

Ordinance No. 123248

Council Bill No. 116794

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: *Sg Bayhan*
Councilmember

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the acquisition of a conservation easement on property located in the Maple Leaf neighborhood and commonly known as Waldo Woods; authorizing acceptance of the deed of conservation easement for open space purposes; increasing appropriations to the Department of Parks and Recreation in the 2010 Budget; all by a three-fourths vote of the City Council.

Committee Action:

3/4/10 PASS SB TR

3-8-10 Passed 9-0

CF No. _____

Date Introduced:	<u>2-16-10</u>	
Date 1st Referred:	To: (committee) <u>Parks + Seattle Center</u>	
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage:	Full Council Vote: <u>9-0</u>	
Date Presented to Mayor:	Date Approved: <u>3-11-10</u>	
Date Returned to City Clerk:	Date Published:	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

This file is complete and ready for presentation to Full Council. Committee: *TR* (initial/date)

Law Department

Law Dept. Review OMP Review City Clerk Review Electronic Copy Loaded Indexed

ORDINANCE 123248

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the acquisition of a conservation easement on property located in the Maple Leaf neighborhood and commonly known as Waldo Woods; authorizing acceptance of the deed of conservation easement for open space purposes; increasing appropriations to the Department of Parks and Recreation in the 2010 Budget; all by a three-fourths vote of the City Council.

WHEREAS, the historic Waldo Hospital property in the Maple Leaf neighborhood of Seattle has a large grove of mature conifers commonly referred to as Waldo Woods; and

WHEREAS, in 2006 a developer made an offer on the Waldo Hospital property and proposed cutting seventy percent of the trees on the site to accommodate a proposed development; and

WHEREAS, the City of Seattle's current tree cover is just eighteen percent, below the thirty percent recommended for Seattle by the U.S. Forest Service; and

WHEREAS, the Seattle City Council has made tree preservation a priority and recently has passed new tree protection rules; and

WHEREAS, community members expressed the desire to preserve Waldo Woods as open space, because of their habitat value and the visual relief provided; and

WHEREAS, the Maple Leaf Community Council sought funds from King County and contributions from the community to preserve Waldo Woods as open space; and

WHEREAS, the King County Council has included the "Waldo Woods Conservation Easement" project in the 2009 Conservation Futures Levy ("CFL") list of Seattle Projects Funded; and

WHEREAS, the CFL funding for Waldo Woods is Three Hundred Thousand Dollars (\$300,000) for the acquisition of a conservation easement preserving the grove of mature conifers on the Waldo Hospital property as open space; and

WHEREAS, CFL funding requires the applicant to provide at least a fifty percent matching contribution; and



1 WHEREAS, the Department of Parks and Recreation has determined, by independent appraisal,
2 that the fair market value of a conservation easement on Waldo Woods is greater than Six
Hundred Thousand Dollars (\$600,000); and

3 WHEREAS, Menachem Mendel Seattle Cheder, a private school, which supports protection of
4 Waldo Woods, acquired the Waldo Hospital property; and

5 WHEREAS, Menachem Mendel Seattle Cheder has agreed to sell a conservation easement to the
6 City of Seattle for the amount of the CFL funding with the understanding that the
7 difference between the fair market value of the conservation easement and the purchase
price will provide the required CFL matching contribution; NOW, THEREFORE,

8
9 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

10 Section 1. The Superintendent of Parks and Recreation (“Superintendent”) or his
11 designee is authorized, on behalf of the City of Seattle, to acquire, substantially in accordance
12 with the terms and conditions of the Real Estate Purchase and Sale Agreement attached hereto as
13 Attachment 1 and incorporated herein by reference (“Agreement”), a Conservation Easement on
14 real property referred to as Waldo Woods for a cash purchase price not to exceed Three Hundred
15 Thousand Dollars (\$300,000). The legal description of Waldo Woods (also referred to hereafter
16 as the Property) is as follows:
17

18 The east 97 feet of Lots 3 to 6 inclusive, Acre 5, Tract 4 according to the plat of Maple
19 Leaf Addition to Green Lake Circle recorded in volume 2, page 115 records of King
20 County Washington; EXCEPT the south 25 feet thereof; AND EXCEPT the east 10 feet
21 thereof; AND EXCEPT for the 6’x10’ area designated as “QWEST Easement” per King
22 County, Washington Recording No. 20090910000012.
23

24 Section 2. The Superintendent or his designee is authorized to execute such documents
25 as he deems necessary or desirable to accomplish acquisition of the Conservation Easement,
26



1 including, without limitation, such consents, approvals, extensions of time, and minor
2 amendments of the Agreement as he shall deem appropriate to carry out the intent of this
3 ordinance.

4 Section 3. Upon delivery of the deed of Conservation Easement for the Property, the
5 Superintendent or his designee is authorized to accept the deed on behalf of the City of Seattle by
6 attaching to the deed his written acceptance thereof, and to record the same. The Conservation
7 Easement shall be accepted for open space purposes, and placed under the jurisdiction of the
8 Department of Parks and Recreation.
9

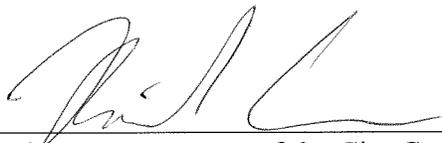
10 Section 4. To pay for the Conservation Easement and for necessary related costs and
11 expenses, the appropriation for the following in the 2010 Adopted Budget is increased from the
12 fund shown, as follows:
13

Fund	Department	Budget Control Level/Capital Improvement Program	Amount
2008 Parks Levy Fund (33860)	Parks and Recreation	2008 Parks Levy – Green Space Acquisition K720011	\$300,000



1 Section 5. This ordinance shall take effect and be in force thirty (30) days from and after
2 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days
3 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

4 Passed by the City Council the 8th day of March, 2010, and
5 signed by me in open session in authentication of its passage this
6
7 8th day of March, 2010.

8
9
10 
11 _____
12 President _____ of the City Council

13 Approved by me this 11th day of March, 2010

14
15 
16 _____
17 Michael McGinn, Mayor

18 Filed by me this 12th day of March, 2010.

19
20 
21 _____
22 City Clerk

23 (Seal)

24 Attachment 1: Real Estate Purchase and Sale Agreement

- 25 Exhibit A to Attachment 1: Legal Description of the Conservation Zone
26 Exhibit B to Attachment 1: Grant Deed of Conservation Easement
27 Exhibit C to Attachment 1: Legal Description of Seller Property
28 Exhibit D to Attachment 1: Permitted Title Exceptions
Exhibit E to Attachment 1: Subordination Agreements



REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT ("Agreement") is made by and between MENACHEM MENDEL SEATTLE CHEDER, a Washington non-profit corporation ("Seller"), and THE CITY OF SEATTLE, a Washington municipal corporation ("Buyer") for purchase and sale of a conservation easement ("Conservation Easement") on, over, across and through that certain real property situated in King County, Washington, described in Exhibit A ("Conservation Zone") as set forth in the deed of conservation easement attached hereto as Exhibit B and incorporated herein ("Grant Deed of Conservation Easement"). This Agreement is dated as of the date it has been executed by both Seller and Buyer ("Effective Date").

RECITALS

A. Seller is the owner of the real property described in Exhibit C attached hereto and incorporated herein (the "Seller Property").

B. The Conservation Zone is a portion of the Seller Property.

C. Seller and members of the Maple Leaf community strongly desire to preserve a grove of trees located in the Conservation Zone.

D. Seller understands that Buyer's only funding for acquisition of the Conservation Easement is Three Hundred Thousand Dollars (\$300,000.00) allocated by King County for this acquisition from the 2009 allocation of King County Conservation Futures Levy ("CFL") funding.

E. Seller further understands that King County requires the acquiring agency to provide a matching contribution, in cash or in property value, at least equivalent to the CFL allocation.

F. Seller is willing to sell the Conservation Easement for open space purposes to Buyer for Three Hundred Thousand Dollars (\$300,000.00), the amount of Conservation Futures Levy funding (CFL) allocated by King County for this acquisition, with the understanding that the difference between the fair market value of the Conservation Easement and the purchase price will provide the required CFL matching contribution.

