character, reputation and interest of the Building and its tenants; providing that nothing herein contained shall be construed to prevent such access to persons with whom any tenant normally deals in the ordinary course of this business, unless such persons are engaged in illegal or unlawful activities. No tenant and no employee or invitee of any tenant shall go upon the roof of the Building.
4. The directory of the Building will be provided for the display of the name and location of tenants and a reasonable number of the principal officers and employees of tenants, and Landlord reserves the right to exclude any other names therefrom. Any additional name that Tenant shall desire to place upon the directory must first be approved by Landlord and, if so approved, a charge will be made therefore.
5. All cleaning and janitorial services for the Building and the Premises shall be provided exclusively through Landlord, and except with the written consent of Landlord, no person or persons other than those approved by Landlord shall be employed by Tenant or permitted to enter the Building for the purpose of cleaning



the same. Tenant shall not cause any unnecessary labor by carelessness or indifference to the good order and cleanliness of the Premises.

6. Landlord will furnish Tenant, free of charge, two (2) keys to each door lock in the Premises. Landlord will also provide for each person occupying an office in the Premises, one electronic Building security system access card that permits access to the Building and control of the elevator to the Premises during the evenings and over weekends when the Building is not normally open for business. Landlord may impose a reasonable charge for any additional key or Building security system access card requested by Tenant. Tenant shall not alter any lock or install a new additional lock or bolt on any door of its Premises. Tenant, upon the expiration or earlier termination of its tenancy, shall deliver to Landlord all Building keys that have been furnished to Tenant, and all Building security system access cards. In the event any keys or Building security system access cards so furnished is not returned as required hereunder, Tenant shall pay the then-current lost key or lost card charge as established by Landlord. Tenant may install its own security system with Landlord's prior consent, which shall not be unreasonably withheld, provided that Landlord shall have access to such security system and the Premises without charge.
7. If Tenant requires telegraphic, telephonic, burglar alarm or similar services, it shall first obtain, and comply with, Landlord's instructions as to their installation.
8. The Building freight elevator(s) shall be available for use by all tenants in the Building, subject to such reasonable scheduling as Landlord, in its discretion, shall deem appropriate. No equipment, materials, furniture, packages, supplies, merchandise or other property will be received in the Building or carried in the elevators except between such hours and in such elevators as may be designated by Landlord. Tenant's initial move in and subsequent deliveries and removals of heavy or bulky items, such as furniture, safes and similar items shall, unless otherwise agreed by Landlord, be made during the hours of 6 P.M. to 6 A.M. or on Saturday or Sunday and subject to such limitations as Landlord may impose. Deliveries during normal office hours shall be limited to normal office supplies and other small items. No delivery shall be made that impedes or interferes with any other tenant or the operation of the Building. In its use of the loading areas for the Building, Tenant shall not obstruct or permit the obstruction of said loading areas, and at no time shall Tenant park vehicles therein except for loading and unloading.
9. Tenant shall not place a load upon any floor of the Premises that exceeds the load per square foot that such floor was designed to carry and that is allowed by law. Landlord shall have the right to prescribe the weight, size and position of all equipment, materials, furniture or other property brought into the Building. Heavy objects shall, if considered necessary by Landlord, stand on such platforms as determined by Landlord to be necessary to properly distribute the weight, which platforms shall be provided at Tenant's expense. Any business machine or mechanical equipment belonging to Tenant that causes noise or vibration that may be transmitted to the structure of the Building or to any space therein, to such a degree as to be objectionable to Landlord or to any tenant in the Building, shall be placed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices sufficient to eliminate noise or vibration. Every person employed to



move such equipment in or out of the Building must be acceptable to Landlord. Landlord will not be responsible for loss of, or damage to, any such equipment or other property from any cause, and all damage done to the Building by maintaining or moving such equipment or other property shall be repaired at the expense of Tenant.

10. Tenant shall not use or keep in the Premises any kerosene, gasoline or flammable or combustible fluid or material other than those limited quantities necessary for the operation or maintenance of office equipment. Tenant shall not use or permit to be used in the Premises any foul or noxious gas or substance, or permit or allow the Premises to be occupied or used in a manner offensive or objectionable to Landlord or any other occupant of the building by reason of noise, odors or vibrations from the Premises, nor shall Tenant bring into or keep on or about the Premises any animal other than a hearing- or seeing-guide dog.
11. Tenant shall not use any method of heating or air conditioning other than that supplied and/or approved by Landlord.
12. Tenant shall not waste electricity, water or air conditioning and agrees to cooperate fully with Landlord to assure the most effective operation of the Building's heating and air conditioning and to comply with any governmental energy-saving rules, laws or regulations of which Tenant has actual notice, and shall refrain from attempting to adjust controls. Tenant shall keep corridor doors closed, and shall close window coverings at the end of each business day.
13. Landlord reserves the right to select the name of the Building and to make such change or changes of name as it may deem appropriate from time to time, and Tenant shall not refer to the Building by any name other than: (i) the names as selected by Landlord (as same may be changed from time to time), or (ii) the postal address, approved by the United States Post Office. Tenant shall not use the name of the Building in any respect other than as an address of its operation in the Building without the prior written consent of Landlord, which Landlord may withhold in its sole and absolute discretion. Landlord reserves the right, exercisable without notice and without liability to Tenant, to change the street address of the Building.
14. Landlord reserves the right to exclude from the Building between the hours of 6 P.M. and 7 A.M. the following day, or such other hours as may be established from time to time by Landlord, and on Sundays and legal holidays, any person unless that person is known to person or employee in charge of the Building and has a pass or is properly identified. Tenant shall be responsible for all persons for whom it requests passes and shall be liable to Landlord for all acts of such persons. Landlord shall not be liable for damages for any error with regard to the admission to or exclusion from the Building of any person. Landlord reserves the right to prevent access to the Building in case of invasion, mob, riot, public excitement or other commotion by closing the doors or by other appropriate action.
15. Tenant shall close and lock the doors of its Premises and entirely shut off all water faucets or other water apparatus, and electricity, gas or air outlets before Tenant and its employees leave the Premises. Tenant shall be responsible for any damage or



injuries sustained by other tenants or occupants of the Building or by Landlord for Tenant's noncompliance with this rule.

