

#12

Hillary Hamilton/HJH
FAS Seattle Executive Fitness Lease ORD
February 5, 2013
Version #2

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117738

AN ORDINANCE authorizing the Director of Finance and Administrative Services to execute an Amended and Restated Lease between the City of Seattle and EF Seattle Fifth Avenue LLC, a Washington limited liability company, for a portion of the property located at 700 5th Avenue, commonly known as the Seattle Municipal Tower.

WHEREAS, the Seattle Municipal Tower has housed a fitness center facility since the property was acquired by the City in 1996; and

WHEREAS, All Star Fitness operated the fitness center from January 1997 through September 2011, at which point EF Seattle Fifth Avenue LLC acquired the business from All Star Fitness; and

WHEREAS, EF Seattle Fifth Avenue LLC (the Tenant) accepted a five-year lease pending the Council's review of a fifteen-year lease; and

WHEREAS, the City has reviewed its need for the space occupied on the 14th floor of the Seattle Municipal Tower and has concluded that it is in the best interest of the City to enter into a long term lease agreement with the Tenant, subject to the City's reservation of an early termination right; and

WHEREAS, the City Council's approval of this lease is required under Seattle Municipal Code Section 3.127.010 because the lease term exceeds sixty calendar months; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Director of Finance and Administrative Services, or his designee, is authorized to execute on behalf of the City the Seattle Municipal Tower Amended and Restated Lease between the City of Seattle, as Landlord, and EF Seattle Fifth Avenue, LLC, as Tenant, substantially in the form of Attachment 1, providing for Seattle Executive Fitness's use and occupancy of a portion of the real property located at 700 Fifth Avenue in Seattle.



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

4 Passed by the City Council the ____ day of _____, 2013, and
5 signed by me in open session in authentication of its passage this
6 ____ day of _____, 2013.

7
8 _____
9 President _____ of the City Council

10
11 Approved by me this ____ day of _____, 2013.

12
13 _____
14 Michael McGinn, Mayor

15
16 Filed by me this ____ day of _____, 2013.

17
18 _____
19 Monica Martinez Simmons, City Clerk

20 (Seal)

21
22
23 Attachment 1 – Seattle Municipal Tower Amended and Restated Lease between the City of
24 Seattle, as Landlord, and EF Seattle Fifth Avenue LLL, as Tenant



Hillary Hamilton/HJH
FAS Seattle Executive Fitness Lease ORD ATT 1
February 8, 2013
Version #2

**SEATTLE MUNICIPAL TOWER
AMENDED AND RESTATED LEASE
BETWEEN
THE CITY OF SEATTLE,
AS LANDLORD,
AND
EF SEATTLE FIFTH AVENUE LLC
AS TENANT**



SEATTLE MUNICIPAL TOWER **AMENDED AND RESTATED LEASE**

THIS AMENDED AND RESTATED LEASE ("Lease") is entered into by and between **THE CITY OF SEATTLE** ("Landlord"), a city of the first class of the State of Washington and **EF SEATTLE FIFTH AVENUE LLC** ("Tenant"), a limited liability company organized under the laws of the State of Washington.

Recitals

This Lease is entered into between Landlord and Tenant with reference to the following facts:

On October 13, 2011, Landlord and Tenant entered into a lease agreement (the "Original Lease") for certain Premises at the building commonly known as the Seattle Municipal Tower.

The Original Lease was for a five year term commencing on October 1, 2011.

As required under the Original Lease, Tenant has completed some improvements to the Premises and desires to further improve the Premises.

Landlord and Tenant mutually desire to amend certain provisions of the Original Lease to extend the Term, to amend the Rent, and to provide for additional improvements to the Premises.

In consideration of the mutual promises herein, 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 Rentable Area (as defined in Subsection 2.B) consisting of 24,721 Rentable Square Feet located on Building Floor 14 as outlined on the floor plan of the Building attached hereto as Exhibit A (the "Floor Plan of Premises"), including tenant improvements described in Exhibit B and Exhibit D.
 - C. **Commencement Date:** October 1, 2011.
 - D. **Expiration Date:** September 30, 2026.
 - E. **Base Rent, Rent, and Additional Charges:** For use and occupancy of the Premises during the Term, Tenant shall pay Landlord Base Rent as follows:

Lease Years	Rent per Rentable Square Foot	Monthly Rent
10/1/11 - 9/30/16	\$4.15	\$8,549.35
10/1/16 - 9/30/17	\$5.57	\$11,464.36
10/1/17 - 9/30/18	\$6.07	\$12,494.41
10/1/18 - 9/30/19	\$6.57	\$13,524.45
10/1/19 - 9/30/20	\$7.07	\$14,554.49
10/1/20 - 9/30/21	\$7.57	\$15,584.53
10/1/21 - 9/30/22	\$8.07	\$16,614.57
10/1/22 - 9/30/23	\$8.57	\$17,644.61
10/1/23 - 9/30/24	\$9.07	\$18,674.66
10/1/24 - 9/30/25	\$9.57	\$19,704.70
10/1/25 - 9/30/26	\$10.07	\$20,734.74

As used in this Lease, "Rent" means Base Rent, Annual Percentage Rent, and Additional Charges. Whether or not so designated, all other sums due from Tenant under this Lease, other than Base Rent and Percentage Rent, shall constitute Additional Charges, payable when specified in this Lease.

- F. Annual Percentage Rent: 8% of the amount of Tenant's annual Gross Receipts that exceeds \$1,500,000, as further described in Sections 4.B and 4.C.
- G. Tenant Improvement Allowance: \$9.15 per Rentable Square Foot, subject to the terms and conditions further described in Section 4.D.
- H. Lease Guaranty: The personal guaranty provided by Merle Gregg, George Petrie, and John Goodman attached and incorporated as Exhibit E to this Lease; or, alternatively, a letter of credit provided in compliance with Section 7.
- I. Parking: The license granted pursuant to Section 36 of this Lease is limited to 20 automobiles. Tenant shall have the additional parking rights set forth in Section 36 of this Lease.
- J. Permitted Use: Athletic club and ancillary related uses including: physical therapy, orthopedic and rehabilitation facilities, swimming pool and Jacuzzi facilities (collectively, the "Swimming Pool"), snack bar, sports shop, tanning services and support offices.



K. Minimum Hours of Operation:

Monday through Friday: 7:00 a.m. to 6:00 p.m.

Saturday: Optional

Sunday: Optional

L. Notice Addresses:

To Landlord:

City of Seattle
c/o CB Richard Ellis
700 Fifth Avenue, Suite 4000
Seattle, WA 98104

To Tenant:

EF SEATTLE FIFTH AVENUE LLC
2801 Alaskan Way, Suite 310
Seattle, WA 98121
Attn: Manager

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

- Exhibit A - Floor Plan of Premises
- Exhibit B - Tenant Improvements.
- Exhibit C - Rules and Regulations.
- Exhibit D - Initial Tenant Improvements.
- Exhibit E - Personal Guaranty
- Exhibit F - Agreement Regarding Use of Premises during City Emergency

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 Area. The confirmed Rentable Area of the Premises is the amount set forth in Subsection 1.B. "Rentable Area" and "Useable Area" (and

their components "Rentable Square Foot" and "Useable Square Foot") shall have the same meaning as set forth in the "Standard Method for Measuring Floor Area in Office Buildings" (American National Standard Institute ANSI Z65.1 - 1996) published by Building Owners and Managers Association International.

- C. Condition. The Premises are leased by Landlord and accepted by Tenant in an "as is" condition, subject to the completion of the improvements, alterations or modifications to be made by Tenant under Section 12 and Exhibit D.
- 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; provided, however any such change shall not have a permanent material adverse impact on the public's accessibility to 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 (provided the usable area of the Premises is not thereby materially reduced) 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. Prospective Tenants. During the final twelve (12) months of the Lease Term, or after an event of Tenant Default that is not cured within the time specified in Section 21.A, Landlord reserves to itself the right to enter the Premises at reasonable hours for purposes of showing the Premises to prospective tenants. 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.
- G. Use of Premises During a City Emergency. During the Term, the City reserves to itself the right to use the Premises during a City Emergency, subject to the terms and conditions in Exhibit F ("Agreement Regarding Use of Premises During a City Emergency"), which is incorporated herein and made a part of this Lease.



3. Lease Term; Effective Date; Prior Lease Superseded; Early Termination.

- A. Term. This Lease shall be for a term ("Lease Term") of fourteen years beginning on the Commencement Date specified in Subsection 1.C and ending on the Expiration Date specified in Subsection 1.D, unless the Lease Term is terminated earlier in accordance with the provisions of this Lease.
- B. Effective Date; Original Lease Superseded. So long as this Amended and Restated Lease is executed by an authorized representative of both parties, the terms and conditions herein shall become effective as of the Commencement Date in Subsection 1.C (even if the date when signed by both parties is after the Commencement Date). Once fully executed, this Amended and Restated Lease shall supersede the Original Lease between Landlord and Tenant for the same Premises.
- C. Early Termination.
- (1) Landlord's Early Termination Rights. In addition to other termination rights reserved to Landlord under this Lease, and notwithstanding anything else in this Lease to the contrary, the Landlord may, at any time, terminate the entirety of this Lease upon not less than 180 days' written notice to Tenant. The Landlord's right to terminate this Lease Agreement is conditioned upon the Landlord requiring the Premises to provide a public purpose or service to its constituents.
 - (2) Tenant's Early Termination Rights. In addition to other termination rights reserved to the Tenant under this Lease, and notwithstanding anything else in this Lease to the contrary, the Tenant may, at any time, terminate the entirety of this Lease upon not less than 180 days' written notice to Tenant.
 - (3) Discussion Period. The terminating party will provide the non-terminating party no less than 90 days' prior written notice of the terminating party's intention to terminate this Lease Agreement (the "Discussion Period"). This Discussion Period begins 270 days prior to the intended termination date, and is intended for the Landlord and the Tenant to explore ways to mitigate the closure of Tenant's business at the Premises.
 - (4) Tenant's Exclusive Remedy Upon Early Termination. If Landlord exercises its early termination right under this section, then Landlord shall reimburse Tenant, as Tenant's sole remedy, the value of the Initial Tenant Improvements in Exhibit D to the extent the improvements have been completed and have not been fully amortized as of the effective date of termination. The amount to be depreciated shall not exceed \$650,000, and shall be depreciated on a straight line basis commencing not later than

January 1, 2014. The depreciation period shall be based upon Generally Accepted Accounting Principles, however not exceeding the term of the Lease. The parties agree that the Base Rent charged reflects City's reservation of the right to terminate this Lease, and reimbursement as set forth in this subsection is a fair and reasonable measure of compensation for the Tenant's damages and is not a penalty. If Tenant exercises its option to terminate this Lease, the Landlord will not be responsible to reimburse the Tenant for any of the Tenant Improvements.

