

Ordinance No. 122815

Council Bill No. 116317

AN ORDINANCE relating to the High Point Neighborhood Center; lifting a budget proviso and authorizing the Seattle Department of Parks and Recreation to purchase and accept a Restrictive Covenant and Public Access Rights to programs, services and community space at the Neighborhood House's future High Point Neighborhood Center.

CF No. _____

Date Introduced:	<u>9.8.08</u>
Date 1st Referred:	Parks & Seattle Center (PSC)
Date Re - Referred:	To: (committee)
Date Re - Referred:	To: (committee)
Date of Final Passage:	Full Council Vote:
<u>9-29-08</u>	<u>9-0</u>
Date Presented to Mayor:	Date Approved:
<u>9-30-08</u>	<u>10.8.08</u>
Date Returned to City Clerk:	Date Published:
<u>10.8.08</u>	<u>4</u> T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
Date Vetoed by Mayor:	Date Veto Published:
Date Passed Over Veto:	Veto Sustained:

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: _____

Tom Roemer

Councilmember

Committee Action:

9/23/08 passed as amended (substituted) 3-0 TR, RC, TB

9-29-08 Passed 9-0

This file is complete and ready for presentation to Full Council.

Committee: _____ (initial/date)

Law Department

Law Dept. Review

OMP Review

City Clerk Review

Electronic Copy Loaded

Indexed



City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

August 12, 2008

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill that lifts a budget proviso and authorizes the Superintendent of Parks and Recreation to enter into an agreement to purchase and accept a Restrictive Covenant and Public Access Rights related to Neighborhood House's future High Point Neighborhood Center (HPNC) facility. The agreement will ensure that recreation and education programs are accessible to all Seattle residents free or at a reasonable cost at this new Neighborhood Center.

In partnership with the Seattle Housing Authority, Neighborhood House will construct a new 18,000 square foot HPNC to house human service, recreation, education, and community programs. The City's 2007-2008 Adopted Budget included \$500,000 in the Department of Parks and Recreation's budget to ensure that High Point residents, the City, and the community at large have facilities in which to gather, recreate, and build community in the High Point neighborhood.

Approval of the proposed agreement supports Neighborhood House's efforts to provide quality recreational, educational and social services provided by Neighborhood House for low-income residents and the general public. Thank you for your consideration of this legislation. Should you have questions, please contact Eric Friedli at 684-8369.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Nickels".

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7th Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360, Email: mayors.office@seattle.gov

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ORDINANCE 122815

AN ORDINANCE relating to the High Point Neighborhood Center; lifting a budget proviso and authorizing the Seattle Department of Parks and Recreation to purchase and accept a Restrictive Covenant and Public Access Rights to programs, services and community space at the Neighborhood House's future High Point Neighborhood Center.

WHEREAS, Neighborhood House is a nonprofit organization founded in 1906 with a mission of helping diverse communities of people with limited resources attain their goals for self sufficiency, financial independence and community building; and

WHEREAS, Neighborhood House and Seattle Housing Authority are currently collaborating on the High Point redevelopment project, which will provide low-income housing in a mixed-income community in the heart of West Seattle; and

WHEREAS, the City of Seattle ("City") recognizes that the provision of low-income housing along with supporting services is vital to the health and success of a community; and

WHEREAS, Neighborhood House has procured designs and plans for the construction of a neighborhood center to be constructed as part of the High Point redevelopment project, and to be called the High Point Neighborhood Center ("HPNC"); and

WHEREAS, the HPNC will provide space for recreation and education programs and social services that will be available to low-income residents and the general public, including a family service center, a teen center, a computer resource center, a playground, community gathering places and classrooms, and additional services and activities focused on nurturing youth, bolstering family strength and building relationships among neighbors in the High Point neighborhood and other city residents; and

WHEREAS, the City of Seattle owns and pays for the operation of community centers that provide space for community gathering, play, education and recreation, and programs similar to those planned for HPNC; and

WHEREAS, the Seattle Department of Parks and Recreation ("DPR"), through its programs and facilities, provides services and activities that focus on nurturing youth, bolstering family strength and building relationships among neighbors, and DPR has determined that it can further its mission and programs by securing public access to the HPNC; and

WHEREAS, Neighborhood House plans to develop community meeting spaces within the HPNC of approximately 2,100 square feet specifically targeted to serve the basic needs of infirm or low-income Seattle residents; and



1 WHEREAS, DPR negotiated an Agreement (“Agreement”) with Neighborhood House for the
2 purchase of a Restrictive Covenant and Public Access Rights to provide public benefits in
the form of public access to and use of the HPNC; and

3 WHEREAS, the City's 2007-2008 Adopted Budget contains an appropriation of Five Hundred
4 Thousand Dollars (\$500,000) in DPR’s budget with a proviso that the money not be spent
until authorized by a future ordinance; and

5 WHEREAS, Neighborhood House plans to break ground in August 2008 and has secured over
6 \$10,000,000 of the \$12,300,000 projected total costs of the project with outstanding
7 grants pending for \$4,262,500;

8 NOW, THEREFORE,

9 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

10 Section 1. The restrictions imposed by the following 2007-2008 Budget Proviso are
11 removed and are no longer restrictions for any purpose.