G. Buyer has determined, by independent appraisal, that the fair market value of the Conservation Easement is greater than Six Hundred Thousand Dollars (\$600,000.00).

NOW, THEREFORE, in consideration of the terms and conditions of this Agreement, and the mutual covenants herein contained, Seller and Buyer hereby agree as follows:



AGREEMENT

1. Purchase Price; Payment. Subject to the provisions of this Agreement and the Grant Deed of Conservation Easement, Seller shall sell and Buyer shall purchase the Conservation Easement for a purchase price of **Three Hundred Thousand and NO/100 Dollars (U.S. \$300,000.00)** ("Purchase Price").

1.1 Deposit. Buyer will open an escrow account with Pacific Northwest Title Company of Washington, Inc., 215 Columbia Street, Seattle, Washington 98104 (referred to hereafter as "Escrow Agent" or "Title Company") and shall deliver to Escrow Agent a deposit of Fifteen Thousand and NO/100 Dollars (\$15,000.00) (the "Deposit") together with a copy of the fully executed Agreement. Escrow Agent shall place the Deposit in an interest-bearing account for the benefit of the Buyer. At closing, Escrow Agent shall apply the Deposit together with interest, if any, to the Purchase Price.

1.2 Payment of Remainder of Purchase Price. The balance of the Purchase Price shall be payable in cash, certified funds, or other good funds at closing.

2. Conveyance; Title Insurance.

2.1 Conveyance. Seller shall convey the Conservation Easement to Buyer by the Grant Deed of Conservation Easement. The Conservation Zone shall be free and clear of any and all liens, encumbrances, defects, easements, conditions, and restrictions except those listed on Exhibit D or those accepted in writing by Buyer (collectively referred to as "Permitted Exceptions").

2.2 Title Insurance. The Conservation Easement shall be insured under an ALTA standard coverage owner's policy of title insurance issued pursuant to the preliminary commitment for title insurance from the Title Company, No. 705621, dated October 9, 2009, and all supplements thereto ("Title Report"), subject only to the Permitted Exceptions. If required by the Title Company to issue an extended coverage owner's ALTA title insurance policy, Buyer shall obtain a survey and title updates for an extended policy at its own cost and expense. Seller shall satisfy all other requirements of the Title Company in connection with issuance of an extended coverage owner's ALTA title insurance policy insuring Buyer's title to the Conservation Easement in the amount of the Purchase Price subject only to the printed exclusions and general exceptions appearing in the policy form and Permitted Exceptions.

3. Conditions Precedent; Feasibility Period.

3.1 Buyer Conditions. The obligations of Buyer under this Agreement shall be subject to the fulfillment and satisfaction of the following conditions, which are for the benefit of Buyer and may be waived only in writing by Buyer. If any condition is not satisfied or waived in writing on or before closing (or such earlier date as provided in the subsections below), then this Agreement shall terminate, and the parties shall have no further obligations under this



Attachment 1

Agreement, except that Buyer shall be entitled to return of the Deposit together with interest, if any.

3.1.1 Feasibility. Buyer shall have until February 1, 2010, ("Feasibility Period") to perform, or have performed by consultants acceptable to Buyer, such surveys, investigations, and studies, including, but not limited to, sampling of the Conservation Zone and/or Seller Property (collectively referred to as "Investigations") as Buyer deems necessary or desirable. During the Feasibility Period, Buyer and its agents shall have the right to enter the Seller Property at reasonable times to conduct such Investigations subject to the following: (a) Buyer shall not allow (and shall immediately remove) any liens on the Seller Property as a result of the Investigations and shall repair or restore the Seller Property to its original condition after completion of its Investigations; (b) Buyer shall fully indemnify and hold Seller harmless from any claim, liability, loss or expense asserted against Seller or the Seller Property arising out of Buyer's or its agent's, employee's, or designee's entry onto the Seller Property. All costs of such Investigations shall be paid for by Buyer. Buyer shall have the Feasibility Period to determine the acceptability of the information, the suitability of the Conservation Zone for Buyer's intended uses, and the feasibility of this transaction, all in Buyer's sole and absolute discretion.

3.1.2 Representations, Warranties and Covenants of Seller. Seller's representations and warranties in this Agreement and the Grant Deed of Conservation Easement shall be true and correct as of closing.

3.1.3 No Adverse Changes. As of closing, there shall have been no adverse change in the physical condition of the Conservation Zone from the date of this Agreement.

3.1.4 Financing. Buyer shall have secured funding for acquisition of the Conservation Easement in an amount sufficient to pay the Purchase Price in full on closing and otherwise on terms and conditions acceptable to Buyer in Buyer's sole and absolute discretion.

3.1.5 No Seller Bankruptcy. At no time prior to closing, (i) shall there be filed against or by Seller a petition in bankruptcy or insolvency or a petition seeking to effect any plan or other arrangement with creditors or seeking the appointment of a receiver and that is not discharged or dismissed before closing; (ii) shall a receiver or liquidator be appointed for all or substantially all of Seller's property; or (iii) shall Seller make an assignment for the benefit of creditors or take any other similar action for the benefit or protection of creditors.

3.1.6 Ordinance. On or before April 19, 2010, an ordinance shall be in effect authorizing the transaction contemplated by this Agreement and appropriating funds to complete this transaction.

3.1.7 Title Insurance. On the date of closing, the Title Company shall be irrevocably committed to issuing to Buyer a standard coverage owner's ALTA title insurance



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policy, dated as of the date of closing, and insuring Buyer in the amount of the Purchase Price against loss or damage by reason of defect in Buyer's title to the Conservation Easement subject only to the printed exclusions and general exceptions appearing in the policy form and any Permitted Exceptions.

3.1.8 Subordination. On or before April 19, 2010, Seller shall have obtained and deposited with the Escrow Agent for recording at closing signed subordination agreements, in the form of Exhibit E attached hereto and incorporated herein, from the beneficiaries of the following deeds of trust:

Deed of trust dated July 5, 2009, recorded under Recording No. 20090720002175

Deed of trust dated July 20, 2009, recorded under Recording No. 20090720002178

Deed of trust dated July 10, 2009, recorded under Recording No. 20090720002177

3.1.9 Compliance With Obligations. Seller shall have performed and complied in all material aspects, at the appropriate times for such performance and compliance, with the obligations, covenants, conditions, and agreements under this Agreement to be performed by Seller.

3.2. Seller Conditions. The obligation of Seller to convey the Conservation Easement to Buyer hereunder shall be subject to the fulfillment and satisfaction of the following conditions within the time periods specified below, which conditions are for the benefit of Seller and may be waived only in writing by Seller, as follows:

3.2.1 Compliance With Obligations. Buyer shall have performed and complied in all material aspects, at the appropriate times for such performance and compliance, with the obligations, covenants, conditions and agreements under this Agreement to be performed by Buyer.

4. Representations and Warranties. Effective as of the date of this Agreement and the date of closing, Seller represents, warrants, and covenants as follows, which representations, warranties, and covenants shall survive closing and shall not be merged in any deed or agreement delivered by Seller to Buyer at closing.

4.1 Authority of Seller. Seller is the sole owner of the Seller Property. Seller and the persons signing on behalf of Seller have full power and authority to execute this Agreement and perform Seller's obligations hereunder, including the Grant Deed of Conservation Easement. When executed and delivered by Seller, this Agreement shall constitute a legal, valid, and binding obligation of Seller.

4.2 Agreements to Transfer or Encumber. Seller has not committed nor obligated itself in any manner whatsoever to sell, lease, or encumber the Seller Property or any interest therein to any party other than Buyer.



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4.3 Bankruptcy, Etc. No bankruptcy, insolvency, rearrangement, or similar action involving Seller or the Seller Property, whether voluntary or involuntary, is pending, threatened by a third party, or contemplated by Seller.

4.4 Litigation. There is no pending or to Seller's best knowledge threatened judicial, municipal, or administrative proceedings with respect to Seller, this transaction or in any manner affecting the Seller Property or any portion thereof or in which Seller is or will be a party by reason of Seller's ownership of the Seller Property or any portion thereof.

4.5 Notices. Seller has not received any notices from any insurance companies, governmental agencies, or from any other parties with respect to any violations or other matters concerning the Seller Property.