16. Tenant shall not obtain for use on the Premises ice, drinking water, food, beverage, towel or other similar services or accept barbering or bootblacking service upon the Premises, except at such hours and under such regulations as may be fixed by the Landlord.
17. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting from violation of this rule shall be borne by the Tenant who, or whose employee or invitee, shall have caused it.
18. Tenant shall not sell, or permit the sale at retail, of newspapers, magazines, periodicals, theatre tickets or any other goods or merchandise to the general public in or on the Premises. Tenant shall not make any room-to-room solicitation of business from other tenants in the building. Tenant shall not use the Premises for any business or activity other than that specifically provided in Tenant's Lease.
19. Except as permitted in the Lease, Tenant shall not install any radio or television antenna, loudspeaker or other devices on the roof or exterior walls of the Building. Tenant shall not interfere with radio or television broadcasting or reception from or in the Building or elsewhere.
20. Tenant shall not mark, drive nails, screw or drill into the partitions, woodwork or plaster, or in any way deface the Premises or any part thereof, except in accordance with the provisions of the Lease pertaining to alterations. Landlord reserves the right to direct electricians as to where and how telephone and telegraph wires are to be introduced to the Premises. Tenant shall not cut or bore holes for wires. Tenant shall not affix any floor covering to the floor of the Premises or any wall or ceiling coverings in any manner except as approved by Landlord. Tenant shall repair any damage resulting from noncompliance with this rule.
21. Tenant shall not install, maintain or operate upon the Premises any vending machine, video game or other coin-operated or coin-activated device without the written consent of Landlord.
22. Canvassing, soliciting and distribution of any handbill or any other written material, and peddling in the Building are prohibited, and Tenant shall cooperate to prevent such activities.
23. Landlord reserves the right to exclude or, expel from the Building any person who, in Landlord's judgment, is intoxicated or under the influence of any liquor or illegal drug or who is in violation of any of the Rules and Regulations of the Building.
24. Tenant shall store all its trash and garbage within its Premises or in other facilities provided by Landlord. Tenant shall not place in any trash box or receptacle any material that cannot be disposed of in the ordinary and customary manner of trash and garbage disposal. All garbage and refuse disposal shall be made in accordance with directions issued, from time to time, by Landlord.



25. The Premises shall not be used for the storage of merchandise held for sale to the general public, or for lodging or for manufacturing of any kind, nor shall the Premises be used for any improper or immoral purpose. No cooking shall be done or permitted on the Premises without Landlord's consent, except that use by Tenant of Underwriters' Laboratory-approved equipment for brewing coffee, tea, hot chocolate and similar beverages, or use of a microwave oven for employee use shall be permitted, provided that such equipment and use is in accordance with all applicable federal, state, county and city laws, codes, ordinances, rules and regulations.
26. Tenant shall not use in any space or in any public hall of the Building, any hand truck except one equipped with rubber tires and side guards or such other material-handling equipment as Landlord may approve. Tenant shall not bring any other vehicle of any kind into the Building.
27. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.
28. Tenant assumes any and all responsibility for protecting its Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed.
29. Tenant's requirement will be attended to only upon appropriate application to the Building management office by an authorized individual. No employee of Landlord shall perform any work or do anything outside of his/her regular duties unless under special instructions from Landlord, and no employee of Landlord shall admit any person (Tenant or otherwise) to any office outside of the Premises without specific instructions from Landlord.
30. Landlord may waive any one or more of these Rules and Regulations for the benefit of Tenant or any other tenant, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of Tenant or any other tenant, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all of the tenants of the Building.
31. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of Tenant's lease of its Premises in the Building.
32. Landlord reserves the right to make such other and reasonable Rules and Regulations as, in its judgment, may from time to time be needed for safety and security, for care and cleanliness of the Building and for the preservation of good order therein. Tenant agrees to abide by all such Rules and Regulations hereinabove stated and any additional rules and regulations that are adopted.
33. Tenant shall be responsible for the observance of all of the rules herein by Tenant's employees, agents, clients, customers, invitees and guests.
34. Smoking is not permitted in any public areas. Public areas include lobbies, restrooms, stairwells and garage. No smoking is permitted on any of the exterior plaza levels, except for an area designated by the Landlord.



EXHIBIT "C"

MENU

**NOODLES**

<b>Wheat Noodles &amp; Vegles</b>	Vegetables blended with wheat noodles and seasonings.
<b>Wheat Noodles, Seaweed &amp; Sprouts</b>	Seaweed and sprouts blended with wheat noodles and seasonings.
<b>Buttered Noodles, Parsley, Parmesan</b>	Noodles blended with olive oil, parsley, parmesan and seasonings
<b>Wheat Noodles &amp; Spinach</b>	Spinach blended with wheat noodles and seasonings.
<b>Pasta, Crab &amp; Snow Peas</b>	Rice shaped pasta with crab meat, snow peas and seasonings.
<b>Tofu &amp; Tuna Shells</b>	Pasta shells mixed with tofu, vegetables, tuna and seasonings.

**RICE**

<b>Plain Steamed White Rice</b>	
<b>Plain Steamed Brown Rice</b>	
<b>Plain Steamed Barley</b>	
<b>Brown Rice &amp; Vegles</b>	Brown rice, minced vegetables sauteed in sesame oil, light soy and seasonings.
<b>Brown Rice, Chicken &amp; Vegles</b>	Brown rice, vegetables and julienne strips of chicken sauteed in sesame oil, light soy sauce and seasonings.
<b>Brown Rice &amp; Sesame</b>	Seasoned brown rice sauteed in sesame oil, tossed with toasted sesame seeds.
<b>Curry Rice</b>	Brown rice and beans spiced with curry powder and seasonings.
<b>Rice &amp; Black Beans</b>	Rice, black beans, vegetables, garlic, onion and seasonings.
<b>Barley with Mushrooms</b>	Steamed barley, mushrooms and seasonings.
<b>Barley with Broccoli &amp; Zucchini</b>	Barley sauteed with broccoli and zucchini with seasonings.