12 Department	Green Sheet	Proviso Description	Project ID
13 Parks and 14 Recreation	#117-1-A-2	Limits the amount of 15 spending on the High 16 Point Neighborhood Center Project	K732359

17
18 Section 2. The Superintendent of the Department of Parks and Recreation
19 (“Superintendent”) is authorized to spend Five Hundred Thousand Dollars (\$500,000) budgeted
20 in the Cumulative Reserve Subfund - Unrestricted Subaccount (00164) for the purpose of
21 purchasing and accepting a Restrictive Covenant and Public Access Rights substantially in the
22 form attached hereto as Attachment 1. The Superintendent is authorized to record the Grant of
23 Restrictive Covenant and Public Rights Access attached hereto as Attachment 1 with the King
24 County Recorder's Office.
25
26



1 Section 3. The Superintendent is further authorized to administer and manage the
2 Agreement, and the City's rights thereunder, and to enter into such agreements and execute such
3 documents (including without limitation an escrow agreement), as the Superintendent deems
4 necessary to effectuate the transaction contemplated by this ordinance. The Superintendent is
5 authorized to make such minor additions, modifications or deletions to the Agreement as the
6 Superintendent deems to be in the best interest of the City.
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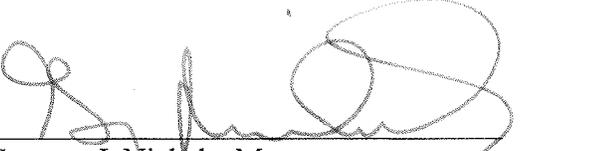
Section 4. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 29th day of September, 2008, and signed by me in open session in authentication of its passage this 29th day of September, 2008.



President _____ of the City Council

Approved by me this 7 day of October, 2008.



Gregory J. Nickels, Mayor

Filed by me this 8ⁿ day of October, 2008.



City Clerk

(Seal)

Attachment 1- Restrictive Covenant and Public Access Rights Agreement
Exhibit A to Attachment 1 – General Floor Plan
Exhibit B to Attachment 1- Legal Description



**AGREEMENT
REGARDING
A RESTRICTIVE COVENANT
AND PUBLIC ACCESS RIGHTS AT THE HIGH POINT NEIGHBORHOOD
CENTER**

This Agreement regarding a Restrictive Covenant and Public Access Rights at the High Point Neighborhood Center ("Agreement") is made and entered into by and between the following parties:

The City of Seattle ("the City"), a first class city of the State of Washington, acting by and through its Department of Parks and Recreation ("DPR") and its Superintendent (the "Superintendent"); and

Neighborhood House, Incorporated, a Washington non-profit corporation ("NH"); and

Neighborhood House High Point QALICB ("NH High Point"), a Washington non-profit corporation and an affiliate of NH.

Except as otherwise stated, NH and NH High Point are co-obligees under this agreement and are referred to collectively as "Neighborhood House".

I. PURPOSE OF AGREEMENT

WHEREAS, NH is a non-profit organization founded in 1906 with a mission of helping diverse communities of people with limited resources attain their goals for self sufficiency, financial independence and community building; and

WHEREAS, NH has successfully collaborated in the past with Seattle Housing Authority to create the New Holly and Rainier Vista housing redevelopments, national models for providing low-income housing in a mixed-housing community development; and

WHEREAS, NH and Seattle Housing Authority are currently collaborating on the High Point redevelopment project, which will provide low-income housing in a mixed-income community in the heart of West Seattle; and

WHEREAS, Neighborhood House is nearing completion of a capital campaign to raise funds for the purpose of designing and constructing a community center in the High Point redevelopment neighborhood (the "High Point Neighborhood Center"), on land owned by NH High Point which building, once constructed, will be owned by NH High Point and leased to NH and Seattle Housing Authority; and



Attachment 1

WHEREAS, construction of the High Point Neighborhood Center will make it possible for NH to expand its current provision of social services specifically targeted to serve low-income and special needs populations; and

WHEREAS, construction of the High Point Neighborhood Center will make it possible for Neighborhood House to provide expanded recreational and educational opportunities and programs to the High Point redevelopment neighborhood and general public; and

WHEREAS, providing parks and recreational facilities for the general public is a fundamental government purpose; and

WHEREAS, the City of Seattle owns and pays for the operation of community centers that provide space for community gathering, play, education and recreation; and

WHEREAS, a community center in the High Point redevelopment neighborhood will help further the Department of Parks and Recreation's mission "to provide safe and welcoming opportunities to play, learn, contemplate and build community;" and

WHEREAS, the City of Seattle has a fundamental public interest in guaranteeing that low-income families in the High Point neighborhood and greater Seattle area have access to necessary support and services such as job counseling, family services, social workers and English language classes;

Now therefore, in consideration of the foregoing, and the mutual benefits and covenants herein, the City and Neighborhood House agree as follows:

2. DEFINITIONS

High Point Neighborhood Center: A community center building and appurtenant amenities to be constructed on the Property as generally depicted on Exhibit A to this Agreement, also referred to as "the Center" herein.

Property: The land generally located at 6500 Sylvan Way SW, Seattle, Washington 98126 and legally described in Exhibit B to this Agreement, and all improvements and fixtures now or hereafter thereon, including, without limitation, the entire building to be known as the High Point Neighborhood Center.

Restrictive Covenant: The covenants and obligations that bind and restrict the use of the Property, as defined and described in Section 4 below.

Use Period: The period of time beginning on the date when the construction of the High Point Neighborhood Center is completed and the Center



is open and available for public use, and ending ten (10) years later, except as it may be extended pursuant to Section 11 hereof.

3. TERM OF AGREEMENT

3.1 This Agreement shall be effective when authorized by Seattle City Council and fully executed and delivered by both parties, which may be in separate counterparts, and shall continue in full force and effect until the Use Period has expired or until otherwise terminated as permitted herein.

4. RESTRICTIVE COVENANT

4.1 In consideration of the City's promises herein, Neighborhood House hereby covenants and agrees to abide by restrictions on the development and use of the Property as follows:

A. Neighborhood House will use the Property solely for the purpose of developing and constructing the High Point Neighborhood Center and for no other purpose whatsoever.

B. For the duration of the Use Period, Neighborhood House will maintain and operate the Center as a community center offering recreational and educational activities, programs and services. For purposes of illustration only, examples of such recreational programs, services and activities include, but are not limited to: outdoor or indoor playground space, a teen recreation center, a computer lab, classrooms and rooms for meetings and other events, outdoor public restrooms serving adjacent open space, educational information regarding green building methods used at the Center and other matters of public interest, and community gathering places, such as a coffee kiosk.