4. **Rent.**

- A. **Rent.** 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 (b) the applicable monthly amount of Leasehold Excise Tax ("LET"), as further described in Section 10, and (c) 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. **Percentage Rent.** As used in this Lease, "Lease Year" means a period of twelve months beginning on the Commencement Date, and thereafter beginning on each anniversary of the Commencement Date throughout the Term. Tenant shall pay Annual Percentage Rent on a quarterly basis by installments as provided in this Subsection. On or before the fifteenth (15th) day of October, January, April, and July occurring in each Lease Year, Tenant shall provide Landlord with a report, in a form reasonably approved by Landlord, providing a statement of Tenant's Gross Receipts earned in the immediately preceding quarter. If the amount of Gross Receipts exceeds \$375,000 (the "Quarterly Breakpoint"), Tenant shall remit 8% of that amount in excess of the Quarterly Breakpoint along with the report. No later than thirty days after the end of each Lease Year during the Term, Tenant shall provide a final statement of Tenant's annual Gross Receipts for the immediately preceding lease year along with any underpayment of Annual Percentage Rent. If Tenant's annual Gross Receipts do not exceed \$1,500,000 in such Lease Year, or if Tenant has overpaid Annual Percentage Rent for such Lease Year, Landlord shall either refund the overpayment within thirty days of receipt of Tenant's annual report or shall credit the overpayment against Tenant's Base Rent. Tenant's final annual statement shall be certified as to its accuracy by a statement by either a certified public account or an executive officer of Tenant in the following manner:



I have examined the definition of "Gross Receipts" in the Lease between City of Seattle and EF Seattle Fifth Avenue LLC ("Tenant"), all relevant financial statements and income tax returns of Tenant and Tenant's system of recording Gross Receipts. In my opinion, the attached statement of Gross Receipts accurately represents Tenant's Gross Receipts for the period identified.

- C. Definition of Gross Receipts. As used in this Lease, the term "Gross Receipts" means and includes the total income of the Tenant and every other person or entity conducting business in, on, or from the Premises, including but not limited to the proceeds from all retail and wholesale sales of memberships, health club use fees, food, beverages, merchandise, and services of any kind whatsoever, for cash, barter, exchange or credit, regardless of collections; sales from vending devices; mail or telephone orders received or filled on or from the Premises; all deposits not refunded to purchasers; orders taken although filled elsewhere; fees; commissions; catalog sales; and rental receipts. An installment or credit sale shall be deemed to have been made for the full price on the date of sale regardless of when payment is received. Subject only to the exclusions specified in the immediately following paragraph, the full amount received by the Tenant shall be included in its "Gross Receipts," regardless of whether (a) the Tenant was acting as a consignee, trustee or agent for a third party in connection with such sale or rental, or (b) the Tenant is entitled to retain the full amount received on such sale as the Tenant's own property.

The term "Gross Receipts" does not mean or include the amount of money refunded to and not merely credited to the account of customers who return or do not accept food, beverages, merchandise, or services sold or rented by Tenant; any exchange of merchandise between stores or the central warehouses of the Tenant where such exchange is made solely for the convenient operation of the Tenant's business and not for the purpose of consummating a sale made in, on, or from the Premises; returns to shippers or manufacturers; any discount allowed by the Tenant to customers; the Washington State Sales Tax and any other tax imposed by any government agency directly on sales; and all admission taxes collected by the Tenant. For purposes of clarity, LET and business and occupation taxes are not taxes imposed directly on sales and shall not be deducted from the amount of "Gross Receipts" reported to the City.

- D. Completion of Tenant Improvements. The Rent payable by Tenant for use and occupancy of the Premises and Landlord's willingness to enter into this Lease are conditioned, in part, upon Tenant's completion, at its sole cost and expense, of improvements to the Premises as detailed in Exhibit D ("Initial Tenant Improvements"). The Initial Tenant Improvements shall be completed in compliance with all applicable provisions of this Lease within thirty-six (36) months of the Commencement Date. Tenant's failure to complete the Initial

Tenant Improvements within thirty-six months of the Commencement Date shall be an event of Default under Section 21.

- E. Rent Credit for Tenant Improvements. Subject to the procedures in this Section, in lieu of a tenant improvement allowance, Tenant shall be entitled to a credit against rent ("Rent Credit") for Tenant's actual costs in making Landlord-approved improvements to the Premises, other than the Initial Tenant Improvements. The Rent Credit shall not exceed a total of \$9.15 per Rentable Square Foot ($\$9.15 \times 24,721 = \$226,197.15$) during the Term, and must be applied in equal monthly installments between lease years 5 through 14. The Rent Credit shall not be available for Tenant's installation of fixtures, equipment, or personal property that will not remain with the Premises upon the expiration or termination of the Lease. The Rent Credit will be available for improvements or alterations to the Premises that are approved by Landlord, that are capital in nature, and that remain with the Premises upon the expiration or termination of the Lease, all as reasonably determined by Landlord. Additionally, in order to obtain the Rent Credit, all improvements and alterations must be completed in compliance with the Landlord-approved plans and all requirements applicable to tenant improvements and alterations under this Lease.
- F. Process for Applying Rent Credit. In order to obtain the Rent Credit, at the time Tenant seeks Landlord's approval of proposed improvements and alterations to the Premises as required under Section 12, Tenant shall also notify Landlord if Tenant proposes to receive a Rent Credit for the improvements. Provided that Landlord approves the proposed alterations or improvements, Landlord shall also provide Tenant with a determination of whether all, a portion, or none of Tenant's proposed improvements or alterations qualify for the Rent Credit. Within sixty (60) days of completing the improvements or alterations, Tenant shall provide Landlord with an accounting of its actual costs associated with making the improvements or alterations, including supporting documentation reasonably required by Landlord. Within thirty days, Landlord shall certify the amount of the Rent Credit or shall provide Tenant with a written explanation of any additional documentation required to certify the Rent Credit, or a reason for denying the same. Once the Rent Credit has been certified by Landlord, Tenant may apply the total amount of the Rent Credit against Base Rent in equal monthly installments distributed during lease years 5 through 14. The total amount of Rent Credit shall not exceed \$22,619.72 per lease year.
- G. Additional Costs. The Rent Credit applied through the procedures under Section 4 shall be Landlord's only contribution to the costs associated with any tenant improvements to the Premises. Tenant shall be solely responsible for all costs associated with the Initial Tenant Improvements and any additional tenant improvements to the Premises.

5. Books and Records; Audit.



- A. **Books and Records.** The Tenant shall keep true, accurate, complete and auditable records of all of the Tenant's Gross Receipts and tenant improvement costs submitted for Rent Credit, which records shall be separate from all of the other business records of the Tenant. Additionally, Tenant shall keep true, accurate, complete, and auditable records of all books of account and records customarily used in the operation of the Lessee's business, and as may from time to time be required by City. All records required to be kept under this paragraph and elsewhere shall be kept in accordance with generally accepted accounting practices and standards, and shall be kept for a period of six (6) years.
- B. **Audit.** The Tenant shall permit Landlord, from time to time, as the State or City Auditor, Director of Financial and Accounting Services, or either's functional successor deems necessary, to inspect and audit in Seattle, Washington, at any and all reasonable times, all books and records pertaining to Tenant's Gross Receipts customarily used in the operation of Tenant's business, and shall permit the Landlord to make a copy of any such books and records and any portion thereof, upon the request of the City Director of Finance, the City Auditor, or either's functional successor or designee. Landlord shall notify the Tenant of the amount of any over or underpayment of Percentage Rent found. If the parties mutually concur in Landlord's audit results, any overpayment of Percentage Rent shall be a credit against any Rent or Additional Rent subsequently due or, at the Landlord's option, shall be refunded to the Tenant. In the event of an underpayment or Percentage Rent, the Tenant shall pay to the Landlord the amount of such underpayment, plus, in the event the agreed-on audit results show that Tenant underpaid Annual Percentage Rent by more than ten percent (10%), Tenant shall, as Landlord's sole remedy for such underpayment, reimburse Landlord's actual out-of pocket third-party expenses to perform the audit up to a maximum of \$2,500. The Tenant shall ensure that the Landlord's right to inspect, audit and copy the Premises user's books and records is a condition of any sublease or other arrangement under which any other person or entity is permitted to use or occupy the Premises.
6. **Late Charge; Interest.** If Tenant fails to pay any Rent 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 Rent that is not paid when due. If Tenant defaults in making any payment of Rent, Landlord shall have the right to require that subsequent Base Rent or Additional Charges payments be made by cashiers or certified check.
7. **Lease Guaranty; Substitution of Letter of Credit.** This Lease is made expressly contingent upon the concurrent execution of a joint and several personal lease guaranty by Merle Gregg, George Petrie, and John Goodman, in the form attached and incorporated herein as Exhibit E (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. Provided that Tenant has completed and Landlord has accepted the initial Tenant Improvements, Tenant may, at its option, provide Landlord with a letter of credit (the "Letter of Credit") in form reasonably acceptable to Landlord from an issuing bank reasonably acceptable to Landlord, for an amount equal to the one year's worth of annual Base Rent (the "Letter of Credit Amount"). Upon Landlord's acceptance of the original Letter of Credit, Landlord shall release the Guaranty.

8. Tenant's Operations.

A. Use of Premises. Tenant shall use the Premises only for the Section 1.J 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 provide all furniture, fixtures, equipment and personnel necessary to operate a first class full service health club. Except as required for maintenance work, for the construction of the initial Tenant Improvements, and for closures due to (i) acts or negligence of Landlord or its agents or contractors; (ii) force majeure; or (ii) events of damage, destruction, or condemnation, Tenant shall keep the Premises continually open, without interruption during the days, nights, and hours designated as the Minimum Hours in Section 1.K above. Tenant shall not be required to keep the Premises open for business on Building Holidays. Tenant may open or keep the Premises open for business prior to or after the Minimum Hours, if Tenant so desires. Tenant shall promptly comply, at its sole cost and expense, with the Exhibit C 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 with the high standards of the Building, permitting no objectionable odors to be emitted from the Premises (provided the odor of normal chlorination of the pool is deemed not objectionable) 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. Tenant's utilization of the sound system presently installed in the Premises at decibel levels consistent with those at other similar indoor health club facilities located at or above ground in the downtown Seattle area, or the generation of sound or vibrations by other means at similar levels is permitted under this Lease and will not be deemed a violation of this Subsection 8.A.

