CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117489

AN ORDINANCE relating to a pedestrian skybridge over and across the alley between 3rd Avenue and 4th Avenue, north of Spring Street, amending Ordinance 120858, as amended by Ordinance 121855, updating the insurance and bond requirements, and amending the annual fee and other terms and conditions of the permit; renewing the term of the permit to Wallyson's Inc.; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

WHEREAS, by Ordinance 120858, the City of Seattle granted Wallyson's Inc. permission to operate and maintain an existing pedestrian skybridge over and across the alley between 3rd Avenue and 4th Avenue, north of Spring Street, for a ten-year term, renewable for two successive ten-year terms; and

WHEREAS, the conditions of Ordinance 120858 were amended by Ordinance 121855; and

WHEREAS, the permission authorized by Ordinance 120858 was due for renewal on August 31, 2011; and

WHEREAS, Wallyson's Inc. has submitted an application to the Seattle Department of Transportation Director ("Director") to continue maintaining and operating the pedestrian skybridge; and

WHEREAS, Wallyson's Inc. has satisfied all terms of the original authorizing ordinance and the Director recommends that the term permit be renewed subject to the terms identified in this ordinance; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The permission granted to Wallyson's Inc. by Ordinance 120858 and amended by Ordinance 121855 to maintain and operate a pedestrian skybridge over and across the alley between 3rd Avenue and 4th Avenue, north of Spring Street, is renewed for a ten-year period, starting September 1, 2011 and ending at 11:59 p.m. on August 31, 2021, upon the terms and conditions set forth in Ordinance 120858, as amended by Ordinance 121855, and as further amended by this ordinance.

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Section 2. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of Ordinance 120858, as amended by Ordinance 121855, are amended as follows:

1. **Permission.** Subject to the terms and conditions of this ordinance, the City of Seattle ("City") grants permission ((~~is hereby granted~~)) (also referred to in this ordinance as a permit) to Wallyson's Inc., and its successors and assigns ((~~("Permittee")~~)) as approved by the Director of the Seattle Department of Transportation ("Director") according to Section 13A of this ordinance (the party named above and each approved successor and assign is referred to as "Permittee"), to maintain and operate a pedestrian skybridge((~~,~~)) (skybridge) over and across the alley between 3rd ((~~/~~)) Avenue and 4th Avenue ((~~Alley~~)), north of Spring Street((~~.~~)), adjacent in whole or in part to the property legally described as:

The southerly 50 feet of Lot 5, and all of Lot 8, Block 15, Addition to the Town of Seattle, as laid out on the claims 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), according to the plat thereof, recorded in Volume 1 of Plats, Page(s) 25, in King County, Washington;

Except the westerly 9 feet thereof condemned by the City of Seattle for street purposes under King County Superior Court Cause Number 54135;

Together with that portion of the westerly half of the alley in said Block 15 lying southerly of the easterly extension of the northerly line of the southerly 50 feet of said Lot 5;

Together with an easement for the construction, maintenance and use of a pedestrian footbridge over portions of Lots 3, 6, and 7 and the northeasterly half of the alley lying with said Block 15 as established by instrument recorded under King County Recording Number 7104060459.

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The ((~~pedestrian~~)) skybridge connects the Abraham Lincoln Building at 1110 Third Avenue to the plaza of the Monaco Hotel at the northwest corner of the intersection of Spring Street and 4th Avenue.

2. **Term.** The permission ((~~herein~~)) granted to the Permittee ((~~its successors and assigns shall be~~)) is for a term of ten ((~~(10)~~)) years, ((~~commencing~~)) starting on September 1, 2001((~~,~~)) and ((~~terminating~~)) ending at 11:59 p.m. on August 31, 2011((~~; provided, however, that upon~~)). Upon written application of the Permittee at least ((~~thirty (30)~~)) 180 days before expiration of the term, the Director ((~~of Transportation ("Director")~~)) or the City Council may renew the permit ((~~for two (2)~~)) twice, each time for a successive ten ((~~(10)~~))-year ((~~terms, provided further that the total term of the permission as originally granted and thus extended shall not exceed thirty (30) years~~)) term, subject to the right of ((~~The~~)) the City ((~~of Seattle ("City")~~)) to require the removal of the skybridge or to revise by ordinance ((~~to then revise~~)) any of the terms and conditions ((~~contained herein~~)) of the permission granted by this ordinance. The total term of the permission, including renewals, shall not exceed 30 years. The Permittee shall submit any application for a new permission no later than 180 days prior to the expiration of the then-existing term.

3. **Protection of utilities.** The permission granted is ((~~hereby~~)) subject to the Permittee bearing the expense of any protection, support, or relocation of existing utilities deemed necessary by the ((~~owner~~)) owners of the ((~~utility and shall be done at Permittee's expense with~~)) utilities, and the Permittee being responsible for any ((~~subsequent~~)) damage to the utilities due to the construction, repair, reconstruction, maintenance, operation, or removal of the ((~~pedestrian~~)) skybridge and for any consequential damages that may result from any damage to utilities or interruption in service caused by any of the foregoing.