C. For the duration of the Use Period, Neighborhood House will use no less than 2,100 square feet of the building to provide services that are specifically targeted to serve the basic needs of infirm or low-income Seattle residents. For purposes of illustration only, examples of such services include, but are not limited to: counseling by social workers, information and assistance obtaining food and shelter, job counseling, financial counseling and other services and education encouraging self-sufficiency, mental health services and referrals, health care services and referrals, Head Start preschool for low-income children, meals for low-income seniors, and other similar social services, education and information.

4.2 This Restrictive Covenant is intended to bind both Neighborhood House and any subsequent owner or assign of the Property for the duration of the Term of this Agreement. In order to secure performance of this Restrictive



Covenant, Neighborhood House shall execute and deliver an original of this Agreement to DPR for recording with the King County Recorder and shall promptly upon demand deliver any other documents, signed by all necessary persons, as may be required for this Restrictive Covenant and for its recording with the King County recorder.

5. PUBLIC ACCESS RIGHTS AND FEES

5.1 For the duration of the Use Period, Neighborhood House will make the High Point Neighborhood Center and its programs and services open and available to all Seattle residents; however, the forgoing does not apply to any social services or programs at the Center that are specifically targeted to meet the needs of infirm or low-income citizens and are therefore restricted based upon income qualifications, including, for example, programs such as Head Start preschool.

5.2 For the duration of the Use Period, Neighborhood House will regularly program or make available at the Center recreational and educational opportunities and activities that may be enjoyed free of charge, such as the playground, and Neighborhood House will endeavor to make its programs and facility available to the public at a reasonable cost calculated to keep the Center accessible to all Seattle residents.

6. COMPENSATION, METHOD AND MANNER OF PAYMENT

6.1 In consideration of Neighborhood House's obligations and promises herein, the City agrees to reimburse NH High Point a maximum amount of \$500,000 toward the actual cost of constructing the High Point Neighborhood Center. The City will make payment as follows:

A. At such time as NH High Point has expended \$500,000 or more on the construction of the Center, NH High Point will provide the City with an itemized invoice specifying the actual costs of construction NH High Point seeks reimbursement for, and demonstrating evidence acceptable to the Superintendent that NH High Point has completed the work detailed on the invoice.

B. Within 15 days of receiving the invoice, the Superintendent or his designee shall authorize payment or notify NH High Point of any deficiencies in the request or additional information required. Within 30 days after the Superintendent or his designee has approved the invoice, the City will issue payment of \$500,000 to NH High Point.

C. If NH High Point seeks reimbursement from the City prior to substantial completion of construction of the Center, the Superintendent may require,



as a condition of approval and payment of the invoice, that NH High Point identify all sources of funding and demonstrate that it has the financial ability to complete construction of the Center.

7. COMMENCEMENT OF THE USE PERIOD

7.1 NH High Point is expected to complete the construction on the Property and open the High Point Neighborhood Center for use no later than March 1, 2010. NH High Point shall cause the Use Period to commence no later than June 1, 2010. The failure to meet this deadline will be a Default by NH High Point, unless the City, in its discretion, agrees in writing to delay the commencement of the Use Period.

8. CONSTRUCTION, TAXES, MAINTENANCE AND OPERATION RESPONSIBILITIES AND COST

8.1 NH High Point shall have sole responsibility for construction, maintenance and operation of the Property and the High Point Neighborhood Center. This responsibility includes, but is not limited to, the payment of any and all taxes and construction costs and any costs associated with the acquisition, construction, maintenance and operation of the Property and the High Point Neighborhood Center to the extent those costs exceed the City's obligations in Section 6. Other than payment of \$500,000, the City will not be responsible for construction, maintenance or operation of the Property in general, nor will the City be responsible for any costs associated with or arising from the Use Rights or operation of the Center.

9. PARKS OVERSIGHT AND AUDITS

9.1 DPR shall have the right to monitor and oversee Neighborhood House's compliance with the requirements and conditions of this Agreement. Neighborhood House shall submit to DPR an annual report regarding public use of the Center using a form developed and agreed upon jointly by DPR and Neighborhood House. In addition, upon proper notice by the City, Neighborhood House shall provide DPR with reasonable access to any additional information, records, and facilities that would assist DPR in monitoring Neighborhood House's compliance with this Agreement.

9.2 Neighborhood House shall maintain books, records, documents and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in connection with the operation and management of this Agreement. These records shall be subject at all reasonable times to inspection, review or audit by personnel duly authorized by DPR, the City, the Office of the State Auditor and other officials so authorized by law, rule, regulation or contract.



10. INSURANCE

10.1 Neighborhood House shall maintain at all times during the Use Period the following insurance:

A. All risk property insurance on the High Point Neighborhood House and all Public Use Areas hereunder. The amount of insurance shall be not less than the current replacement cost of the building as established upon each annual insurance policy renewal. The City of Seattle shall be an additional insured and loss payee as its interest may appear.

B. General (premises) liability insurance on the Property with a minimum limit of liability of \$1,000,000 each occurrence bodily injury and property damage combined single limit. The City of Seattle shall be an additional insured for primary and non-contributory limits of liability.

10.2 The insurance described in paragraphs 10.1 (A) and (B) above shall be placed with insurers having A.M. Best's ratings of not less than A- and VII and shall not be cancelled without thirty (30) days prior written notice to the City, except ten (10) days as respects non-payment of premium.

10.3 A copy of all insurance required herein shall be provided to the Department no later than seven (7) days after completion of construction of the facility. Grantor shall also provide the City with documentation of the above insurance policies on an annual basis.

11. DAMAGE OR DESTRUCTION

11.1 If the Property and/or the High Point Neighborhood Center shall be destroyed or damaged by fire or other casualty during the Term of this Agreement and when the Use Period has not yet commenced or has time remaining, then Neighborhood House shall restore or rebuild the Property and/or High Point Neighborhood Center if sufficient insurance proceeds are available, and the Restrictive Covenant and Public Access obligations herein shall apply to the rebuilt or restored Property and/or High Point Neighborhood Center, and the Agreement Term and Use Period shall be extended by a period equal to the time that the Center was not operating. In the alternative, if the Property and/or the Center are not rebuilt or restored, or if such building or restoration does not commence within 24 months of the damage or destruction, then NH shall pay the City liquidated damages as described in Section 20.

