



CITY OF KIRKLAND

Department of Parks & Community Services

505 Market Street, Suite A, Kirkland, WA 98033 425.587.3300

www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager
From: Jennifer Schroder, Director
Date: February 6, 2014
Subject: Acquisition of Property for Totem Lake Park

RECOMMENDATION:

That City Council approves the attached resolution ratifying the City Manager's signature on the Purchase and Sale Agreement between the City of Kirkland and Rosarita, LLC (Rosarita"), owner of real property commonly referred to as the "Yuppie Pawn Shop Property", and appropriating the funds in the amount of \$2,340,000.00 for that purchase.

BACKGROUND DISCUSSION:

In February 2013 the City Council adopted the City's 2013 – 2014 Work Program, which included emphasis on Totem Lake revitalization:

"Revitalize the Totem Lake Business District through continued implementation of the Totem Lake Action Plan to further the goals of Financial Stability and Economic Development."

Totem Lake Park Master Plan

In March 2013 the City Council approved funding to create a Totem Lake Park Master Plan. Working in cooperation with the property owner, King Conservation District, the Parks and Community Services Department was tasked to develop a long range plan for future park and recreation improvements to the 17-acre Lake property, which is comprised almost entirely of wetlands.

Goals for the Master Plan included:

- Develop a strong sense of place at a Totem Lake Park that becomes a catalyst for revitalization of the greater Totem Lake community.
- Leverage opportunities and complement the Cross Kirkland Corridor. Create a park that will become a trailhead and a destination for trail users.

- Create a plan that enhances the human experience of the park, opening it up to become an icon of the community, while enhancing the ecological performance of the lake and wetland.
- Encourage neighborhood and regional connections to surrounding businesses, Evergreen Health, the Totem Lake Transit Center, the Corridor, and nearby residential neighborhoods.

The Totem Lake Park Master Plan was approved by City Council via Resolution R-5022 on December 10, 2013.

Proposed Upland Park Land Acquisition

The Master Plan (Attachment 1) identifies the acquisition and development of an adjacent upland parcel to help meet the vision and goals established for the Park. The Yuppie Pawn Shop Property (Attachment 2) is a key park land acquisition opportunity. Its preferred location and size make it ideal for meeting park design and programming requirements.

Acquisition of the Yuppie Pawn Shop Property would:

- Provide for a formal park entry and access point, increasing public awareness and use of this valuable public asset.
- Ensure a view corridor and visual connection to/from the Totem Lake Malls property located directly to the north.
- Provide a prominent physical connection to the Totem Lake Malls property.
- Provide necessary buildable land for desired future park amenities to include:
 - Restroom
 - Information kiosk
 - Historical and environmental interpretive displays
 - Playground and passive lawn
 - Terraced seating
 - Dedicated parking for park users
- Provide for amenities (as described above) to jointly serve users of adjacent Cross Kirkland Corridor trail system.
- Provide improved site access for park maintenance activities.

The Yuppie Pawn Shop Property (tax parcel #6928400032) is approximately a 1.6 acre property located at 12031 N.E. Totem Lake Way. In 2012 the Yuppie Pawn Shop property was appraised for the City by an outside appraiser. The appraisal resulted in a value of \$1.7 million. The property directly east and contiguous to the Yuppie Pawn Shop, known as the Carlton Inn property was appraised at the same time for \$2.5 million. The Carlton Inn property sold for \$6,890,000 on October 31, 2013. Given the price paid for the Carlton Inn and the importance of the Yuppie Pawn Shop site to the Master Plan, the City Manager felt that sufficient special conditions existed to pay more than the appraised value.

A portion of the Yuppie Pawn Shop Property was assumed to include the property adjacent to it, which is known as a part of Totem Lake Way ("Questioned Property"). That area is identified in Attachment 2 with cross hatch markings. Since the appraisal was completed, that assumption has been called into question. Further research is being done to determine who does own the Questioned Property if it is not Rosarita. In that event, the City would attempt to acquire title by whatever means necessary. The appraiser has confirmed the appraised value of the Yuppie Pawn Shop Property was based on the usable area, not the entire area, and the conclusion of value should therefore be unaffected. It is worth noting that even if another is

determined to be the owner of the Questioned Property, the City and the public would have an easement to use Totem Lake Way in perpetuity.

Funding

The proposed funding for the \$2,340,000 purchase of the Yuppie Pawn Shop property is as follows:

- \$90,000 credit for one-year's rent at \$7,500 per month,
- \$500,000 in REET 1 reserves (replenished from the Recreation and Conservation Office grant toward purchase of the CKC),
- \$180,000 in 2013 King County Parks levy funds received by the City,
- \$610,000 in uncommitted 2013-2014 Kirkland Park levy park acquisition funds,
- \$140,000 in uncommitted 2013-2014 CIP fund for park acquisition,
- \$820,000 from the King County Parks levy approved in November 2013. This amount commits the annual receipts of approximately \$205,000 for 2014 through 2017. It will be necessary to use a portion of the General Capital Contingency, which will be replenished with the levy receipts.