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, and 20.42, 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 therefor 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 Landlord's prior consent shall not be required for the storage, use and disposal of Hazardous Substances that are: (i) customary in the operation of the permissible uses of the Premises (including without limitation the pool facilities); (ii) stored on the Premises in normal quantities for such uses; (iii) handled in compliance with applicable laws; and (iv) disclosed in writing to Landlord along with a manufacturer's Material Safety Data Sheet. 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 therefor, 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 therefor. 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.

- E. Signs. Tenant shall not erect or place, or permit to be erected or placed, or maintain any signs of any nature or kind whatsoever on the exterior walls or windows of the Premises or elsewhere in the Building without the prior written approval of Landlord. Tenant may install mutually agreeable identifying signage placed on or near the front door of the Premises and one building lobby sign, the size, style and location of which must first be approved in writing by Landlord.. Tenant shall be permitted to install exterior building signage subject to Landlord's prior written approval and compliance with City of Seattle sign code ordinance (SMC 20.55 et. seq.) and zoning requirements. All signage installed by Tenant shall be removed at Tenant's sole cost and expense and Tenant shall restore all surface areas to the prior condition. Tenant shall abide by all signage rules and regulations, if any, promulgated by Landlord.
- F. No Distress Sales. No auction, fire, bankruptcy, going out of business or other distress sale of any nature may be conducted in, about or from the Premises without Landlord's prior consent.
- G. Certain Activities Permitted. Any other provisions of this Lease or Landlord's rules and regulations notwithstanding:
- (a) Landlord agrees to provide admittance to the Building and access to the Premises during Tenant's hours of operation to Tenant's employees, members and guests who possess reasonable identification from Tenant. The Landlord may however, deny access to any individuals who appear disorderly, intoxicated or might otherwise be likely to engage in unlawful or objectionable behavior.
- (b) Tenant shall have the right to sell food and beverages, and to provide drinking water and ice to its members, guests, and employees. No such items may be dispensed through coin or bill-operated vending machines except in compliance with all applicable laws. Tenant may operate a café on the Premises, so long as



the café otherwise complies with all City Code requirements and does not exceed 2,000 square feet in size.

- (c) Tenant shall have the continuing right to supply towels for the use of its members and guests and in connection therewith to maintain a laundry facility on its Premises.
- (d) Tenants shall have the continuing right to sell athletic equipment and clothing to its members and guests. At no time shall the space devoted to the display of such items exceed 500 square feet.
- (e) Tenant provides a number of for-fee services to its members and guests. These presently include the services of fitness trainers, massage therapists, coaches in various sports, and lectures and classes on health and fitness related topics. Landlord consents to the provision of these and similar services so long as they are a type normally associated with athletic clubs and health and fitness centers.
- (f) Tenant shall have the right to back wash, clean, and/or drain the Swimming Pool as necessary per State, City, or Municipal Codes. Tenant shall provide Landlord not less than 48 hours prior notice of such activity. Tenant shall monitor the drainage rate and ensure such rate does not exceed 160 GPM at any time. Tenant further understands Tenant shall monitor the third floor public restrooms during any drainage activities to ensure no overflow occurs during the process. Landlord has the right to modify the timing and manner of drainage activities to prevent damage to the Building.

9. Utilities and Services.

A. Tenant's Responsibility.

- (1) Tenant shall be solely responsible for, and shall promptly pay when due, all charges for electricity, telephone, water, and all other utilities that are separately metered and supplied. Notwithstanding any provision to the contrary in this Lease or in the attached Rules and Regulations, Tenant shall be solely responsible for arranging, and promptly paying when due, all charges for the depositing of dry garbage into the dumpster designated by Landlord in the Building; the removal of wet garbage; the performance of janitorial services; and the maintenance and repair of all trade fixtures, including but not limited to heating and filtration equipment for the existing Swimming Pool, the Swimming Pool area heating and ventilation systems, and all fixtures that are non-Building standard. As required under Seattle Municipal Code, 22.920.050, at Landlord's request Tenant shall provide Landlord information regarding utility use that is needed by Landlord in order to comply with Chapter 22.920 of the Seattle Municipal Code, as amended from time to time.

B. Landlord's Services.

- (1) Common Areas and Building Systems. Landlord shall cause the Common Areas of the Building and the Building systems to be maintained in reasonably good order and condition consistent with other Class A office buildings in downtown Seattle, 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. Landlord shall arrange for the removal, at no additional charge to Tenant, of dry garbage from the Landlord-designated dumpster in the Building; and the providing of chilled water service for the HVAC (excluding the pool heating and ventilations systems) for up to 120 hours per week, inclusive of normal Building operating hours; electricity from the Building service to the point of separate metering for such portion of the premises; water and sewer service through the Building to the point of connection with such portion of the Premises; and elevator service.

- (2) 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. Notwithstanding anything to the contrary elsewhere herein, Landlord confirms that all electrical fixtures and equipment existing in the Premises as of the Commencement Date hereof are acceptable and do not exceed 4.2 watts per square foot.

- (3) 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. Additionally, Tenant shall pay all taxes on Tenant's interest in this Lease and any leasehold interest deemed to have been created thereby under RCW Ch. 82.29A (Leasehold Excise Tax or "LET"); and in the event the State of Washington makes any demand upon the City for payment of leasehold excise taxes resulting from the Tenant's occupancy of the Premises or withholds future payments due to the City to enforce collections of leasehold excise taxes, Tenant shall remit the taxes demanded along with any interest and penalties associated therewith, or at no expense to the Landlord, contest such collection action and indemnify Landlord for all sums expended or withheld by the State of Washington from the City in connection with such action. As of the Commencement Date, the applicable LET rate is 12.84% of Base Rent and Annual Percentage Rent, which rate is subject to change from time to time. LET shall be paid to Landlord in the same time and manner as Rent under Sections 4.A and 4.B. 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.**
 - A. **General Obligation regarding Tenant Improvements.** Tenant shall not make any alterations, additions or improvements in or to the Premises, including the Initial Tenant Improvements on Exhibit D, without obtaining Landlord's prior written approval, which may be granted, conditioned, or withheld in Landlord's reasonable discretion. Additionally, at the time Tenant requests approval, Tenant shall also submit to Landlord professionally prepared plans and specifications for such work, if reasonably required due to the scope of work being contemplated and obtaining Landlord's reasonable prior written approval thereof as provided in

Exhibit B. Tenant covenants that it will cause all alterations, additions and improvements to the Premises to be completed by a contractor approved by Landlord and in a manner that (a) is consistent with the Landlord-approved plans and specifications and any conditions reasonably imposed by Landlord in connection therewith; (b) is in conformity with first-class, commercial standards; (c) includes reasonably 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 will complete all Initial Tenant Improvements at Tenant's sole cost and expense, and Tenant shall be responsible for all cost overruns. 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. During the Term, Tenant shall own all alterations, additions and Tenant Improvements (expressly including all light fixtures; floor, and window and wall coverings, but expressly excluding heating, ventilation and air conditioning units and electrical wiring). At the expiration or termination of the Lease, all alterations, additions, and improvements made by Tenant to the Premises, including without limitation the Swimming Pool and all other improvements existing at the Premises as of the Commencement Date hereof, as well as all of the initial Tenant Improvements (except Tenant's personal property, 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 and Tenant shall not remove all or any portion thereof on the termination of this Lease. Within ninety (90) days after the completion of any alteration, addition or improvement to the Premises (excluding however the initial Tenant Improvements), Tenant shall deliver to Landlord a full set of "as-built" plans or marked-up construction drawings of the Premises showing the details of the applicable alteration, addition or improvement made to the Premises.

13. Care of Premises.

- A. General Obligation. Tenant shall not cause any damage to the Premises and, subject to Section 16.F. below (Waiver of Subrogation), Tenant shall reimburse Landlord for costs incurred by Landlord to repair any 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. 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 remainder of the Premises and all structural components of the Building in a reasonable condition, as determined by Landlord in its reasonable discretion, shall be performed under Landlord's direction and at its expense, except as otherwise provided herein. Tenant shall perform all maintenance and repair of its trade fixtures, equipment, improvements, and Swimming Pool located thereupon at a standard consistent with similar fitness facilities in downtown Seattle at Tenant's expense. 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. Landlord's consent to the installation of any such art work may be granted, granted upon one or more conditions, or withheld in Landlord's discretion.
- 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 City 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, together with the initial Tenant Improvements (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 and damage by fire or other casualty which Tenant is not required elsewhere hereunder to repair or restore. 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 or be required to remove floor coverings; heating, ventilating and air conditioning equipment; lighting equipment or fixtures; the Swimming Pool; or floor, window or wall coverings unless otherwise specifically permitted 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 (collectively, "Personal Property") that Tenant does not remove from the Premises at the expiration of the Term or within ten (10) days after termination of the Term. Landlord will give written notice to Tenant specifying the Personal Property to be removed and requesting removal, and if Tenant does not remove the Personal Property within ten (10) days from the date of notice, the Personal Property will be deemed abandoned by Tenant and title to the Personal Property shall vest in Landlord. Landlord may retain or dispose of the Personal Property in Landlord's discretion. Tenant waives all claims against Landlord for any damage to Tenant resulting from Landlord's retention or disposition of any Personal Property not removed by Tenant as required under this Section 14. 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. Except to the extent caused by the negligence or breach of this Lease by Landlord, 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 8.D, 12, 13.C 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 five million (\$5,000,000)** each occurrence combined single limit bodily injury and property damage (CSL), **except:**

\$1,000,000 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, including the completed Tenant Improvements, 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 for at least six (6) months, with sufficient coverage to provide for the payment of rent and other fixed costs during any interruption of Tenant's business for up to six (6) months.
- B. Property Insurance Coverage Maintained by Landlord. **"All Risks"** Property insurance or self-insurance under which the Building is insured, excluding the Tenant's furniture, trade fixtures, equipment and inventory, including the completed Tenant Improvements
- C. 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 reasonable 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 (not more frequently than once every three (3) years) to reflect type of or exposure to risk, at which time Landlord shall have the right to 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.

D. 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.L 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 is 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.L 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.
- E. Reconstruction Following Loss. Following completion of Landlord's repair and restoration obligations pursuant to Section 19 below, Tenant shall proceed with reasonable diligence as soon as sufficient funds are available therefor, to prepare plans and specifications for, and thereafter to carry out, all work necessary (a) to repair and restore its improvements made thereto that have been damaged by any insured casualty to their former condition, or (b) to replace its 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, its improvements that were damaged or destroyed.
- F. 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. Likewise, if Landlord's negligence, or that of its employees, contractors or agents, causes loss or damage to the Premises or to any of the Tenant's property therein, Landlord will reimburse Tenant 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.