4.6 Tax Returns. Seller has filed all local, State, and federal tax forms that are required to be filed by Seller, has paid all taxes due and payable by Seller to date, and will pay all such taxes that become due and payable by Seller prior to closing.

4.7 Underground Storage Tanks. To the best of Seller's knowledge, there are no cisterns, wells, subterranean storage, or underground storage tanks on the Seller Property and underground storage tanks have not been removed from the Seller Property.

4.8 Leases, Service Contracts, or Other Contracts. No leases, service contracts, or other contracts are in place regarding or related to the Seller Property.

4.9 Mechanic's Liens. No labor, material, or services have been furnished in, on, or about the Seller Property or any part thereof as a result of which any mechanics', laborer's, or materialmen's liens or claims might arise.

4.10 Assumption of Liabilities. Buyer, by virtue of the purchase of the Conservation Easement, will not be required to satisfy any obligation of Seller, other than such obligations expressly assumed by Buyer or any liens or other obligations with respect to the Conservation Zone that result from any action or activities by or on behalf of Buyer after the closing date. Seller will pay and discharge any and all liabilities of each and every kind arising out of or by virtue of the possession, ownership or use of the Seller Property and shall indemnify, defend and hold Buyer harmless therefrom.

4.11 Provide Further Information. From the date of this Agreement to the closing date, Seller will notify Buyer of each event of which Seller becomes aware affecting the Seller Property or any part thereof immediately upon learning of the occurrence of such event.

4.12 Environmental Compliance. In addition to and without limiting any other representations, warranties, covenants, and agreements in this Agreement, Seller represents, warrants, covenants, and agrees:



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4.12.1. Hazardous Substances. Seller has not used, generated, manufactured, produced, stored, released, discharged, or disposed of on, under, above, or about the Seller Property (or off-site of the Seller Property that might affect the Conservation Zone), or transported to or from the Seller Property, any Hazardous Substance or allowed any other person or entity to do so. Seller has no knowledge nor has Seller observed any questionable practice or conduct indicating that any Hazardous Substance has been used, generated, manufactured, produced, stored, released, discharged, or disposed of on, under, or above the Seller Property (or off-site of the Seller Property that might affect the Seller Property), or transported to or from the Seller Property by any entity, firm or person, or from any source whatsoever.

4.12.2. Pre-closing Covenant. Seller will not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under, above, or about the Seller Property (or off-site of the Seller Property that might affect the Seller Property), or transport to or from the Seller Property, any Hazardous Substance or authorize any other person or entity to do so, prior to the closing.

4.12.3. Environmental Indemnity. Seller shall protect, indemnify, hold harmless, and defend Buyer and its elected officials, officers, and employees from and against any and all loss, damage, cost, expense, or liability (including attorneys' fees and costs) directly or indirectly arising out of or attributable to a breach of any representation, warranty, covenant, or agreement contained in this Subsection 4.12 including, without limitation, (a) all consequential damages, and (b) the costs of any required or necessary repairs, cleanup, or detoxification of the Seller Property and the preparation and implementation of any closure, remedial, or other required plans. This indemnity does not apply to actions of Buyer, its agents, or independent contractors.

4.12.4 Definitions. The term "Hazardous Substance" includes without limitation (a) those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances", "hazardous wastes", or "solid waste" in any Environmental Law; (b) petroleum products and petroleum byproducts; (c) polychlorinated biphenyls; and (d) chlorinated solvents. The term "Environmental Law" includes any federal, State, municipal or local law, statute, ordinance, regulation, order or rule pertaining to health, industrial hygiene, environmental conditions, or Hazardous Substance.

5. Seller's Pre-closing Obligations.

5.1. Claims, Events and Litigation. Seller shall promptly notify Buyer upon receiving notice of a claim or pending litigation affecting the Seller Property or any part thereof, or notice of any event, transaction, or occurrence before closing that would adversely affect the Seller Property or any part thereof.

5.2. Title. Seller shall not convey, mortgage, grant a deed of trust, or contract to do the foregoing or otherwise allow or consent to convey, abandon, relinquish, cloud, or encumber title to the Seller Property or any interest therein or part thereof without Buyer's consent.



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5.3. Maintenance and Operation. Seller shall maintain the Seller Property in good order, condition, and repair, and otherwise operate the Seller Property and maintain its business records in the same manner as before the making of this Agreement.

5.4. No Adverse Actions. Seller shall take no action that will directly or indirectly adversely affect the Conservation Zone or title to the Seller Property.

6. Closing.

6.1 Closing Date. Closing shall occur in the office of Escrow Agent on a date mutually agreeable to Buyer and Seller, but in any event no later than April 19, 2010, which is the termination date of this Agreement unless further extended by written agreement. As used in this Agreement, "closing," "closing date" or "date of closing" means the date on which all appropriate documents are recorded and proceeds of sale are available for disbursement to Seller in accordance with this Agreement. Funds held in reserve accounts pursuant to escrow instructions shall be deemed, for purposes of the definition of "closing", "closing date", and "date of closing," as available for disbursement to Seller.

6.2 Prorations; Closing Costs. Buyer and Seller shall each pay their own attorneys' fees. Seller shall pay excise tax (if due), all real property taxes, general assessments, utilities and operating expenses relating to the Seller Property, including the Conservation Zone, through the date of closing and shall pay all fees, taxes and charges associated with the Seller Property after closing that could become a lien against the Conservation Zone. If Seller is entitled to a reimbursement for overpayment of real property taxes, it shall be Seller's responsibility to seek such reimbursement from the appropriate taxing authority outside of closing. Monetary liens on the Seller Property that have not been subordinated, released, discharged or reconveyed as to the Conservation Zone prior to closing shall be discharged in full out of the Purchase Price at closing. Buyer will pay the premium for its title insurance policy, the escrow agent's fees, and the cost of recording the Grant Deed of Conservation Easement.

6.3 Documents and Evidence. Buyer and Seller shall deposit in escrow with Escrow Agent all instruments, documents and monies necessary to complete the sale in accordance with this Agreement. At closing, Seller shall execute and deliver to Buyer in escrow the following documents, each of which shall be in form and substance satisfactory to Buyer: the Grant Deed of Conservation Easement, a real estate excise tax affidavit, and an affidavit evidencing that Seller is exempt from the withholding requirements of Section 1445 of the Internal Revenue Code.

6.4 Use. Buyer's use of the Conservation Zone upon closing is subject to the terms and provisions of the Grant Deed of Conservation Easement.

7. Risk of Loss. In the event of damage to the Conservation Zone prior to closing, Buyer may terminate this Agreement by giving notice of termination to Seller. If Buyer elects to



Attachment 1

terminate this Agreement, the Deposit together with interest, if any, shall be refunded to Buyer, and the parties shall have no further rights or obligations under this Agreement.

8. Remedies on Default or Termination. If Buyer has performed its obligations under this Agreement, and Seller defaults under the terms and conditions of this Agreement, then Buyer shall be entitled to pursue such remedies as may be available at law or equity or to terminate this Agreement without further obligation to Seller and to receive return of the Deposit plus interest, if any. If Seller has performed its obligations under this Agreement, and Buyer defaults under the terms and conditions of this Agreement, then the Deposit shall be forfeited to Seller as liquidated damages as Seller's sole and exclusive remedy. Upon termination of this Agreement by mutual agreement or under the terms of this Agreement, the Deposit, plus interest if any, shall be returned to Buyer.

9. Broker Representation. Seller represents and warrants to Buyer that Seller has not incurred finder's, broker's, or other commissions or fees payable to any person (other than the M. S. Cavoad Company) in connection with the sale of the Conservation Easement. Seller shall indemnify and hold Buyer harmless from and against any liability for such commissions or fees incurred by Seller. Buyer represents and warrants to Seller that Buyer has not incurred finder's, broker's, or other commissions or fees payable to any person in connection with the sale of the Conservation Easement. Buyer shall indemnify and hold Seller harmless from and against any liability for such commissions or fees incurred by Buyer.