A Fiscal Note detailing the funding sources for the proposed acquisition is included as Attachment 3.

Terms of Purchase & Sale Agreement

A copy of the proposed Purchase and Sale Agreement is attached to the Resolution (Attachment 4, Exhibit A).

Section 1 of the signed Purchase and Sale Agreement stipulates that the agreement is "subject to Council appropriation of funds." If the Council elects not to approve the resolution, the P&S Agreement will be null and void.

In consideration for the transfer by warranty deed of fee simple title to the Yuppie Pawn Shop Property, the City would provide the following to Rosarita:

At closing, tentatively scheduled for February 19 or 20, 2014, Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000)

A non-refundable Ninety Thousand Dollar fund for Rosarita to use as a credit against rent of \$7,500 per month for continued possession and use of the Yuppie Pawn Shop Property to operate its retail business for one year (3/1/14 to 2/28/15) pursuant to the terms of the Lease attached to the Purchase and Sale Agreement.

An option to continue in possession for up to 6 months (3/1/15 to 8/31/15) upon payment of \$7,500 in advance of each month's tenancy and subject to the same terms and conditions as provided in the lease.

Costs of escrow will be shared equally by the City and Rosarita. Rosarita will pay excise tax, commission and the premium for a standard form owner's policy of title insurance. Rosarita will also pay any cost or expense required to be paid in order to clear title to the Property.

The Park Board was presented with the potential purchase during an Executive session. Although the Board was unable to make decisions during the Executive session, no objections were raised and a great deal of enthusiasm was expressed. The Park Board will review the purchase in open session at the February 12 Board meeting and may make a formal recommendation of support at that meeting. Staff will report on the Park Board discussion and action at the February 18 Council meeting.

cc: Park Board

Attachments:

- 1 - Totem Lake Park Master Plan Graphic
- 2 - Site Location Map
- 3 - Fiscal Note
- 4 - Resolution
- 4A- Exhibit A - Purchase & Sale Agreement

Totem Lake Park Master Plan

ATTACHMENT 1



Proposed Upland Parcel Development
(current Yuppie Pawn Shop)



PROPOSED TOTEM LAKE PARK LAND ACQUISITION

ATTACHMENT 2



Legend

- Streets
- ▭ Parcels
- ComPlace Names
- Parks
- z_Image09
- Red: Band_1
- Green: Band_2
- Blue: Band_3

1: 758



0.0 0 0.01 0.02 Miles

NAD_1983_StatePlane_Washington_North_FIPS_4601_Feet
Produced by the City of Kirkland. © 2013 City of Kirkland, Washington, all rights reserved.

No warranties of any sort, including but not limited to accuracy, fitness or merchantability, accompany this product.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

Notes

Yuppie Pawn Shop Property

FISCAL NOTE*CITY OF KIRKLAND*

Source of Request							
Jennifer Schroder, Director of Parks & Community Services							
Description of Request							
Provide funding for the purchase of the "Yuppie Pawn Shop" property for Totem Lake Park as described in the attached memo. Reserve uses include 1) REET 1 reserves: \$500,000 and 2) General Capital Contingency to be repaid by future King County Park Levy receipts: \$820,000. Additional funding of \$610,000 is from uncommitted 2013-2014 Kirkland Park levy park acquisition projects, \$180,000 from uncommitted 2013 King County Park Levy revenue, and \$140,000 from uncommitted 2013-2014 park acquisition funding. In addition, the current property owner will have a \$90,000 credit for one-year's rent.							
Legality/City Policy Basis							
Fiscal Impact							
One-time use of \$500,000 from REET 1 Reserve and \$820,000 from General Capital Contingency (to be replenished as described above). These reserves are able to fully fund this request.							
Recommended Funding Source(s)							
Reserve	Description	2014 Est End Balance	Prior Auth. 2013-14 Uses	Prior Auth. 2013-14 Additions	Amount This Request	Revised 2014 End Balance	2014 Target
	REET 1 Reserves	4,507,512	1,073,688	0	500,000	2,933,824	1,071,000
	General Capital Contingency	4,810,795	0	0	820,000	3,990,795	5,735,330
Prior Authorized Uses of REET 1 Reserves: Totem Lake Master Plan \$38,000; Public Safety Building Bid Alternates \$259,031; and NE 85th Street Corridor projects funding \$776,657.							
Revenue/Exp Savings	Revenue sources include: 2013 King County Park Levy Revenue \$180,000; \$140,000 from Park Acquisition funding. Additionally, estimated 2014-2017 King County Park Levy revenue will replenish the General Capital Contingency at \$820,000. Expenditure reprioritization from 2013-14 Kirkland Park Levy Property Acquisition projects \$610,000.						
Other Source	Rental credit of \$90,000 for one-year lease back by current property owner.						
Other Information							

Prepared By	Neil Kruse, Senior Financial Analyst	Date	February 6, 2014
-------------	--------------------------------------	------	------------------

RESOLUTION R-5034

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND RATIFYING THE CITY MANAGER'S SIGNATURE OF THE OFFER TO PURCHASE AND AGREEMENT TO SELL REAL PROPERTY OWNED BY ROSARITA, LLC, AND APPROPRIATING FUNDS IN THE AMOUNT OF \$2,340,000 FOR THAT PURCHASE.