- G. 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 shall not be unreasonably withheld, delayed, or conditioned. In determining whether or not to grant its consent to the Tenant's sublet or assignment request the Landlord may consider any reasonable factor. The granting of consent to a given transfer shall not constitute a waiver of the consent requirement as to future transfers. Any assignment or sublease, without Landlord's prior written consent to the extent required herein, 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 reasonably satisfactory to Landlord. If Tenant assigns its interest in this Lease or sublets the Premises, Tenant shall pay to Landlord one-half (1/2) of any and all consideration received by Tenant for such assignment or sublease reasonably allocable to the leasehold estate being sublet or assigned, as applicable. 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 the majority of the general partners in or voting or decision-making control of the partnership shall also constitute an assignment. Tenant shall also pay all reasonable legal fees and other costs actually incurred by Landlord in connection with Landlord's consideration of Tenant's request for approval of assignments or subleases, including assignments for security purposes; provided that such fees shall not exceed \$750 in connection with any request for (x) a subletting of less than twenty-five percent (25%) of the Premises, or (y) any documents required by Tenant or its lender relating to its business or equipment financing. Furthermore, Tenant shall have the right, with prior notice to Landlord but without Landlord's consent, to sublet or license up to 2,000 square feet of space at the Premises for use as a café/juice bar.
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 untenantable 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 untenantable 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. The Tenant shall be deemed in default of this Lease upon the occurrence of any of the following events (a "Default"):

- (1) If Tenant fails to pay Rent within ten (10) days after receipt of written notice thereof from Landlord;
- (2) If Tenant violates or breaches or fails to keep or perform any covenant, term or condition of this Lease, including but not limited to the completion of the Tenant Improvements, that does not involve the payment of Rent and fails to remedy such violation or breach within ten (10) days after receipt of a written notice thereof (unless such remedy cannot be completed within such 10-day period in which case the Tenant shall not be deemed in Default if Tenant has commenced such remedy within the 10-day period and is diligently prosecuting the completion of such remedy);
or
- (3) 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.

B. Rights of Landlord. In the event of a Default by Tenant, the 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.

C. Reentry. If Landlord reenters the Premises under option (iii) of Subsection 21.B, 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.

- D. Termination. If Landlord elects to terminate this Lease pursuant to the provisions of options (i) or (iv) of Subsection 21.B, 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 therefor; 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.D, 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.
- E. 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.** 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.
24. **Access by Landlord.** With the exception of emergencies, including repairs that the Landlord deems are immediately necessary, in which case no prior notice shall be required, Landlord and its agents shall have the right to enter the Premises at any time after giving Tenant at least 24 hours before such planned entry 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 therefor. 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.
25. **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.

26. **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 26. 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.
27. **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 26, 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 factual matters concerning the Lease or the Premises 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.
28. **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.

29. **Notices.** Any notice, demand or request required hereunder shall be given in writing to the party's address set forth in Subsection 1.L 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.
30. **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.
31. **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.
32. **Brokers' Commission.** Tenant shall indemnify and hold Landlord harmless from all damages, judgments, liabilities, claims and expenses (including attorneys' fees) arising out of or in connection with any claim or demand of any broker, agent or finder with whom Tenant has dealt for any commission of fee alleged to be due in connection with its participation in the procurement of Tenant or the negotiation of this Lease. Landlord shall indemnify and hold Tenant harmless from all damages, judgments, liabilities, claims and expenses (including attorneys' fees) arising out of or in connection with any claim or demand of any broker, agent or finder with whom Landlord has dealt for any commission or fee alleged to be due in connection with its participation in the procurement of Landlord or the negotiation of this Lease. Landlord shall pay any commissions due in connection with this Lease to its broker, CB Richard Ellis, Inc., pursuant to a separate agreement.

33. **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.
34. **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.
35. **Financial Statements.** In addition to the reports under Section 4 for calculation of Percentage Rent and Landlord's audit rights under Section 5, within ten (10) days after Landlord's request therefor, and not more than once per calendar year, Tenant shall deliver to Landlord a financial statement for Tenant's prior quarter and fiscal year. Such statements shall not be required to have been audited. 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 statute, court rule or order.
36. **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 or increase up to the maximum number set forth above 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.
37. **Member Parking**
- A. **Free Parking.** Landlord shall provide parking in the Building garage for Tenant's employees and members without an hourly charge, provided the employee or member (i) enters the garage after 4:30 p.m. on a business day and exits the garage before midnight, or (ii) enters the garage after midnight and exits the garage prior to 8:30 a.m. on a business day, or (iii) enters and exits the garage during any hours on a Saturday, Sunday or Building holiday (collectively, the "Free Parking"). Notwithstanding that there will be no hourly charges for those persons qualifying for the Free Parking, Tenant shall reimburse Landlord for all reasonable out of pocket costs incurred by Landlord in connection with implementing the Free Parking, including the cost of key cards or entry devices



and reasonable handling or processing charges. Tenant may charge its members an incidental fee to cover such costs, including administrative expenses. Tenant may not otherwise charge for parking privileges. Tenant shall cooperate fully and completely with Landlord to assure that the Free Parking privileges are not abused by its employees or members, or used by any employee or member to store a vehicle overnight. In all instances other than when a vehicle fully qualifies for Free Parking, that vehicle shall incur parking charges for the period during which it is in the garage but outside of the Free Parking period, at the same rate as is charged with respect to any other vehicle not having a monthly parking arrangement with the garage operator.

B. Validation. Landlord shall provide Tenant a monthly parking subsidy of one hundred (100) hours of validation stamps.

38. Twenty-Four Hour Access. Landlord shall provide Tenant with access at all times to the Building through use of card key system or such other system as may be adopted by Landlord. At Tenant's request, Landlord shall make such access available to Tenant's members, provided that Tenant shall pay the cost of all materials (e.g., card keys, keys) required thereby. Tenant shall pay the cost of replacement of all card keys, keys, etc. whether or not Tenant paid the original cost of such materials.
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. Neither party shall 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**. 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 fully executed copies have been delivered to Landlord and Tenant.
46. **Time of Essence; Time Calculation Method**. Time is of the essence with respect to this Lease. Except as otherwise specifically provided, any reference in this Lease to the word "day" means a "calendar day;" Provided, that if the final day for any action required hereunder is a Saturday, Sunday or City holiday, such action shall not be required until the next succeeding day that is not a Saturday, Sunday or City 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.
49. **Termination of Prior Lease**. Landlord represents and warrants that, as of the Commencement Date hereof, no party other than Tenant is entitled to possession of the Premises, and that any prior lease, sublease, license, or other occupancy agreement for the Premises or any portion thereof has been duly terminated.



Hillary Hamilton/HJH
FAS Seattle Executive Fitness Lease ORD ATT 1
February 8, 2013
Version #2

[SIGNATURES ON NEXT PAGE]

Hillary Hamilton/HJH
FAS Seattle Executive Fitness Lease ORD ATT 1
February 8, 2013
Version #2

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

LANDLORD:
THE CITY OF SEATTLE

TENANT:
EF SEATTLE FIFTH AVENUE LLC

By: _____
Fred Podesta, Director
Department of Finance
And Administrative Services

By: _____
George Petrie, Manager
EF SEATTLE FIFTH AVENUE LLC

Authorized by Ordinance Number: _____



Hillary Hamilton/HJH
FAS Seattle Executive Fitness Lease ORD ATT 1
February 8, 2013
Version #2

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

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared **Fred Podesta**, known to me to be the **Director of Department of Finance and Administrative Services** for **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 he 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 WASHINGTON)
) ss. (Acknowledgement for Tenant)
COUNTY OF KING)

On this _____ day of _____, 2013, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared George Petrie, to me known to be the **Manager** of **EF SEATTLE FIFTH AVENUE LLC**, the entity that executed the foregoing Lease as Tenant; and acknowledged to me that he signed the same as the free and voluntary act and deed of said entity for the uses and purposes therein mentioned and that he 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.

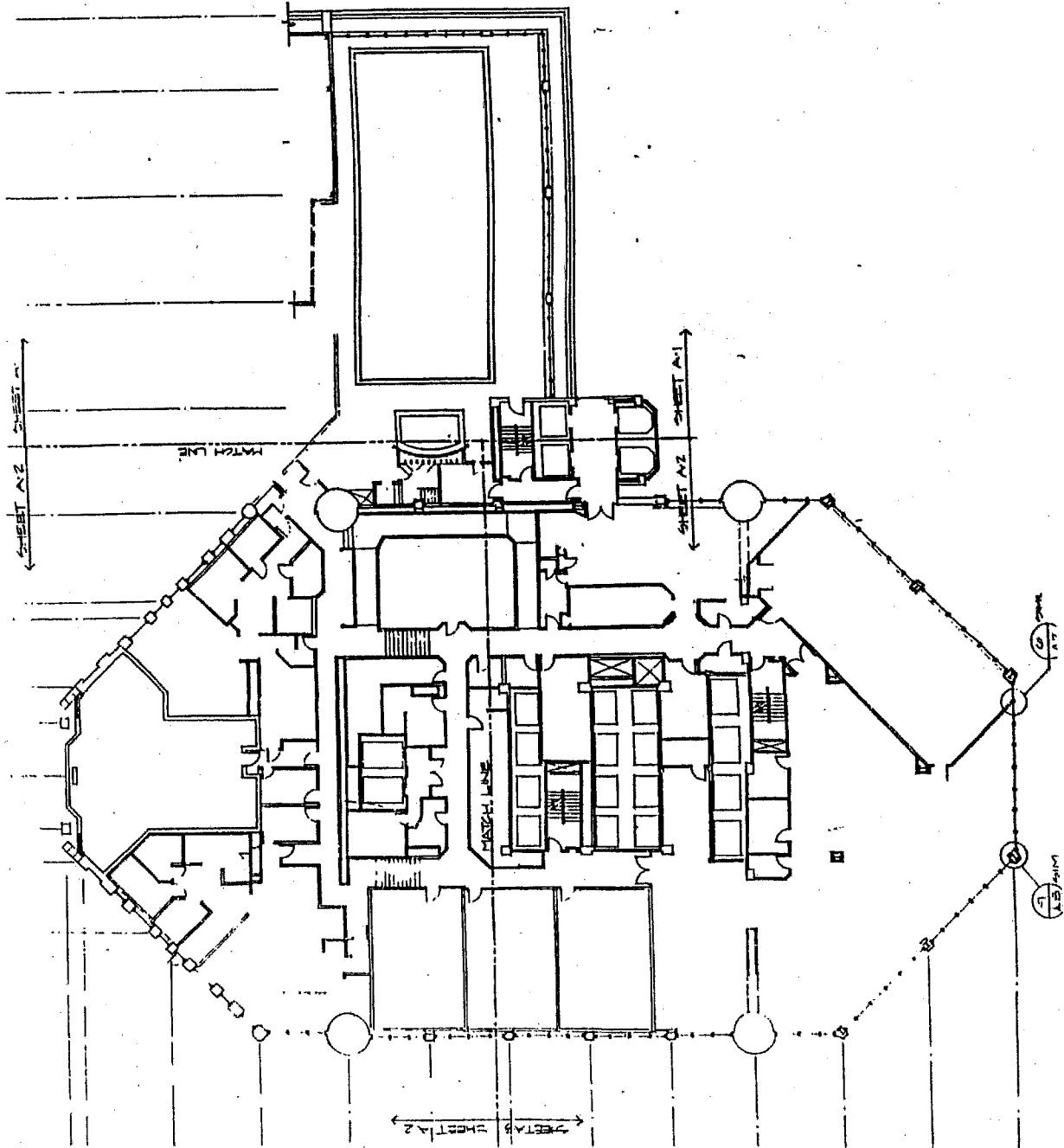
[Signature]

