

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

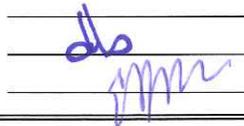
PROJECT TITLE:

Lease Renewal and
Amendment No. 2 with
Village Theatre for lease
of space at 2730 Wetmore
Avenue

- Briefing
- Proposed Action
- Consent
- Action
- First Reading
- Second Reading
- Third Reading
- Public Hearing
- Budget Advisory

COUNCIL BILL # _____
 Originating Department Facilities/Real Property
 Contact Person Barb Hardman
 Phone Number (425) 257-7294
 FOR AGENDA OF February 24, 2016

Initialed by:
 Department Head _____
 CAA _____
 Council President _____

do


<u>Location</u>	<u>Preceding Action</u>	<u>Attachments</u>	<u>Department(s) Approval</u>
2730 Wetmore Avenue	Initial Lease Agreement dated July 18, 2009; Amendment No. 1 dated September 20, 2011	Amendment No. 2; Amendment No. 1; Lease Agreement	Facilities/Property Management

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):
Budget Remaining	-0-	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

Village Theatre leases the former Key Bank Building located at 2730 Wetmore Avenue. The current lease term expires on February 29, 2016. Village Theatre wishes to remain in the space and exercise their first option to extend the Lease for a period of five years, to begin March 1, 2016 and expire on February 28, 2021. All other lease terms remain unchanged.

RECOMMENDATION:

Authorize the Mayor to sign the Lease Renewal and Amendment No. 2 with Village Theatre for Lease of space at 2730 Wetmore Avenue.

**LEASE RENEWAL
and AMENDMENT No. 2**

This Lease Renewal and Amendment No. 2 is dated as of this ___ day of February 2016, by and among **City of Everett**, a Washington State municipal corporation the ("City" or "*Lessor*") and **VILLAGE THEATRE** a nonprofit corporation , (the "Theatre" or "*Lessee*").

RECITALS

The City, and the Theatre are parties to the Former Key Bank Building Lease between Village Theatre and City of Everett dated June 18, 2009 and Amendment No.1 dated September 20, 2011(the "Lease").

The City and Village Theatre hereby express their mutual desire to renew the **Lease** by

Exercising the first option to extend the **Lease** for a period of five (5) years as provided for under Section 2. A.Term /Options to Renew to Extend of the **Lease**.

The Lease is hereby extended commencing on March 1, 2016, and will expire on February 28, 2021

Full Force and Effect. The parties acknowledge that the responsibilities for exterior repair and maintenance will remain with the Lessor during this lease term. The parties further agree that the **Lease** remains in full force and effect without interruption, except as expressly modified by this Amendment, and as of the date of this Amendment, the parties know of no facts or circumstances that would constitute a default under the **Lease**.

This LEASE RENEWAL and AMENDMENT No. 2 is hereby approved and accepted by:

LESSOR:

CITY OF EVERETT

By _____
Ray Stephanson, Mayor

Dated: _____

ATTEST:

By _____
Sharon Fuller, City Clerk

Dated: _____

APPROVED AS TO FORM:

James D. Iles, City Attorney

Dated: _____

On this day of 20____, before me the undersigned, personally appeared RAY STEPHANSON, to me known to be the MAYOR of the CITY OF EVERETT, a municipal corporation, 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 uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

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

Notary: _____
Print Name: _____
Notary Public in and for the State of
Washington, residing at _____
My commission expires _____

STATE OF WASHINGTON
:
COUNTY OF SNOHOMISH

) ss.

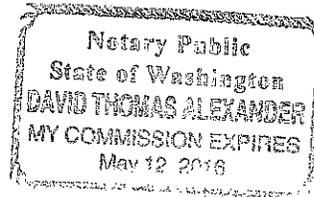
LESSEE:

Village Theatre

By 
Robert W. Hunt
Its Executive Producer

I certify that I know or have satisfactory evidence that Robert W. Hunt signed this instrument and acknowledged it as the Executive Producer to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 2-5-16
Signature of _____
Notary Public: 
Notary (print name) DAVID THOMAS ALEXANDER
Residing at 305 7th St N Issaquah WA 98027
My appointment expires: 5-12-16



RETURN TO
EVERETT CITY CLERK
2930 Wetmore
Everett, WA 98201

**AMENDMENT NO. 1
FORMER KEY BANK BUILDING LEASE BETWEEN VILLAGE THEATRE
AND CITY OF EVERETT**

THIS AMENDMENT is dated as of September __, 2011, by and between the CITY OF EVERETT, a Washington municipal corporation (the "City" or "Lessor") and VILLAGE THEATRE, a nonprofit corporation (the "Theatre" or "Lessee").

RECITALS

- A. The City and the Theatre are parties to the Former Key Bank Building Lease between Village Theatre and City of Everett dated June 18, 2009 (the "Lease").
- B. The City and the Theatre desire to make certain changes to the Lease.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. The following sentence in Section 3 of the Lease is deleted:

While Lessee is constructing Tenant Improvements, Lessee's rental amount shall be reduced to \$2000 per month, provided that such rental reduction shall only apply to the first six months of the Lease term or until programmatic use of the premises occurs during the first six month period.

2. The following is added to the end of Section 3 of the Lease:

The northwest portion of the first floor of the Premises contains a food and beverage space that opens to the area between the Everett Performing Arts Center and the Premises (the "Concession Space"). The Lessee's rental amount shall be reduced to \$2000 per month until the City's construction activities in the area between the Everett Performing Arts Center and the Premises are completed to the extent necessary to allow the Lessee a commercially reasonable opportunity to sublease the Concession Space.

3. All provisions of the Lease remain in full force and effect, except as expressly modified by this Amendment. Capitalized terms not defined in this Amendment have the meaning given to them in the Lease.