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4. **Removal for public use or for cause.** The ((~~permit~~)) permission granted ((~~hereby~~)) is subject to ((~~primary and secondary~~)) use of the street right-of-way or other public place (collectively public place) by the City and the public ((~~of the alley right-of-way~~)) for travel ((~~and~~)), utility purposes, ((~~and the~~)) and other public uses or benefits. The City expressly reserves the right to deny renewal, or terminate the permission at any time prior to expiration of the initial term or any renewal term; and require the Permittee to remove the ((~~pedestrian~~)) skybridge, or any part thereof, or installation on the public place, at the Permittee's sole cost and expense in the event that:

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

b) The Director ((~~of Seattle Transportation ("Director")~~)) determines that use of the skybridge has been abandoned; or

c) The Director determines that any term or condition of this ordinance has been violated, and ((~~such~~)) the violation ((~~is~~)) has not been corrected by the Permittee by the compliance date after ((~~notice of violation having been given~~)) a written request by the City to correct the violation (unless a notice to correct is not required due to an immediate threat to the health or safety of the public).

A City Council determination that the space is ((~~necessary~~)) needed for, or the skybridge interferes with, a ((~~primary and secondary~~)) public use or benefit ((~~shall be~~)) is conclusive and final without any right of the Permittee to resort to the courts to adjudicate the matter.

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5. **Permittee's obligation to remove and restore.** ((~~In the event that~~)) If the permission ((~~hereby~~)) granted is not renewed at the expiration of a term, or if the permission expires without an application for a new permission being granted ((~~extends to its termination in thirty (30) years~~)), or if the City ((~~orders~~)) terminates the permission; then within 90 days after the expiration or termination of the permission, or prior to any earlier date stated in an ordinance or order requiring removal of the ((~~pedestrian~~)) skybridge ((~~pursuant to the terms of this ordinance, then within ninety (90) days after such expiration, termination, or order of removal, or prior to the date stated in an "Order to Remove", as the case may be,~~)); the Permittee shall, at its own expense, remove the ((~~pedestrian~~)) skybridge and all of the Permittee's equipment and property from the public place. Following removal of the skybridge, the Permittee shall ((~~place~~)) replace and restore all portions of the ((~~alley~~)) public place that may have been disturbed for any part of the skybridge((~~,~~)). The public place shall be replaced and restored in as good condition for public use as it was prior to construction of the skybridge((~~,~~)) and in at least as good condition in all respects as the abutting portions ((~~thereof~~)) of the public place as required by SDOT right-of-way restoration standards. ((~~Whereupon, the Director shall issue a certificate discharging the Permittee from responsibility under this ordinance for occurrences after the date of such discharge.~~))

Failure to remove the skybridge as required by this section is a violation of Chapter 15.90 of the Seattle Municipal Code (SMC) or successor provision; however, applicability of Chapter 15.90 does not eliminate any remedies available to the City under this ordinance or any other authority. If the Permittee does not timely fulfill its obligations under this section, the City may in its sole discretion remove the skybridge and restore the public place at the Permittee's expense, and collect the expenses in any manner provided by law.

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Upon the Permittee's completion of removal and restoration in accordance with this section, or upon the City's completion of the removal and restoration and the Permittee's payment to the City for the City's removal and restoration costs, the Director shall then issue a certification that the Permittee has fulfilled its removal and restoration obligations under this ordinance. Upon prior notice to the Permittee and entry of written findings that it is in the public interest, the Director may, in the Director's sole discretion, conditionally or absolutely excuse the Permittee from compliance with all or any of the Permittee's obligations under this section.

6. **Repair or reconstruction.** The skybridge shall remain the exclusive responsibility of the Permittee and the Permittee shall maintain the skybridge in good and safe condition for the protection of the public. The Permittee shall not ((~~commence reconstruction, relocation, readjustment~~)) reconstruct or repair ((~~of~~)) the ((~~pedestrian~~)) skybridge except ((~~under the supervision of, and~~)) in strict accordance with((~~,~~)) plans and specifications approved by the Director. The Director may, in ((~~his/her~~)) the Director's judgment ((~~may~~)), order ((~~such reconstruction, relocation, readjustment, or repair of~~)) the ((~~pedestrian~~)) skybridge reconstructed or repaired at the Permittee's ((~~own~~)) cost and expense because of: the deterioration or unsafe condition of the skybridge((~~, grade separations, or~~)); the installation, construction, reconstruction, maintenance, operation, or repair of any ((~~and all~~)) municipally-owned public utilities((~~,~~)); or for any other cause.