[Printed Name]

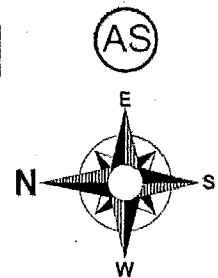
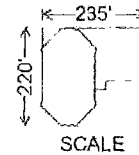
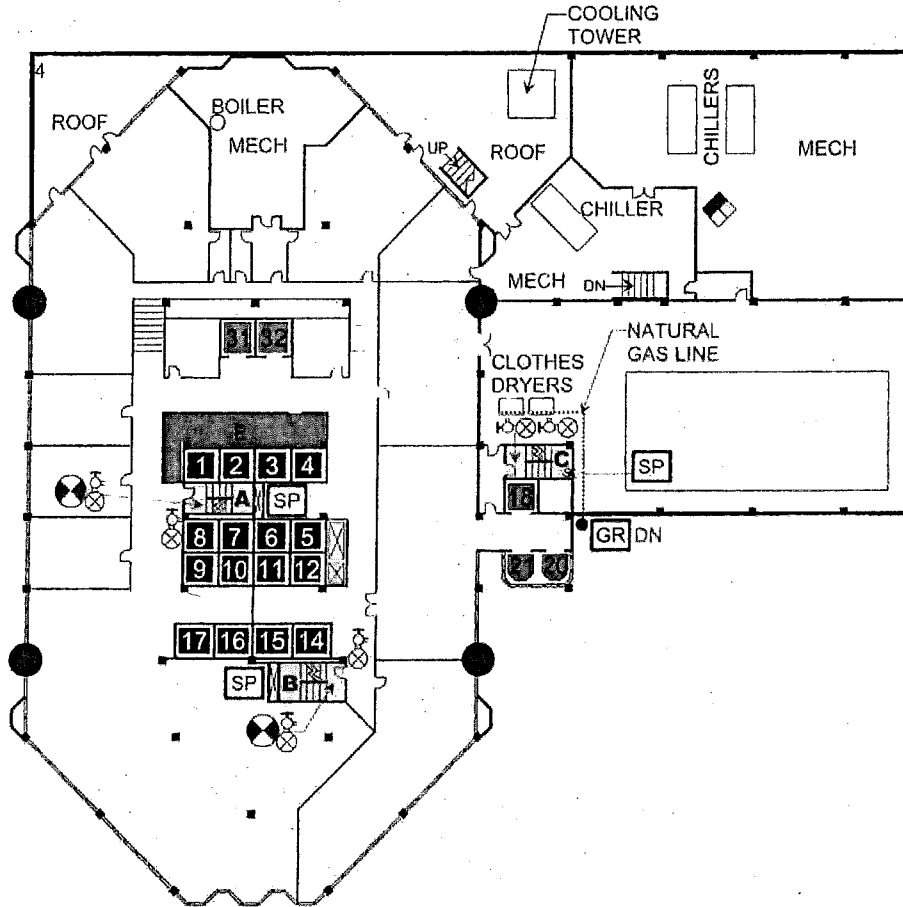
NOTARY PUBLIC in and for the State of
Washington residing at _____
My commission expires _____.

EXHIBIT A
TO
SEATTLE MUNICIPAL TOWER LEASE

FLOOR PLAN OF PREMISES



700 5th Avenue



FLOOR
14

Seattle Executive Fitness
Mechanical/Boiler Room
Parking Level 12

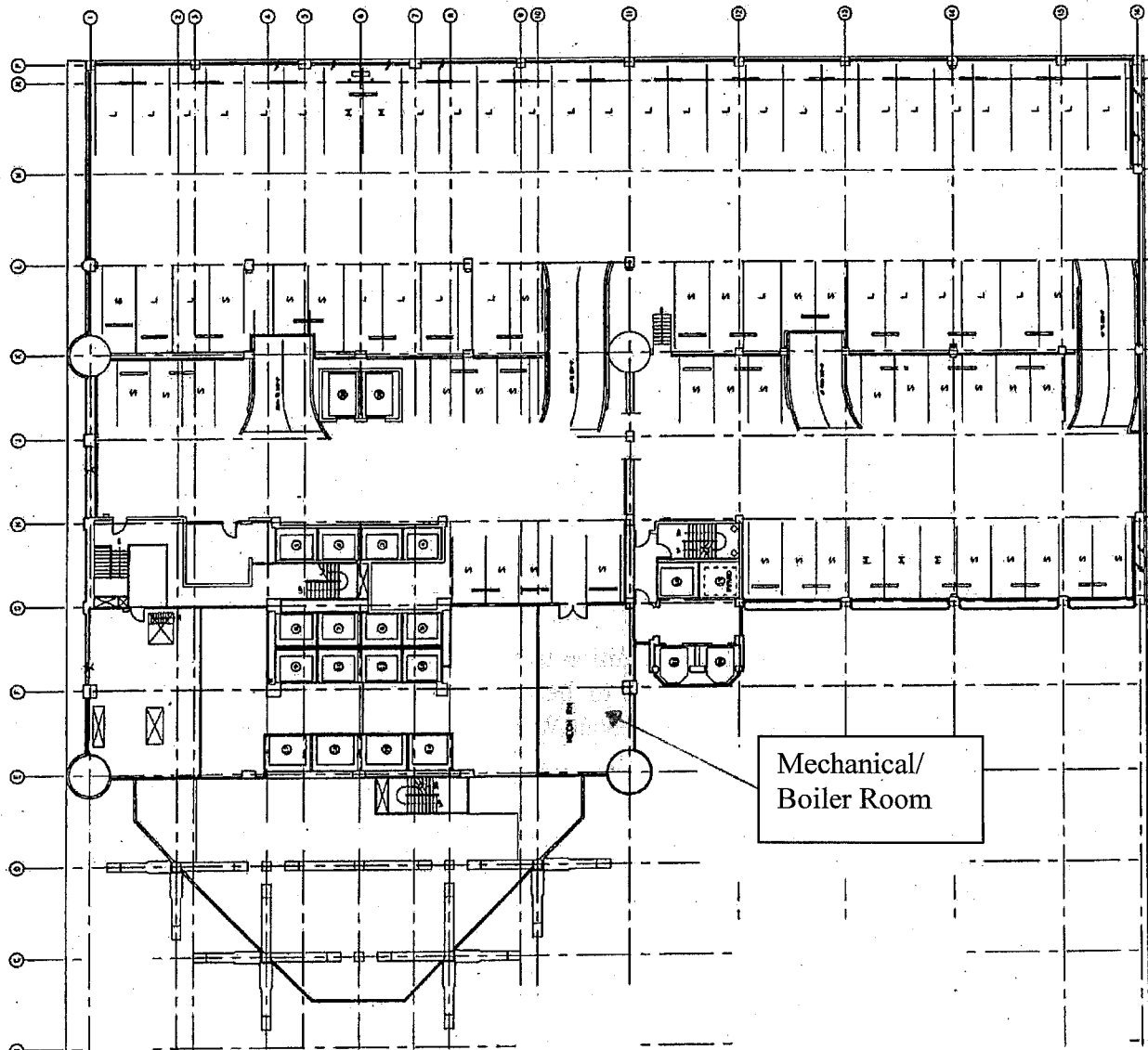


EXHIBIT B
TO
SEATTLE MUNICIPAL TOWER LEASE

TENANT IMPROVEMENTS

A. BASIC BUILDING IMPROVEMENTS.

Landlord is making the Premises available to Tenant in an "AS IS" condition. Landlord will, however, install Tenant's name and suite number in the Building directory on the main floor of the Building and in any directory on the floor on which the Premises are located, all in the style and manner of other Building lessees.

B. TENANT WORK.

If Tenant elects to upgrade surface finishes from the condition they are in when made available to Tenant, as described in Section A hereof or from the Building Standard, or to make any other departure from Building Standard with respect to any portion of the walls; ceiling; floor; electrical distribution equipment; heating and air conditioning equipment and ducting, including but not limited to standard size variable air volume air terminal units; restrooms; drinking fountains; fire and life safety equipment; telephone service to the telephone closet located within the core area of the Building; and the basic sprinkler distribution grid; then such upgrade or other departure from Building Standard shall be subject to Landlord's and Landlord's Architect's approval and Tenant shall pay the cost thereof pursuant to the terms of Section C.2 of this Exhibit. (Non-Building Standard items are sometimes referred to herein as "special" items.)

Improvements to the Premises that are in addition to those to be provided by Landlord in Section A of this Exhibit are sometimes referred to herein as Tenant Work. Tenant, rather than Landlord, shall be responsible for all new Tenant Work, which includes, if proposed or requested by Tenant, the following items:

1. All partitioning (solid, glazed or otherwise), including walls separating the Premises from the space to be occupied by other tenants in the Building, all partitioning within the Premises, and the walls separating the Premises from the public corridor.
2. Paint or other wall coverings, all of which shall be subject to Landlord's approval prior to application or installation. Painted walls shall receive at least one prime coat and one finish coat. The brand of paint shall be Building Standard or an equivalent brand subject to Landlord's prior approval.
3. Doors, door frames, relite frames and door hardware.
4. Ceiling, including suspension system, hangers and finish materials.
5. Cabinetry and millwork.

6. Carpeting, pad or other floor covering.
7. Window coverings for exterior windows as designated by Landlord.
8. Light fixtures, including Building Standard fixtures and switching, all in accordance with applicable Seattle codes and the Energy Edge Program.
9. Electrical receptacles, wiring and conduit from electrical panels to electrical receptacles and light fixtures, and other electrical items.
10. Mudrings and pullstrings for telephone and computer receptacles. Tenant is responsible for Tenant's telephone and computer equipment, service and cabling. Tenant shall select a telephone system and coordinate its installation with Landlord.
11. Air terminal units including related ducting, round low pressure run out ducting, flexible ducting, diffusers and any other items for heating and air conditioning.
12. Modifications to the sprinkler distribution system and installation of sprinkler heads, emergency speakers, exit signs and fire extinguishers and cabinets within the Premises.
13. All removal of debris for any item of work installed pursuant to Section B of this Exhibit.
14. The fees due for any architectural or interior design services provided with respect to the Premises including but not limited to the furnishings, furniture, art work, fixtures, equipment, and other personal property therein.
15. All Washington State sales tax applicable to Tenant improvements made to the Premises.
16. The fee charged by Landlord's architect for the reviewing on Landlord's behalf, Tenant's proposed plans and specifications for the improvement of the Premises by Tenant.
17. All signage in excess of that provided by Landlord under the Building Rules & Regulations.