12. REPRESENTATIONS AND WARRANTIES

12.1 Neighborhood House represents and warrants as follows:

A. Both NH High Point and NH have the right, power and authority to grant the Restrictive Covenant on the Property and to execute, deliver and perform this Agreement; and that all requisite actions of Neighborhood House to enter, deliver and perform this Agreement and to authorize the execution by the person signing on behalf of Neighborhood House (including the consent of third parties if applicable) have been taken.

B. Neither the Restrictive Covenant nor any provision of this Agreement is in conflict with any provision of any other agreement or instrument by which NH and NH High Point are bound or to which the Property is subject (including but not limited to any debts that are secured by the Property), nor shall the execution, delivery or performance of this Restrictive Covenant and Agreement constitute an event of default under any such agreement or instrument.

13. TRANSFER, LEASE, RENTAL OR PERMISSION FOR USE OF FACILITY

13.1 If the Neighborhood House transfers the Property, or leases, rents or otherwise permits any person to use the High Point Neighborhood Center in any manner whatsoever, Neighborhood House shall remain bound by the Restrictive Covenant and shall not be released from any of Neighborhood House's obligations hereunder.

14. RECORDING AND PRIORITY

14.1 This Agreement shall be duly recorded with King County. Neighborhood House warrants and covenants that the Restrictive Covenant shall have priority over all encumbrances on the Property, other than those in favor of the City and any future exceptions to which the City subordinates this Agreement by instrument hereafter recorded, to the extent of such subordination.

15. NONDISCRIMINATION

15.1 Neighborhood House shall comply, and cause all contractors and subcontractors working on the Property to comply, with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and the City of Seattle, including but not limited to Chapters 14.04, 14.10 and 20.42 of the Seattle Municipal Code (SMC), to the extent applicable, and rules, regulations, orders and directives of the associated administrative agencies and their officers.



16. ASSIGNMENT OR TRANSFER

16.1 In the event that NH High Point assigns or transfers its rights and ownership in the Property during the term of this Agreement, NH agrees to completely and faithfully assume and fulfill all responsibilities and obligations allocated to NH High Point individually under this Agreement. Neither NH nor NH Highpoint will assign or transfer its rights and obligations under this agreement to any person or entity not a party to this Agreement without the prior written approval of the Superintendent.

17. DEFAULT

17.1 If Neighborhood House fails to perform when required any obligation or breach any term of this Agreement, the City shall provide written notice to NH and NH High Point, specifying the nature of the breach and the reasonable number of days (a minimum of 30 days, but in any event the City shall not be required to allow more than sixty (60) days) after the date of the notice within which such breach must be cured. Unless Neighborhood House shall fully cure all breaches specified in such notice within the time allowed, Neighborhood House shall be in Default.

17.2 In case of Default by either Neighborhood House collectively, or by NH High Point or NH individually, the City may exercise remedies as specified in Section 20, or specified under any applicable provision of this Agreement. In addition to or in lieu of the foregoing, the City shall be entitled to all remedies permitted from time to time by the laws of the State of Washington. The City's rights and remedies hereunder are not exclusive, but cumulative, and the City's exercise of any right or remedy due to Neighborhood House's failure to perform any covenant or condition of this Agreement shall not be deemed a waiver of, or alter, affect or prejudice any other right or remedy that the City may have under this Agreement or by law or in equity.

18. DEFAULT BY CITY AND REMEDIES

18.1 If, within sixty (60) days after Neighborhood House shall have timely satisfied all conditions to the City's obligation for payment hereunder, the City shall not have tendered full payment hereunder, then Neighborhood House may either (1) terminate this Agreement by written notice to the City within 30 days, in which case neither party shall have any liability or obligation hereunder; or (2) pursue any remedy available at law or in equity for enforcement of this Agreement, provided that the City shall not be liable for damages or any other monetary remedy in excess of the total price stated hereunder, plus interest as may be allowed by law.



19. TERMINATION

19.1 This Agreement shall continue in effect until the earliest to occur of:

- A. The expiration of the Use Period; or
- B. If the City elects to claim liquidated damages after Default in accordance with Section 20 hereof, the date on which the City receives full payment of all liquidated damages; or

19.2 The City may terminate this Agreement in the event that, prior to payment by the City hereunder, Neighborhood House is in Default, or the City, in its reasonable discretion, determines that Neighborhood House will be unable to timely complete the construction of the High Point Neighborhood Center.

20. LIQUIDATED DAMAGES

20.1 The parties understand and agree that the City's ability to obtain value from this Agreement is conditioned upon the development and construction of the Property and the completion, opening, and operation of the High Point Neighborhood Center. From the nature of this Agreement, it would be impracticable and extremely difficult to fix the actual damages sustained as a result of the failure of Neighborhood House to complete the Center or make it available for uses contemplated herein, or sustained as a result of Neighborhood House's use of the Property for purposes contrary to the terms of the Restrictive Covenant. As a result, the parties agree that in the circumstances expressly set forth in this section and other applicable sections of this Agreement, the City shall have the right to recover, at its option, liquidated damages in the amounts set forth herein, which amounts the parties agree are a reasonable estimate of the damage to the City, and are intended to fairly measure the loss to the City and not to be punitive in nature.

20.2 In the event that Neighborhood House fails to complete the High Point Neighborhood Center or otherwise fails to cause the Use Period to commence by the date required herein, NH agrees to pay the City on demand liquidated damages in the amount of the greater of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000) plus interest, or the amount equal to the total of any purchase money already paid by the City, plus interest. Interest shall accrue from the date the City tenders any payment under this Agreement until the date of full repayment at the rate applied during the same period of time to the participating funds of the Consolidated Cash Portfolio of the City of Seattle.