7. **Failure to correct unsafe condition.** After written notice to the Permittee((~~,~~)) and failure of the Permittee to correct ((~~said~~)) an unsafe ((~~or risk prone~~)) condition within the time stated in ((~~such~~)) the notice, the Director may order the ((~~pedestrian~~)) skybridge be closed or removed at the Permittee's expense if the Director deems that ((~~it~~)) the skybridge has become

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unsafe or creates a risk of injury to the public. ((~~In a situation in which~~)) If there is an immediate threat to the health or safety of the public, a notice to correct is not required.

8. **Continuing obligations.** Notwithstanding termination or expiration of the permission granted, or closure or removal of the ((~~pedestrian~~)) skybridge, the Permittee shall remain bound by all of its ((~~obligation~~)) obligations under this ordinance until((~~:~~

~~a) the pedestrian skybridge and all its equipment and property are removed from the alley;~~

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

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

~~Provided, that upon written notice to the Permittee and entry of written findings that such is in the public interest, the Director may, in his/her sole discretion, excuse the Permittee, conditionally or absolutely, from compliance with all or any of the Permittee's obligations to remove the pedestrian skybridge and its property, and restore disturbed areas.~~)) the Director has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 5 of this ordinance. Notwithstanding the issuance of that certification, the Permittee shall continue to be bound by the obligations in Section 9 of this ordinance and shall remain liable for any unpaid fees assessed under Section 14C of this ordinance.

9. **Release, hold harmless, indemnification, and duty to defend.** ((~~The pedestrian skybridge shall remain the exclusive responsibility of the Permittee.~~)) The Permittee, by ((~~acceptance~~)) accepting the terms of this ordinance ((~~and the permission hereby granted, does release~~)); releases the City, its officials, officers, employees, and agents; from and against any and all claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of every

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kind and description arising out of or by reason of the skybridge or this ordinance; including but not limited to claims resulting from injury, damage, or loss to ((~~its own~~)) the Permittee or the Permittee's property ((~~and does covenant and agree for itself, its successors and assigns, with The City of Seattle,~~)).

The Permittee agrees to at all times ((~~protect and save~~)) defend, indemnify, and hold harmless ((~~The~~)) the City ((~~of Seattle~~)), its officials, officers, employees, and agents; from and against all claims, actions, suits, liability, loss, costs, expenses, attorneys' fees, or damages of every kind and description, ((~~(~~))excepting only ((~~such~~)) damages that may result from the sole negligence of the City((~~), which~~)), that may accrue to, be asserted by, or be suffered by((~~,~~)) any person or ((~~persons and/or~~)) property ((~~or properties,~~)) including, without limitation, damage, death, or injury to ((~~the Permittee, its~~)) members of the public or to the Permittee's officers, agents, employees, contractors, invitees, tenants ((~~and~~)), tenants' invitees, licensees, or ((~~its~~)) successors and assigns((~~,~~)) arising out of or by reason of:

(a) the existence, condition, construction, reconstruction, modification, maintenance, operation ((~~or~~)), use, or removal of ((~~said pedestrian~~)) the skybridge((~~,~~)) or any portion thereof, or ((~~by reason of~~)) the use, occupation, or restoration of the public place or any portion thereof by the Permittee or any other person or entity;

(b) anything that has been done((~~,~~)) or may at any time be done((~~,~~)) by the Permittee((~~, its successors or assigns,~~)) by reason of this ordinance((~~, or by reason of~~)); or

(c) the Permittee((~~, its successors or assigns,~~)) failing or refusing to strictly comply with ((~~each and~~)) every provision of this ordinance; ((~~and if~~)) or

(d) this ordinance in any other way.

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If any ((~~such~~)) suit, action, or claim ((~~be~~)) of the nature described above is filed, instituted, or begun against the City((~~,~~)); the Permittee((~~, its successors or assigns,~~)) shall((~~,~~)) upon notice ((~~thereof~~)) from the City((~~,~~)) defend the ((~~same~~)) City, with counsel acceptable to the City, at ((~~its or their~~)) the sole cost and expense of the Permittee, and ((~~in case~~)) if a judgment ((~~shall be~~)) is rendered against the City in any suit or action, the Permittee((~~, its successors, or assigns,~~)) shall fully satisfy ((~~said~~)) the judgment within ((~~ninety (90)~~)) 90 days after ((~~such~~)) the action or suit ((~~shall have~~)) has been finally determined, if determined adversely to the City. ((~~Provided that if~~)) If it is determined by a court of competent jurisdiction that Revised Code of Washington (RCW) 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or result from the concurrent negligence of((~~: a)~~)) the City, its agents, contractors, or employees; and((~~, b)~~)) the Permittee, its agents, contractors, or employees((~~, or its successors or assigns,~~)); this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Permittee or the Permittee's agents, contractors, or employees((~~, or its successors or assigns~~)).