**POTATOES**

<b>Creamy Potatoes</b>	Potatoes baked in a cream sauce.
<b>Roasted Garlic Potatoes</b>	Red potatoes roasted in a olive oil garlic dressing.
<b>Honey-Dijon Potato</b>	Red potatoes blended in a sweet, tangy honey-dijon sauce.
<b>Baked Potato</b>	Bolled baked potato served plain.



MENU

**VEGIES - SAUTE'**

**Sprouts, Celery & Carrots**

Bean sprouts, celery, carrots sauteed in seasonings.

**Asparagus & Tomatoes**

Asparagus and tomatoes sauteed in garlic and seasonings.

**Eggplant & Mushroom**

Eggplant, mushrooms and red peppers sauteed in seasonings.

**Spiced Eggplant**

Eggplant sauteed in a spicy blend of seasonings.

**Zucchini & Mushrooms**

A sauteed blend of zucchini, mushrooms and seasonings.

**Sesame Broccoli**

Sauteed broccoli tossed with sesame seeds and seasonings.

**Asparagus & Shrimp**

Sauteed blend of asparagus, shrimp and seasonings.

**String Bean Sesame**

Sauteed string beans tossed with sesame seeds and seasonings.

**Mushrooms**

Sauteed mushrooms seasoned with herbs and spices.

**Asparagus & Mushrooms**

Sauteed asparagus and mushrooms, herbs and spices.

**Snowpeas & Shrimp**

Sauteed blend of snowpeas and shrimp with seasonings.

**VEGIES - FRIED**

**Spinach Toss**

Boiled spinach seasoned and garnished with sesame.

**Bean Sprout Toss**

Boiled bean sprouts seasoned and garnished with sesame.

**Corn & Red Pepper Toss**

Fresh steamed corn and red peppers tossed with a splash of oil and seasonings.

**Herbed Greens**

Spinach, romaine lettuce, lettuce, red onions and tomatoes.

**Tomato & Basil**

Tomato, basil and mozzarella with garlic and seasonings.

**Garden Vegetable Toss**

Tomato, zucchini, olives and mushrooms with vinaigrette.

**Oriental Vegetable Toss**

Snowpeas, cauliflower, bamboo shoots and water chestnuts with seasonings.

**Cherry Tomato Cucumber Toss**

Tomatoes and cucumber marinated in vinaigrette dressing.

**Asparagus with Red Wine Vinegar**

Asparagus, tomatoes, onions with red wine vinegar and seasonings.

**Asparagus & Crab**

Asparagus and crab tossed in olive oil and seasonings.



**MENU**

**BEANS**

**Black Bean Toss**

Black Beans, scallions, tomatoes tossed with vinaigrette.

**Colorful Bean Toss**

Black, kidney, chick and pinto beans tossed in vinaigrette.

**VEGETABLES**

**Steamed - Plain**

Asparagus  
Bean Sprouts  
Broccoli  
Brussel Sprouts  
Cauliflower  
Mushroom  
Snowpeas

**Fresh Raw Vegetables**

Alfalfa Sprouts  
Bean Sprouts  
Broccoli  
Carrots  
Cauliflower  
Celery  
Cucumber  
Green Peppers  
Mushrooms  
Purple Onion  
Red Pepper  
Spinach  
Tomatoes  
Yellow Peppers

**DRESSINGS**

Yogurt Dressing  
Honey-Dijon  
Poppy-Seed Parmesan  
Herbed Oil & Vinegar



**MENU**

**SUSHI**

Crab Meat, Avocado, Scallion  
Spinach, Egg, Scallion  
Shrimp, Cucumber  
Idodomaki

**DUMPLINGS**

Tofu Dumplings  
Vegetable Dumplings  
Seafood Dumplings

**PATTIES**

Vegetable Patties  
Zucchini Patties  
Potato Patties  
Scallion "Cakes"

**SOUPS**

Rice & Bean Soup  
Tofu Miso Soup  
Tofu & Vegetable Soup  
Tofu & Mushroom Chicken Soup  
Seaweed Soup  
Black Bean Soup  
Spinach Tofu Soup  
Vegetable Chili

**FRUITS**

Citrus Salad  
Berry Salad

Oranges, grapefruits and asian pears topped with raisins and nuts.  
Blueberries, cranberries, raspberries, strawberries, cherries, kiwis  
and grapes.

Tropical Salad

Honey dew, cantaloupe, oranges, grapefruit, pineapple, kiwi,  
strawberries and grapes.

\* Optional dressings for Fresh Fruit Puree or Honey Marinade \*



**MENU**

**DESSERTS**

Sweet Red Bean Soup  
Sweet Rice, Fruit & Nuts  
Brownies  
Zucchini Bread  
Banana Nut Bread  
Carrot Cake  
Frozen Yogurt  
Sweet Red Bean Bar

Variety of Original Pastries

**BREAKFAST ITEMS**

**FRUITS**

Choice of Fruit Salad - Citrus, Berry, Tropical

Fresh Cut Fruits - Cantaloupe, Grapefruit, Honey Dew, Oranges, Strawberries, Pineapple, Peaches.