20.3 Additionally, in the event of Default after the beginning of the Use Period and prior to the expiration of the Use Period, NH agrees to pay the City on demand liquidated damages in the amount of FIFTY THOUSAND AND NO/100



DOLLARS (\$50,000) for each year remaining in the Use Period (prorated for any Partial Use Year based upon the number of months remaining) plus interest on that amount, accrued as described in Section 20.2, for each year remaining in the Use Period.

20.4 NH shall be solely liable for any liquidated damages that the City may be entitled to under the terms of this Agreement, regardless of whether the liability is incurred as a result of default or breach by either NH or NH High Point individually, or by Neighborhood House collectively. The City may directly pursue against NH any remedy allowed under this Agreement or at law. Any future sale or transfer of the Property shall not extinguish NH's obligations hereunder, nor shall it impair the City's ability to pursue liquidated damages from NH.

20.5 After receipt of liquidated damages in cleared funds, the City shall, within a reasonable time, record an instrument terminating the Restrictive Covenant and this Agreement shall be terminated.

20.6 The City may, at its option, set off any liquidated damages under this Section against any amount otherwise payable or distributable by the City to NH, whether or not in relation to this Agreement or the Property.

21. COMPLIANCE WITH LAW

21.1 Neighborhood House shall comply at its sole expense with all applicable laws of the United States and the State of Washington; the Charter, Municipal Code and ordinances of the City of Seattle; and rules, regulations, orders and directives of their administrative agencies and the officers thereof (all of the foregoing are referred to as "applicable laws".) Neighborhood House shall require all contractors and subcontractors working on the Property to comply with all applicable laws.

21.2 Neighborhood House represents and warrants that any activities in connection with the development of the Property prior to this Agreement have been in compliance with all applicable laws.

21.3 Neighborhood House shall defend and indemnify the City and its officers and employees from and against any claim, demand, liability or loss resulting from the failure of Grantors or of any contractor or subcontractor to comply with applicable laws.



22. Indemnity

22.1 Neighborhood House shall have control over and responsibility for the development, construction, operation, and maintenance of the Property, the Center and the services provided therein. As a result, NH agrees to defend, indemnify, and hold the City of Seattle, its elected officials, officers, employees and agents harmless from any and all damages, claims, liabilities, losses and/or costs of any kind, including attorney's fees, that arise in any way from the development, construction, financing, operation, maintenance or use of the Property and the Center, including without limitation any public use under this Agreement of the Center and adjacent grounds on the Property.

22.2 This clause applies to claims, liabilities, costs, losses and/or damages of any kind notwithstanding any acts, omissions or negligence of the City or its officers, officials, employees, contractors or agents; provided, that nothing herein shall be construed as requiring either NH and NH High Point to indemnify the City against liability for bodily injury or damage to property caused by or resulting from the sole negligence of the City or of any of its officers, elected officials, employees or agents, and further provided, that if RCW 4.24.115 (or successor provision) shall apply to any claim for any such damage or injury, then to the extent required by such statute, (1) this indemnity shall not apply in case of any liability for damages arising out of bodily injury to persons or damage to property caused or resulting from the sole negligence of the City, its agents or employees, and (2) in case of liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) the City or its agents or employees, and (b) Neighborhood House and or its agents or employees, this indemnity shall apply only to the extent of Neighborhood House's negligence. The indemnification obligation set forth in this section shall survive the expiration or earlier termination of this Agreement.

22.3 For purposes of this Section, Neighborhood House waives, solely with respect to City, its immunity under RCW Title 51, Industrial Insurance. Neighborhood House and City acknowledge that this waiver has been specifically negotiated and that City would not have entered into this Agreement absent this waiver.

This Section 22 shall survive termination of this Agreement for the duration of applicable laws relating to limitations of actions.

23. APPLICABLE LAW; VENUE

23.1 This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.



24. HEADINGS

24.1 The headings used in this Agreement are for convenience only and do not define or limit the contents.

25. NOTICES AND REPORTS

25.1 Any notices or reports required or permitted hereunder shall be effective when hand delivered during normal business hours or two (2) business days after mailed, postage prepaid, to a party at the addresses set forth below, or to such other address as a party shall designate in writing in accordance with this Section. Any notice to NH High Point or Neighborhood House shall constitute notice to both parties.

If mailed or delivered to the City of Seattle:

City of Seattle – Department of Parks and Recreation
Contracts and Business Resources
c/o Manager
6310 NE 74th St; Suite 109E
Seattle, WA 98115

If mailed or delivered to Neighborhood House:

Neighborhood House
Attn: Executive Director
905 Spruce Street
Seattle, WA 98104

NH High Point
c/o Neighborhood House
905 Spruce St.
Seattle, WA 98104

26. EXHIBITS

26.1 The following exhibits are incorporated by reference and are made a part of this Agreement:

Exhibit A: General floor plan for the High Point Neighborhood Center
Exhibit B: Legal Description of the Property

27. ASSIGNMENT; NO THIRD PARTY RIGHTS

27.1 This Agreement is personal to each of the parties hereto and neither party may assign or delegate any of its rights or obligations hereunder without first obtaining the consent of the other party. Nothing herein shall confer any rights or remedies on any person or entity other than the parties hereto.



28. ENTIRE AGREEMENT

28.1 This Agreement and the exhibits attached hereto and forming a part hereof, are all of the covenants, promises, agreements and conditions between the parties with respect to the subject matter hereof. No verbal agreements or conversations between any officer, agent, associate or employee of the City and any officer, agency, employee or associate of Neighborhood House shall affect or modify any of the terms or obligations contained in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, 2008, by having their representatives affix their signatures below.

CITY OF SEATTLE:

By: _____

Timothy A. Gallagher,
Superintendent, Department of Parks and Recreation

NEIGHBORHOOD HOUSE INCORPORATED:

By: _____

NH HIGH POINT QALICB INCORPORATED:

By: _____

STATE OF WASHINGTON)

) ss. (Acknowledgement for The City of Seattle)

COUNTY OF KING)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared Timothy Gallagher, known to me to be the Superintendent of the Department of Parks and Recreation of **THE CITY OF SEATTLE**, the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.