WHEREAS, in February, 2013, the City Council adopted the City's 2013 – 2014 Work Program, which included emphasis on Totem Lake revitalization; and

WHEREAS, the City Council next approved funding to create a Totem Lake Park Master Plan ("Plan") and that Plan was approved by City Council Resolution R-5022 on December 10, 2013; and

WHEREAS, the Plan recommended, among other things, that a park should be created that would leverage and complement the Cross Kirkland Corridor and become a trailhead and a destination for trail users while enhancing the human experience of the park, opening it up to become an icon of the community; and

WHEREAS, unique property owned by Rosarita, LLC, in the Totem Lake area, if acquired, would further City's ability to create this park and pursue these and the other goals of the Plan,

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager's signature of the attached Offer to Purchase and Agreement to Sell Real Property ("Exhibit A") is hereby ratified and funds in the amount of \$2,340,000 are hereby appropriated to complete that purchase.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of February, 2014.

Signed in authentication thereof this ____ day of February, 2014.

MAYOR

Attest:

City Clerk

OFFER TO PURCHASE AND AGREEMENT TO SELL REAL PROPERTY

This Agreement made this 3rd day of February, 2014, by and between the City of Kirkland, a municipal corporation of the State of Washington ("Buyer"), and ROSARITA, LLC, a Washington limited liability company, owner of the real property hereinafter described ("Seller").

For and in consideration of the mutual covenants herein contained, the sufficiency of which is unconditionally acknowledged by Buyer and Seller, the parties hereby agree as follows:

1. Purchase of Real Property. Subject to City Council appropriation of funds, Seller and Buyer hereby agree to the purchase and sale of the real property described as follows:

LOT C OF CITY OF KIRKLAND SHORT PLAT NUMBER 77-4-14 (SHORT PLAT OF TOTEM LAKE SOUTH), RECORDED UNDER RECORDING NUMBER 7704210659, AND AS CORRECTED BY CITY OF KIRKLAND LOT LINE ADJUSTMENT NUMBER KROLL 424W G&B ESTATES, RECORDED UNDER RECORDING NUMBER 7903080659, IN KING COUNTY, WASHINGTON;

TOGETHER WITH THAT PORTION, IF ANY, OF ADJOINING TOTEM LAKE WAY, WHICH IF VACATED, ATTACHED TO SAID PREMISES BY OPERATION OF LAW;

EXCEPT ANY PORTION THEROF LYING WITHIN THE CORRECTION MAP OF TOTEM LAKE SOUTH, ACCORDING TO THE PLAT THEROF, RECORDED IN VOLUME 110, OF PLATS, PAGES 92 AND 93, IN KING COUNTY, WASHINGTON.

("Property") TAX ACCOUNT NUMBER: 692840-0032

2. Purchase Price; Payment. The Purchase Price for the Property shall be Two Million Three Hundred Forty Thousand and 00/100 Dollars (\$2,340,000.00). The Purchase Price shall be paid as follows:

2.1 Ninety Thousand (\$90,000.00) will be paid as a credit for rent due from the Seller at \$7,500 per month for the one year lease retained by the seller from the first day of the month following the closing date. If the Seller is evicted or vacates the Property before that date, it will not be entitled to any compensation for any portion of the credit remaining after the date of eviction or vacation.

2.2 At or before Closing, Buyer shall deposit the balance of the Purchase Price in the amount of Two Million Two Hundred Fifty Thousand (\$2,250,000.00 with the Escrow Holder.

3. Escrow Holder: Promptly following the execution of this Agreement, Buyer shall open an escrow with Chicago Title Company, Bellevue, Washington (the "Escrow Holder"). A copy of this Agreement shall be provided to the Escrow Holder to advise the Escrow Holder of the terms and conditions hereof. Escrow Holder shall conduct the Closing pursuant to the escrow instructions of the Parties which shall be consistent herewith.

4. Title Policy and Condition of Title. Buyer will order a standard coverage preliminary commitment for title ("Title Report") from a title company immediately upon mutual execution hereof. Within 10 days after receipt of the title report, Buyer shall notify Seller what exceptions to title, if any, will be accepted by Buyer. Only those exceptions approved by Buyer in writing shall constitute permitted exceptions. Seller shall remove all exceptions that are not permitted exceptions prior to closing date, however if Seller is unable to remove such exceptions prior to closing date, this Agreement shall be deemed null and void unless the time for closing is extended by mutual agreement of the parties.