10A. **Insurance.** For as long as the Permittee((~~, its successors or assigns, shall exercise~~)) exercises any permission granted by this ordinance and until the ((~~pedestrian skybridge is entirely removed from its location as described in Section 1 or until discharged by order of the~~)) Director ((~~as provided by~~)) has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 5 ((~~of this ordinance~~)), the Permittee shall obtain and maintain in full force and effect, at its own expense, insurance ((~~policies which fully protect~~)) and/or self-insurance that protects the Permittee and the City from ((~~any and all~~)) claims and risks of ((~~any~~)) loss from perils ((~~which~~)) that can be insured against under commercial general liability (CGL) insurance ((~~contracts and fire insurance contracts, including any extended~~

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~~coverage endorsements thereto which are customarily available from time to time,~~)) policies in conjunction with:

(a) construction, reconstruction, modification, operation, maintenance, use, ((~~or~~)) existence, or removal of the ((~~pedestrian~~)) skybridge ((~~permitted by this ordinance and of any and all portions~~)) or any portion thereof, as well as restoration of any disturbed areas of the public place in connection with removal of the ((~~pedestrian~~)) skybridge;

(b) the Permittee's activity upon or the use or occupation of the ((~~areas~~)) public place described in Section 1 of this ordinance((~~, as well as~~)); and

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

Minimum insurance requirements ((~~shall be a policy of comprehensive commercial general liability of a form acceptable to the City~~)) are CGL insurance based on the Insurance Services Office (ISO) form CG 00 01 or equivalent. The City ((~~will require~~)) requires insurance coverage to be placed with ((~~a company~~)) an insurer admitted and licensed to conduct business in Washington State((~~, except that if it is infeasible to obtain such a policy, the City may approve an alternative company~~)) or with a surplus lines carrier according to RCW Chapter 48.15. If coverage is placed with any other insurer or is partially or wholly self-insured, such insurer(s) or self-insurance is subject to approval by the City's Risk Manager.

Minimum ((~~policy~~)) limits of liability shall be $2,000,000 ((~~per~~)) each occurrence combined single limit bodily injury and property damage, with $4,000,000 annual aggregate ((~~each period~~)). Coverage shall ((~~specifically name~~)) include the ((~~pedestrian skybridge exposure. Liability coverage shall add by endorsement the~~)) "City of Seattle, its elected and

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appointed officers, officials, employees and agents" as additional ((~~insured. Coverage shall contain a Separation of Insureds indicating essentially that except with respect to the limits of insurance, and any rights or duties specifically assigned in this coverage part of the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought. The City will not accept a certificate of insurance as evidence of current coverage. Evidence of current coverage shall be submitted to the City in the form of a photocopy of the insurance policy declaration page, indicating all endorsements attached thereto, and is a condition to the validity of this permit.~~)) insureds for primary and non-contributory limits of liability subject to a Separation of Insureds clause.

Within 60 days after the effective date of this ordinance, the Permittee shall provide to the City, or cause to be provided, certification of insurance coverage including an actual copy of the blanket or designated additional insured policy provision per the ISO CG 20 12 endorsement or equivalent. The insurance coverage certification shall be delivered or sent to the Director or to the Department of Transportation (SDOT) at an address as the Director may specify in writing from time to time. The Permittee shall provide a certified complete copy of the insurance policy to the City promptly upon request.

If the Permittee is self-insured, a letter of certification from the Corporate Risk Manager may be submitted in lieu of the insurance coverage certification required by this ordinance, if approved in writing by the City's Risk Manager. The letter of certification must provide all information required by the City's Risk Manager and document, to the satisfaction of the City's Risk Manager, that self-insurance equivalent to the insurance requirements of this ordinance is in force. After a self-insurance certification is approved, the City may from time to time

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subsequently require updated or additional information. The approved self-insured Permittee must provide 30 days' prior notice of any cancellation or material adverse financial condition of its self-insurance program. The City may at any time revoke approval of self-insurance and require the Permittee to obtain and maintain insurance as specified in this ordinance.

In the event that the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall maintain in effect the insurance required under this section until the Director has approved the assignment or transfer pursuant to Section 13A.

10B. **Adjustment of insurance and bond requirements.** The Director, in consultation with the City's Risk Manager, may adjust minimum liability insurance levels ((~~of liability insurance~~)) and surety bond requirements during the term of this permission. ((~~The~~)) If the Director and City's Risk Manager determine that an adjustment is necessary to fully protect the interests of the City, the Director shall notify the Permittee of the new requirements in writing. ((~~Upon receipt, the~~)) The Permittee shall, within 60 days of the date of the notice of adjustment, provide proof of the ((~~required levels of~~)) adjusted insurance and surety bond levels to the Director ((~~within 60 days~~)).