Village Theatre
Key Bank lease

IN WITNESS WHEREOF, the City and the Theatre have executed this Amendment as of the date first above written.

CITY/LESSOR:

CITY OF EVERETT
WASHINGTON

By: Ray Stephanson
Ray Stephanson, Mayor

9-20-2011
Date

ATTEST:

Sharon Marks
Sharon Marks, City Clerk
Date: 9/20/11

APPROVED AS TO FORM:

James D. Iles
James D. Iles, City Attorney
Date: 9/19/11

THEATRE/LESSEE:

VILLAGE THEATRE,
a nonprofit corporation

By: Ralph H. [Signature]
Title Executive Producer

9/26/11
Date

**FORMER KEY BANK BUILDING LEASE BETWEEN VILLAGE THEATRE
AND CITY OF EVERETT**

This Lease is made this th 18th day of June, 2009, between the City of Everett, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the "Lessor", and Village Theatre, a nonprofit corporation, hereinafter referred to as "Lessee".

1. PREMISES. The Lessor does hereby lease to Lessee, and Lessee does hereby lease from Lessor, those certain premises at 1621 California St., Everett, WA (hereinafter called "Premises"), legally described as:

The East 80 ft. of Lots 17 to 20 inclusive, Block 625, Plat of Everett, Volume 3 of Plats, page 32, records of the County of Snohomish, State of Washington.

2. TERM AND IMPROVEMENTS.

A. Term/Options to Renew. The term of this Lease shall be for five (5) years and commence on 12:00 AM of the first day of the month following substantial completion of the Shell Improvements (as defined below), and end at 11:59 PM of the sixtieth month thereafter. There shall be three options to renew for succeeding five year periods which may be exercised (provided that Lessee is in compliance with the provisions of this Lease) by Lessee by written notice of intent to renew delivered to Lessor within the period of the 54th and the 58th month period of each five year term. If, during the course of the lease, Lessor chooses not to renew Lessee's Everett Performing Arts Center management contract, Lessee may terminate this Lease without cause upon three (3) months written notice, and Lessor will reimburse Lessee for unamortized Tenant Improvement costs. Tenant Improvements to be amortized and amortization schedules will be provided upon occupancy when Tenant Improvements are placed in service. Provided that upon payment of such reimbursement, all Tenant Improvements listed in Exhibit B shall become the property of the City of Everett. Said amortization shall be fifteen years (15) straight line starting from the aforesaid Commencement Date. In any event, this Lease shall terminate and no longer be effective after December 31, 2029.

B. Shell Improvements. Lessor shall construct shell improvements on the Premises (the "Shell Improvements") as described on Exhibit A hereto. The City considers this lease for the Kidstage program to be part of an overall public facility which will include a Plaza planned for construction adjacent to the west of the Premises. Lessee agrees to cooperate with the Lessor in the construction of said Plaza and the integration of the two properties for public use; provided that it is understood that Lessee shall not be responsible for Plaza construction and Plaza maintenance costs.

C. Conditions Precedent to Lease Commencement. The Lessor shall have no obligation to construct the Shell Improvements or to go forward with the lease until the following conditions are satisfied: (1) Lessee shall provide to Lessor evidence satisfactory to the City Budget and Finance Director that Lessee has maintained minimum funding for Lessee's Tenant Improvements (as defined below), which amount

**RETURN TO
EVERETT CITY CLERK
2930 Watmore
Everett, WA 98201**

Lease
Term to 5/1/2011
TO
2/29/2016
3-5yr
options
renew
Village Theatre
Key Bank
Building

is \$900,000 (Lessor agrees that the current approved line of credit is satisfactory); and (2) Lessor shall have obtained a bid or bids for the construction of the Shell Improvements satisfactory to the Lessor and not exceeding \$1,500,000 including taxes. In the event that the foregoing condition 1 is not satisfied, Lessor may at Lessor's sole discretion terminate this Lease on written notice thereof to Lessee, in which case Lessee shall have no claim against the Lessor for any costs incurred by Lessee prior to such termination or for any loss, damage or liability that may result from such termination; in the event condition 2 is not satisfied and Lessor terminates the Lease, Lessor will reimburse Lessee for all costs incurred after the date the Lease is signed, not to exceed \$50,000.

D. Tenant Improvements. Lessee shall construct tenant improvements on the Premises ("Tenant Improvements") as described on Exhibit B hereto. The Tenant Improvements shall be subject to Section 5 of this Lease. Lessee shall also obtain Lessor's written approval prior to construction of the Tenant Improvements of (1) any contractors to be used in the construction of the Tenant Improvements and the insurance carried by such contractors and (2) the plans and specifications of the Tenant Improvements. In the event that the Tenant Improvements are not substantially completed on or before the date that is six months after the substantial completion of the Shell Improvements, Lessor may at Lessor's sole discretion terminate this Lease on written notice to Lessee, in which case Lessee shall have no claim against Lessor for any costs incurred by Lessee prior to such termination or for any loss, damage or liability that may result from such termination.

3. CONSIDERATION. Lessee leases said Premises for said term and agrees to pay the monthly rental amount for the Premises (which amount is set forth below in this Section 3) within 10 days after the first day of each month during the term of this Lease and any extensions thereof to:

Treasurer
City of Everett
2930 Wetmore
Everett, WA 98201

or such other place as the Lessor may from time to time designate in writing. If any rent is, at any time, ten (10) or more days past due, Lessee will be charged a late charge equal to ten (10) percent of the past due rental amount. All rent payments must be made without deduction or offset.

During the first year of the Lease, the monthly rental amount for the Premises shall be \$4000.00. Throughout the Lease term and any extensions thereof, the monthly rental amount for the Premises shall increase on each anniversary of the commencement of the Lease. Such annual increase shall be an amount equal to the monthly rental amount for the Premises in effect for the year preceding such anniversary multiplied by the percentage change in the Consumer Price Index (CPI-U) for the Seattle-Tacoma area from the beginning to the end of such preceding year. In the event there is no CPI increase, rent shall remain the same as the previous year.