10. General Provisions.

10.1 Notices. All notices required or permitted hereunder shall be in writing and shall either be delivered in person, sent by certified mail, return receipt requested, or delivered via facsimile transmittal, and shall be deemed received on the sooner of actual or facsimile receipt or three (3) days after deposit in the United States mail, postage prepaid, addressed to Seller or Buyer, as the case may be, at the address/facsimile number set forth below and with copies as specified:

Seller: Menachem Mendel Seattle Cheder
1702 North 45th Street
Seattle, WA 98103
Attention: Mark Goldberg

Buyer: Seattle Parks and Recreation
800 Maynard Ave South, 3rd Floor
Seattle, WA 98134
Attention: Chip Nevins

Notice of a change of address or facsimile number shall be given by written notice in the manner specified above.



Attachment 1

10.2 Costs. Except as specifically provided in this Agreement, neither party shall be responsible for paying any costs incurred by the other party in connection with this Agreement or otherwise.

10.3 Amendment. This Agreement may be amended only by written instrument signed by Seller and Buyer, acting through duly authorized representatives if applicable.

10.4 Entire Understanding. This Agreement, and the exhibits attached hereto and the documents incorporated herein, embody the entire agreement between the parties with respect to the transaction contemplated hereby, superseding all prior expressions by the parties. The terms of this Agreement cannot be waived except by the written agreement of the party against whom a waiver is asserted.

10.5 Time of Essence. Time is of the essence of this Agreement and each term and condition hereof.

10.6 Governing Law; Venue. This Agreement shall in all respects be interpreted, construed, and enforced in accordance with the laws and judicial decisions of the State of Washington. The venue for resolution of any dispute in connection with this Agreement shall be the Superior Court of King County, Washington.

10.7 Severability. If any portion of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement, which shall be enforced in accordance with its terms.

10.8 Holidays and Weekends. In the event that the date for any notice, performance, term, or period specified or contemplated hereunder shall fall on a holiday or a weekend, the date and any associated performance or action shall automatically be extended to the next succeeding business day.

10.9 Captions. Section titles or other headings set forth in this Agreement are for the convenience of the parties only and shall not be a part of this Agreement, nor shall they be considered in its interpretation, construction, or enforcement.

10.10 Exhibits Incorporated. All exhibits attached hereto, as listed below, are expressly incorporated into and form a part of this Agreement.

- Exhibit A. Legal Description of Conservation Zone
- Exhibit B. Grant Deed of Conservation Easement
- Exhibit C. Legal Description of Seller Property
- Exhibit D. Permitted Exceptions
- Exhibit E. Subordination Agreements



Attachment 1

11. Survival. The covenants, agreements, indemnities, representations, and warranties made in this Agreement shall survive closing unimpaired and shall not merge into the Grant Deed of Conservation Easement and the recordation thereof.

IN WITNESS WHEREOF the parties have signed this Real Estate Purchase and Sale Agreement as of the Effective Date, defined above.

BUYER:

The City of Seattle, a Washington municipal corporation

By:

Timothy A. Gallagher, Superintendent of Parks and Recreation

SELLER:

Menachem Mendel Seattle Cheder, a Washington non-profit corporation

By:

Print Name

Its:



Attachment 1

STATE OF WASHINGTON)
)
) ss
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 A. Gallagher, to me known to be the Superintendent of Parks and Recreation of The City of Seattle, a Washington municipal corporation, the municipal corporation that executed the within and 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 said instrument.

WITNESS MY HAND AND OFFICIAL SEAL hereto affixed the day and year first above written.

(TYPE OR PRINT NAME)

[SEAL]

Notary Public in and for the State
of Washington, residing at _____.
My Commission expires on _____.

STATE OF WASHINGTON)
)ss
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 _____, known to me to be the _____ of Menachem Mendel Seattle Cheder, a Washington non-profit corporation, the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

WITNESS MY HAND AND OFFICIAL SEAL hereto affixed the day and year first above written.

(TYPE OR PRINT NAME)

[SEAL]

Notary Public in and for the State
of Washington, residing at _____.
My Commission expires on _____.



Exhibit A
To Attachment 1

EXHIBIT A

LEGAL DESCRIPTION OF THE CONSERVATION ZONE

The east 97 feet of Lots 3 to 6 inclusive, Acre 5, Tract 4 according to the plat of Maple Leaf Addition to Green Lake Circle recorded in volume 2, page 115 records of King County Washington;

EXCEPT the east 10 feet conveyed to King County, Washington, under Recording Numbers 2611618, 2611617 and 166351;

AND EXCEPT the east 10 feet thereof

AND EXCEPT for the 6'x10' area designated as "QWEST Easement" per King County, Washington Recording No. 20090910000012

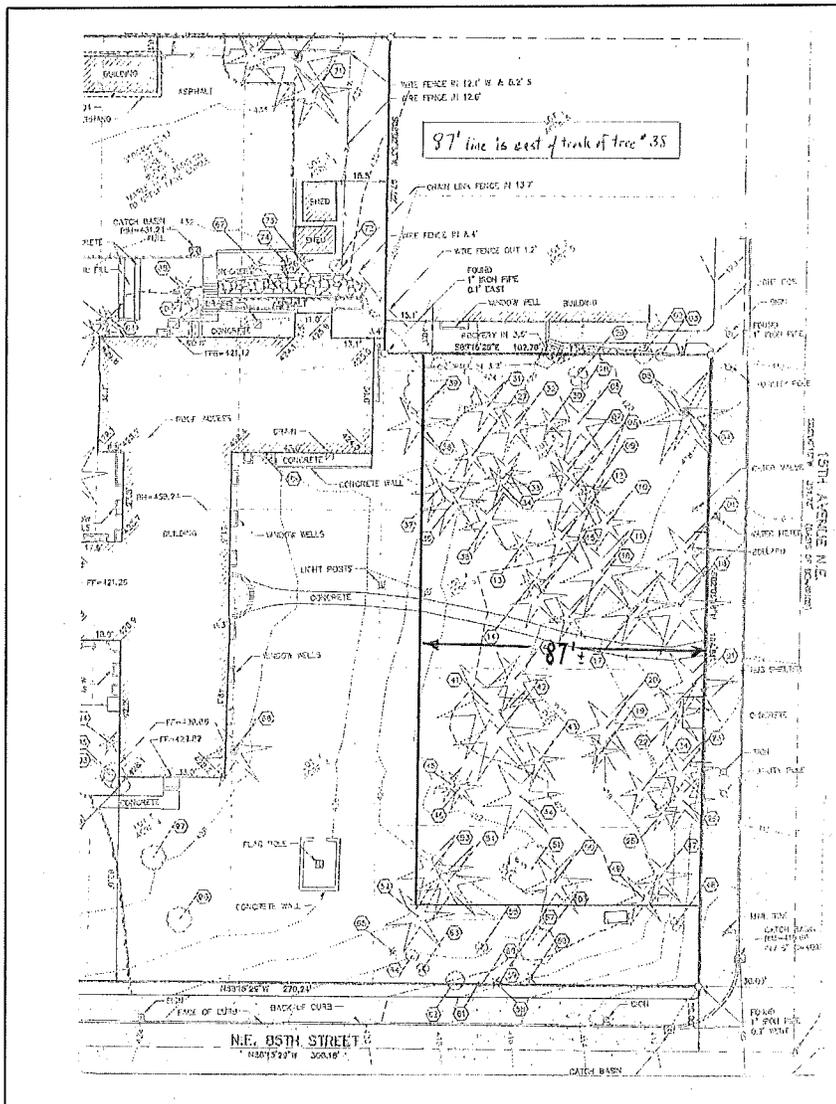


EXHIBIT B

GRANT DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT (the "Easement") is granted this ____ day of _____, 2010, by MENACHEM MENDEL SEATTLE CHEDER, a Washington non-profit corporation ("Grantor"), having an address 1707 North 45th Street, Seattle, WA 98103, to the CITY OF SEATTLE, a Washington municipal corporation ("Grantee"), having an address at Seattle Department of Parks and Recreation, 800 Maynard Ave South, 3rd Floor, Seattle, Washington 98134 attention: Property Management.

I. RECITALS

WHEREAS, Grantor and Grantee make the following recitals:

A. Grantor is the sole owner in fee simple of that certain real property located at 8511 15th Ave NE, Seattle WA 98115, in the Maple Leaf neighborhood of Northeast Seattle, in King County, Washington, which is legally described in Exhibit A attached to and incorporated into this Easement by this reference (the "Property").