11. **Contractor insurance.** The Permittee shall contractually require that any and all of its contractors performing ((~~construction~~)) work on ((~~the~~)) any premises ((~~as~~)) contemplated by this permit((~~,~~)) name the "City of Seattle, its elected and appointed officers, officials, employees and agents" as ((~~an~~)) additional ((~~insured on all policies of public liability insurance, and~~)) insureds for primary and non-contributory limits of liability on all CGL, Automobile and Pollution liability insurance and/or self-insurance. The Permittee shall also include in all contract documents with its contractors a third-party beneficiary provision extending to the City construction indemnities and warranties granted to the Permittee ((~~to the City as well~~)).

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12. **Performance bond.** Within ((~~sixty (60)~~)) 60 days after the effective date of this ordinance, the Permittee shall deliver to the Director ((~~of Seattle Transportation~~)) for filing with the City Clerk a ((~~good and~~)) sufficient bond executed by a surety company authorized and qualified to do business in the State of Washington that is: in the ((~~sum~~)) amount of ((~~Ten Thousand Dollars ($10,000.00), executed by a surety company authorized and qualified to do business in the State of Washington,~~)) $18,000, and conditioned with a requirement that the Permittee ((~~will~~)) shall comply with ((~~each and~~)) every provision of this ordinance and with ((~~each and~~)) every order the Director ((~~pursuant thereto; provided, that if the Mayor of the City of Seattle in his/her judgment shall deem any bond or bonds filed to be insufficient and demand a new or additional bond, the Permittee shall furnish a new or additional bond in such amount as the Mayor may specify to be necessary to fully protect the City. Said bond shall remain~~)) issues under this ordinance. The Permittee shall ensure that the bond remains in effect until ((~~such time as the pedestrian skybridge is entirely removed from its location as described in Section 1, or until discharged by order of~~)) the Director ((~~as provided in~~)) has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 5 ((~~of this ordinance~~)). An irrevocable letter of credit approved by the City's Risk Manager may be substituted for the bond upon approval of the Director. In the event that the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall maintain in effect the bond or letter of credit required under this section until the Director has approved the assignment or transfer pursuant to Section 13A.

13A. **Consent for and conditions of assignment or transfer.** The ((~~Permittee, its successors and assigns shall not~~)) permission granted by this ordinance shall not be assignable or transferable by operation of law; nor shall the Permittee assign ((~~or~~)), transfer ((~~any privileges~~

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~~conferred by this ordinance~~)), mortgage, pledge or encumber the same without the Director's consent ((~~of the Director.~~)), which the Director shall not unreasonably refuse. The Director may approve assignment ((~~and/or transferal~~)) or transfer of the ((~~permit~~)) permission granted by this ordinance to a successor entity ((~~in the case of a change of name and/or ownership provided that~~)) only if the successor or assignee has ((~~demonstrated its acceptance of~~)) accepted in writing all of the terms and conditions of the permission granted ((~~to the initial Permittee. Notwithstanding anything contained herein to the contrary, consent of the Director shall not be required for any transfer or assignment of the privileges conferred by this ordinance by way of mortgage, pledge or encumbrance or by way of foreclosure or deed in lieu of foreclosure of any mortgage, pledge or encumbrance. If permission is granted, the assignee or transferee shall be bound by all of the terms and conditions of this ordinance.~~)) by this ordinance; has provided, at the time of the acceptance, the bond and certification of insurance coverage required under this ordinance; and has paid any fees due under Section 14C of this ordinance. Any person or entity seeking approval for an assignment or transfer of the permission granted by this ordinance shall provide the Director with a description of the current and anticipated use of the skybridge.

13B. **Obligations of successors and assigns.** The obligations and conditions imposed on the Permittee by and through this ordinance are also imposed on the Permittee's successors and/or assigns regardless of whether the Director has approved assignment or transfer of the permission granted by this ordinance to such successors and/or assigns. All references in this ordinance to obligations or conditions imposed on the "Permittee" shall also be deemed to refer to the successors and assigns of the Permittee.

The obligations and conditions imposed on the Permittee by and through this ordinance are covenants that run with the land and bind subsequent owners of the property adjacent to the

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skybridge and legally described in Section 1 of this ordinance (the "Property"), regardless of whether the Director has approved assignment or transfer of the permission granted herein to such subsequent owner(s). At the request of the Director, Permittee shall provide to the Director a current title report showing the identity of all owner(s) of the Property and all encumbrances on the Property. The Permittee shall, within 60 days of the effective date of this ordinance, and prior to conveying any interest in the Property, deliver to the Director upon a form to be supplied by the Director, a covenant agreement imposing the obligations and conditions set forth in this ordinance, signed and acknowledged by the Permittee and any other owner(s) of the Property and recorded with the King County Recorder's Office. The Director shall also file the recorded covenant agreement with the City Clerk. The covenant agreement shall reference this ordinance by its ordinance number. At the request of the Director, Permittee shall cause encumbrances on the Property to be subordinated to the covenant agreement.