As additional consideration to Lessor, Lessee agrees to the following: a) Lessee will provide space on commercially reasonable terms by sublease or otherwise as approved by the Lessor for food and beverage dispensation with an opening to the area planned for development by the Lessor between the Everett Performing Arts Center and

the Premises, and such space shall be marked on the plans and specification submitted by Lessee for approval under Section 2(D) of this Lease; b) Lessee will allow Lessor use of the Premises at no charge for Lessor-sponsored functions to a maximum of ten (10) events over each twelve month period during the term of the Lease and any extensions thereof; c) Lessee will provide at least one lunch performance per week during the period of the first of July to mid-August of each year during the term of the Lease and any extensions thereof on the adjacent Plaza property of the Lessor; d) within one month of completion of Tenant Improvements and commencement of the full Lease, the Kidstage program will be removed from revenue-producing spaces at the Everett Performing Arts Center, except for Summerstock rehearsals and performances and contracted performances; e) Lessee agrees to reasonably cooperate and coordinate its programs and activities and use of the Premises with the programs and activities of the Lessor on the Plaza property adjacent to the Premises.

While Lessee is constructing Tenant Improvements, Lessee's rental amount shall be reduced to \$2,000 per month, provided that such rental reduction shall only apply to the first six months of the Lease term or until programmatic use of the premises by Lessee occurs during that first six month period.

4. USE. The Lessee will use and occupy said Premises for Lessee's "Kidstage" program or other programs as approved by the Lessor to encourage children's interest and participation in the theater and in the arts. Lessee agrees that in the operation of the business to be conducted on said Premises and in any occupancy thereof Lessee shall comply with the laws, rules and regulations of the governments of the United States, State of Washington, Snohomish County and City of Everett. Lessee agrees to maintain the Premises in good condition and repair throughout the term of the Lease and any extensions thereof. Lessee agrees not to use any machinery or equipment in the Premises which might be injurious to the building or which might cause noise or vibration which would be objectionable to uses on the Lessor's adjacent property. Upon termination of the lease, Lessee shall quit and surrender the Premises in as good a state and condition as reasonable use and wear and tear thereof permit, damage by the elements or other actions not caused by Lessee or its employees, agents, customers or invitees excepted.

5. ALTERATIONS AND FIXTURES. Lessee is aware of the nature and extent of Shell Improvements to be constructed by Lessor and accepts the Premises as is, except for construction of said Shell Improvements. After prior written consent of Lessor, Lessee may make alterations, additions and improvements in said Premises, at Lessee's sole cost and expense. Lessee shall use contractors acceptable to Lessor and such contractors shall carry insurance acceptable to Lessor. In the performance of such work, Lessee agrees to comply with all laws, ordinances, rules, and regulations of any proper public authority, and to save Lessor harmless from damage, loss or expense. Upon termination of this Lease, (unless termination is due to Lessor not renewing Lessee's Everett Performing Arts Center management contract, in which case due compensation per 2A applies) if Lessor elects to not retain Lessee's alterations and improvements, Lessee shall remove such improvements installed by Lessee and restore the Premises to its original condition not later than the termination date, at Lessee's sole cost and expense. Any such improvements not so removed shall be removed at Lessee's expense including the cost to repair any damage caused by such removal

6. LIENS. In the event the Premises shall at any time during the term of this Lease or any extensions thereof become subject to any suit brought to enforce a lien or any statement or claim of lien filed to enforce a lien resulting from the furnishing of materials or labor to Lessee on the Premises, Lessee may contest such lien by legal proceedings but shall, in any event, cause such lien, at its sole cost, to be discharged

within thirty (30) days after notice thereof by the substitution therefore of a mechanic's lien release bond, by posting of adequate security for the payment thereof (including all expenses incident thereto), or by such other method as shall be reasonably satisfactory to Lessor.

7. HOLD HARMLESS CLAUSE. Lessee agrees to and does hereby indemnify and hold Lessor and its officers, employees and agents and the property of Lessor free and harmless from and against any and all claims, actions, demands, suits, losses or liability resulting at any time from injury to or death of any person or persons, and/or damage to any and all property occurring from the negligence or other fault or omission of Lessee, its agents, servants, employees, subcontractors or sublicensees, in or about the Property, or resulting from any non-compliance with any law, ordinance or regulation respecting the condition, use or occupation of the Property or any part thereof, or arising or resulting from the exercise by Lessee of any of its rights under the terms of this Lease. Without limiting the generality of the foregoing, the within indemnification by Lessee of Lessor and its officers, employees and agents shall include indemnification from any claim, action, demand, cause of action, suit or proceeding and said indemnification shall in all events include any and all attorney's fees, court costs and other legal expenses, and shall include the obligation of Lessee to appear in and defend any and all such claims, actions or other legal proceedings whether judicial, quasi-judicial, administrative or otherwise, against or affecting Lessor arising out of or pertaining to the performance or non-performance of any duty by Lessee under the terms and provisions of the within Lease.

This paragraph does not purport to indemnify the Lessor against liability for damages arising out of bodily injury to persons or damages caused by or resulting from the sole negligence of the Lessor, its officers, employees and agents; provided, that if the claims or damages are caused by or result from the concurrent negligence of (a) the Lessor, its officers, employees or agents, and (b) Lessee, its agents, servants, employees, officers, subcontractors, sublicensees, sublessees, successors or assigns, this indemnity provision shall be valid and enforceable to the extent permitted by law. The Lessee specifically and expressly waives any immunity under Industrial Insurance, Title 51 R.C.W., and acknowledges that this waiver has been mutually negotiated by the parties.