Yogurt

**BAKED GOODS**

Muffins  
Brioche  
Croissants  
Bagels  
Cinnamon Rolls

**HOT ITEMS**

Multi-Grain Pancakes  
Blueberry Pancakes  
Honey-Vanilla Yogurt Pancakes  
Omelet with Herbs  
Omelet with Asparagus, Mushrooms & Cheese  
Omelet with Havarti & American Cheese  
Hot Muesli  
Cinnamon & Raisin Cream of Wheat

C-5



**MENU**

**BEVERAGES**

**Cold**

Sweet Rice Beverage  
Soy Milk  
Fruit Smoothies  
Juices  
Iced Teas  
Seltzers  
Mineral Water

**Hot**

Barley Tea  
Wheat Tea  
Green Tea  
Ginseng Tea  
Strawberry Tea  
Coffee

**PARTY TRAYS**

Sushi Plate  
Deluxe Fruit Tray  
Vegetable Tray (fresh, sauteed, steamed)  
Patty Tray (vegetable patties, scallion cakes, etc.)

C-6



**EXHIBIT D**  
**PERSONAL GUARANTY OF FINANCIAL OBLIGATIONS IN LEASE**

This Personal Guaranty (“Guaranty”) is entered into by Jong Ho Yang (“Guarantor”) in favor of **THE CITY OF SEATTLE**, a municipal corporation of the State of Washington, (the “City” or “Landlord”).

A. Morningstar Investments, LLC d/b/a ChewChews (“Tenant”), a Washington limited liability company, desires to enter into a Lease whereby Tenant leases from the City certain premises located in the Seattle Municipal Tower (the “Lease”).

B. Guarantor desires that the City enter into that certain Seattle Municipal Tower Lease, which this Guaranty is incorporated into and made a part of as Exhibit D. As stated in Section 2.F of the Lease, the City is willing to enter into the Lease strictly conditioned upon the Guarantor’s personal guaranty of Tenant’s financial obligations under the Lease in the manner set forth herein.

NOW THEREFORE, for other good and valuable consideration receipt of which Guarantor hereby acknowledges, Guarantor agrees as follows:

1. Guarantee. Guarantor, acting in his individual and personal capacity and not as the manager or member of Tenant, unconditionally guarantees to Landlord and its successors and assigns, Tenant’s full and punctual performance of all financial obligations, including, but not limited to, payment of rent and any other sum of money due to Landlord from Tenant (“Guaranteed Obligations”) pursuant to the Seattle Municipal Tower Lease between the City of Seattle and Tenant, initially dated as of the same date hereof and which this Guaranty is incorporated and made a part of as Exhibit E, and as further modified or amended by Landlord and Tenant during the term of this Guaranty (the “Lease”).

2. Term of Guaranty. This Guaranty will be effective commencing upon the effective date of the Lease and shall continue in full force for the entire Lease Term or until all Tenant’s obligations under the Lease are fully performed.

3. Joint and Several Liability. Tenant and Guarantor shall be jointly and severally liable for the full and complete performance of Tenant’s obligations under the Lease.

4. Right of City to Proceed Against Guarantor. In the event of a failure by Tenant to perform any Guaranteed Obligation hereunder, the City shall have the right to proceed first and directly against the Guarantor under this Guaranty and without proceeding against Tenant or exhausting any other remedies against Tenant which the City may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that the City (1) file suit or proceed to



obtain a personal judgment against Tenant, (2) make any other effort to obtain payment or performance of the Guaranteed Obligations from Tenant other than providing Tenant with notice of such payment or performance as may be required by the terms of the Lease or required to be given to Tenant under applicable law, or (3) exercise any other right or remedy to which the City is or may be entitled in connection with the Guaranteed Obligations. Upon any unexcused failure by Tenant in the payment or performance of any Guaranteed Obligation and the giving of such notice or demand, if any, to Tenant and Guarantor as may be required in connection with such Guaranteed Obligation and this Guaranty, the liability of the Guarantor shall be effective and shall immediately be paid or performed. Notwithstanding the City's right to proceed directly against the Guarantor, the City (or any successor) shall not be entitled to more than a single full performance of the obligations in regard to any breach or non-performance thereof.

5. Guaranty Absolute and Unconditional. The obligations of the Guarantor hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect until Tenant shall have fully discharged the Guaranteed Obligations in accordance with the terms of the Lease and shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such Guaranteed Obligations) based on any claim that the Guarantor may have against Tenant, the City or any other person. Without limiting the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by or further consent of the Guarantor):

(a) any permitted transfer or assignment or rights or obligations under the Lease;

(b) any permitted assignment for the purpose of creating a security interest or mortgage of all or any part of the respective interests of the City or Tenant in the Lease;

(c) any amendment, change or modification to of any of the Guaranteed Obligations, and in such case the liability of Guarantor shall be deemed modified in accordance with such amendment or modification of the Lease;

(d) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshaling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium arrangement, composition with creditors or readjustment of, or other similar proceedings against Tenant or the Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guaranty in any such proceeding (it is specifically understood, consented and agreed to that, to the extent permitted by law, this Guaranty shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had



not been instituted and as if no rejection, stay, termination, assumption or modification had occurred as a result thereof, it being the intent and purpose of this Guaranty that the Guarantor shall and do hereby waive all rights and benefits which might accrue to them by reason of any such proceedings);

(e) any failure on the part of Tenant for any reason to perform or comply with any agreement with the Guarantor;

(f) any failure of the City to mitigate damages resulting from any default by Tenant under the Lease (except to the extent such failure constitutes a legal or equitable defense of Tenant under applicable law);

(g) any sale, lease, transfer, abandonment or other disposition of any or all of the property of Tenant;

(h) any legal disability of any party to the Lease; or

(i) the fact that entering into the Lease by Tenant was invalid or in excess of its powers.

Should any money due or owing under this Guaranty not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (a) through (i) above, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of Tenant pursuant to the terms of the Lease and not merely a guarantor and shall be paid by the Guarantor forthwith subject to the terms of this Guaranty. Notwithstanding anything to the contrary expressed in this Guaranty, nothing in this Guaranty shall be deemed to amend, modify, clarify, expand or reduce Tenant's rights, benefits, duties or obligations under the Lease. To the extent that any of the matters specified in subparagraphs (a) through (c) and (e) through (i) would provide a defense to, release, discharge or otherwise affect Tenant's Guaranteed Obligations, the Guarantor's obligations under this Guaranty shall be treated the same.