5. Closing. Title on closing to be conveyed to Buyer by statutory warranty deed free and clear of all taxes, assessments, liens, and encumbrances, and shall be so insurable. The Date of Closing shall be the date the deed is recorded. The deed shall be recorded when sale proceeds are available for Seller. Seller shall be entitled to possession of the property for one year from the first day of the month following the closing date pursuant to a lease agreement, and for up to an additional six months if Seller wishes to retain possession and pay rent, unless Seller is evicted for breach of the lease or vacates the property before then. In that event, Buyer will be entitled to possession on the date of eviction or vacation. The closing of the sale of the property shall be held at the Bellevue offices of Chicago Title Company ("Escrow") no later than, February 28, 2014. This date may be extended by agreement of the parties which agreement shall not be unreasonably withheld.

The cost and expenses of escrow shall be paid equally by Seller and Buyer. Seller shall pay excise tax, commission and the premium for a standard form owner's policy of title insurance. Seller shall pay any cost or expense required to be paid in order to clear Seller's title. Buyer and Seller shall place with escrow all instruments, documents, and monies necessary to complete the sale in accordance with this Agreement.

6. Access to Property. Buyer and its employees and agents shall have the right and permission from the date of this Agreement through closing date to enter upon the Property for inspection purposes, but Buyer will not conduct any tests at the Property that involve piercing the ground or structures.

7. Property Tax. Even though Buyer is exempt from property taxes, all property taxes applicable to the property will be paid by Seller prior to closing or through Escrow. Immediately after closing, if any taxes have been paid in excess of what was required, the City will advise King County to refund the excess taxes to Seller if refundable.

8. Condition of Property. All representations and warranties of Seller contained herein shall be true, accurate, and complete at the time of closing. The physical condition of the property at closing shall be the same as on the date of this Agreement. If not, Buyer may elect at its sole discretion to either 1) rescind this Agreement, with Seller refunding the entire purchase price and reimbursing Buyer for all costs incurred, or 2) have Seller pay for all costs of repair or restoration at Seller's expense. In the event the Property contains a well fuel tank or septic tank, Seller will remove such tank and until it is removed there will be no closing.

8.1 Seller shall not enter into any lease, trust deed, mortgage, restriction, encumbrance, lien, license or other instrument or agreement affecting the property without the prior written consent of Buyer from and after the date of this Agreement. Seller warrants as follows: that Seller is the sole legal owner of the fee simple interest in the property and is not holding title as a nominee for any other person or entity; that no person or entity has a first right of refusal or option to purchase or other similar right to or interest in the property; that no labor, materials or services have been furnished or will be furnished in, on or about the property or any part thereof as a result of which any mechanics', laborers' or materialpersons' liens or claims might arise.

8.2 This offer is made with respect to the physical condition of the real property on an "as is and where is basis" as of the date of closing, provided that Buyer does not waive any claim it may now have or hereafter acquire against Seller based on, arising out of, or in any way related to toxic, dangerous, or hazardous waste or substance as the same may now or hereafter be defined by any applicable law or regulation, nor does Buyer release Seller from any liability to Buyer based upon, arising out of, or any way related to toxic, dangerous, or hazardous waste or substance as may hereafter be found and determined to have been on or within the subject property as of the date of closing of this sale or earlier.

9. Seller's Knowledge. To the best of Seller's knowledge, the property is not in violation of any law or regulation relating to the environmental conditions thereon and there is no hazardous waste, toxic substance or pollutant, within the scope of any state, federal or local environmental statute or rule, on or in the vicinity of the property or on any parcels of land which abut the property to the best of Seller's knowledge. Further, to the best of Seller's knowledge there is no asbestos, PCB's or underground storage tanks located on the property or which have been removed therefrom.

10. Remedies. If Seller reasonably concludes that Buyer is in breach of this Agreement, Seller's sole remedy shall be to terminate this Agreement by sending written notice to Buyer and Escrow. If Buyer reasonably concludes that Seller is in breach of this Agreement, Buyer shall have the right to either terminate this Agreement by sending written notice to Seller and Escrow or may instead maintain an action for specific performance (together with recovery of costs and attorney's fees incurred in such action). If an action or proceeding occurs between the parties seeking enforcement of any provision contained in this Agreement, the prevailing party in any such action or proceeding shall be entitled to reasonable attorney's fees and costs in addition to any other relief which a court of law having jurisdiction determines it is entitled to.

11. Notice. Any demand, request or notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given whether delivered by facsimile, delivered to the person, or three days after being deposited in the United States mail, addressed as follows:

To Seller:

ROSARITA, LLC
12545 TOTEM LAKE BLVD
KIRKLAND, WA 98034

To Buyer:

City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033
Attn: CAO

12. Binding. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto and shall inure to the benefit of them.

13. Leasehold. If the Seller signs and returns the attached Lease Agreement to the Buyer with this Agreement, it will have a one year lease from the first day of the month following the Closing Date subject to the terms and conditions therein stated.