8. LIABILITY INSURANCE. The Lessee shall, at its own expense, maintain Commercial General Liability Insurance with a reputable insurance company or companies satisfactory to the Lessor, in the minimum limits of two million dollars (\$2,000,000) per occurrence and no less than \$2,000,000 in the annual aggregate. The Lessee agrees to supply the Lessor with a certificate of insurance establishing (1) that its insurance obligations as herein provided have been met, (2) that the insurance policy or policies as herein required are not subject to cancellation without at least sixty (60) days advance written notice to the Lessor, and (3) that the City of Everett, its officers, employees and agents are named as additional insureds.

9. SUBLETTING AND ASSIGNMENT. Lessee shall not sublet the whole or any part of said Premises, nor assign this lease, or any part thereof, without the written consent of Lessor which consent shall not be unreasonably withheld. If consent is once given by Lessor to the assignment of this lease, or any interest therein, Lessor shall not be barred from afterward refusing to consent to any further assignment. This Lease shall not be assignable by operation of law. Lessee acknowledges that any assignment shall continue or parallel the uses outlined in Section 4 above.

Any assignment made by Lessee shall not become effective until the assignee, in writing, shall assume this Lease and agree to perform and be bound by all of the obligations of Lessee accruing under this Lease from and after the date of such assignment. In the event of such an assignment and assumption, Lessor shall remain bound by all of the obligations of Lessor accruing under this lease and, regardless of Lessor's consent, no subletting or assignment shall release Lessee of Lessee's obligation or alter the primary liability of Lessee to pay the rent and to perform all other obligations to be performed by Lessee hereunder. Acceptance of rent by Lessor from any other person shall not be deemed to be a waiver by Lessor of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting.

In the event of a permitted assignment of this Lease, Lessor, without having written notice from the Lessee to the contrary, shall at such time credit all unearned rental hereunder to the assignee. Any other disposition of unearned rental will be made by Lessor only upon the joint written request of both Lessee and Lessee's assignee at the time of submitting said assignment to Lessor for its consent.

Notwithstanding anything to the contrary herein, Lessor may assign its interest in the Lease and Lessee shall attorn to such assignee.

10. CASUALTY REBUILDING CONDEMNATION. In the event the building of which the Premises are a part shall be destroyed or damaged by fire or other causes (and regardless of the extent of the damage) to such an extent that the parties agree that the uses by the Lessee as outlined in Section 4 hereof, are no longer feasible, then rental obligations under this Lease shall terminate as of the date of the damage or destruction. Either party may elect to terminate the Lease if the cost of the repairs are in excess of Lessor's or Lessee's available insurance. Rent shall abate from the date of such damages or destruction to the date the premises are restored to the same condition as immediately before.

In the event that the Premises are not usable as contemplated in this agreement for over 180 days due to said damage or destruction and the parties have not reached an agreement as to future use and continuation of the Lease, Lessee or Lessor have the right to terminate the lease.

If the Premises or any part thereof is taken by state, federal, or other non-City of Everett action, such as eminent domain, this Lease and all options shall terminate and Lessee shall have no interest in the just compensation except to the extent of payment attributable to fixtures installed by the Lessee.

11. WAIVER OF SUBROGATION. Lessor and Lessee each mutually release the other from every right, claim and demand which may hereafter arise in favor of either arising out of or in connection with any loss occasioned by fire and such other perils as are included in the provisions of the normal extended coverage clauses of fire insurance policies, and do hereby waive all rights of subrogation in favor of insurance carriers arising out of any such losses and sustained by either the Lessor or the Lessee in or to the Premises or any property therein. Provided, however, that if at any time either Lessor or Lessee can obtain a waiver of subrogation clause only for an additional premium, such clause shall be obtained only if the party in whose favor it runs pays such additional premium. If such waiver of subrogation can be obtained only for an additional premium

by either Lessor or Lessee, and either party elects not to obtain a waiver of subrogation, this entire clause shall be null and void.

12. NOTICES. All notices to be given by the parties hereto shall be in writing and may either be served personally or may be deposited in the United States mail, postage prepaid, by either registered or certified mail, and if to be given Lessor, may be addressed to Lessor at:

Mayor of Everett
City of Everett
2930 Wetmore
Everett, WA 98201

Real Property Manager
City of Everett
3200 Cedar Ave.
Everett, WA 98201

City Clerk
City of Everett
2930 Wetmore
Everett, WA 98201

or if to be given Lessee, may be addressed to Lessee at the following address(es):

Village Theatre
c/o Robert W. Hunt
303 Front Street N.
Issaquah, WA 98027

13. SERVICES. Lessor shall provide connection and initial turn-on of the premises to all utilities, except communications. Lessee shall be responsible paying the ongoing cost of those services and utilities, including electricity, gas, water, sewer, heating and air-conditioning. Lessee shall pay all janitorial and garbage service expenses, excluding costs incurred for the Plaza pump equipment.

14. REPAIRS AND MAINTENANCE. All interior repairs and maintenance of the premises and fixtures shall be the responsibility of the Lessee at Lessee's sole expense, excluding those repairs covered by warranty under Lessor's control or repairs of damage caused by actions of Lessor or its agent which will be the responsibility of Lessor. During the first five (5) years of the Lease, Lessor shall be responsible for exterior repairs and maintenance (except window washing) including but not limited to window damage, siding, roof, and landscaping. Lessor will be responsible for repairs to the exterior of the building covered by warranty under control of the Lessor. During the lease term and any extensions thereof, damage to the exterior of the building caused by public's use of the park will be the responsibility of the Lessor. Design and maintenance of landscaping and exterior artwork shall be at the Lessor's discretion to the Lessor's usual and accustomed standards for its properties. After the first five year term, exterior repair and maintenance responsibilities shall be negotiated and resolved before the Lessor's and Lessee's agreement to any succeeding lease term. In the event that the Lessor determines to make repairs or improvements during the Lease term or any extensions thereof, Lessee shall grant reasonable access to the Lessor and no compensation shall be made to or claimed by the Lessee from the Lessor by reasons of inconvenience, annoyance or damage of any kind whatsoever arising from the making of repairs to or maintenance or alteration of the building or appurtenances of the Premises covered hereby. Lessor reserves the right to make repairs, alterations, connections or extensions when and where the same may be deemed by the Lessor to be necessary. However, any repairs, maintenance or alteration of the building or appurtenances shall not render the building unusable for the purposes of this Lease because of any action arising from the making of the repairs, maintenance or alteration to the building or

appurtenances. However, nothing herein should be construed that the Lessor and Lessee may not negotiate the nature of and the cost of the repairs and alterations to the Premises.