Notwithstanding any provision contained herein to the contrary, the Guarantor shall be entitled to exercise or assert any and all legal or equitable rights or defenses which Tenant may have under the Lease or under applicable law (other than bankruptcy or insolvency of Tenant and other than any defense which the Guarantor has expressly waived in this Guaranty), and the obligations of the Guarantor hereunder are subject to such counterclaims, set-offs or deductions which Tenant is permitted to assert pursuant to the Lease, if any.

6. Guarantor's Consent. Guarantor hereby consents to the Lease, and further consents and agrees that the City may, without further consent or disclosure and without affecting or releasing the Guaranteed Obligations of Guarantor hereunder, except as otherwise specifically set forth herein: (a) surrender, exchange, release, assign, or sell any collateral securing any Guaranteed Obligation or waive, release, assign, sell, or



subordinate any security interest, in whole or in part; (b) waive or delay the exercise of any rights or remedies of the City against Tenant, its successor or permitted assigns; (c) waive or delay the exercise of any rights or remedies of the City against any surety or guarantor (including without limitation, rights or remedies of the City against Guarantor under this Guaranty); (d) waive or delay the exercise of any rights or remedies of the City in respect of any collateral or security interest now or hereafter held; (e) release any surety or guarantor; or (f) renew, extend, waive or modify the terms of the obligations of any other surety or guarantor, or any instrument or agreement evidencing the same.

6. Guarantor' Waiver. Except for any notice specifically required by the terms of this Guaranty, Guarantor waives notice of (a) the City's acceptance of this Guaranty or its intention to act or its actions in reliance hereon; (b) the present existence or future incurring of any Guaranteed Obligations or any terms or amounts thereof; (c) any default by Tenant, its successor or permitted assigns or any surety or guarantor; (d) the obtaining of any guaranty or surety agreement (in addition to this Guaranty); (e) the obtaining of any pledge, assignment or other security for any Guaranteed Obligations; (f) the release of any surety or guarantor; (g) the release of any collateral; (h) any change in Tenants business or financial condition or the business or financial condition of its successor or permitted assigns; (i) any acts or omissions of the City consented to in Section 5 hereof; and (j) any other demands or notices whatsoever with respect to the Guaranteed Obligations or this Guaranty. Except for any notice specifically required by the terms of this Guaranty, Guarantor further waives notice of presentment, demand, protest, notice of nonpayment and notice of protest in relation to any instrument or agreement evidencing any Guaranteed Obligation. In addition, Guarantor hereby unconditionally and irrevocably waives:

(a) to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period which may be applicable to Guarantor (or parties in similar relationships) which would be shorter than the applicable statute of limitations period for the underlying claim;

(b) any right to require a proceeding first against Tenant;

(c) the requirement of, or the notice of, the filing of claims by the City in the event of the receivership or bankruptcy of Tenant; and

(d) all demands upon Tenant or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this Section 6, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from their absolute, present, irrevocable, unconditional and continuing obligations hereunder.

7. Guarantor's Knowledge of Tenant's Economic Condition. Guarantor represents and warrants to the City that it has reviewed such documents and other information as it deemed appropriate in order to permit it to be fully apprised of Tenant's



financial condition and operations and has, in entering into this Guaranty made its own credit analysis independently and without reliance upon any information communicated by the City. Guarantor covenants for the benefit of the City to remain apprised of all material economic or other developments relating to or affecting Tenant, its successor or permitted assigns or their properties or businesses.

8. Unconditional Guaranty. Except as specifically set forth elsewhere in this Guaranty, the obligations of Guarantor under this Guaranty are absolute and unconditional without regard to the obligations of any other party or person and shall not be in any way limited or affected by any circumstance whatsoever.

9. Guarantor's Death. If either Guarantor should die prior to the expiration or satisfaction of this Guaranty, this Guaranty shall be binding upon said Guarantor and his estate, personal representatives and other legal representatives, heirs, beneficiaries, assigns, and upon the trustees and successors trustees of any revocable trust established by Guarantor (whether presently existing or hereafter established).

10. Separate Obligations; Reinstatement. The joint and several obligations of the Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall (a) give rise to separate and independent causes of action against either or both Guarantor and (b) apply irrespective of any indulgence granted from time to time by the City. The Guarantor agree that this Guaranty shall be automatically reinstated if and to the extent that for any reason any payment or performance by or on behalf of Tenant is rescinded or must be otherwise restored by the City, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding, unless such rescission or restoration is pursuant to the terms of the Lease or Tenant's enforcement of such terms under applicable law.

11. Notices. Any notice permitted hereunder may be given to Guarantor by personal delivery, by fax (with confirmation of receipt by telephone), or by certified mail addressed to:

Jong Ho Yang

[Get an address that is NOT the premises for this]

12. Amendments; Waiver. This Guaranty may not be amended or modified except by written agreement of Guarantor and the City. Except as otherwise provided herein, no provision of this Guaranty may be waived except in writing and then only in the specific instance and for the specific purpose for which given.

13. No Third-Party Beneficiaries. Nothing contained herein shall be construed as creating a third-party beneficiary relationship.

14. Governing Law; Severability. This Guaranty shall be governed by and construed in accordance with the internal laws of the State of Washington. The parties hereto intend and believe that each provision in this Guaranty comports with all



applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Guaranty is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Guaranty to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Guaranty shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of the City under the remainder of this Guaranty shall continue in full force and effect.

15. Assignment. Without the prior written consent of the City, this Guaranty may not be assigned by the Guarantor.

16. Capitalized Terms. Capitalized terms not otherwise defined herein shall have the meanings given in the Lease unless another meaning is clearly contemplated herein.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2009, in the City of Seattle, King County, Washington.