B. The Property, which is located in a densely populated portion of Seattle, includes a mature Douglas fir grove of approximately .4 acres that is the target of this Easement ("Conservation Zone").

C. The Conservation Zone, which is legally described in Exhibit B attached to and incorporated into this Easement by this reference, provides natural, scenic, wildlife habitat, open space, stormwater retention, and educational values (collectively, the "Conservation Values"), of great importance to the people of Northeast Seattle and as more particularly described in Recitals below.

D. The Conservation Zone provides wildlife habitat, visually enhances the neighborhood and offers a pleasing contrast to densely developed urban lands within the neighborhood.

E. The Property is an extremely desirable property for future residential development because of its location, natural features, and orientation. In the absence of this Easement, the Property and its Conservation Zone could be developed into multiple building lots, which would destroy the wildlife habitat and natural appearance of the Conservation Zone.

F. The specific Conservation Values of the Conservation Zone are documented in an inventory of relevant features, which are maintained on file at the offices of the Grantee and are incorporated into this Easement by this reference ("Baseline Documentation"). The Baseline Documentation consists of maps, photographs, and other documentation that provide,



Exhibit B to Attachment 1

collectively, an accurate representation of the Conservation Zone at the date of grant of this Easement and that is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement.

G. Grantor, as owner of the Property, desires to protect, and preserve the Conservation Values of the Conservation Zone in perpetuity.

H. Grantee agrees, by accepting this Easement, to preserve and protect in perpetuity the Conservation Values of the Conservation Zone for the benefit of this generation and the generations to come.

II. GRANT

A. For the reasons stated above, Grantor hereby voluntarily grants, bargains, sells, conveys and confirms to Grantee, and Grantee accepts, as permitted by R.C.W. 64.04.130, R.C.W. Ch. 84.34, and Seattle Ordinance No. _____, a conservation easement in perpetuity over the Conservation Zone, as defined in this Easement, subject only to the mutual covenants, terms, conditions and restrictions set forth in this Easement and to those encumbrances set forth in Exhibit B.3 ("Permitted Title Exceptions"), which is attached to and incorporated into this Easement by this reference.

B. This Easement is an interest in real property under the provisions of RCW 64.04.130.

C. Grantor expressly intends that this Easement run with the land and that this Easement shall be binding upon Grantor's personal representatives, heirs, successors, and assigns.

III. PURPOSE

A. The purpose ("Purpose") of this Easement is to implement the mutual intentions of Grantor and Grantee as expressed in the above Recitals, which are incorporated herein by this reference, and in the provisions that follow, to assure that the Conservation Zone will be retained forever in its natural and open space condition, and to prevent any use of, or activity on, the Conservation Zone that will impair or interfere with the Conservation Values of the Conservation Zone (the "Purpose").

B. To further this Purpose, the parties to this Easement with assistance from interested community members, or community members with the consent of Grantor and Grantee, may develop a plan for stewardship of the Conservation Zone (the "Stewardship Plan"). The Stewardship Plan would generally describe activities mutually acceptable to Grantor and Grantee to steward, maintain, protect, enhance, or restore the open space, habitat, and natural conditions of the Conservation Zone, and to control or eradicate invasive plant species. The failure to develop a Stewardship Plan shall in no way affect the effectiveness or enforceability of this Easement. Interested community members may, at their own cost, hire a licensed arborist



during development of the Stewardship Plan, if developed, to assist with recommendations for stewardship of the Conservation Zone.

IV. GRANTEE'S RIGHTS AND RESPONSIBILITIES

To accomplish the Purpose of this Easement, the following rights are conveyed to Grantee by this Easement:

A. **Identification, Protection, and Enhancement.** The right to identify, preserve, and protect in perpetuity the Conservation Values of the Conservation Zone. Grantee shall not undertake enhancement or management of the Conservation Zone without agreement of Grantor in writing, such as the Stewardship Plan described in Section III above.

B. **Access.** The right to enter the Conservation Zone for inspection to assure compliance with this Easement.

C. **Signs.** The right to post signs on the Conservation Zone concerning the Easement and public access; provided that if a sign or signs on the Conservation Zone, or other public announcement, indicates that public access to the Property is permitted, then such sign or other public announcement shall also state that entry is permitted during daylight hours. Location of signs shall be by mutual agreement of Grantor and Grantee.

D. **Injunction and Restoration.** The right to enjoin any use of, or activity on, the Conservation Zone that is inconsistent with the Purpose of this Easement, including trespass by members of the public, and undertake or cause to be undertaken the restoration of such areas or features of the Conservation Zone as may be damaged by uses or activities contrary to the provisions of this Easement, consistent with Section IX.

E. **Enforcement.** The right to enforce the terms of this Easement, consistent with Section IX.

F. **Assignment.** The right to assign, convey, or otherwise transfer Grantee's interest in the Conservation Zone, consistent with Section XIV.

G. **Development Rights.** All development rights that are now or hereafter associated with, allocated to, implied, reserved, or inherent in the Conservation Zone. Grantor and Grantee agree that Grantor may not use such development rights or transfer such development rights from the Conservation Zone to any other portion of the Property as it now or hereafter may be bounded or described, or to any other property, or use such development rights or the area of the Conservation Zone for the purpose of calculating permissible lot yield, lot coverage, setbacks, or density of the Property or any other property.



V. GRANTOR'S RIGHTS AND RESPONSIBILITIES

A. **General.** Grantor has the right to engage in, or to permit or invite others to engage in any use of, or activity in, the Conservation Zone that is not inconsistent with the Purpose of this Easement and that is not prohibited by this Easement. Without limiting the generality of the foregoing, Grantor specifically reserves for itself and its personal representatives, heirs, successor, and assigns, the following uses and activities subject to applicable law:

B. **Conservation Zone.**

1. **Continued Use of Pipelines.** Grantor may continue to use and repair any underground pipeline for the conveyance of water or wastewater identified in the Baseline Documentation as existing at the time of grant of this Easement; provided that the repair of any such pipeline be conducted so as to minimize erosion and impact to the grove of trees and that the Conservation Zone be restored or improved to its condition prior to such repair.

2. **Protection of Public Health or Safety.** Grantor may undertake activities necessary to protect the public health or safety; provided that any such use or activity shall be conducted in compliance with the Environmentally Critical Areas Ordinance of the City of Seattle (ch. 25.09 Seattle Municipal Code or successor chapter) and the Stormwater, Grading and Drainage Control Code of the City of Seattle (ch. 22.800 Seattle Municipal Code or successor chapter) and any other applicable law, and so that interference with the Conservation Values of the Conservation Zone is avoided or, if avoidance is not possible, minimized to the extent possible. To ensure that interference with the Conservation Values of the Conservation Zone is so avoided or minimized, Grantor shall request approval from the Grantee prior to undertaking any use or activity under this Section V.B.2. Grantor's request shall include measures to restore the Conservation Zone to a condition prior to such use or activity to the maximum extent possible.

3. **Landscaping, Vegetation Management.** Grantor may manage, enhance, and protect vegetation within the Conservation Zone to enhance, maintain, or restore the Conservation Values of the Conservation Zone; provided that such activities are undertaken consistent with the Purpose of this Easement and the Stewardship Plan, if any, and pursuant to a written vegetation management plan prepared by Grantor and approved in advance by Grantee, and that a copy of this Easement Section V.B.3. (and Stewardship Plan, if any, and the vegetation management plan) is submitted to all permitting authorities together with all required applications.

4. **Waste Removal.** Grantor may remove any wastes, refuse, or other debris from the Conservation Zone.

5. **Footpath.** Grantor may maintain, improve, or rebuild the footpath that currently exists in the Conservation Zone; provided that such work is undertaken consistent with the Purpose of this Easement and pursuant to a construction plan prepared by Grantor and



approved in advance by Grantee, and that the removal of trees is prohibited and the removal of shrubs is avoided in the creation of such footpath; and that damage to the trees' root structures is minimized to the greatest extent possible.

6. Lighting. Grantor may locate, install, and maintain lighting along the footpath; provided that such work is undertaken consistent with the Purpose of this Easement and pursuant to a lighting plan prepared by Grantor and approved in advance by Grantee. To the extent possible, such lighting improvements shall be low impact and shall not overly detract from the natural features of the Conservation Zone.