14A. **Inspection fees.** The Permittee((~~, its successors and assigns,~~)) shall, as provided by SMC Chapter 15.76 or successor provision, pay ((~~to The~~)) the City ((~~of Seattle such~~)) the amounts ((~~as may be justly chargeable by said~~)) charged by the City ((~~as costs of inspection of said pedestrian~~)) to inspect the skybridge during construction, reconstruction, repair, annual ((~~structural~~)) safety inspections, and at other times deemed necessary ((~~to ensure the safety of the skybridge, under the direction of the Director as provided by Municipal Code section 15.76.~~)) by the City. An inspection of the skybridge by the City shall not be construed as a representation, warranty, or assurance to the Permittee or any other person as to the safety, soundness, or condition of the skybridge. Any failure by the City to require correction of any defect or condition shall not in any way limit the responsibility or liability of the Permittee.

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14B. **Inspection reports.** The Permittee shall submit to the Director, or to the Department of Transportation at an address specified by the Director, an inspection report that:

(a) describes the physical dimensions and condition of all load-bearing elements;

(b) describes any damages or possible repairs to any element of the skybridge;

(c) prioritizes all repairs and establishes a timeframe for making repairs; and

(d) is stamped by a professional structural engineer licensed in the State of Washington.

A report meeting the foregoing requirements shall be submitted within 60 days after the effective date of this ordinance; subsequent reports shall be submitted every 2 years; provided that, in the event of a natural disaster or other event that may have damaged the skybridge, the Director may require that additional reports be submitted by a date established by the Director. The Permittee has the duty of inspecting and maintaining the skybridge, and the responsibility to submit structural inspection reports periodically or as required by the Director does not waive or alter any of the Permittee's other obligations under this ordinance. The receipt of any reports by the Director shall not create any duties on the part of the Director. Any failure by the Director to require a report, or to require action after receipt of any report, shall not waive or limit the obligations of the Permittee.

14C. **Annual fee.** Beginning on September 1, 2011, and annually thereafter, the Permittee shall ((~~also~~)) promptly pay to the City ((~~in advance~~)), upon statements or invoices ((~~rendered~~)) issued by the Director, an annual fee ((~~for the privileges granted and exercised hereunder of One Thousand Six Hundred Seventy-One Dollars ($1,671.00) for each of the first five years of the permit. At the end of this period, adjustments~~)) of $13,824, or as adjusted annually thereafter, for the privileges granted by this ordinance.

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Adjustments to the annual fee ((~~amount~~)) shall be made in accordance with a term permit fee schedule adopted by the City Council ((~~by ordinance~~)) and may be ((~~adjusted~~)) made every year. In the absence of ((~~such~~)) a schedule, the Director may only increase or decrease the previous year's fee ((~~amount annually~~)) to reflect any inflationary changes so as to charge ((~~said~~)) the fee in constant dollar terms. This adjustment will be calculated by adjusting the previous year's fee ((~~amount~~)) by the percentage change between the two most recent year-end values available ((~~from~~)) from the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All Urban Consumers, All Products, Not Seasonally Adjusted. All payments shall be made to the City Finance Director for credit to the Transportation Operating Fund.

15. **Compliance with other laws.** ((~~The Permittee shall not discriminate against any (1) employee, (2) applicant for employment, or (3) person with respect to the award or referral of a contract or with respect to the conditions, terms, price, or performance standards, or other provisions of a contract in connection with the design, architectural, or structural engineering work or the construction, repair, or maintenance of the pedestrian skybridge permitted to be erected and/or operated pursuant to this ordinance, on the basis of race, religion, creed, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, age, national origin, or the presence of any sensory, mental, or physical handicap unless based upon bona fide occupational qualification.~~

~~a) The Permittee shall post in conspicuous places available to such employees and applicants for such employment, notices setting forth the provisions of this non-discrimination clause.~~

~~b) The Permittee shall insert in any contract for work undertaken in connection with the design, architectural, or structural engineering work or the repair, construction, maintenance, or~~

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~~operation of the pedestrian skybridge referenced in this ordinance language substantially similar to the language contained in this Section 15 and which requires any person or entity entering into such contract to comply with the non-discrimination provisions of this Section.~~))

Permittee shall construct, maintain and operate the skybridge in compliance with all applicable federal, state, County and City laws and regulations. Without limitation, in all matters pertaining to the skybridge, the Permittee shall comply with the City's laws prohibiting discrimination in employment and contracting including Seattle's Fair Employment Practices Ordinance, Chapter 14.04 and Fair Contracting Practices code, Chapter 14.10 (or successor provisions).