**GUARANTOR:**  
Jong Ho Yang

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date:

[Acknowledgement on next page]



STATE OF \_\_\_\_\_ )  
 ) ss. (Acknowledgement for Guarantor)  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, a Notary Public in and for the State of \_\_\_\_\_, duly commissioned and sworn, personally appeared **Jong Ho Yang**, to me known to be the person who executed the foregoing Personal Guaranty as Guarantor; and acknowledged to me that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned and that he was authorized to execute said Guaranty for said entity.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

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

\_\_\_\_\_  
*[Signature]* *[Printed Name]*  
NOTARY PUBLIC in and for the State of \_\_\_\_\_ residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_.



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>DOF Analyst/Phone:</b>
FFD	Myrna Frasier / 3-7094	Kathryn Ewing / 3-9580

**Legislation Title:**

AN ORDINANCE authorizing the Director of the City of Seattle’s Fleets and Facilities Department to execute a lease agreement between the City and Morningstar Investments, LLC, d/b/a ChewChews, a Washington limited liability company, for the continued operation of a restaurant establishment in the Seattle Municipal Tower.

• **Summary of the Legislation:**

This legislation authorizes the Director of the Fleets and Facilities Department (FFD) to execute a lease with Morningstar Investments, LLC operating as ChewChews (“ChewChews”), to provide for the continued occupancy of approximately 1,696 rentable square feet of retail space in the Seattle Municipal Tower (SMT) for the operation of a ChewChews restaurant. The lease provides for an initial term of five years with a two year renewal option. The lease requires legislation because the term of the lease exceeds FFD statutory authority for leasing under Seattle Municipal Code 3.18.160.

• **Background:**

ChewChews has been a tenant in SMT since 1992. The City acquired the property in 1996 and has continued to lease space to ChewChews. ChewChews is one of a limited number of retail tenants providing services to building tenants and the public. The proposed lease covers the same square footage as the current lease. The rate per square foot increases from the current rate of \$6.01 per square foot to \$12.75 per square foot. This rental rate was reached through negotiations between ChewChews and the City’s representative, CB Richard Ellis.

FFD uses revenue received from private tenants in City-owned property to reduce the amount of money collected in rent paid by City tenants in City-owned properties. Revenue received from non-City SMT and City Hall Tenants reduces space rent for all City departments with office space in the downtown civic complex. Space rent for City entities is generally calculated on a biennial basis. Changes in non-City leases are considered when space rent is calculated.

       **This legislation does not have any financial implications.**

  X   **This legislation has financial implications.**

**Appropriations:** N/A



**Anticipated Revenue/Reimbursement: Resulting From This Legislation:**

<b>Fund Name and Number</b>	<b>Department</b>	<b>Revenue Source</b>	<b>2009 Revenue</b>	<b>2010 Revenue</b>
50300 – FFD Operations Fund	FFD	Lease Payments Jan-June 2009	\$5,096.46	
		Lease Payments Starting July 2009	\$10,812.00	\$21,624.00
		<b>TOTAL</b>	<b>\$15,908.46</b>	<b>\$21,624.00</b>

**Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact:**

None.

**Spending/Cash Flow:** N/A

• **What is the financial cost of not implementing the legislation?**

Failure to implement this legislation would result in lost revenue for the City while trying to find another tenant for the space.

• **Does this legislation affect any departments besides the originating department?**

No.

• **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**

Allow the ChewChews lease to expire and seek another tenant for the space on the open market. This would result in lost revenue during the time between ChewChews' lease expiration and the date a new lease with a new tenant begins. The rental rate for a new tenant is unknown as it would depend on the market conditions at the time the deal with the new tenant is negotiated. Further, a new lease would likely require City funded tenant improvements which would have an initial capital expense.

• **Is the legislation subject to public hearing requirements?**

No.

• **Other Issues:**

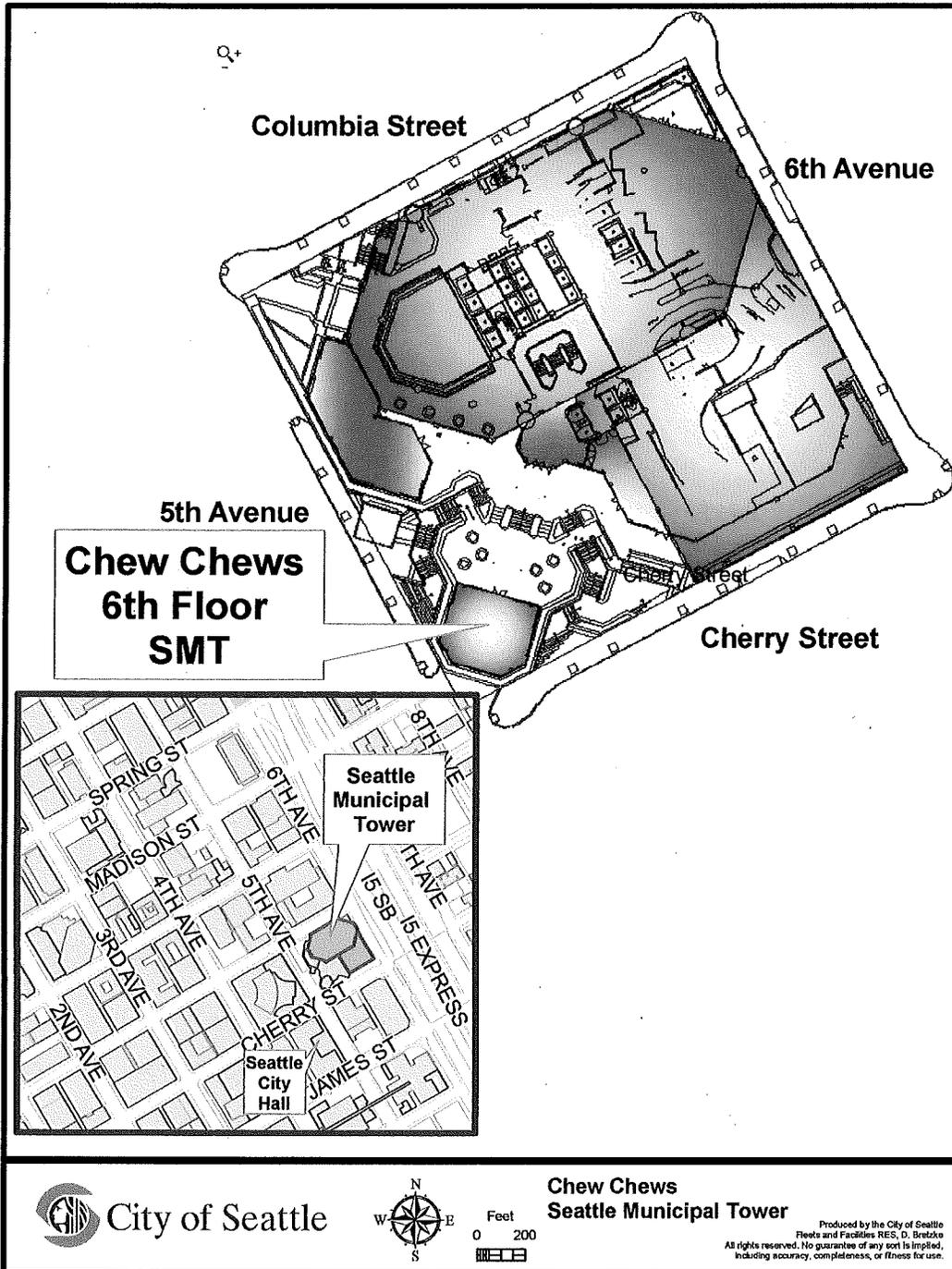
None.