14. Seller has until February 5, 2014, to accept this offer. Time is of the essence of this Agreement and the dates and deadlines contained herein are also of the essence of this Agreement.

The above identified Buyer hereby makes the foregoing offer to purchase real property from Seller on the terms and conditions set forth above.

DATED this 3rd day of February, 2014.

CITY OF KIRKLAND

By: 
Kurt Triplett, City Manager

Approved as to form:


City Attorney

ACCEPTANCE OF OFFER TO PURCHASE AND AGREEMENT TO SELL

The Seller hereby accepts the foregoing offer to purchase real property and agrees to sell same to Buyer on the terms and conditions set forth above.

Rosarita, LLC

By: Brian Lurie, member
Brian Lurie

Date: 2/3/2014

LEASE AGREEMENT

This Lease Agreement ("Lease") will be effective March 1, 2014, by and between City of Kirkland ("City") and Rosarita, LLC, Inc. ("Rosarita"). The City and Rosarita are referred to in this Lease collectively as the "Parties."

RECITALS

A. In February of 2014, the City intends to purchase the property commonly known as 12031 – NE Totem Lake Way, Kirkland, WA 98034 (the "Property") from Rosarita.

B. Rosarita currently conducts business at that location and would like to remain in possession of the Property, as a tenant of the City, upon the terms and conditions set forth in this Lease.

C. Should the sale occur, the City is willing to have Rosarita remain in possession as a tenant of the City on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the covenants set forth in this Lease, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. Lease of Property.** If the sale of the Property to the City does close, the City hereby leases to Rosarita, upon the terms and conditions set forth in this Lease, the Property and the buildings located on the Property, situated in the City of Kirkland, King County, Washington, the legal description of which is attached hereto as **Exhibit A** and incorporated herein. If the sale of the Property does not close, this Lease will be deemed void ab initio and neither party will have any obligations to perform any of the terms of the Lease.
- 2. Use of Property.** The Property shall be used by Rosarita for operation of a retail store, together with any uses that are necessary or incidental to such use.
- 3. Term.** The term of this Lease shall commence on March 1, 2014, and end on February 28, 2015. Thereafter, the tenancy may continue on a month to month basis until August 31, 2015, however The City may not terminate the tenancy during such period unless Rosarita is in breach of the lease.. Rosarita agrees to vacate the Property by August 31, 2015e without further action by the City unless an extension beyond that date is granted by the City.
- 4. Rent.** Under the terms of the Purchase and Sale Agreement, Rosarita received a non-refundable rent credit in the amount of \$90,000 as partial consideration from the City for the Property. Rent and maintenance for the Property is \$7,500 per month, which means the credit is sufficient to pay the rent through February 28, 2015. In the event Rosarita vacates the Property or is evicted for default before that date, it will not be entitled to a refund of any of the then remaining credit. Thereafter, beginning on March 1, 2015, Rosarita covenants and agrees to pay to the City rent and maintenance for the Property in the amount of \$7,500 per month. Monthly installments of rent shall be due and payable on the first day of each and every calendar month, in advance. In the event Rosarita is obligated to pay rent for a period which is less than a calendar month, the amounts set forth above shall be prorated based upon

the ratio which is the number of days in such partial month bears to the total number of days in the month in which such partial month occurs.

5. Utilities.

5.1 Utility Charges. Rosarita shall pay all charges for amounts of water, sewer, electrical, telephone, internet and any other utility services rendered or furnished to the Property during the Lease term.

5.2 Interruption of Utilities. The City, in its capacity as landlord, shall not be liable for any loss, injury or damage to persons or property caused by or resulting from any variation, interruption, or failure of any utilities or services due to any cause whatsoever, and no such event shall be deemed an eviction of Rosarita or relieve Rosarita from any of its obligations under this Lease.

5.3 Security Alarm. Rosarita shall pay all costs relating to the security alarm, if any, including but not limited to monthly service payments and inspection, repair and maintenance fees.

6. City Right of Entry. The City shall have the right to inspect the Property upon 24 hours notice to Rosarita. The City shall have the right to make monthly inspections of the Property. In addition, nothing in this Section shall limit the City's right at any time during Rosarita's operating hours to enter any areas of the Property that are open to the public.

7. Repairs and Maintenance. The City shall not be required to alter, remodel or improve the Property or any part of it. Rosarita shall, at its sole cost and expense, keep the Property and every part of it in good condition and repair, ordinary wear and tear excepted. All damage or injury done to the Property by Rosarita or by any persons who may be in or upon the Property with the express or implied consent of Rosarita, including but not limited to the cracking or breaking of any glass, windows or doors, shall be paid for by Rosarita.

8. Alterations. Rosarita shall not make any alterations, changes or additions to the Property without the prior written approval of the City, which the City may withhold in its sole discretion. Following any material alteration by Rosarita, Rosarita agrees to furnish the City with copies of any plans and specifications for any such alterations.