7. Construction of Fences, Gates. Grantor may locate, construct, and maintain fences and gates along the Property boundary abutting the Conservation Zone; provided that such work is undertaken consistent with the Purpose of this Easement and pursuant to a construction plan prepared by Grantor and approved in advance by Grantee. To the extent possible, such improvements shall complement and enhance the natural features of the Conservation Zone.

8. Children's Play Equipment. Grantor may locate, install, and maintain children's play equipment in the Conservation Zone; provided that such work is undertaken consistent with the Purpose of this Easement and pursuant to a construction plan prepared by Grantor, approved in advance by Grantee, that prohibits removal of trees and use of concrete foundations or footings in the installation of such play equipment. Grantor has agreed to limited installation of children's play equipment in the Conservation Zone in recognition of Menachem Mendel Seattle Cheder's mission and its cooperation with this Easement. At such time as Menachem Mendel Seattle Cheder is no longer the owner of the Property, children's play equipment will no longer be permitted in the Conservation Zone.

9. Recreational. Grantor may undertake passive recreational activities such as hiking and bird watching in the Conservation Zone; provided that such activities are conducted in a manner and intensity that does not adversely impact the Conservation Values of the Conservation Zone.

C. Creation of Mortgage Liens. Grantor may create consensual liens, whether by mortgage, deed of trust, or otherwise, for the purpose of securing repayment of indebtedness; provided that such liens shall be at all times subordinate to this Easement.

VI. PROHIBITED USES AND ACTIVITIES

Any use of, or activity in, the Conservation Zone inconsistent with the Purpose of this Easement is prohibited, and Grantor and Grantee acknowledge and agree that they will not conduct, engage in, or permit any such use or activity. Without limiting the generality of this Section, the following uses or activities, though not an exhaustive list, are inconsistent with the Purpose of this Easement and shall be prohibited; except as expressly provided for in Section V:



A. **Removal of Nonhazardous Trees and Other Vegetation.** Grantor shall not prune, cut down, or top, or otherwise destroy or remove nonhazardous live and dead trees and other understory vegetation within the Conservation Zone; except for Holly trees and as deemed necessary by Grantee and consistent with the Stewardship Plan, if any, to preserve, protect, or restore the Conservation Values of the Conservation Zone.

B. **Subdivision of Property.** Grantor shall not legally or “de facto” subdivide any portion of the Conservation Zone, in any manner. Grantor shall retain no right to use all or any portion of the Conservation Zone, or any development rights associated with the Conservation Zone, in conjunction with the rest of the Property or other property to create new or reconfigured lots or parcels or additional building sites, or to use all or any portion of the Conservation Zone or any development rights associated with the Conservation Zone to meet setback, density, or open space requirements for development on the rest of the Property or other property.

C. **Construction.** Grantor shall not place or construct any buildings, structures, fixtures, or other improvements of any kind within the Conservation Zone (including, without limitation, pipelines, wells, septic systems, drainfields, roads, and parking areas).

D. **Utilities.** Grantor shall not construct or install any utility pole, tower, line, or facility within the Conservation Zone.

E. **Storage.** Grantor shall not store or place equipment, supplies, or personal property of any kind within the Conservation Zone.

F. **Alteration of Land.** Grantor shall not alter the surface of the Conservation Zone, including, without limitation, the excavation, fill, or removal of soil, sand, gravel, rock, peat, or sod; except as deemed necessary by Grantee to preserve, protect, or restore the Conservation Values of the Conservation Zone.

G. **Erosion or Water Pollution.** Grantor shall not undertake any use or activity within the Conservation Zone that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.

H. **Exploration or Mining.** Grantor shall not conduct any exploration for, or development, or extraction of, minerals and hydrocarbons in the Conservation Zone.

I. **Waste Disposal.** Grantor shall not dump, store, or dispose of wastes, refuse, and other debris of any kind, including yard waste and compost, within the Conservation Zone.

J. **Uncontrolled Drainage.** Grantor shall not discharge pollutants or stormwater into the Conservation Zone.

K. **Impervious Surfaces.** Grantor may not create any new area of impervious surface or expand any impervious surface existing at the time of this grant within the Conservation Zone.



L. **Herbicides or Pesticides.** Grantor shall not apply, store, release, or deposit any herbicide or pesticide within the Conservation Zone; except as approved in advance by Grantee to preserve, protect, or restore the Conservation Values of the Conservation Zone.

M. **Other Hazardous Substances.** Grantor shall not apply, store, release, or deposit any petroleum product or any other hazardous, dangerous, or toxic waste or substance as now or hereafter defined by applicable law or regulation within the Conservation Zone.

N. **Wildlife Disruption.** Grantor shall not intentionally disrupt wildlife breeding and nesting activities within the Conservation Zone.

O. **Other Restrictions.** Grantor shall not hunt, trap, camp, burn (or otherwise use fire), discharge firearms, compost, or store vehicles of any kind within the Conservation Zone.

VII. NOTICE AND APPROVAL

A. **Notice.**

1. **Grantor.** Several provisions of this Easement require Grantor to notify the Grantee and to receive the Grantee's written approval prior to undertaking certain permitted uses and activities within the Conservation Zone (e.g., V.B.2 (property protection), V.B.3 (vegetation management), V.B.5 (footpath), V.B.6 (lighting), V.B.7 (fences and gates), V.B.8 (children's play equipment), VI.M. (herbicides, pesticides) and XII.D (subsequent transfers). The purpose of requiring Grantor to notify the Grantee prior to undertaking these permitted (or otherwise prohibited) uses and activities is to afford the Grantee an opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the Purpose of this Easement. Whenever such notice or permission is required, Grantor shall notify the Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the use or activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with the Purpose of this Easement.

2. **Grantee.** Several provisions of this Easement require Grantee to give notice to Grantor prior to undertaking certain activities within the Conservation Zone (e.g., IV.B (access) and XIV.A (assignment)). Whenever such notice is required, Grantee shall notify Grantor in writing not less than thirty (30) days prior to the date Grantee intends to undertake the use or activity in question, unless otherwise provided for by this Easement.

B. **Approval.** Where approval by one of the parties is required under this Easement, such approval shall be granted or withheld in writing within thirty (30) days of receipt of a written request for approval, and such approval shall not be unreasonably withheld.



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1. Grantor. If Grantor must undertake emergency action under Section V.B.2 to protect the public health or safety or must act by and subject to compulsion of any governmental agency, Grantor may proceed with such action without Grantee's approval only if Grantor notifies the Grantee prior to taking such action and Grantee cannot provide its approval, with or without conditions, within such time as is reasonable under the circumstances, and restores the Conservation Zone to a condition prior to such use or activity to the maximum extent possible.

2. Grantee. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the use or activity as proposed would be inconsistent with the Purpose or other terms and conditions of this Easement. Grantee's approval may include reasonable conditions that must be satisfied in undertaking the proposed use or activity.

3. Failure to Approve Within the Required Time. When approval is required under this Easement, and when such approval is not granted or not withheld within the time period and manner set forth in this subsection, approval of the permitted use or activity in question may be presumed.

C. Addresses. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class certified mail, postage prepaid, addressed as follows:

To Grantor: Menachem Mendel Seattle Cheder
1702 N. 45th Street
Seattle, WA 98103
Attention: Mark Goldberg

To Grantee: Seattle Parks and Recreation
800 Maynard Ave South, 3rd Floor
Seattle, WA 98104
Attention: Chip Nevins

or to such other address as either party designates by written notice to the other.

VIII. DISPUTE RESOLUTION

A. Preventive Discussions. Grantor and Grantee will promptly give the other notice of problems or concerns arising in connection with the other's actions under this Easement or the use of or activities or conditions in or on the Conservation Zone, and will meet as needed, but no later than fifteen (15) days after receipt of a written request for a meeting, to minimize the same.

B. Alternative Dispute Resolution. If a dispute is not resolved through preventive discussions under subsection A above, Grantor and Grantee may by mutual agreement submit the



matter to mediation or arbitration upon such rules of mediation or arbitration as Grantor and Grantee may agree upon.

IX. THE GRANTEE'S REMEDIES

A. Notice of Failure. If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Conservation Zone resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Conservation Zone so injured.