15. SIGNS. Lessee shall have the right to place identifying signage on and about the Premises with consent of Lessor, subject to compliance with all applicable laws. This consent shall not be unreasonably withheld.

16. INSOLVENCY. In the event that the Lessee shall make an assignment for the benefit of creditors, or shall be adjudicated a bankrupt, or if a receiver is appointed for the Lessee or if the property of the Lessee upon the Premises shall be seized by any enforcement officer by reason of an attachment, execution or other process, Lessor shall have the option to terminate this lease.

17. DEFAULT - TERMINATION. If Lessee fails to observe or perform any term or condition of this lease, the Lessor may elect to deliver written notice to the Lessee as specified in section 12 above. After failure to cure a monetary default within ten (10) days after receiving notice or a non-monetary default within thirty (30) days after receiving notice, the Lessee shall be deemed to be in default. In the event of default and upon thirty (30) days written notice of termination to the Lessee in default, the Lessor may terminate this Lease. In the event of default by Lessee, Lessee's current rent obligation shall continue until Lessee fully vacates the Premises and turns over the possession to Lessor, plus, after vacation, Lessee shall pay to Lessor an amount equal to six months rent.

18. NO WAIVER OF COVENANTS. No waiver of any default hereunder shall be implied from any omission by either party to take any action on account of such default if such default persists or is repeated and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. The acceptance by Lessor of rent with knowledge of the breach of any of the covenants of this Lease by Lessee shall not be deemed a waiver of any such breach. One or more waivers of any breach of any covenant, term, or condition of this Lease shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

19. DELAYED POSSESSION. In the event of the inability of Lessor to deliver possession of the Premises for any reason whatsoever at the time of the commencement of the term of this Lease, neither Lessor nor its agents shall be liable for any damage caused thereby, nor shall this lease thereby become void or voidable, nor shall the term herein specified by in any way extended, but in such event Lessee shall not be liable for any rent until such time as Lessor can deliver possession, and in the event that possession is delayed over ninety (90) days, Lessee shall have the right to terminate this Lease.

20. HOLDING OVER. If Lessee, with the consent, express or implied, of the Lessor, shall hold over after the expiration of the term of this Lease, the Lessee shall remain bound by all the terms, covenants, and agreements hereof, except that the tenancy shall be from month to month, at 105% of the monthly rent payable for the last month of the Lease term.

21. REPRESENTATIVES. The rights, liabilities, and remedies provided for herein shall extend to the legal representatives, successors and, so far as the terms of this lease permit, assigns of the parties hereto; and the words "Lessor" and "Lessee" and their accompanying verbs or pronouns, wherever used in this lease, shall apply equally to all persons, firms or corporations which may be or become parties hereto.

22. RULES. Lessee and Lessor may from time to time agree on rules and regulations governing the operation of the Premises, and will use reasonable methods to induce customers, clients and all persons invited by Lessee into said building to observe the same.

23. LEASE TAX. The possessory interest of Lessee in the property herein leased may be subject to taxation under the laws of the State of Washington (Ch. 61, 1975-1976 Laws, 2d Ex. Sess., as amended) at the present rate of twelve point eighty four percent (12.84%), or as may be amended by Washington State legislation, of the taxable rent to be paid to the Lessor monthly under the terms of this lease. This tax is not included in the monthly rent required above. Lessee agrees to pay and the Lessor agrees to collect and pay over to the State Department of Revenue the aforesaid leasehold excise tax in accordance with the statutes governing same to the extent that it is applicable to this Lease. Lessee will be responsible for pursuing such leasehold excise tax exemption as may be applicable.

24. RECORDING. Lessee agrees that Lessor, at its sole option and at any time prior to the expiration of this Lease, may file same or a Memorandum Form thereof for recording with the Director, Records and Elections, Snohomish County, Washington. If a Memorandum Form of the lease is filed for recording, Lessee agrees to execute and return same promptly upon receipt from Lessor.

25. TIME. Time is of the essence of this agreement.

26. HAZARDOUS MATERIAL. Lessee shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Premises by Lessee, its agents, employees, contractors, or invitees, without the prior written consent of Lessor. Lessee's request for use of commercial products that may be considered Hazardous Materials shall include a listing of the products, their intended uses by Lessee, and the manufacturer's Material Safety Data Sheet for each product, as prepared in accordance with 29 CFR 1910.1200 (hazard communication). Lessee's request shall also include a statement that Lessee will handle, store, and dispose of the products in accordance with the manufacturers' Material Safety Data Sheets. Lessor shall not unreasonably withhold consent as long as Lessee demonstrates to Lessor's reasonable satisfaction that such Hazardous Material is necessary or useful to Lessee's business and will be used, kept, and stored in a manner that complies with all laws regulating any such Hazardous Material, brought upon or used or kept in or about the Premises.

If Lessee breaches the obligation stated in the preceding paragraph, or if the presence of Hazardous Material on the Premises caused or permitted by Lessee results in contamination of the Premises, or if contamination of the Premises by Hazardous Material otherwise occurs for which Lessee is legally liable to Lessor for damage resulting therefrom, then Lessee shall indemnify, defend, and hold Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the Premises, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees) which arise during or after the Lease term as a result of such contamination. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or groundwater on or under the Premises.