Attachment 1

STATE OF _____)
) ss. (Acknowledgement for NH High Point
 QALICB Incorporated)
COUNTY OF _____)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared _____, known to me to be the Executive Director of **Neighborhood House High Point QALICB**, the agency that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS my hand and official seal the day and year in this certificate above written.

[Signature]

[Printed Name]

NOTARY PUBLIC in and for the State of _____ residing at _____

My commission expires _____.



EXHIBIT A
General Floor Plan

High Point Neighborhood House

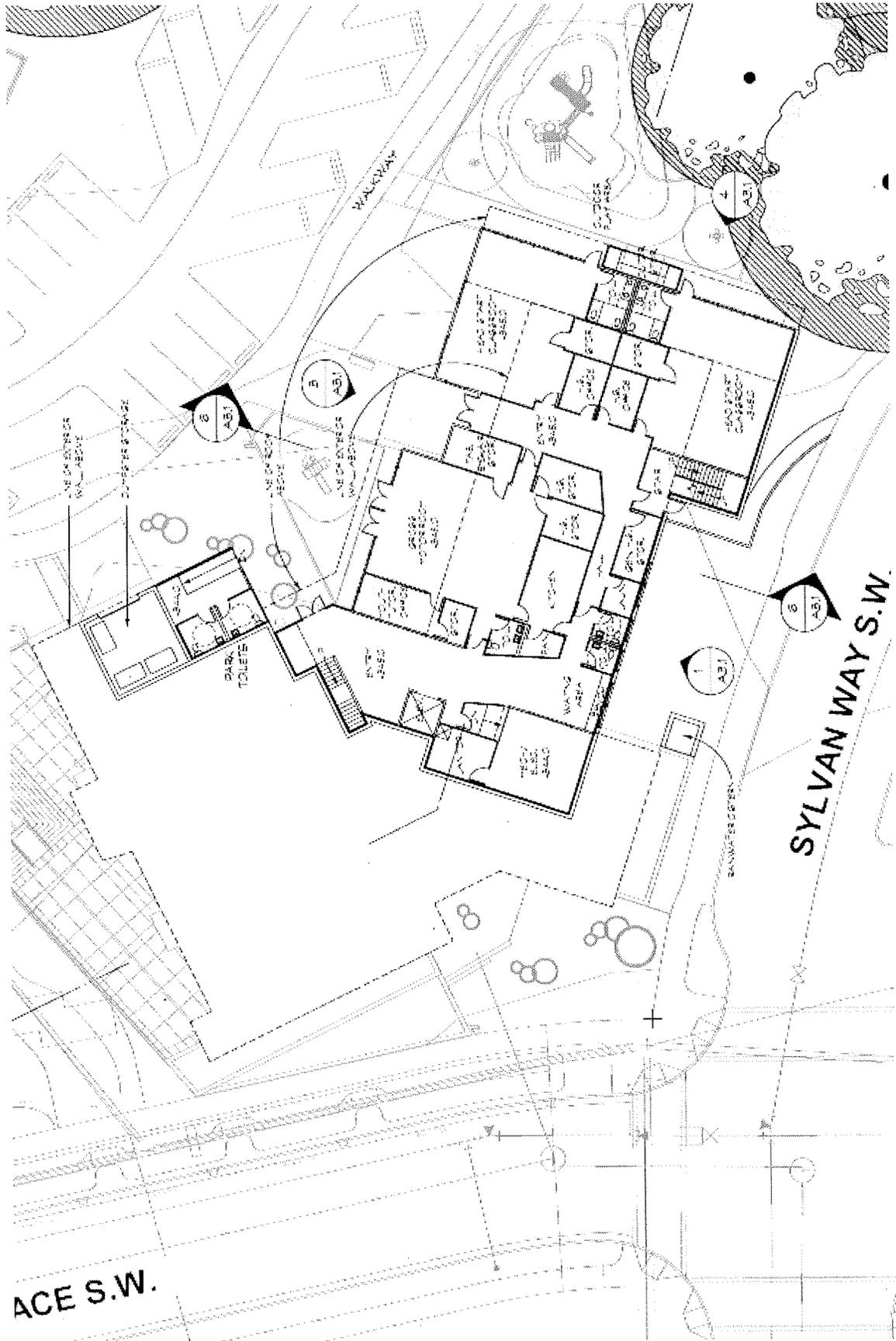


EXHIBIT B

High Point Neighborhood Center

Legal Description:

Lots 1, 2, 3 and 4, Block 20, High Point Community, according to the plat recorded April 13, 2004 as Auditor's File No. 20040413001567, King County, Washington.

Common Address:

6500 Sylvan Way SW

Seattle, WA 98126 (zip code tentative)



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Parks and Recreation	Eric Friedli/ 684-8369	Jennifer Devore/ 615-1328

Legislation Title:

AN ORDINANCE relating to the High Point Neighborhood Center; lifting a budget proviso and authorizing the Seattle Department of Parks and Recreation to purchase and accept a Restrictive Covenant and Public Access Rights to programs, services and community space at the Neighborhood House's future High Point Neighborhood Center.

- **Summary of the Legislation:** The proposed legislation authorizes the Superintendent of the Department of Parks and Recreation (Superintendent) to spend \$500,000 to purchase a restrictive covenant and enter into a public access rights agreement (Agreement) with Neighborhood House (NH). These will ensure NH will build, use and maintain the High Point Neighborhood Center (HPNC) as a community center offering recreational and educational activities, programs and services with no less than 2,100 square feet of the building used to provide services that are specifically targeted to serve the basic needs of infirm or low-income Seattle residents. NH has pledged to secure funding for the cost of the building improvements and provide any additional funds required to complete the project as mutually agreed and designed.

The Agreement stipulates that once HPNC is opened and for ten years thereafter, NH will make the HPNC and its programs and services open and available to all Seattle residents; as well as regularly program or make available some recreational and educational opportunities and activities that may be enjoyed free of charge, and some at a reasonable cost calculated to keep HPNC accessible to all Seattle residents. An annual report to the City will document compliance with the requirement that the facility is available for community use.