**Please list attachments to the fiscal note below:**

FFD\_ChewChewsSMT\_FISC\_Attach1\_Map.

Attachment 1: Map Location of Space to be Leased





# City of Seattle

Gregory J. Nickels, Mayor

## Office of the Mayor

June 23, 2009

Honorable Richard Conlin  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

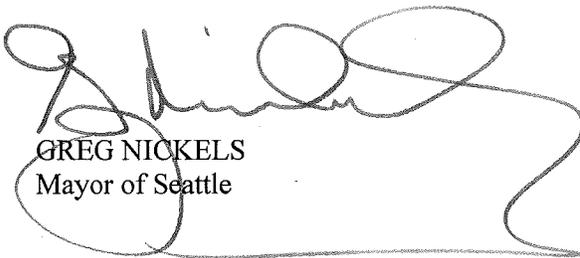
Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill authorizing the Director of the Fleets and Facilities Department (FFD) to execute a lease agreement with Morningstar Investments, LLC, operating as ChewChews, to lease approximately 1,696 square feet of retail space in the Seattle Municipal Tower (SMT) for the operation of a ChewChews restaurant. This lease is for an initial term of five years with a two year renewal option.

ChewChews has been a tenant in SMT since April 1, 1992, and is one of the few restaurant establishments within SMT to serve our building tenants and the public. Legislation is required because the term of the lease exceeds FFD's statutory authority for leasing.

The lease agreement authorized by this legislation will continue to provide the City with revenue for this space. Thank you for your consideration of this legislation. Should you have any questions, please contact Myrna Frasier at 233-7094.

Sincerely,



GREG NICKELS  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7<sup>th</sup> Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 615-0476 Fax: (206) 684-5360, Email: [mayors.office@seattle.gov](mailto:mayors.office@seattle.gov)

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123058

**STATE OF WASHINGTON – KING COUNTY**

--SS.

243757  
CITY OF SEATTLE, CLERKS OFFICE

No. TITLE ONLY

**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 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

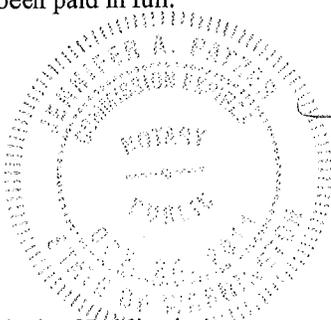
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:123057-62,64-69

was published on

08/21/09

The amount of the fee charged for the foregoing publication is the sum of \$ 268.85, which amount has been paid in full.



*Valery Wald*  
\_\_\_\_\_  
Subscribed and sworn to before me on  
08/21/09  
*[Signature]*  
\_\_\_\_\_  
Notary public for the State of Washington,  
residing in Seattle

Affidavit of Publication

# State of Washington, King County

## City of Seattle

### TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on August 10, 2009, and published here by title only, will be mailed upon request, or can be accessed at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

#### ORDINANCE NO. 123069

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

#### ORDINANCE NO. 123068

AN ORDINANCE authorizing, in 2009, acceptance of funding from non-City sources; authorizing the heads of the Seattle Department of Transportation, the Seattle Police Department, the Seattle Public Utilities, Seattle City Light, the Seattle Fire Department, the Human Services Department, and the Fleets and Facilities Department to accept specified grants and private funding and to execute, deliver, and perform corresponding agreements; and ratifying and confirming certain prior acts.

#### ORDINANCE NO. 123067

AN ORDINANCE amending the 2009 Adopted Budget, including the 2009-2014 Capital Improvement Program (CIP); changing appropriations to various departments and budget control levels, and from various funds in the Budget; establishing new appropriations; adding a new project and revising project allocations for certain projects in the 2009-2014 CIP; amending Ordinance 122863; and ratifying and confirming certain prior acts, all by a three-fourths vote of the City Council.

#### ORDINANCE NO. 123066

AN ORDINANCE amending budget provisions that restrict spending of an appropriation for a Public Engagement Portal Initiative in the Department of Information Technology's 2009 Adopted Budget.

#### ORDINANCE NO. 123065

AN ORDINANCE accepting funds from the Washington State Department of Commerce allocated through the American Recovery and Reinvestment Act of 2009; authorizing the Mayor or his designee to execute related agreements; amending the 2009 Adopted Budget to increase appropriations for the Office of Housing; and ratifying and confirming prior acts; all by a three-fourths vote of the City Council.