9. Insurance.

9.1 During this Lease, Rosarita, at its sole cost and expense, and for the mutual benefit of the City and Rosarita, shall carry and maintain the following types of insurance in the amount specified: (1) comprehensive commercial general liability insurance which includes premises liability coverage (occurrence, not claims-made form) with minimum limits of \$2,000,000 combined single limit; (2) where required by law, workers' compensation coverage for all persons entering onto the Property; (3) employer's liability insurance with minimum limits of \$500,000; (4) automobile liability insurance for all vehicles entering onto the Property including owned, non-owned, and hired vehicles, with minimum limits of \$1,000,000 combined single limit; and (5) personal property insurance in an amount sufficient to cover all personal property on the Property. Such coverage shall be primary insurance over any separate

insurance the City may provide for itself. All insurance policies provided under this Section 9 shall ensure that the City is named as an additional insured, and shall be issued by financially responsible insurers, duly authorized to do business in the State of Washington, with at least a B+/VII rating or better, utilizing the A.M. Best company rating system.

9.2 All policies of insurance shall provide by endorsement, that any loss shall be payable to the City or Rosarita as their respective interests may appear. Rosarita shall deliver to the City proof of the insurance required in Section 9.1 of this Lease within 10 days of execution of this Lease. If Rosarita fails to do so, the City may procure such insurance and Rosarita shall, on demand, pay the premiums or reimburse the City for all monies expended by it for that purpose, with interest at the maximum rate of interest permitted under applicable law, which may be added to and be collectible as additional rent under this Lease.

9.3 Rosarita agrees not to knowingly violate or permit to be violated any of the conditions or provisions of the insurance policies required to be furnished hereunder, and agrees to promptly notify the City of a fire or other casualty. Rosarita agrees not to knowingly increase the hazards on the Property by any of its own acts. Rosarita agrees to comply promptly with the requirements of any companies issuing such insurance policies in order to keep the insurance in full force and effect. In the event that any policies shall be canceled for non-compliance with the conditions or provisions of said policies, or requirements of the insurance companies, or in the event that Rosarita shall fail to notify the insurance companies of any claims which may arise in accordance with the terms of said insurance, then Rosarita agrees to indemnify and save harmless the City from any claims or damages whatsoever which would otherwise be covered by insurance, including reasonable attorney fees incurred or expended by the City.

9.4 The City and Rosarita each waive any and all rights to recover against the other, or against the officers, directors, shareholders, partners, joint ventures, employees, agents, customers, invitees or business visitors of such other party, for any loss or damage to such waiving party arising from any cause covered by any property insurance required to be carried pursuant to this Lease or any other property insurance actually carried by such party. On request, the City and Rosarita will cause their respective insurers to issue appropriate waiver of subrogation rights endorsements to all property insurance policies carried in connection with the Property or its contents.

10. Hazardous Substances. Except for normal office and cleaning supplies typically found in office environments and used in accordance with label instructions and applicable laws, Rosarita shall not use, dispose of or otherwise allow the release of any hazardous substance, waste or materials in, on or under the Property or any adjacent property. Rosarita represents and warrants to the City that, except as set forth in the preceding sentence, Rosarita's intended use of the Property does not involve the use, production, disposal or bringing on to the Property of any hazardous waste and materials. As used in this Lease, the term "hazardous substance, waste or materials" includes any substance, waste or material defined or designated as hazardous, toxic or dangerous by any federal state or local statute, regulation, rule or ordinance now or hereafter in effect. Rosarita shall promptly comply with all applicable laws and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction relating to hazardous waste or materials. Rosarita agrees to indemnify, defend and hold harmless the City against any and all loss, cost and expense (including, without limitation, consultant fees,

attorneys' fees and disbursements) which may be incurred by the City in connection with any act or omission by Rosarita that constitutes a breach of this Section of the Lease.

11. Assignment and Subletting.

11.1 Rosarita shall keep its interest in this Lease and any property of Rosarita (other than unattached personal property) and the Property free and clear from any liens arising out of any work performed or material ordered or obligations incurred by or on behalf of Rosarita and hereby indemnifies and holds the City harmless from any liability for any such lien. Rosarita shall have no right or authority to cause or allow the Property to be subjected to any such lien.

11.2 This Lease shall not be assigned or encumbered nor shall all or any portion of the Property be sublet, used or occupied by any other person or entity without the prior written consent of the City, which may be withheld in the City's sole discretion, however Rosarita may assign the lease to Brian Lurie or another entity controlled by Brian Lurie subject to the same terms and conditions of the Lease.

12. Surrender. Upon the expiration or termination of this tenancy, Rosarita will at once surrender and deliver up the Property, together with all improvements thereon, to the City in good condition and repair, reasonable wear and tear excepted; conditions existing because of Rosarita's failure to perform maintenance, repairs or replacements as required of Rosarita under this Lease shall not be deemed "reasonable wear and tear." Said improvements shall include all plumbing, lighting, electrical, heating, cooling and ventilating fixtures and equipment and other articles of personal property used in the operation of the Property (as distinguished from Rosarita's trade fixtures). Rosarita shall surrender to the City all keys to the Property and make known to the City the combination of all combination locks which Rosarita is permitted to leave on the Property. Any alterations in or upon the Property made by Rosarita shall be removed from the Property upon such termination or expiration without allowance, compensation or credit to Rosarita.