Background: In partnership with the Seattle Housing Authority, NH is constructing a new HPNC, an 18,000 sq ft building, to house human service, recreation, education and community programs. The Center will be owned and operated by NH. The facilities previously providing these services were demolished as a result of the Seattle Housing Authority's HOPE VI redevelopment of public housing. The HPNC will provide vital support programs to High Point residents as well as the larger Seattle and King County community and provide access to critical support services to 700 low-income families living in the redeveloped public housing in the High Point mixed community. The HPNC will include space for community service organizations' offices, direct service providers, a teen center, meeting rooms, a multi-purpose room and related administrative activities. NH recently developed and successfully managed a similar facility in the Rainier Vista neighborhood. This new facility will provide a unique resource to the High Point community. As such, NH is embarking on a major capital fundraising campaign to build the HPNC. As of March 2008, NH has raised \$10,300,000 of the \$12,300,000 needed to reach



its goal. Presently, there are no DPR plans or capital improvement funds allocated for construction of a similar facility in the High Point community.

- Please check one of the following:

This legislation does not have any financial implications.

This legislation has financial implications.

Appropriations: N/A

Fund Name and Number	Department	Budget Control Level*	2008 Appropriation	2009 Anticipated Appropriation
TOTAL	N/A			

Notes: The proposed legislation does not request appropriation authority.

Anticipated Revenue/Reimbursement: Resulting From This Legislation: N/A

Fund Name and Number	Department	Revenue Source	2008 Revenue	2009 Revenue
TOTAL	N/A			

Notes: No revenue is anticipated as a result of this legislation. NH will not charge the City for the use of HPNC meeting facilities per the agreement.

Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact: N/A

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2008 Positions	2008 FTE	2009 Positions*	2009 FTE*
TOTAL	N/A						

Notes: There is no staffing request as a result of this legislation.

- Do positions sunset in the future? N/A

Spending/Cash Flow:

Fund Name & #	Department	Budget Control Level*	2008 Expenditures	2009 Anticipated Expenditures
Cumulative Reserve Subfund- Unrestricted Subaccount (00164)	Parks and Recreation	New Investment— Project ID Number (K732359)	\$500,000	0
TOTAL			\$500,000	0

Notes: When the Agreement between the City and NH is finalized and the proposed legislation is adopted, the City’s allocated funds of \$500,000 will be released to NH when NH has expended \$500,000 or more on the construction of the center.

- **What is the financial cost of not implementing the legislation?** While there would be no direct financial cost to the City if this legislation is not implemented, the City would forego the opportunity to ensure for ten years the use of the HPNC as an entity providing recreational and educational activities specifically targeted to serve the basic needs of infirm and low-income Seattle residents.
- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** There are no other viable alternatives that would achieve the same objective.
- **Is the legislation subject to public hearing requirements?** No
- **Other Issues:** No facility exists at this time that provides this service and the City has no current plans or funding to build one.

Please list attachments to the fiscal note below:

Attachment A: Contract Summary Form



Seattle Department of Parks and Recreation

CONTRACT SUMMARY

Date: July 7, 2008

Name of Contracting Party/ Lessee/ Concessionaire/Other: Neighborhood House

Contract Type: Agreement regarding a Restrictive Covenant and Public Access Rights

Non-Profit **or** **For Profit** _____

New **or** **Renewal (or extension of existing Lease)** _____

Term of Agreement: 10 years.

Purpose of Agreement: To purchase a Restrictive Covenant and Public Access Rights from Neighborhood House (NH) in the future High Point Neighborhood Center (HPNC) that will ensure its use as a community center offering recreational and educational activities, programs and services for ten years.

Public Benefit: In addition to making the HPNC and its programs and services open and available to all Seattle residents, NH will use no less than 2,100 square feet of the HPNC to provide services that are specifically targeted to serve the basic needs of infirm and low-income Seattle residents.

Revenue or Offsets (as applicable): There is no direct revenue benefit to the City. However, the HPNC will regularly program or make available recreational opportunities and activities that may be enjoyed either free of charge or will endeavor to make its programs and facilities available to the public at a reasonable cost.

Brief description, overview, history, general terms and other pertinent info:

In partnership with Seattle Housing Authority, NH is constructing a new HPNC, an 18,000 sq ft building to house human service programs. Previous facilities providing these programs were demolished as a result of the Seattle Housing Authority's HOPE VI redevelopment of public housing. This new facility would provide a unique and vital resource to the High Point community. As such, NH is embarking on a major capital fundraising campaign to build the HPNC. As of March 2008, NH raised \$10,300,000 of the \$12,300,000 needed to reach its goal.

1
2 **ORDINANCE _____**

3 AN ORDINANCE relating to the High Point Neighborhood Center; lifting a budget proviso and
4 authorizing the Seattle Department of Parks and Recreation to purchase and accept a
5 Restrictive Covenant and Public Access Rights to programs, services and community
6 space at the Neighborhood House's future High Point Neighborhood Center.

7 WHEREAS, Neighborhood House is a nonprofit organization founded in 1906 with a mission of
8 helping diverse communities of people with limited resources attain their goals for self
9 sufficiency, financial independence and community building; and

10 WHEREAS, Neighborhood House and Seattle Housing Authority are currently collaborating on
11 the High Point redevelopment project, which will provide low-income housing in a
12 mixed-income community in the heart of West Seattle; and

13 WHEREAS, the City of Seattle ("City") recognizes that the provision of low-income housing
14 along with supporting services is vital to the health and success of a community; and

15 WHEREAS, Neighborhood House has procured designs and plans for the construction of a
16 neighborhood center to be constructed as part of the High Point redevelopment project,
17 and to be called the High Point Neighborhood Center ("HPNC"); and

18 WHEREAS, the HPNC will provide space for recreation and education programs and social
19 services that will be available to low-income residents and the general public, including a
20 family service center, a teen center, a computer resource center, a playground, community
21 gathering places and classrooms, and additional services and activities focused on
22 nurturing youth, bolstering family strength and building relationships among neighbors in
23 the High Point neighborhood and other city residents; and