#### ORDINANCE NO. 123064

AN ORDINANCE relating to certain City-owned property located at the intersection of Ninth Avenue and Lenora Street in the City of Seattle; authorizing the Director of the Fleets and Facilities Department to execute an agreement with the State of Washington Secretary of State to create a nonresidential condominium on the property and to convey certain units therein to the State of Washington in connection with the operation of the Washington Talking Book and Braille Library; and authorizing execution of related agreements.

#### ORDINANCE NO. 123062

AN ORDINANCE relating to the partial release of a restrictive covenant and easement in gross restricting the use of property in the Rainier Valley; authorizing the Superintendent of the Department of Parks and Recreation to execute and record, in favor of the Housing Authority of the City of Seattle, a partial release of an encumbrance on real property; and superseding the requirements of Ordinance 118477 for purposes of this ordinance.

#### ORDINANCE NO. 123061

AN ORDINANCE accepting deeds, correction deeds, and easements for street, alley, and sidewalk purposes; laying off, opening, widening, extending, and establishing portions of the following rights-of-way: the alley in Lots 1 and 2, Block 26, of Second Addition to that part of the City of Seattle Laid off by A.A. Denny and W.M. Bell (Commonly known as Bell and Denny's 2nd Addition to the City of Seattle); the alley in Lots 3 through 6, Block 9, an Addition to the Town of Seattle, as laid off by the Heirs of Sarah A. Bell, Deceased (commonly known as Heirs of Sara A. Bell's Addition to the City of Seattle); the sidewalk adjoining a portion of Lot 7, Block 9, Compton's 1st Addition to the City of Seattle; the alley in Lots 7 and 8, Block 69, D.T. Denny's Park Addition to North Seattle; the alley in Lots 9 and 10, Block 69, D.T.

Denny's Park Addition to North Seattle; the sidewalk adjoining a portion of Lot 7, Block 19, Hill Tract Addition to the City of Seattle; the sidewalk abutting Lot 25, Block 13, Westholme; the alley in Lots 1, 2, and 3, Block 8, Jos. C. Kinnear's Addition to the City of Seattle; the alley in Lots 9 and 10, Block 23, South Park; the sidewalk adjoining portions of Lots 5 and 6, Block 23, Denny and Hoyt's Addition to the City of Seattle; the alley in Lot 4, Block 2, Daniel's University Grove; the alley turn-around in Lots 15 and 16, Block 48, Yesler's 2nd Addition (Supplemental) to the City of Seattle; the alley in Lots 46 and 47, Block 5, Pettit's University Addition; the alley in Lots 10 and 11, Block 9, Lake View Addition to the City of Seattle; the alley in Lots 3 and 4, Block 29, North Seattle; the alley in Lots 19, 20 and 21, Block 9, Lake View Addition to the City of Seattle; the alley in Lots 16, 17, 18, and 19, Block 9, Lake View Addition to the City of Seattle; the sidewalk adjoining Lot 7, Block 98, D.T. Denny's 5th Addition to North Seattle; the alley in Lots 14 and 15, Block 9, Latona First Addition to the City of Seattle; the alley in Lots 7 and 8, Block 11, Fairview Homestead Addition For The Benefit of Mechanics and Laborers; and placing the real property conveyed by said deeds and easements under the jurisdiction of the Seattle Department of Transportation.

#### ORDINANCE NO. 123060

AN ORDINANCE relating to the Seattle Department of Transportation's Duwamish Intelligent Transportation Systems (ITS) project; authorizing the Director of Transportation to acquire and accept, on behalf of the City, permanent and temporary construction easements from the Port of Seattle, located in portions of Lots 14, 15, and 16, Block 426, Seattle Tide Lands, for the purpose of constructing, operating, maintaining, repairing, replacing, modifying, improving, removing, and using the easement areas for use of the conduit for underground electrical transmission and communications lines and Dynamic Message Sign (DMS) pole and base in connection with the Duwamish ITS project; and placing the real property conveyed by such easements under the jurisdiction of the Seattle Department of Transportation.

#### ORDINANCE NO. 123059

AN ORDINANCE authorizing the Director of the City of Seattle's Fleets and Facilities Department to execute a lease agreement between the City and Morningstar Investments, LLC, d/b/a ChewChews, a Washington limited liability company, for the continued operation of a restaurant establishment in the Seattle Municipal Tower.

#### ORDINANCE NO. 123058

AN ORDINANCE relating to Capitol Hill Housing Improvement Program (CHHIP), a public corporation chartered by The City of Seattle, authorizing the Director of the Office of Housing to enter into an agreement with King County, consenting to a request from CHHIP to develop an affordable housing project located in the White Center neighborhood of unincorporated King County, and extending the City's powers, authorities and rights regarding public corporations and authorities beyond the city limits for that project.

#### ORDINANCE NO. 123057

AN ORDINANCE relating to the City's 2009-2012 Consolidated Plan for Housing and Community Development; authorizing acceptance of grant funds from the United States Department of Housing and Urban Development for programs included in the City's Consolidated Plan for Housing and Community Development; increasing appropriations in the 2009 Budget for activities under the Community Development Block Grant Program, the HOME program, and the Housing Opportunities for Persons with AIDS program; and decreasing appropriations for the Emergency Shelter Grant program; adding appropriations for the Neighborhood Stabilization Program; re-adopting the City's 2009-2012 Consolidated Plan originally adopted in Resolution 31087; amending the Neighborhood Notification and Community Relations Guidelines Policy and the Annual Allocation Plan components of the Consolidated Plan; authorizing the use of Housing Levy loan repayments for rent assistance; reallocating unexpended funds from prior years; authorizing other conforming amendments to the Consolidated Plan; and ratifying and confirming certain prior acts.

Date of publication in the Seattle Daily Journal of Commerce, August 21, 2009.  
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