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KING COUNTY  
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CASE NUMBER: 07-2-34017-3 SEA

HONORABLE NICOLE MacINNES

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

JEFFERSON SQUARE APARTMENTS NW  
LLC,

Plaintiff,

v.

SEATTLE SCHOOL DISTRICT,

Defendant.

Case No. 07-2-34017-3 SEA

ANSWER AND AFFIRMATIVE  
DEFENSES OF DEFENDANT  
SEATTLE SCHOOL DISTRICT

Defendant Seattle School District answers Plaintiff Jefferson Square Apartments NW LLC's Complaint, and alleges and raises the further defenses herein.

**I. PARTIES, JURISDICTION AND VENUE**

1. Admit.
2. Admit.
3. Admit.

**II. BACKGROUND**

4. Admit that Jefferson Square Apartments is the current Lessee under the Ground Lease attached as Exhibit 1 to the Complaint. Admit that the first floor of the building is occupied by a different tenant.

5. Admit that on January 1, 1985 a single lease was entered into for the property. Admit that in October 1985, at the request of the Lessee, the original lease was replaced with two

1 leases, one of which is attached as Exhibit 1 to the Complaint. Admit that the split of the single  
2 lease into two leases was not intended to affect the rights or obligations of the Landlord. Deny  
3 the remaining allegations in Paragraph 5.

4 6. Admit that Exhibit 1 to the Complaint is a true and correct copy of the lease,  
5 except that it lacks copies of exhibits referenced in the lease.

6 7. Admit that the lease was assigned to Jefferson in 2005 with the District's  
7 permission. Admit that Jefferson has attempted to buy the "air space" occupied by the building  
8 and that the District has declined to sell.

9 8. Admit that the superintendent did not have authority to sell the subject property.  
10 Admit that RCW 28A.335.120(2) would have required a hearing and Board approval before a  
11 sale of the subject property and deny that any such approval was ever given. Admit that the  
12 value of the subject property is in excess of \$70,000. Deny each and every other allegation in  
13 Paragraph 8.

### 14 III. CAUSES OF ACTION

15 9. The District denies that Plaintiff has the right to specific performance.

16 10. The District denies that it is in breach of the contract. To the extent that the  
17 contract may appear to include sale of the air space, such a provision was not executed in  
18 conformance with Washington law and is not enforceable.

### 19 AFFIRMATIVE DEFENSES

20 Defendant by way of affirmative defense to Plaintiff's claims asserts as follows:

- 21 a) Plaintiff's claims are barred by laches and applicable statutes of limitation;
- 22 b) The relief that Plaintiff seeks is barred by statute;
- 23 c) To the extent that the lease may appear to require sale of the subject property to

24 Plaintiff, the lease is defective in that it was signed without the approval and authority of the  
25 School Board;

26 d) Plaintiff's claims must fail based upon failure of consideration;

27 e) Plaintiff fails to state a claim upon which relief may be granted;

1 f) The Superintendent lacked the authority to sign an amendment to the lease which  
2 provides for sale of the property;

3 g) To the extent that the lease may appear to require sale of a fee interest in the air  
4 space, it was the result of mutual mistakes of the parties to the lease;

5 h) Plaintiff's claim is barred by *ultra vires*, because the transaction that Plaintiff  
6 claims was beyond the authority of the Superintendent; and

7 i) Sale of the property is not permitted, and/or is *ultra vires*, without compliance  
8 with the requirements of RCW 28A.335.120, specifically that a public hearing be held, that an  
9 appraisal be made, that the sales price be at least 90% of the fair market value, and that the  
10 School Board approve the transaction. None of these requirements were met.

11 **PRAYER FOR RELIEF**

12 The Seattle School District prays for relief as follows:

- 13 1. For a judgment dismissing Plaintiff's claims; and  
14 2. For attorneys' fees and costs and such further relief as the Court deems just and  
15 equitable.

16  
17 DATED this 13<sup>th</sup> day of November, 2007.

18 KIPLING LAW GROUP PLLC

19 By:   
20 Robert D. Stewart, WSBA #8998

21 and

22 Ronald J. English, WSBA #7114  
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Counsel for Defendant Seattle School District

1 **CERTIFICATE OF SERVICE**

2 I do hereby certify that on this 13<sup>th</sup> day of November, 2007, I caused to be served a true  
3 and correct copy of the foregoing *Answer and Affirmative Defenses of Defendant Seattle School*  
4 *District* by method indicated below and addressed to the following:

5 By:  U.S. Mail  Overnight Mail  Facsimile  Hand Delivered  E-Mail

6 Paul R. Taylor  
7 Jofrey M. McWilliam  
8 Byrnes & Keller LLP  
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14 

15 \_\_\_\_\_  
16 Carol A. Cannon, Legal Assistant

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Case Title: JEFFERSON SQUARE APARTMENTS NW VS SEATTLE SCHOOL DISTRICT  
Document Title: ANSWER OF DEFENDANT SEATTLE SCHOOL DISTRICT RE PLAINTIFF'S  
COMPLAINT  
User's Name: Robert Stewart  
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User Signed

Signed By: Robert Stewart  
WSBA #: 8998  
Date: 11/13/2007 12:02:13 PM