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Section 3. **Acceptance of terms and conditions.** The Permittee shall deliver to the Director its written signed acceptance of the terms of this ordinance within 60 days after the effective date of this ordinance. The Director shall file the written acceptance with the City Clerk. If no such acceptance is received within that 60-day period, the privileges conferred by this ordinance shall be deemed to be declined or abandoned and the permission granted deemed to be lapsed and forfeited and the Permittee shall, at its own expense, remove the skybridge and all of the Permittee's equipment and property and replace and restore all portions of the public place as provided in Section 5 of Ordinance 120858, as further amended by Ordinance 121855 and as further amended by this ordinance.

Section 4. **Section titles.** Section titles are for convenient reference only and do not modify or limit the text of a section.

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Section 5. **Ratify and confirm.** Any act taken by the City or the Permittee pursuant to the authority and in compliance with the conditions of this ordinance but prior to the effective date of the ordinance is ratified and confirmed.

Section 22. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2012, and signed by me in open session in authentication of its passage this _____ day of _____, 2012.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2012.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2012.

_____

Monica Martinez Simmons, City Clerk

(Seal)

CITY CLERK

Form revised: December 6, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Department of Transportation	Angela Steel/684-5967	Rebecca Guerra/684-5339

Legislation Title:
AN ORDINANCE relating to a pedestrian skybridge over and across the alley between 3rd Avenue and 4th Avenue, north of Spring Street, amending Ordinance 120858, as amended by Ordinance 121855, updating the insurance and bond requirements, and amending the annual fee and other terms and conditions of the permit; renewing the term of the permit to Wallyson's Inc.; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

Summary of the Legislation:
This legislation amends Ordinance 120858, as amended by Ordinance 121855, for Wallyson's Inc. to continue maintaining and operating the existing skybridge located over and across the alley between 3rd Avenue and 4th Avenue, north of Spring Street. An area map is attached for reference.

This permit is renewed for a ten-year term starting on September 1, 2011. The legislation updates the insurance and surety bond provisions as recommended by the City's Risk Manager, specifies the conditions under which authorization is granted, and provides for acceptance of the permit and conditions.

The ordinance requires Wallyson's Inc. to pay the City an annual fee of $13,824 starting from September 1, 2011, and annually thereafter. Adjustments to the annual fee may be made every year and if so made shall be calculated in accordance with a term permit fee schedule adopted by the City Council by Ordinance 123485. An Annual Fee Appraisal Summary is attached for reference.

Background:
By Ordinance 120858, the City granted permission to Wallyson's Inc. to construct, operate, and maintain a skybridge located over and across the alley between 3rd Avenue and 4th Avenue, north of Spring Street, for a ten-year term, renewable for two successive ten-year terms.

The conditions of Ordinance 120858 were amended by Ordinance121855. The permission authorized by Ordinance 120858 was due for renewal on August 31, 2011.

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Please check one of the following:

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

__X__ **This legislation has financial implications.**

Appropriations: N/A

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2012 Revenue	2013 Revenue
Transportation Operating Fund 10310	Seattle Department of Transportation	Annual Fee –	2011 Fee: $13,824 2012 Fee: $13,824	TBD
TOTAL			**$27,648**	TBD

Revenue/Reimbursement Notes: None

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact: N/A

Do positions sunset in the future? No

Spending/Cash Flow: N/A

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
No

b) **What is the financial cost of not implementing the legislation?**
If the legislation is not enacted by the City Council, the City of Seattle will not receive the annual fee of $13,824. As previously stated, the City of Seattle has the option to adjust the fee amount on an annual basis.

c) **Does this legislation affect any departments besides the originating department?**
No

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** None

e) **Is a public hearing required for this legislation?**
No

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f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?
No

g) Does this legislation affect a piece of property?
Yes, an area map is attached for reference.

h) Other Issues: N/A

List attachments to the fiscal note below:
Attachment A – Wallyson's Skybridge Area Map
Attachment B – Annual Fee Assessment Summary