13. Permitted Signs. Rosarita may keep the signs it has and erect other signs (subject to compliance with this Lease and all applicable City ordinances), at its sole cost and expense, upon the Property subject to the City's prior written approval. No exposed neon sign, flashing or animated sign, or roof or free standing sign is presently erected, and no such sign will be permitted to be erected on the Property.

14. City Remedies.

14.1 Events of Default. The term "Event of Default," for which the City shall have the rights specified in this Section, shall mean any of the following:

(a) Rosarita shall fail to pay any installment of rent, or any other sums or charges which Rosarita may be required to pay pursuant to this Lease within ten (10) days of due date;

(b) (i) if the estate hereby created shall be attached or taken on execution or by other process of law, or (ii) if Rosarita shall be judicially declared bankrupt or insolvent according to law, or (iii) if any assignment shall be made of the property of Rosarita for the

benefit of creditors, or (iv) if a receiver, guardian, conservator, trustee or other similar officer shall be appointed to take charge of all or any substantial part of Rosarita's property by a court of competent jurisdiction and not dismissed within ninety (90) days, or (v) if a petition shall be filed by anyone other than Rosarita respecting the bankruptcy or insolvency of Rosarita under any provisions of any bankruptcy or insolvency act now or hereafter enacted, and such proceeding is not dismissed within ninety (90) days after it is begun, or (vi) if Rosarita shall file such a petition;

(c) If (a) Rosarita shall breach or fail to perform or observe any other covenant on Rosarita's part to be performed or observed under this Lease and (b) such failure has continued for thirty (30) days after written notice of such failure from the City to Rosarita.

14.2 Remedies. Upon the occurrence of an Event of Default, the City shall have the following remedies in addition to the City's right to cure defaults as provided below:

(a) Bring Suit for Specific Performance. The City may bring suit for collection of unpaid rent or other amounts for which Rosarita is in default, or for the performance of any other covenant or agreement contained in this Lease, without the necessity of terminating the Lease or entering into possession of the Property.

(b) Re-Entry Without Termination. The City may reenter the Property, by summary proceedings or otherwise, and take possession thereof, without terminating this Lease, and remove all persons and property from the Property, without becoming liable to prosecution, and lease the whole or any part or parts of the Property from time to time, either in the name of the City or on account of Rosarita or otherwise, to such person or persons, for such terms ending before, on or after the expiration date, at such rental and upon such other conditions as the City in its sole discretion shall determine. The City will make a good faith and reasonable effort to lease the Property or any part thereof and shall in no event be liable for refusal or failure to lease the Property and any part of it. It is understood that Rosarita's liability as provided for in this Lease shall survive and continue after such dispossession, reentry or repossession.

(c) Termination of Lease. The City may terminate this Lease upon ten (10) days written notice to Rosarita. No act by the City, other than giving Rosarita written notice of termination shall be required to terminate this Lease. Upon termination of this Lease, neither the City nor Rosarita shall have any further obligation except as provided in this Lease and the right of the City to recover all unpaid rent to the date of termination.

14.3. Cost to Cure with Interest. In the event of any breach of this Lease by Rosarita, the City may elect, following any notice period for Rosarita to cure under this Lease, as another alternate remedy, to cure such breach for the account and at the expense of Rosarita. Any sums so expended by the City shall be deemed additional rent under this Lease and shall be reimbursed by Rosarita upon demand, together with interest at the rate of ten percent (10%) per annum, which interest shall accrue from the date of such expenditure by the City until the date of payment by Rosarita.

15. Indemnity; Hold Harmless.

15.1 Rosarita shall save the City harmless from, and defend and indemnify the City against, any and all injury, loss or damage or claims for injury, loss or damage, of whatever nature, to any person or property caused by or resulting from any act, omission or negligence of Rosarita, including without limitation, reasonable attorneys' fees. It is a condition of this save harmless and indemnification, that Rosarita shall receive reasonably prompt notice of any such claim from the City.

15.2 The City shall save Rosarita harmless from, and defend and indemnify Rosarita against, any and all injury, loss or damage or claims for injury, loss or damage, of whatever nature, to any person or property caused by or resulting from any act, omission or sole negligence of the City, including without limitation, reasonable attorneys' fees. It is a condition of this save harmless and indemnification that the City shall receive reasonably prompt notice of any such claim from Rosarita.