B. Grantor's Failure to Respond. Grantee may bring an action as provided in Section IX.C. if Grantor:

1. Fails to cure the violation within thirty (30) days after receipt of a notice of violation from the Grantee; or
2. Under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period or fails to continue diligently to cure such violation until finally cured.

C. Grantee's Action. Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement:

1. To enjoin the violation, ex parte as necessary, by temporary or permanent injunction;
2. To recover any damages to which it may be entitled for violation of the terms of this Easement or for injury to any Conservation Values protected by this Easement, including damages for the loss of Conservation Values; and
3. To require the restoration of the Conservation Zone to the condition that existed prior to any such injury.

Without limiting Grantor's liability in any way, Grantee shall first apply any damages recovered to the cost of undertaking corrective or restoration action in the Conservation Zone.

D. Immediate Action Required. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Conservation Zone, Grantee may pursue its remedies under this Section IX. without prior notice to Grantor or without waiting for the period provided for cure to expire.

E. Nature of Remedy. Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantee shall be entitled



to the injunctive relief described in this Section IX. in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section IX. shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

F. Costs of Restoration. In the event Grantee must enforce the terms of this Easement, the costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, family members, invitees, or licensees in violation of the terms of this Easement shall be borne by Grantor or those of its personal representatives, heirs, successors, or assigns, against whom a judgment is entered. In the event that Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration shall be borne by Grantor or those of its personal representatives, heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized use or activity.

G. Grantee's Forbearance. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term or of any right under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

H. Waiver of Certain Defenses. Grantor acknowledges that Grantee and its successors and assigns have limited resources for monitoring compliance with the terms of this Easement. In recognition of this fact, Grantor hereby waives any technical defense it may have against an enforcement action undertaken by Grantee or its successors or assigns based upon laches (e.g., delay by Grantee in enforcing the terms of this Easement), estoppel (e.g., a claim by Grantor that, in reliance on a prior oral rather than written statement of Grantee, it undertook a use or activity on the Conservation Zone deemed by Grantee to be inconsistent with the Purpose of this Easement), or prescription.

I. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Conservation Zone or to recover damages for any injury to or changes on the Conservation Zone resulting from causes beyond Grantor's control, including, without limitation, natural changes, climate change, fire, flood, storm, or earth movement, or from acts of trespassers, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Conservation Zone resulting from such causes.

J. Estoppel Certificates. Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, that certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement.



X. PUBLIC ACCESS

While Menachem Mendel Seattle Cheder is the owner of the Property, public access is limited as follows: the public may enter a fenced-off portion of the Conservation Zone (mutually acceptable to Grantor and Grantee), consisting of approximately 1000 square feet, via 15th Avenue NE, for passive recreation consistent with protecting the Conservation Values of the Conservation Zone. Grantor has agreed to limited public access in recognition of the unique security concerns of Menachem Mendel Seattle Cheder. At such time as Menachem Mendel Seattle Cheder is no longer the owner of the Property, public access to the Conservation Zone may be expanded by Grantee if Grantee determines that additional public access is consistent with the reasonable security concerns of successor Grantors and with protection of the Conservation Values of the Conservation Zone.

XI. COSTS, LIABILITIES AND INSURANCE, TAXES, AND INDEMNIFICATION

A. Costs, Liabilities and Insurance. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, upkeep, and maintenance of the Conservation Zone, including the maintenance of adequate liability insurance coverage. Grantor shall keep the Conservation Zone free and clear of any liens arising out of any work performed for, material furnished to, or obligations incurred by Grantor; provided that the Conservation Zone shall be deemed to be free of such liens if Grantor is diligently challenging the application of such liens to the Conservation Zone.

B. Taxes. Grantor shall pay all taxes levied against the Property, including the Conservation Zone, by government authority as they become due, and shall furnish the Grantee with satisfactory evidence of payment upon request. If Grantor fails to pay any taxes when due, Grantee is authorized, but in no event obligated, to make or advance such payment of taxes upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement, or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the maximum rate allowed by law.

C. Indemnification. Grantor shall hold harmless, indemnify, and defend the Grantee, its successors and assigns, and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with:

1. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring in or about the Property, including the Conservation Zone, that is not a consequence of any activity of any of the Indemnified Parties undertaken under the rights granted to Grantee under this Easement;



2. Violations or alleged violations of any federal, State or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, unless such violations or alleged violations are due to the acts or omissions of any of the Indemnified Parties on the Property, including the Conservation Zone; and

3. The obligations specified in subsections A and B of this section.

XII. EXTINGUISHMENT AND SUBSEQUENT TRANSFER

A. Extinguishment. If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court having jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Conservation Zone subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with Section XII.B of this Easement. Grantee shall use all such proceeds for acquisition or preservation of other lands within Northeast Seattle. Any endowment funds assigned to the Conservation Zone shall be assigned to properties or property interests acquired under this section.

B. Valuation. This Easement constitutes a real property interest immediately vested in Grantee, which, for the purpose of this Section XII, the parties agree to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in the value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. For the purposes of this paragraph, the ratio at the time of this grant of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

C. Condemnation. In the event that the Conservation Zone is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in the amount determined by using the valuation described in Section XII.B of this Easement multiplied by the percentage of the Conservation Zone taken. Grantee shall use all such compensation for acquisition or preservation of other lands within Northeast Seattle. Any endowment funds assigned to the Conservation Zone shall be assigned to properties or property interests acquired under this section.

D. Subsequent Transfers. Grantor agrees to:

1. Incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest;



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2. Describe this Easement in and append it to, any executory contract for the transfer of any interest in the Property;

3. Give written notice to the Grantee of the transfer of any interest no later than forty-five (45) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or representative.

The failure of Grantor to perform any act required by this Section shall not impair the validity of this Easement or limit its enforceability in any way.

XIII. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantee and Grantor are free to jointly amend this Easement; provided that any amendment shall be consistent with the Purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of King County, Washington, and any other jurisdiction in which such recording is required.

XIV. ASSIGNMENT

This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization or government unit that is authorized to acquire and hold conservation easements under RCW 64.04.130 or RCW 84.34.250 (or any successor provision(s) then applicable). As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment.

XV. RECORDATION

Grantee shall record this instrument in timely fashion in the official records of King County, Washington, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

XVI. GENERAL PROVISIONS

A. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Washington.

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the reservation to affect the Purpose of this Easement and the policy and purposes of RCW 64.04.130 and Chapter 84.34 RCW. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.



C. **Severability.** If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

D. **Entire Easement.** This instrument sets forth the entire agreement of the parties with respect to the Conservation Zone and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Zone, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section XIII.

E. **No Forfeiture.** Nothing contained in this Easement will result in a forfeiture or reversion of Grantor's title in any respect.

F. **"Grantor" - "Grantee".** The terms "Grantor" and "Grantee," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include, respectively, the above-named Grantor, and its personal representatives, heirs, successors, and assigns, and the above-named Grantee, and its personal representatives, successors, and assigns.

G. **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.

H. **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's entire interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive the transfer.

I. **Subordination.** At the time of conveyance of this Easement, the Property is subject to three deeds of trust against the Property. The beneficiaries of the deeds of trust have agreed by separate instruments, which will be recorded concurrently with this Easement, to subordinate their rights in the Property to this Easement or to the extent necessary to permit Grantee to enforce the Purpose of this Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the beneficiaries under the deeds of trust.

J. **Recitals.** The recitals set forth in Section I above are incorporated into this Easement by this reference.

K. **Effective Date.** The effective date of this Easement is the date of recording in the records of King County, Washington.



XVII. SCHEDULE OF EXHIBITS

- A. Legal Description of the Property**
- B. Legal Description and Map of the Conservation Zone**
- C. Permitted Title Exceptions**



Exhibit B to Attachment 1

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Lots 3 to 6, inclusive, Acre 5, Tract 4;
EXCEPT the east 10 feet conveyed to King County, Washington, under Recording Numbers 2611618, 2611617 and 1663511;

Lots 1 through 6, inclusive, Acre 4, Tract 4;

Lots 3 and 4, Acre 3, Tract 4;
EXCEPT portion lying westerly of the following described line:
Beginning at a point on the southerly line of said Lot 4, Acre 3, a distance of 35 feet westerly from the southeast corner thereof; Thence in a northerly direction 291.95 feet, more or less, to the northwest corner of said Lot 3;
TOGETHER WITH the south half of vacated Northeast 86th Street adjoining said Lot 3, Acre 3; All in Maple Leaf Addition to Green Lake Circle, according to the plat thereof recorded in Volume 2 of Plats, page 115, in King County, Washington.