C. DESIGN OF TENANT IMPROVEMENTS.

1. Plans for Tenant Work.

- a. Responsibility of Tenant's Architect for Final Contract Documents. Based on Exhibits A and B and other information provided by Tenant and approved by Landlord, and if reasonably necessary for the scope of the proposed Tenant Work, Tenant's Architect shall prepare the working drawings, specifications and engineering drawings representing the Final Contract Documents for Tenant Work. Notwithstanding the foregoing, based on the currently contemplated scope of work reflected in Exhibit D to the Lease which has previously been approved by the



parties, the parties expect that working drawings and Contract Documents shall not be required for the Tenant Work.

- b. Final Contract Documents. If reasonably necessary due to the scope of the proposed Tenant Work, Tenant shall cause Tenant's Architect to submit two (2) blackline sets of Contract Documents to Landlord. Landlord shall have ten (10) days to review and return one (1) marked up set of Contract Documents to Tenant's Architect; Provided, that if structural or mechanical work is proposed to be undertaken for Tenant, and Landlord, in the exercise of its discretion, requires consultation with Landlord's structural engineer or mechanical engineer to evaluate the Contract Documents, Landlord shall give notice to Tenant's Architect of such need, and Landlord shall have up to an additional thirty (30) days for its review of the Contract Documents. Tenant's Architect shall incorporate Landlord's comments into the proposed Final Contract Documents and submit two (2) complete sets of the proposed Final Contract Documents, as modified, to Tenant. Tenant shall have ten (10) days to review and approve the modified Final Contract Documents. Tenant shall indicate its approval by signing the cover sheet of the modified Final Contract Documents and returning one (1) complete set to Landlord. The Final Contract Documents, as modified, shall be prepared in accordance with the standards developed by the Landlord including common symbols, legends and abbreviations together with information required to obtain a building permit. If reasonably necessary due to the scope of the proposed Tenant Work, The Final Contract Documents, as approved and signed by Tenant, shall include:

- (1) Architectural Floor Plan: A plan, fully dimensioned, showing partition layout and type identifying each room with a number and each door with a number and the extent of floor finishes, casework, relites, etc. Plumbing requirements must also be noted on this plan. This plan shall indicate HVAC zoning requirements.
- (2) Reflected Ceiling Plan: A plan showing all Building Standard and special ceiling conditions and materials. This plan shall include the location and type of all Building Standard and special light fixtures including switching, together with a legend indicating fixture type, quantity of fixtures, and connected wattage of each fixture as necessary for compliance with The City of Seattle codes.
- (3) Electrical, Telephone and Computer Receptacles Plan: A plan locating all power, telephone and computer requirements dimensioned to give exact location of receptacle, height above concrete slabs and position from a corner. This plan shall identify all dedicated circuits and identify all power receptacles greater than 120 volts. For equipment utilizing receptacles that require dedicated circuits and/or that require greater than 120 volts, Tenant shall specify the type of equipment, the manufacturer's name and model number. The plan must also identify the name of the

manufacturer of the phone and computer system to be used and the power requirements, size and location of its primary equipment.

- (4) Furniture Layout: Basic layout showing furniture location.
- (5) Millwork/Casework Details: Complete elevations, sections and construction details of all special millwork including but not limited to cabinets, paneling, trim, bookcases, doors, door frames and relite frames.
- (6) Hardware Specifications and Keying Schedule: Complete specifications for all special hardware. Key ways in special locks must be compatible with building master key system. The keying schedule must indicate which doors are locked and which keys open each lock, together with a symbol indicating which side of the door is to be locked to prohibit entry.
- (7) Room Finish and Color Schedule; Signage: Complete information showing on the drawings the location and specifications for all finishes including wall, floor covering, wall base, ceiling and special conditions; as well as the size, design, method of installation, and desired location of all signage.
- (8) Construction Notes and Specifications: Any special notes required and complete specifications for all special items including but not limited to instructions for bidders, special conditions incorporating the AIA standard form of general conditions and technical specifications for all special Building work.
- (9) Structural Drawings: If reasonably necessary due to the scope of the proposed Tenant Work, Tenant shall engage the services of its structural engineer, a separate structural permit will be obtained, and the cost of those services and permits shall be included in the cost of Tenant Work. A drawing will be prepared for Landlord's review, indicating the extent of structural modifications proposed for the Premises.
- (10) Mechanical Drawings: If reasonably necessary due to the scope of the proposed Tenant Work, Tenant shall engage the services of its mechanical engineer, separate plumbing and HVAC permits will be obtained, and the cost of those services and permits shall be included in the cost of Tenant Work. Drawings shall be prepared for Landlord's review indicating plumbing and HVAC requirements as follows:
 - (a) Plumbing: Clearly indicating all waste, vent and water requirements, locations and connections to stub-outs located at the Building core.
 - (b) HVAC: Clearly indicating the basic system, modifications to the basic system if required, including any special cooling or



stand-alone system, special ventilation system, and supply air diffusers, return air grilles and space temperature sensors.

2. Delays and Costs.

Tenant shall be responsible for delays and additional costs in completion of the Tenant Work and any damages or other costs, including but not limited to the additional fees of Landlord's Architect, incurred by Landlord that are caused by (a) the failure to provide adequate information to Landlord's Architect, except that Tenant shall not be responsible for delays resulting from Landlord's failure to review and to approve or comment upon the proposed Final Contract Documents within a commercially reasonable time after their delivery by Tenant to Landlord, unless the delay is requested by or the fault of Tenant; (b) Tenant-requested changes in the Basic Building Improvements; (c) improvements to the Premises beyond those provided for in Sections A and B of this Exhibit; (d) delays in the delivery of special materials if Landlord has made reasonable efforts to secure said materials in a timely manner; or (e) delays requested by Tenant. Tenant shall reimburse Landlord for such costs upon the commencement of the Lease term. However, Landlord not charge a construction management or supervisory fee in connection with the Tenant Work. If, after the commencement or completion of Tenant Work, Tenant wishes to make improvements to or changes in the Premises beyond those provided for in Sections A and B of this Exhibit, Tenant shall submit to Landlord a written request to make such changes, and the parties shall follow the same procedures and be subject to the same requirements as are specified herein for the initial Tenant Work.

D. CONSTRUCTION OF TENANT IMPROVEMENTS.

1. **Tenant's Entry into Premises.** Tenant's entry to the Premises for any purpose, including without limitation, inspection of the performance of Tenant's construction by Landlord's contractor prior to commencement of the initial term of this Lease, shall be scheduled in advance with Landlord and shall be subject to all the terms and conditions of the Lease, except the payment of Base Rent. Tenant's entry shall mean entry by Tenant, or any of its officers, contractors, office planner, licensees, agents, servants, employees, guests, invitees or visitors.
2. **Tenant's Telephone.** Tenant shall be solely responsible for its telephone system, including selection, installation and cost and for Tenant's telephone service. Information concerning telephone equipment size and any special requirements must be given to Landlord's Architect during the planning phase, and Tenant shall coordinate installation of the telephone system with Landlord's Tenant Improvement Coordinator during the construction phase.
3. **Cooperation; Responsibility.** Tenant shall cooperate fully with Landlord as necessary and appropriate with respect to construction of Tenant Work.

E. GENERAL CONDITIONS.

The following provisions shall be applicable to all Tenant Work.

1. Tenant shall have the right to control design of special improvements to the Premises, subject to Landlord's approval, which shall not be unreasonably withheld.
2. Tenant shall be responsible for the payment to Landlord, as an Additional Charge, of any increase in Building energy costs attributable to special lighting. Lighting not consistent with Seattle's Energy Code or the Energy Edge Program shall not be installed without the prior approval of Landlord and Landlord's Architect, which may be withheld in the sole discretion of Landlord.
3. If Tenant requests that Landlord install any fixtures in the Premises or perform any alterations, additions or improvements to the Premises that are in addition to or subsequent to the Tenant Work, and if Landlord consents to such request, such additional work shall be installed at Tenant's sole cost and expense and the terms and conditions of Section D of this Exhibit shall govern all such work.

F. SPECIAL PROVISIONS.

If a portion of the Tenant Work or any other installation within the Premises is to be performed by someone other than the Landlord's contractor or subcontractor, then the following terms and conditions shall apply:

1. Such work shall proceed upon Landlord's written approval of (i) Tenant's contractor; (ii) public liability and property damage insurance satisfactory to Landlord carried by Tenant's contractor; (iii) detailed plans and specifications for such work; and (iv) the amount of general conditions to be paid by Tenant to Landlord for the service(s) (if any) provided by Landlord's contractor.
2. All work shall be done in conformity with a valid building permit, when required, a copy of which shall be delivered to Landlord before such work is commenced, and in any case, all such work shall be performed in accordance with all applicable governmental regulations. Notwithstanding any failure by Landlord to object to any such work, Landlord shall have no responsibility for Tenant's failure to meet all applicable regulations.
3. All work by Tenant or Tenant's contractor shall be scheduled through Landlord.
4. Tenant or Tenant's contractor shall arrange for necessary utility, hoisting and elevator service with Landlord's contractor and shall pay such reasonable charges for such services as may be charged by Landlord's contractor. These charges will be included in the general conditions of Section E.1 of this Exhibit.
5. Tenant shall promptly reimburse Landlord for costs incurred by Landlord due to faulty work done by Tenant or by any of its contractors, or by reason of any delay caused by such work, or by reason of inadequate clean-up.



6. Prior to commencement of any work on the Premises by Tenant or any contractor of Tenant, Tenant and Tenant's contractor shall enter into an indemnity agreement and a lien priority agreement satisfactory to Landlord indemnifying and holding harmless Landlord and Landlord's contractor for any liability, losses or damages directly or indirectly from lien claims affecting the land, the Building or the Premises arising out of Tenant's or Tenant's contractor's work or that of every subcontractor or supplier, and subordinating each such lien to the liens of construction and permanent financing for the Building.
7. Landlord shall have the right to post a notice or notices in conspicuous places in or about the Premises announcing its non-responsibility for the work being performed therein.