24 WHEREAS, the City of Seattle owns and pays for the operation of community centers that
25 provide space for community gathering, play, education and recreation, and programs
26 similar to those planned for HPNC; and

27 WHEREAS, the Seattle Department of Parks and Recreation ("DPR"), through its programs and
28 facilities, provides services and activities that focus on nurturing youth, bolstering family
strength and building relationships among neighbors, and DPR has determined that it can
further its mission and programs by securing public access to the HPNC; and

WHEREAS, Neighborhood House plans to develop community meeting spaces within the HPNC
of approximately 2,100 square feet specifically targeted to serve the basic needs of infirm
or low-income Seattle residents; and



1 WHEREAS, DPR negotiated an Agreement (“Agreement”) with Neighborhood House for the
2 purchase of a Restrictive Covenant and Public Access Rights to provide public benefits in
the form of public access to and use of the HPNC; and

3 WHEREAS, the City's 2007-2008 Adopted Budget contains an appropriation of Five Hundred
4 Thousand Dollars (\$500,000) in DPR’s budget with a proviso that the money not be spent
until authorized by a future ordinance; and

5 WHEREAS, Neighborhood House plans to break ground in August 2008 and has secured over
6 \$10,000,000 of the \$12,300,000 projected total costs of the project with outstanding
7 grants pending for \$4,262,500;

8 NOW, THEREFORE,

9 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

10 Section 1. The restrictions imposed by the following Budget Proviso are removed and
11 are no longer restrictions for any purpose.

Department	Green Sheet	Proviso Description	Project ID
Parks and Recreation	#117-1-A-20	Limits the amount of spending on the High Point Neighborhood Center Project	K732359

17
18 Section 2. The Superintendent of the Department of Parks and Recreation
19 (“Superintendent”) is authorized to spend Five Hundred Thousand Dollars (\$500,000) budgeted
20 in the Cumulative Reserve Subfund - Unrestricted Subaccount (00164) for the purpose of
21 purchasing and accepting a Restrictive Covenant and Public Access Rights substantially in the
22 form attached hereto as Attachment 1. The Superintendent is authorized to record the Grant of
23 Restrictive Covenant and Public Rights Access attached hereto as Attachment 1 with the King
24 County Recorder's Office.
25
26



1 Section 3. The Superintendent is further authorized to administer and manage the
2 Agreement, and the City's rights thereunder, and to enter into such agreements and execute such
3 documents (including without limitation an escrow agreement), as the Superintendent deems
4 necessary to effectuate the transaction contemplated by this ordinance. The Superintendent is
5 authorized to make such minor additions, modifications or deletions to the Agreement as the
6 Superintendent deems to be in the best interest of the City.
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Section 4. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2008, and signed by me in open session in authentication of its passage this ____ day of _____, 2008.

President _____ of the City Council

Approved by me this ____ day of _____, 2008.

Gregory J. Nickels, Mayor

Filed by me this ____ day of _____, 2008.

City Clerk

(Seal)

Attachment 1- Restrictive Covenant and Public Access Rights Agreement
Exhibit A to Attachment 1 – General Floor Plan
Exhibit B to Attachment 1- Legal Description



STATE OF WASHINGTON – KING COUNTY

--SS.

230158
CITY OF SEATTLE, CLERKS OFFICE

No. TITLE ONLY

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

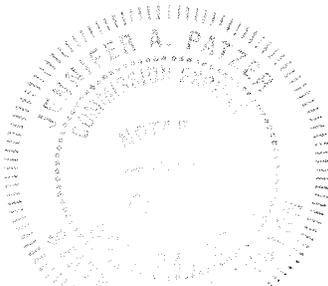
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:122813-15,17,19-20,22

was published on

10/14/08

The amount of the fee charged for the foregoing publication is the sum of \$ 98.35, which amount has been paid in full.



Affidavit of Publication

M. J.

Subscribed and sworn to before me on
10/14/08 *[Signature]*

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on September 29, 2008, and published here by title only, will be mailed, at no cost, on request for two months after this publication. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 122822

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

ORDINANCE NO. 122820

AN ORDINANCE relating to the Seattle Center Department; authorizing the Seattle Center Director to execute a lease agreement with Mahuja International, LLC d/b/a Bainbridge Island Coffee Roasters for space in the 5th Avenue North Garage at Seattle Center, and ratifying and confirming certain acts.

ORDINANCE NO. 122819

AN ORDINANCE relating to City employment; authorizing the Mayor to sign and/or execute a collective bargaining agreement by and between the International Brotherhood of Teamsters, Local 117 Admissions unit to be effective through December 31, 2010; and providing payment therefor.

ORDINANCE NO. 122817

AN ORDINANCE relating to the Surplus Allen School/Phinney Neighborhood Center; authorizing the Mayor to enter into a contract with the Phinney Neighborhood Association; and removing a budget proviso that restricted an appropriation in the 2008 Adopted Budget contingent upon execution of such contract.

ORDINANCE NO. 122815

AN ORDINANCE relating to the High Point Neighborhood Center; lifting a budget proviso and authorizing the Seattle Department of Parks and Recreation to purchase and accept a Restrictive Covenant and Public Access Rights to programs, services and community space at the Neighborhood House's future High Point Neighborhood Center.

ORDINANCE NO. 122814

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent to enter into a Lease Agreement with Building 11 LLC for the purpose of renovating Building 11 and offering multiple uses and recreational opportunities in Building 11 at Magnuson Park; and exempting the use of a portion of the Building from the provisions and requirements of Ordinance 118477.

ORDINANCE NO. 122813

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent to enter into a Concession Agreement with Arena Sports Magnuson Park LLC to renovate and provide indoor participant sports programs in Building 27 at Warren G. Magnuson Park.

Publication ordered by JUDITH PIPPIN,
City Clerk

Date of publication in the Seattle Daily
Journal of Commerce, October 14, 2008.

10/14(230158)