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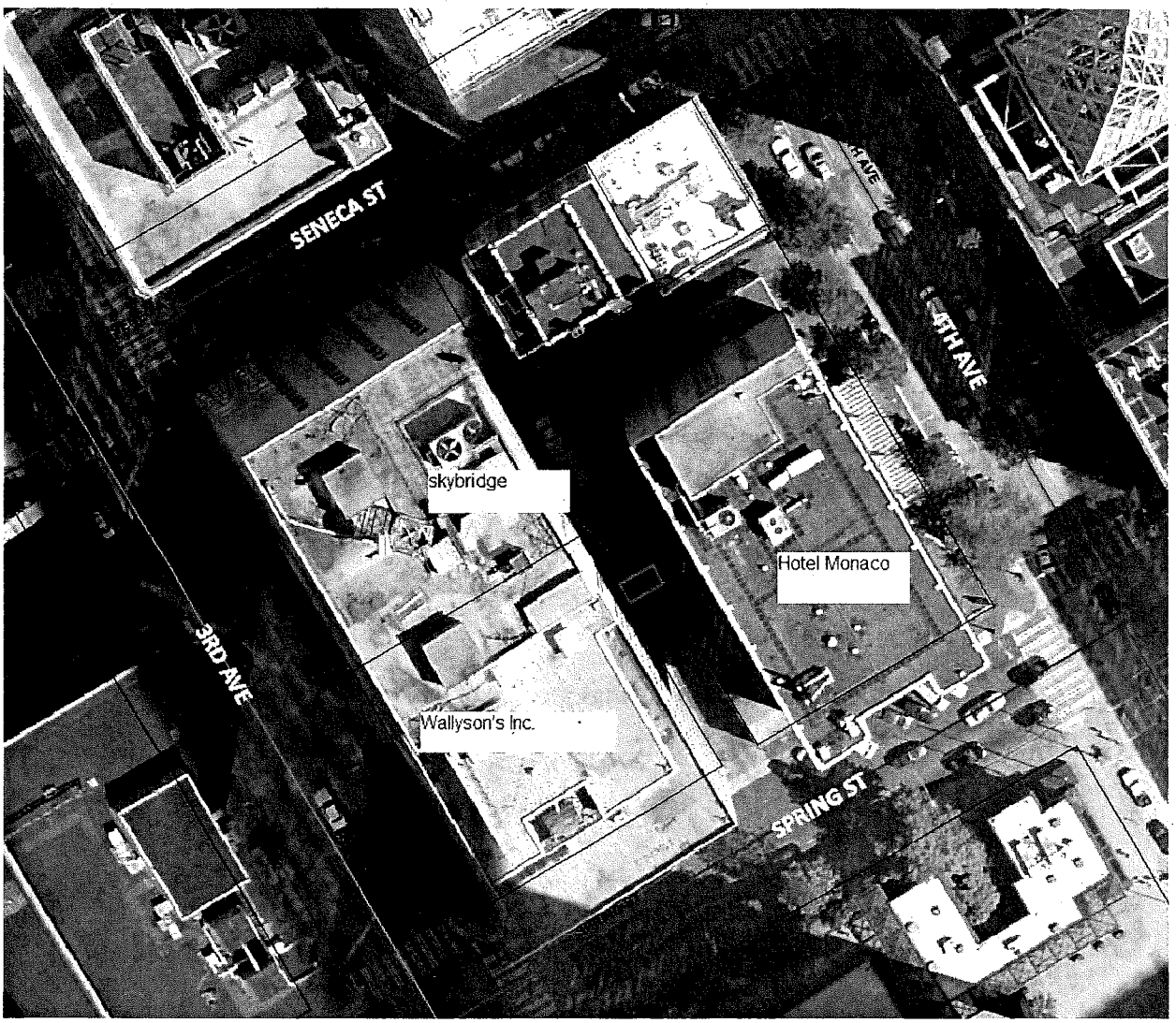
Attachment A – Wallyson's Skybridge Area Map



Map is for informational purposes only and is not intended to modify or supplement the legal description(s) in the Ordinance.

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Attachment B - Annual Fee Assessment Summary

STREET USE ANNUAL FEE ASSESSMENT

Date: 5/8/12

Summary:
Land Value: $600/SF
First Year Permit Fee:
$13,824

I. Property Description:

Existing skybridge located over and across the alley between 3rd Avenue and 4th Avenue, north of Spring Street. Connecting Tax parcels are 0942000140 and 0942000145. Permit is for a total **144 square foot area.**

Applicant:
Wallyson's Inc.

Abutting Parcels, Property Size, Assessed Value:

1. Parcel 0942000140; 12,210 SF

Tax year 2011 Appraised Land Value $7,326,000
Assessed at $600/SF

2. Parcel 0942000145; 19,980 SF

Tax year 2011 Appraised Land Value $11,988,000
Assessed at $600/SF

2011 tax assessed land value: $600/SF

II. Annual Fee Assessment:

The 2011 permit fee is calculated as follows: ($600/SF) X (144 SF) X (200%) X (8%) = $13,824, where 200% is the degree of alienation for a private-use skybridge and 8% is the estimated annual rate of return.
Fee methodology authorized under Ordinance 123485.

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City of Seattle
Office of the Mayor

May 29, 2012

Honorable Sally Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that will grant to Wallyson's Inc. a ten-year renewal permit for an existing skybridge over and across the alley between 3rd Avenue and 4th Avenue, north of Spring Street, as authorized by Ordinance 120858.

The existing skybridge connects the Wallyson's Inc. property at 1110 3rd Avenue with the Hotel Monaco property at 1101 4th Avenue. In addition to granting a new ten-year permit renewal, the proposed Council Bill updates the insurance and bond requirements, updates the annual fee, and specifies the conditions under which authorization is granted.

Thank you for your consideration of this legislation. Should you have questions, please contact Angela Steel at 684-5967.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
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mike.mcginn@seattle.gov

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