EXHIBIT C
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 therefor.
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 foregoing rules by Tenant's employees, agents, clients, customers, invitees and guests.
34. No smoking is 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 D
TO
SEATTLE MUNICIPAL TOWER LEASE

Initial Tenant Improvements

Men's Restroom:

- Completely reface existing locker system in locker room area.
- Completely remove or repair existing tile and install new tile in shower and restroom areas as appropriate.
- Completely remove existing sink cabinets and counter tops and install new sink cabinets & countertops.
- Install new water saving faucets where existing faucets are located.
- Install new water saving shower heads & valves where existing are currently located.
- Improvements to existing restroom & shower ventilation systems as required to remove excess moisture from area.
- Complete additional repairs and upgrades to Steam and Sauna areas which include, but are not limited to, removal of existing tile and install new tile, repairs to all damaged wood in dry sauna, and repairs to the steam and dry sauna heat regulators/elements as needed to meet Class A operation standards.

Women's Restroom:

- Completely reface existing locker system in locker room area.
- Completely remove or repair existing tile and install new tile in shower and restroom areas as appropriate.
- Completely remove existing sink cabinets and counter tops and install new sink cabinets & countertops.
- Install new water saving faucets where existing faucets are located.
- Install new water saving shower heads & valves where existing are currently located.
- Improvements to existing restroom & shower ventilation systems as required to remove excess moisture from area.
- Complete additional repairs and upgrades to Steam and Sauna areas which include, but are not limited to, removal of existing tile and install new tile, repairs to all damaged wood in dry sauna, and repairs to the steam and dry sauna heat regulators/elements as needed to meet Class A operation standards.

P-12 Pool & Boiler Room:

- Landlord requires Tenant to complete permanent structural repairs of the expansion take overflow floor drain located within the Boiler Room on Level P-12 (Exhibit A-3) of the Garage to Class A standards as per Landlord's specifications.



Hillary Hamilton/HJH
FAS Seattle Executive Fitness Lease ORD ATT 1
February 8, 2013
Version #2

Note: Tenant to submit full construction & architectural plans as part of Exhibit D with detailed finish plans for Landlord's review.

EXHIBIT E
TO
SEATTLE MUNICIPAL TOWER LEASE

PERSONAL GUARANTY OF FINANCIAL OBLIGATIONS IN LEASE

This Personal Guaranty ("Guaranty") is entered into by Merle Gregg, George Petrie, and John Goodman (collectively referred to herein as "Guarantor") in favor of **THE CITY OF SEATTLE**, a municipal corporation of the State of Washington, (the "City" or "Landlord").

- A. EF Seattle Fifth Avenue, LLC ("Tenant") desires to enter into that certain Seattle Municipal Tower Lease between the City 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").
- B. Guarantor desires that the City enter into the Lease with Tenant, and the City is willing to enter into the Lease strictly conditioned upon the Guarantor's guaranty of Tenant's financial obligations under the Lease under the terms herein.

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

1. Guarantee. Guarantor 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 Lease.
2. Term of Guaranty. This Guaranty will be effective commencing upon the effective date of the Lease and shall continue in full force until the Guaranteed Obligations have been fully paid and performed. If Landlord agrees to release Tenant from its duties and obligations under the Lease as provided in Section 16 of the Lease, this Guaranty will be released to the extent the Tenant is released.
3. Joint and Several Liability. Merle Gregg, George Petrie, and John Goodman shall be personally and jointly and severally liable as Guarantor under this Guaranty. 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 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 does 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 Tenant 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.

7. 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 Tenant's 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 waive 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 7, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.
8. 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.
9. 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.
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 Tenant (b) apply irrespective of any indulgence granted from time to time by the City. The Guarantor agrees 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:
- EF Seattle Fifth Avenue, LLC
2801 Alaskan Way, Suite 310
Seattle, WA 98121



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.
17. Substitution of Letter of Credit; Release of Guaranty. Notwithstanding anything to the contrary elsewhere herein, Landlord shall return the original of this Guaranty to Guarantor and all of Guarantor's liability hereunder shall automatically terminate upon delivery to Landlord of the Letter of Credit described in Section 6 of the Lease.

Signed this ____ day of _____, 2013, in the City of Seattle, King County, Washington.

GUARANTOR:

Merle Gregg

Date

Hillary Hamilton/HJH
FAS Seattle Executive Fitness Lease ORD ATT 1
February 8, 2013
Version #2

STATE OF WASHINGTON)
) ss. (Acknowledgement for Guarantor)
COUNTY OF KING)

On this _____ day of _____, 2013, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared George Petrie to me known to be the person that executed the foregoing Guaranty as Guarantor; and acknowledged to me that he/she signed the same as his/her own 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
Washington residing at _____
My commission expires _____

STATE OF WASHINGTON)
) ss. (Acknowledgement for Guarantor)
COUNTY OF KING)

On this _____ day of _____, 2013, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared John Goodman to me known to be the person that executed the foregoing Guaranty as Guarantor; and acknowledged to me that he/she signed the same as his/her own 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
Washington residing at _____
My commission expires _____

EXHIBIT F
TO
SEATTLE MUNICIPAL TOWER LEASE
Agreement Regarding Use of Premises during City Emergency

AGREEMENT REGARDING Use of Premises DURING CITY EMERGENCY

This Agreement Regarding Use of Premises During City Emergency is made a part of the Seattle Municipal Tower Lease between The City of Seattle, as Landlord and EF SEATTLE FIFTH AVENUE, LLC as Tenant commencing when signed by an authorized representative of both parties. Unless otherwise defined in this Agreement, all capitalized terms shall have the meaning they are given in the Lease. This Agreement is intended to memorialize an understanding and plan and set forth the terms and conditions for the City's potential use of the Premises during an Emergency Event. As used in this Agreement, an "Emergency Event" means any circumstance when the Emergency Operations Center (EOC) is activated for more than a 24 consecutive hour period.

1. Seattle Municipal Tower (SMT) Security will provide EOC staff access to the Premises outside of EF SEATTLE FIFTH AVENUE, LLC's normal business hours (or if EF SEATTLE FIFTH AVENUE, LLC is closed as a result of the Emergency Event) for the sole purpose of allowing EOC staff to shower and rest (on City-provided cots) subject to the terms of this Agreement. The City shall instruct the EOC staff that they are prohibited from using the equipment and training facilities located on the Premises and that EF SEATTLE FIFTH AVENUE, LLC shall have no liability for any damages suffered by a member of the EOC staff arising from any unauthorized use of such equipment and/or training facilities. Liability for any such damages shall be borne solely by the City.
2. If the Premises is needed during EF SEATTLE FIFTH AVENUE, LLC's normal business hours, EOC management will work with the EF SEATTLE FIFTH AVENUE, LLC manager or designee to determine how best to accommodate EOC staff during the Emergency Event in a manner that minimizes interference with EF SEATTLE FIFTH AVENUE, LLC's regular customers' use of the Premises and EF SEATTLE FIFTH AVENUE, LLC's normal business operations to the extent reasonably possible.
3. The City will reimburse EF SEATTLE FIFTH AVENUE, LLC for its incremental costs associated with the EOC staff's use of the Premises during the Emergency Event. These costs will be determined by EF SEATTLE FIFTH AVENUE, LLC and the City's property manager within 30 days of EOC staff use.
4. The City will be responsible for providing and removing any cots needed for EOC staff to rest no later than 24 hours after the end of the Emergency Event.



5. The City will be responsible for any damage caused by use of the Premises by the EOC staff under the above conditions and shall pay such damages within thirty (30) days after receipt from EF SEATTLE FIFTH AVENUE, LLC of a written demand therefor along with a reasonably detailed description of such damage. The City shall defend and indemnify EF SEATTLE FIFTH AVENUE, LLC and its members, managers, employees and agents (the "Indemnified Parties") against all damages and costs (including attorneys' fees) incurred by the Indemnified Parties and arising from claims made by third parties in connection with the EOC staff's use of the Premises as a result of an Emergency Event. The City's duty to defend and indemnify the Indemnified Parties shall survive and continue after the termination of the Lease.

THE CITY OF SEATTLE

EF SEATTLE FIFTH AVENUE LLC

By: _____
 Fred Podesta, Director
 Department of Finance
 And Administrative Services

By: _____
 George Petrie, Manager
 EF SEATTLE FIFTH AVENUE LLC

Primary Contact:

City of Seattle

EF SEATTLE FIFTH AVENUE

	City of Seattle	EF SEATTLE FIFTH AVENUE
Name		
Title		
Address		
Phone/Office		
Phone/Cell		
Email		

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Finance and Administrative Services	Hillary Hamilton/x4-0421	Jennifer Devore/x5-1328

Legislation Title: AN ORDINANCE authorizing the Director of Finance and Administrative Services to execute an Amended and Restated Lease between the City of Seattle and EF Seattle Fifth Avenue LLC, a Washington limited liability company, for a portion of the property located at 700 5th Avenue, commonly known as the Seattle Municipal Tower.

Summary of the Legislation:

This legislation authorizes the Director of Finance and Administrative Services (FAS) to execute a lease with EF Seattle Fifth Avenue, LLC, doing business as Seattle Executive Fitness (SEF). This action replaces an existing five-year lease for approximately 24,721 rentable square feet of special use retail space in the Seattle Municipal Tower (SMT). The new lease provides for a term of fifteen (15) years, retroactively commencing on October 1, 2011. The lease provides the City with an option to terminate the lease early in the event that the City has a public use for the space. The lease also allows the City to utilize the space during emergencies, providing emergency staff and responders a place to rest and shower. The lease requires legislation because the term of the lease exceeds the FAS Director's statutory authority for leasing under Seattle Municipal Code (SMC) 3.127.010.

Background:

Ordinance 117739, adopted July 31, 1995 authorized the purchase of SMT by the City. The primary purpose of SMT is as a class A office building; however the design of the building also includes ancillary special use spaces including retail on the 3rd and 4th floor and purpose-built fitness center space on the 14th floor of the parking garage. The fitness center space is a unique space that includes special features such as high ceilings, showers, saunas, locker rooms and a swimming pool.

Between 1997 and 2011, the fitness center was operated by All Star Fitness under consecutive leases with the City. The last five-year lease expired on September 30, 2011 but, in August 2011, All Star Fitness sold the business to SEF. SEF initially sought a fifteen-year lease with the City however, due to the sale occurring immediately prior to Council's budget deliberations and the SMC requirement that a lease in excess of five years be approved by the Council, FAS was only able to execute a five-year lease running through September 30, 2016. FAS and SEF subsequently agreed to business terms for a new, long-term lease that would replace the initial short-term lease and would be retroactive to October 1, 2011, expiring on September 30, 2026.



The lease rate structure is provided under the Revenues section below. FAS has no direct expenditures associated with the proposed lease.