Without limiting the previous portions of this Section, if the presence of any Hazardous Material on the Premises caused or permitted by Lessee results in any contamination of the Premises, Lessee shall promptly take all actions at its sole expense as are necessary to return the Premises to the condition existing prior to the introduction of any such Hazardous Material to the Premises. Provided, however, Lessor's approval of such actions shall first be obtained. Lessor's approval shall not unreasonably be withheld so long as such actions would not potentially have any material adverse long-term or short-term effect on the Premises.

If the Lessee spills, releases, or disposes of any Hazardous Material in the Premises, Lessor may, at Lessor's sole option, declare Lessee in default.

As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Washington, or the United States Government.

All portions of this Hazardous Material Section shall survive the expiration or early termination of this Lease.

27. PRIORITY/ESTOPPEL CERTIFICATES. Lessee agrees to execute any subordination or estoppel certificates which may be requested by Lessor within fifteen (15) days of their submission to Lessee. If the subordination or estoppel certificate notes or describes any outstanding dispute between the Lessor and Lessee, the certificate will not act as a waiver of the outstanding dispute.

28. NO BROKERS. Lessor and Lessee warrant to one another that neither has engaged a broker in connection with this Lease and agree to indemnify the other if a claim for a fee or commission arises in connection with this transaction as a result of such indemnifying parties' activities.

29. INSPECTION AND RIGHT-OF-ENTRY. Lessor and its agents shall have the right, but not the duty, to inspect the Premises at any time to determine whether Lessee is complying with the terms of this Lease. If Lessee is not in compliance with this Lease, Lessor shall have the right, but not the duty, to immediately enter upon the Premises to remedy any violation caused by Lessee's failure to comply notwithstanding any other provision of this Lease. Lessor shall use its best efforts to minimize interference with Lessee's business but shall not be liable for any interference caused thereby. Lessor and its agents shall have the right of entry to inspect and make repairs to the pump equipment; entry is limited to reasonable times by prior arrangement with Lessee so as to minimize interference with Lessee's business. Lessor may enter premises upon notification of Lessee if an emergency occurs.

30. CAPTIONS. The Captions in this Lease are for convenience only and do not in any way limit or amplify the provisions of this Lease.

31. ENTIRE AGREEMENT. This Lease represents the entire agreement between the parties and supersedes all other agreements and representations made prior hereto. No amendment hereof shall be binding on either party unless and until approved in writing by both parties.

32. SEVERABILITY. If any provision of this Lease or any application hereof shall be found to be invalid or unenforceable, for any reason, the remainder of this Lease and any other application of such provision shall not be affected thereby.

33. **BINDING EFFECT.** This Lease shall be binding upon the parties hereto and upon their respective representatives, successors and assign.

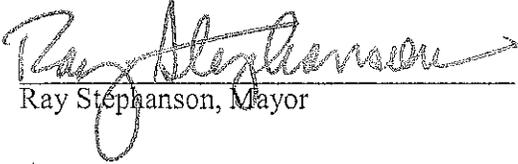
34. **VENUE.** This Lease shall be administered and interpreted under the laws of the State of Washington. Jurisdiction of litigation arising from this Lease shall be in Snohomish County, Washington.

IN WITNESS WHEREOF THE PARTIES hereto have executed this Lease the day and year first above written.

LESSOR:

APPROVED AS TO FORM:

CITY OF EVERETT


Ray Stephanson, Mayor

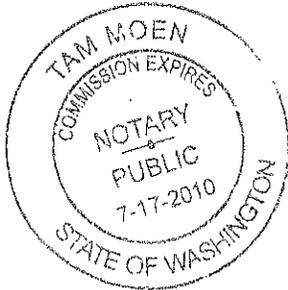

James D. Iles, City Attorney

ATTEST:


Sharon Marks, City Clerk

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that Ray Stephanson signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Everett to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Dated: 6-16-09
Signature of Notary Public Tam Moen
Title: Deputy City Clerk
My commission expires: 7-17-2010

**FORMER KEY BANK BUILDING LEASE
BETWEEN VILLAGE THEATRE AND
CITY OF EVERETT**

**EXHIBIT A
SHELL IMPROVEMENTS**

The City of Everett, Lessor, shall construct the following shell improvements on the Premises:

GENERAL:

1. Abate all existing interior materials which contain asbestos.
2. Demolish all existing items as required that are associated with the former Key Bank Building
3. Abate all existing roofing materials which contain asbestos.
4. Demolish all existing roofing materials and roof insulation.

ARCHITECTURAL:

1. New roofing and roofing insulation to meet current energy codes.
2. New exterior wall insulation to meet current energy codes.
3. Replace storefront and window glazing with new glazing units or spandrel panels to meet current energy codes.
4. All items regarding the exterior finishes.
5. Exterior doors and hardware. (Locks shall accommodate Russwin removable key cores per City standards.)
6. All interior partitions, doors and hardware per drawings A2.1, A2.2, & A2.3. (See attached drawings)
7. All interior finishes, paint, doors and hardware, toilet partitions and toilet room accessories for Public Restrooms 102, 103, & 202. (See attached drawings)

STRUCTURAL:

1. Seismic upgrades to the buildings existing structural frame as required.
2. Install a seismic brace frame on the interior side of the east exterior wall between grid lines 5 & 6.
3. Install a seismic brace frame on the interior side of the west exterior wall between grid line 4 & 5.