16. Waiver. Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights under this Lease.

17. Notices. All notices required or permitted to be sent under this Lease shall be delivered by any one of the following methods: (a) United States certified mail, return receipt requested; (b) Federal Express or similar overnight delivery; or (c) commercial courier with either receipt for delivery signed by the addressee or a sworn declaration that delivery was refused. Notice shall be deemed given on the date of delivery to or refusal thereof by the addressee. Notices shall be sent as follows:

To the City of Kirkland:

City of Kirkland, Attn. Facility Services
915 Eighth Street
Kirkland, WA 98033

With a copy to:

Kirkland City Attorney's Office
123 Fifth Avenue
Kirkland, WA 98033

To Rosarita, LLC:

Rosarita, LLC
12031 NE Totem Lake Way
Kirkland, WA 98034

Either party shall have the right to change its designees for the receipt of notices by use of the notice provisions contained in this section.

18. General Terms.

18.1 Choice of Law. This Lease shall be construed in accordance with the laws of the state of Washington.

18.2 Accord and Satisfaction. No payment by either party or receipt by the other party of a lesser amount than the rental and other charges under this Lease shall be deemed to be other than payment on account of the earliest rent and other charges then unpaid and due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and either party may accept such check or payment without prejudice to its right to recover the balance of such rent and other charges or pursue any other remedy provided for in this Lease or available at law or in equity.

18.3 Brokers. The City and Rosarita each represents and warrants that it has not dealt with any real estate agent or broker in connection with this Lease, and each shall and hereby agrees to defend, indemnify and hold the other party harmless, including reasonable attorneys' fees, from and against all claims for commissions and/or other compensation made by any broker or agents or other damage for breach of the foregoing representations by the indemnifying party.

18.4. Independent Operation. Nothing in this Lease shall cause the City in any way to be construed as a partner, joint-venturer or an associate of Rosarita in the operation of the Property.

18.5 No Recordation of Lease. Neither this Lease, nor any memorandum thereof, shall be recorded.

18.6 Attorneys' Fees; Waiver of Jury Trial. In the event of any action or proceeding brought by either party against the other under this Lease, each party shall, and hereby does (to the extent permitted by law) waive trial by jury, and the prevailing party shall be entitled to recover all costs and expenses, including its reasonable attorneys' fees.

18.7 Jurisdiction and Venue. Jurisdiction for any dispute concerning this Lease shall be exclusively in King County, Washington.

18.8 Time of the Essence. Time is of the essence with respect to the performance of all of the obligations of Rosarita specified in this Lease.

18.9 Entire Agreement; Modification. This Lease is the final and complete expression of the City and Rosarita relating in any matter to the leasing, use and occupancy of the Property, and other matters set forth in this Lease. No prior agreements or understandings pertaining to the same shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or added to except in writing signed by both the City and Rosarita.

18.10 Authority. The individual executing this Lease on behalf of Rosarita represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Rosarita, and that this Lease is binding upon Rosarita in accordance with its terms.

IN WITNESS THEREOF, the parties hereto have caused this Lease to be executed under seal as of the day and year first above written.

CITY OF KIRKLAND

ROSARITA, LLC

By: [Signature]
Its: City Manager

By: [Signature]
Its: member

Approved as to form:

[Signature]
Title: Asst. City. Atty

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 30 day of JANUARY, 2014, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared BRIAN LURIE, to me known to be the MEMBER of **Rosarita, LLC**, the Washington limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute the said instrument.

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



[Signature]
Print Name: ZAHRA KHAZE
Notary Public in and for the State of WASHINGTON
Washington, residing: Kirkland, WA
My Commission Expires: 11/6/2017

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 3rd day of February, 2014, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Kurt Triplett, to me known to be the City Manager of the **City of Kirkland**, the Washington municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute the said instrument.

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

Lela B Santangelo
Print Name: Lela B Santangelo
Notary Public in and for the State of
Washington, residing: Kirkland
My Commission Expires: 12-19-2017

EXHIBIT A

CHICAGO TITLE COMPANY
A.L.T.A. COMMITMENT
SCHEDULE A
(Continued)

Order No.: 1350470
Your No.: YUPPIE PAWN SHOP

LEGAL DESCRIPTION EXHIBIT
(Paragraph 4 of Schedule A continuation)

LOT C OF CITY OF KIRKLAND SHORT PLAT NUMBER 77-4-14 (SHORT PLAT OF TOTEM LAKE SOUTH), RECORDED UNDER RECORDING NUMBER 7704210659, AND AS CORRECTED BY CITY OF KIRKLAND LOT LINE ADJUSTMENT NUMBER KROL 424W G&B ESTATES, RECORDED UNDER RECORDING NUMBER 7903080659, IN KING COUNTY, WASHINGTON;

TOGETHER WITH THAT PORTION, IF ANY, OF ADJOINING TOTEM LAKE WAY, WHICH, IF VACATED, ATTACHED TO SAID PREMISES BY OPERATION OF LAW;

EXCEPT ANY PORTION THEREOF LYING WITHIN THE CORRECTION MAP OF TOTEM LAKE SOUTH, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 110, OF PLATS, PAGES 92 AND 93, IN KING COUNTY, WASHINGTON.