The fitness center business is traditionally a very difficult model due to the competitive nature of the marketplace. Because of this, the credit worthiness of a fitness center tenant is very important. The lease requires either a personal guaranty (or letter of credit) to be provided by business owners Merle Gregg, George Petrie and John Goodman. The two latter partners are local commercial property owners who are very credit worthy, with prior experience in operating a fitness facility. Their ownership of the club's "sister" facility at the Medical Dental Building provides a strong incentive to ensure that this operation succeeds.

Please check one of the following:

This legislation does not have any financial implications.

This legislation has financial implications.

Appropriations:

Fund Name and Number	Department	Budget Control Level*	2013 Appropriation	2014 Anticipated Appropriation
TOTAL				

*See budget book to obtain the appropriate Budget Control Level for your department.

Appropriations Notes: No new appropriations in this legislation.

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2013 Revenue	2014 Revenue
50330 – FAS Facility Operations Subfund	FAS	Space Rent	\$102,592.20	\$102,592.20
TOTAL			\$102,592.20	\$102,592.20

Revenue/Reimbursement Notes:

Lease Years	Rent per Rentable Square Foot	Monthly Rent
10/1/11 - 9/30/16	\$4.15	\$8,549.35
10/1/16 – 9/30/17	\$5.57	\$11,464.36
10/1/17 – 9/30/18	\$6.07	\$12,494.41
10/1/18 – 9/30/19	\$6.57	\$13,524.45
10/1/19 – 9/30/20	\$7.07	\$14,554.49



10/1/20 – 9/30/21	\$7.57	\$15,584.53
10/1/21 – 9/30/22	\$8.07	\$16,614.57
10/1/22 – 9/30/23	\$8.57	\$17,644.61
10/1/23 – 9/30/24	\$9.07	\$18,674.66
10/1/24 – 9/30/25	\$9.57	\$19,704.70
10/1/25 – 9/30/26	\$10.07	\$20,734.74

- The apparently low face rate of the rent is due to the fact that the City is not required to provide a tenant improvement allowance otherwise common in such deals. Further, this is a triple net lease in which the tenant is responsible for the cost of utilities, janitorial, and other services related to the space.
- In addition to the base rent above, the new lease provides that the tenant will pay percentage rent of 8% of annual gross revenue above \$1,500,000 on top of the base rent.
- The revenues through 2012 have already been received and future revenues are anticipated in the 2013 Adopted Budget.

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

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2013 Positions	2013 FTE	2014 Positions*	2014 FTE*
TOTAL							

* 2014 positions and FTE are total 2014 position changes resulting from this legislation, not incremental changes. Therefore, under 2014, please be sure to include any continuing positions from 2013.

Position Notes: None.

Do positions sunset in the future? Not applicable.

Spending/Cash Flow:

Fund Name & #	Department	Budget Control Level*	2013 Expenditures	2014 Anticipated Expenditures
TOTAL				

* See budget book to obtain the appropriate Budget Control Level for your department.

Spending/Cash Flow Notes: The City has no direct expenditures over the life of the lease.



Other Implications:

a) Does the legislation have indirect financial implications, or long-term implications?

The term of the proposed lease would run through September of 2026. However, the lease provides the City with an option to terminate the lease at any time in the event the City requires the space for a public purpose. In the event that the City chooses to exercise its termination option, the City would be obligated to reimburse SEF for the unamortized cost of certain improvements made by SEF. The total cost of improvements subject to reimbursement is capped at \$650,000, and would be amortized on a flat-line basis over a maximum period not to exceed the term of the lease. As an example, if the City were to exercise its termination option in early 2016, the approximate reimbursement would be \$485,000. The longer the City waits to exercise its option, the lower the cost to the City.

b) What is the financial cost of not implementing the legislation?

If the legislation is not implemented, the existing lease will expire on September 30, 2016. At that time, SEF and the City may mutually decide to enter into a new lease, however neither party would be obligated to do so. If SEF chooses not to renew the lease, it is anticipated that the space would remain vacant for as little as three months, however economic conditions at the time could cause an extended vacancy of more than a year as the City seeks a new fitness center operator. In addition, entering into a new lease will likely require a tenant improvement allowance to be paid by the City, and may require offering several months of free rent to attract a new operator in what has been for several years a difficult business model. While it is possible to convert the space to another type of use other than a fitness center, this is not advised due to the high estimated cost (upwards of \$150/sq. ft., or approximately \$4 million in today's dollars), the potentially undesirable location, and the fact that any conversion for use by a private tenant would likely need to be done speculatively due to the length of time necessary to complete the work. Conversion would result in minimum vacancy period of twelve months to complete the renovations and seek a new tenant.

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?

An analysis of potential scenarios shows that the Net Present Value (NPV) of the proposed SEF lease exceeds the NPV for either a new fitness center operator or a new office tenant. This is due to the costs associated with vacancy, marketing and capital expenditures. As noted above, while repurposing the fitness center to an office use would increase revenues, the substantial upfront investment required would offset those revenues. The estimated payback period would be approximately thirteen years.

The early termination option provides the City with flexibility to utilize the space for its own purposes at any time during the life of the lease.

e) Is a public hearing required for this legislation?

No.

f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No.

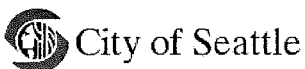
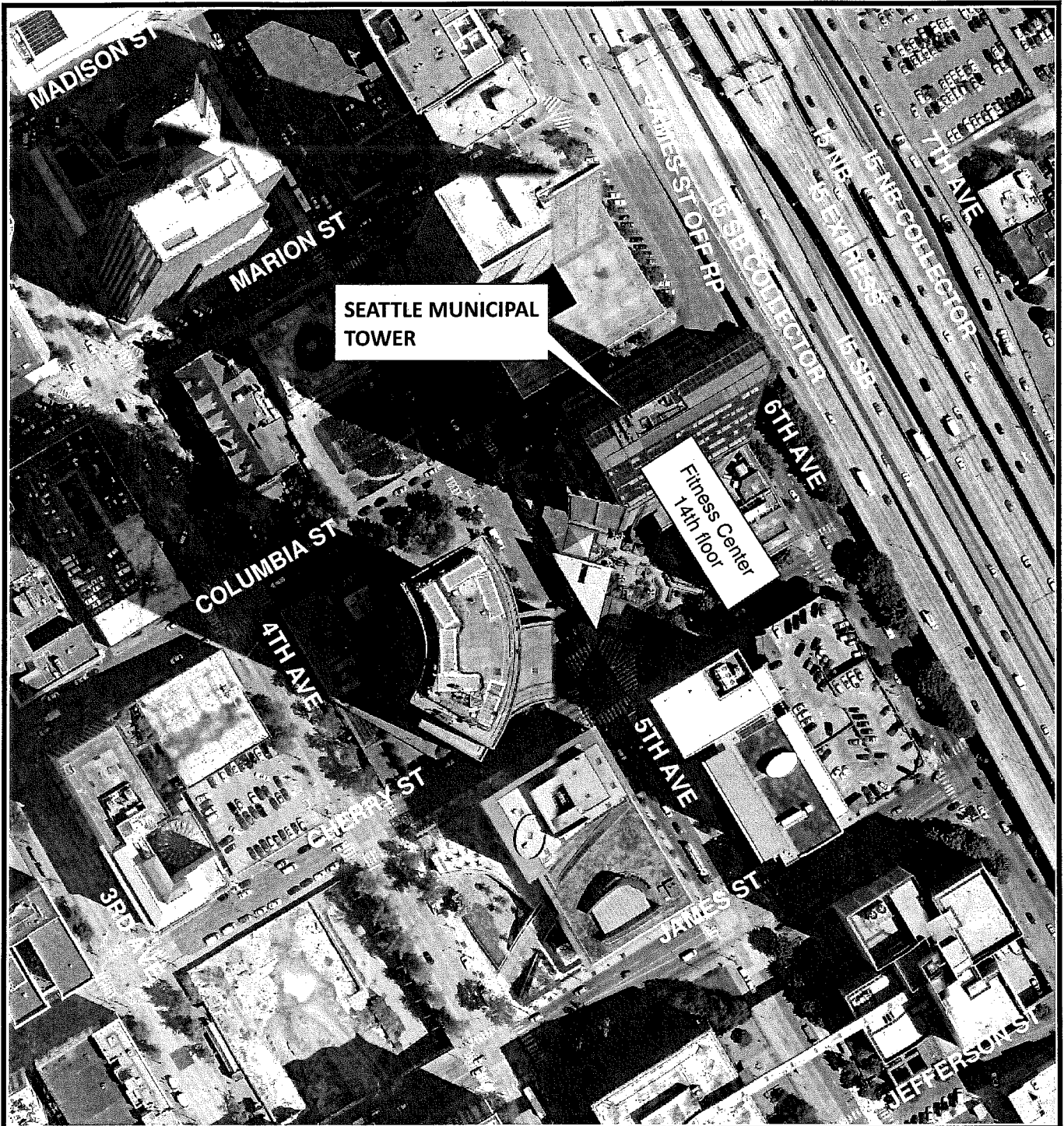
g) Does this legislation affect a piece of property?

Yes. See Attachment A.

h) Other Issues: None.

List attachments to the fiscal note below:

Attachment A – Map.



Produced by the City of Seattle
Dept. of Finance and Administrative Services
February 8, 2013

Seattle Municipal Tower Fitness Center Lease

Attachment A to the FAS Seattle Executive Fitness Lease Fiscal Note

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City of Seattle
Office of the Mayor

February 19, 2013

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

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill/Resolution authorizing the Director of the Department of Finance and Administrative Services (FAS) to execute an Amended and Restated Lease with Seattle Executive Fitness LLC (SEF) for operation of the fitness center on the 14th floor of the Seattle Municipal Tower (SMT). This legislation replaces an existing five-year lease with a new 15-year lease, retroactive to October 1, 2011.

The fitness center at SMT is purpose-built space that includes a swimming pool, locker rooms, saunas, and showers. Operated by All Star Fitness between 1997 and 2011, All Star Fitness sold the business to SEF in August 2011, just as the lease was expiring. SEF initially sought a 15-year lease, but FAS was only able to execute a five-year lease under the provisions of the Seattle Municipal Code. FAS agreed to bring forward a long-term lease for the Council's review to replace the original short-term lease.

In the event that the City identifies a public use for the fitness center, the lease includes an early termination option. The lease also allows the City to utilize the space during emergencies, providing emergency staff and responders a place to rest and shower.

While the fitness center business is a difficult economic model due to the competitive nature of the marketplace, this proposed lease provides a stable, credit-worthy tenant with little financial risk to the City. Thank you for your consideration of this legislation. Should you have questions, please contact Hillary Hamilton at 684-0421.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council