MECHANICAL:

1. New, higher efficiency HVAC mechanical rooftop units and higher efficiency interior ceiling VAV units to help achieve LEED Silver rating and to accommodate the low floor to ceiling heights in the basement.
2. All main branches of the HVAC ductwork.
3. All HVAC lateral ductwork and terminations except for Room 105, 107, 200, 201, 203, 207, 208, 210, 211. (See attached drawings)
4. All mechanical equipment as required for Public Restrooms 102, 103, & 202. (See attached drawings)

5. The natural gas service and distribution to all gas burning equipment.

ELECTRICAL:

1. New 3 Phase, 208 Volt electrical service located in the Electrical Room 111.
2. One (1) electrical sub-panel shall be located in the Mechanical Room 101 and shall provide all power for the exterior lighting and power as required for the Plaza.
3. Two (2) electrical sub-panels shall be located as directed by the Lessee's Architect.
4. The electrical service shall have two (2) separate PUD meters. One PUD meter shall monitor all power used by the exterior Plaza and the other meter shall monitor all power used by the Building.
5. All exterior lighting that will illuminate the exterior walls of the building, entrances and adjacent walking surfaces as required.
6. Electrical service, conduit, wiring, and devices to all mechanical equipment installed by the Lessor.
7. All power and lighting as required for the Public Restrooms 102, 103, & 202, Mechanical Room 101, and Electrical Room 111. (See attached drawings)
8. Underground conduits as required to accommodate PUD, Verizon and Comcast entrances into the building.

PLUMBING:

1. All plumbing as required for the Public Restrooms 102, 103, & 202. (See attached drawings)
2. All rough-in plumbing to Lessee required plumbing. This rough-in work shall be to the general location of the Lessee plumbing and shall not be considered a complete rough-in. The Lessee shall be responsible for the rest of the rough-in to accommodate the exact location and details of Lessee provided plumbing fixtures.
3. One (1) public drinking fountain which shall meet current ADA requirements.
4. Roof drains and downspouts as required.

LIFE SAFETY:

1. A water service for a fire sprinkler system per City of Everett Design and Construction Standards.
2. A complete fire sprinkler system except for final drops and heads in the following areas: Men's Restroom 105, Women's Restroom 107, Entry 200, Waiting 201, Orchestra 203, Chair Storage 207, Corridor 208, Vestibule 209, Janitor 210, Storage 211, Concessions 212, & Stairs 213.
3. If a Lighting Catwalk is installed by Lessee, a complete fire sprinkler system except for main pipe runs, final drops and heads to the underside of the Lighting Catwalk located on the First Floor between Grid Lines 2 & 4 including fire sprinklers to the existing vault.
4. The contract documents for the Shell Improvements shall include plans for the Tenant Improvement so that the Fire Sprinkler Contractor can size, design and make provisions for a complete fire sprinkler system.

5. A complete fire alarm system except for conduit, wiring, smoke detectors and horn/strobes in the following areas: Men's Restroom 105, Women's Restroom 107, Entry 200, Waiting 201, Orchestra 203, Chair Storage 207, Corridor 208, Vestibule 209, Janitor 210, Storage 211, Concessions 212, & Stair 213.
6. If a Lighting Catwalk is installed by Lessee, a complete fire alarm system except the underside of the Lighting Catwalk located on the First Floor between Grid Lines 2 & 4 including a fire alarm system to the existing vault.
7. The contract documents for the Shell Improvements shall include plans for the Tenant Improvements so that the Fire Alarm Contractor can size, design and make provisions for a complete fire alarm system.
8. Provide Fire Extinguishers as required.

**FORMER KEY BANK BUILDING LEASE
BETWEEN VILLAGE THEATRE AND
CITY OF EVERETT**

**EXHIBIT B
TENANT IMPROVEMENTS**

The Village Theatre, Lessee, shall be responsible for paying to construct the following tenant improvements if made to the Premises:

GENERAL:

1. The Lessee shall seek LEED Silver Certification for the tenant improvements.
2. All exterior signage and associated signage support structure

ARCHITECTURAL:

1. All interior partitions, doors and hardware per drawings A2.1, A2.2, & A2.3. (See attached drawings)
2. All interior doors with keyed locks shall accommodate Russwin removable key cores per City standards.
3. All finished ceilings as required.
4. All floor prep and leveling.
5. All movable seating and associated floor modifications as required.
6. All interior finishes and paint except for Public Restrooms 102,103, & 202. (See attached drawings.)
7. All interior casework.
8. All window treatments.
9. Room divider curtain.

STRUCTURAL:

1. All structural modifications as required for any movable seating.
2. All structural modifications as required for any room divider curtain.
3. All structural modifications as required for any overhead lighting grid.
4. All structural modifications as required for any catwalk construction.

MECHANICAL:

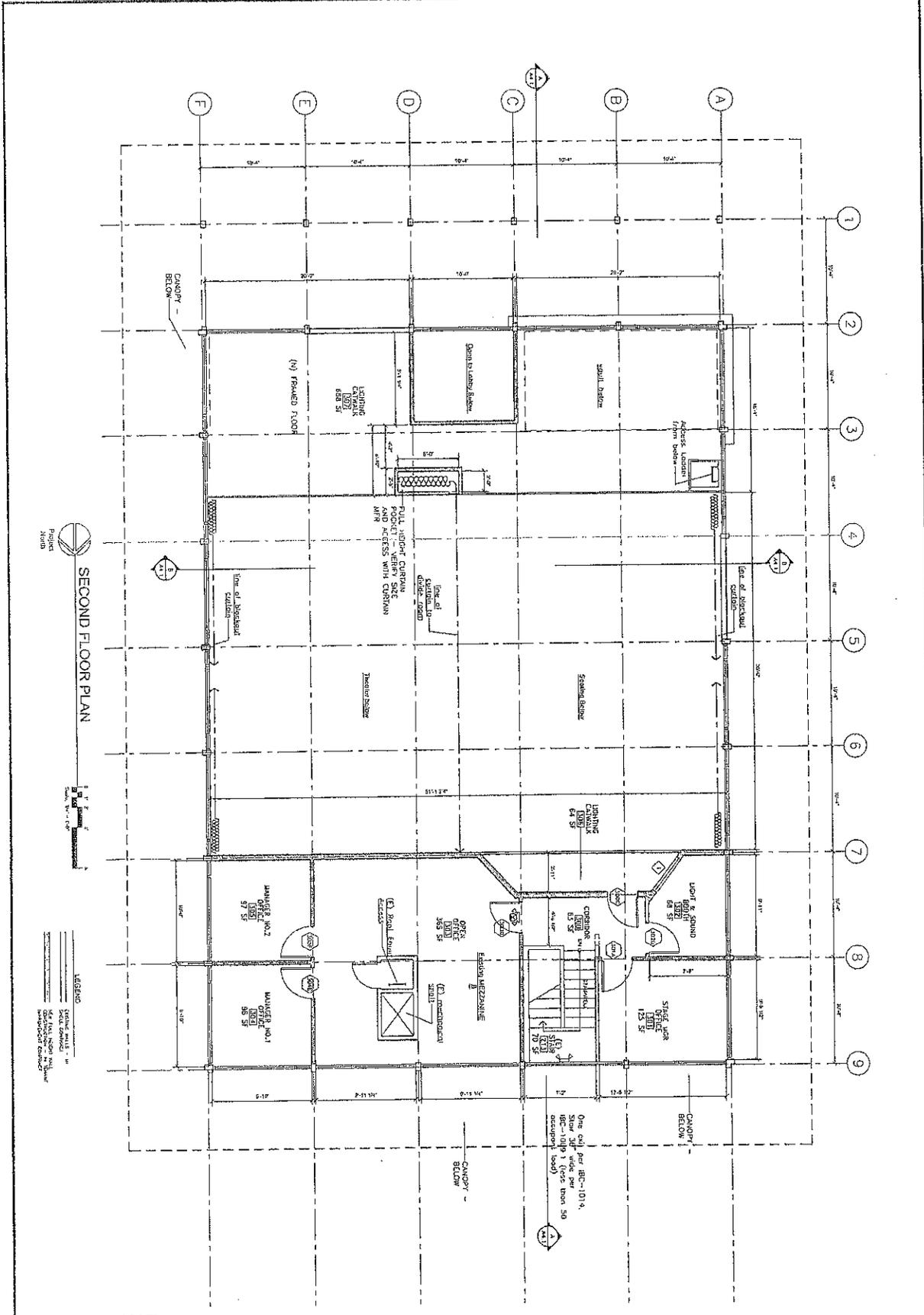
1. HVAC lateral ductwork and terminations for Rooms 105, 107, 200, 201, 203, 207,208, 210, 211. (See attached drawings)
2. If Lighting Catwalk is installed by Lessee, install all mechanical equipment, ductwork and terminations to the underside of the Lighting Catwalk located on the First Floor between Grid Lines 2 & 4. This shall also include all mechanical equipment, ductwork, and terminations as required for the existing vault. (See attached drawing)

ELECTRICAL:

1. All electrical conduit, wiring, and devices for power and lighting as required except for Public Restrooms 102, 103, & 202, Mechanical Room 101, and Electrical Room 111. (See attached drawings)
2. All electrical conduit, wiring and devices for exterior signage.
3. All low voltage panels, patch boards, wiring, and devices as required for communication and data systems.
4. All television cable and devices as required.
5. All conduit, wire, and devices to all mechanical equipment installed by the Lessee.

LIFE SAFETY:

1. Complete the fire sprinkler system by installing the final drops and heads in the following areas: Men's Restroom 105, Women's Restroom 107, Entry 200, Waiting 201, Orchestra 203, Chair Storage 207, Corridor 208, Vestibule 209, Janitor 210, Storage 211, Concessions 212, & Stairs 213.
2. If Lighting Catwalk is installed by the Lessee, complete the fire sprinkler system by installing main pipe runs, final drops and heads to the underside of the Lighting Catwalk located on the First Floor between Grid Lines 2 & 4. This shall also include fire sprinklers to the existing vault. (See attached drawings)
3. In order to obtain an Occupancy Permit the Lessee shall hire the Shell Improvement Fire Sprinkler Contractor to complete the fire sprinkler system.
4. Complete the fire alarm system by installing all conduit, wire, smoke detectors and horn/strobes in the following areas: Men's Restroom 105, Women's Restroom 107, Entry 200, Waiting 201, Orchestra 203, Chair Storage 207, Corridor 208, Vestibule 209, Janitor 210, Storage 211, Concessions 212, & Stair 213.
5. If Lighting Catwalk is installed by Lessee, complete the fire alarm system by installing all conduit, wire, smoke detectors and horn/strobes to the underside of the Lighting Catwalk located on the First Floor between Grid Lines 2 & 4. This shall also include a fire alarm system as required to the existing vault.
6. In order to obtain an Occupancy Permit the Lessee shall hire the Shell Improvement Fire Alarm Contractor to complete the fire alarm system.
7. Install all lighted exit signs and emergency lighting except as required for Public Restrooms 102, 103, & 202. (See attached drawings)
8. Install all fire extinguisher cabinets.



PERMIT SET

DATE	NO.
DESIGNED	DATE
DRAWN	DATE
CHECKED	DATE
PROJECT	NO.
A2.3	

PLAZA THEATRE
 Children's Educational Theater
 1621 California Street
 Everett, WA 98201

DESIGNS northwest ARCHITECTS

1000 5th Ave Suite 8
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 PH: 425.336.2441
 FX: 425.336.2158
 WWW.DESIGNSNW.COM

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REVISIONS:
1. 1/17/08 2-1/4
2. 1/27/08 2-1/4
3. 2/11/08 2-1/4
4. 2/11/08 2-1/4
5. 2/11/08 2-1/4