Exhibit B to Attachment 1

EXHIBIT C

PERMITTED TITLE EXCEPTIONS

1. EASEMENT AND THE TERMS AND CONDITIONS REFERENCED THEREIN,
INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

PURPOSE: Sewer line

AREA AFFECTED: Portion of said premises

RECORDED: March 3, 1949

RECORDING NUMBER: 3881386

The description contained therein is not sufficient to determine its exact.



EXHIBIT C

LEGAL DESCRIPTION OF SELLER PROPERTY

Lots 3 to 6, inclusive, Acre 5, Tract 4;

EXCEPT the east 10 feet conveyed to King County, Washington, under Recording Numbers 2611618, 2611617 and 1663511;

Lots 1 through 6, inclusive, Acre 4, Tract 4;

Lots 3 and 4, Acre 3, Tract 4;

EXCEPT portion lying westerly of the following described line:

Beginning at a point on the southerly line of said Lot 4, Acre 3, a distance of 35 feet westerly from the southeast corner thereof; Thence in a northerly direction 291.95 feet, more or less, to the northwest corner of said Lot 3;

TOGETHER WITH the south half of vacated Northeast 86th Street adjoining said Lot 3, Acre 3; All in Maple Leaf Addition to Green Lake Circle, according to the plat thereof recorded in Volume 2 of Plats, page 115, in King County, Washington.



EXHIBIT D

PERMITTED TITLE EXCEPTIONS

1. EASEMENT AND THE TERMS AND CONDITIONS REFERENCED THEREIN,
INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

PURPOSE: Sewer line

AREA AFFECTED: Portion of said premises

RECORDED: March 3, 1949

RECORDING NUMBER: 3881386

The description contained therein is not sufficient to determine its exact location within the property herein described.



Exhibit E to Attachment 1

After Recording Return to:

Department of Parks and Recreation
800 Maynard Avenue South, Third Floor
Seattle, Washington 98134
Attention: Chip Nevins

SUBORDINATION AGREEMENT

1. Samis Foundation, a Washington non-profit corporation (“Subordinator”), is the beneficiary of a deed of trust dated July 20, 2009, which is recorded under Recording No. 20090720002178, records of King County, Washington (“Deed of Trust”).
2. The Menachem Mendel Seattle Cheder, a Washington non-profit corporation (“Owner”) is the owner of all the real property described in the Deed of Trust. The legal description of the property (“Property”) is attached hereto as Exhibit A. The Owner is the grantor of a conservation easement (“Conservation Easement”), dated _____, over a portion of the Property. The portion of the Property covered by the Conservation Easement is legally described on Exhibit B. The Conservation Easement is to be recorded concurrently with this Subordination Agreement.
3. The City of Seattle (“City”) is the grantee of the Conservation Easement.
4. In consideration of benefits to Subordinator from Owner, receipt and sufficiency of which is hereby acknowledged, the Subordinator does hereby unconditionally subordinate the lien of the Deed of Trust to the Conservation Easement.
5. Subordinator acknowledges that, prior to the execution hereof, it has had the opportunity to examine the terms of the Conservation Easement and consents to and approves same.
6. It is understood by the parties hereto that the City would not accept the Conservation Easement without this Subordination Agreement.
7. This Subordination Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the liens or charges of the Deed of Trust to the Conservation Easement and shall supersede and cancel any prior agreements as to such.



Exhibit E to Attachment 1

8. The heirs, administrators, assigns, and successors in interest of the Subordinator shall be bound by this Subordination Agreement. In all instances, gender and number of pronouns are considered to conform to the undersigned.

Executed this _____ day of _____, 20__.

Samis Foundation

By: _____

Print Name

Its: _____

STATE OF WASHINGTON)

) ss.

COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that ___ signed this instrument, on oath stated that ___ is authorized to execute the instrument and acknowledged it as the _____ of Samis Foundation to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated _____

(signature)

(type or print name)
NOTARY PUBLIC in and for the State
of Washington residing at _____.
My appointment expires: _____



EXHIBIT A TO SUBORDINATION AGREEMENT

LEGAL DESCRIPTION OF PROPERTY COVERED BY DEED OF TRUST

Lots 3 to 6, inclusive, Acre 5, Tract 4;
EXCEPT the east 10 feet conveyed to King County, Washington, under Recording Numbers
2611618, 2611617 and 1663511;

Lots 1 through 6, inclusive, Acre 4, Tract 4;

Lots 3 and 4, Acre 3, Tract 4;

EXCEPT portion lying westerly of the following described line:

Beginning at a point on the southerly line of said Lot 4, Acre 3, a distance of 35 feet westerly
from the southeast corner thereof; Thence in a northerly direction 291.95 feet, more or less, to
the northwest corner of said Lot 3;

TOGETHER WITH the south half of vacated Northeast 86th Street adjoining said Lot 3, Acre 3;
All in Maple Leaf Addition to Green Lake Circle, according to the plat thereof recorded in
Volume 2 of Plats, page 115, in King County, Washington.



EXHIBIT B TO SUBORDINATION AGREEMENT

LEGAL DESCRIPTION OF PROPERTY COVERED BY CONSERVATION EASEMENT

The east 97 feet of Lots 3 to 6 inclusive, Acre 5, Tract 4 according to the plat of Maple Leaf Addition to Green Lake Circle recorded in volume 2, page 115 records of King County Washington;
EXCEPT the south 25 feet thereof;
AND EXCEPT the east 10 feet thereof;
AND EXCEPT for the 6'x10' area designated as "QWEST Easement" per King County, Washington Recording No. 20090910000012.



Exhibit E to Attachment 1

After Recording Return to:

Department of Parks and Recreation
800 Maynard Avenue South, Third Floor
Seattle, Washington 98134
Attention: Chip Nevins

SUBORDINATION AGREEMENT

1. Camp Fire USA Central Puget Sound Council, a Washington non-profit corporation (“Subordinator”), is the beneficiary of a deed of trust dated July 10, 2009, which is recorded under Recording No. 20090720002177, records of King County, Washington (“Deed of Trust”).

2. The Menachem Mendel Seattle Cheder, a Washington non-profit corporation (“Owner”) is the owner of all the real property described in the Deed of Trust. The legal description of the property (“Property”) is attached hereto as Exhibit A. The Owner is the grantor of a conservation easement (“Conservation Easement”), dated _____, over a portion of the Property. The portion of the Property covered by the Conservation Easement is legally described on Exhibit B. The Conservation Easement is to be recorded concurrently with this Subordination Agreement.

3. The City of Seattle (“City”) is the grantee of the Conservation Easement.

4. In consideration of benefits to Subordinator from Owner, receipt and sufficiency of which is hereby acknowledged, the Subordinator does hereby unconditionally subordinate the lien of the Deed of Trust to the Conservation Easement.

5. Subordinator acknowledges that, prior to the execution hereof, it has had the opportunity to examine the terms of the Conservation Easement and consents to and approves same.

6. It is understood by the parties hereto that the City would not accept the Conservation Easement without this Subordination Agreement.

7. This Subordination Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the liens or charges of the Deeds of Trust to the Conservation Easement and shall supersede and cancel any prior agreements as to such.



Exhibit E to Attachment 1

8. The heirs, administrators, assigns, and successors in interest of the Subordinator shall be bound by this Subordination Agreement. In all instances, gender and number of pronouns are considered to conform to the undersigned.

Executed this _____ day of _____, 20__.

Camp Fire USA Central Puget Sound Council

By: _____

Print Name

Its: _____

STATE OF WASHINGTON)

) ss.

COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that ___ signed this instrument, on oath stated that ___ is authorized to execute the instrument and acknowledged it as the _____ of Camp Fire USA Central Puget Sound Council to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated _____

(signature)

(type or print name)

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

My appointment expires: _____



EXHIBIT A TO SUBORDINATION AGREEMENT

LEGAL DESCRIPTION OF PROPERTY COVERED BY DEED OF TRUST

Lots 3 to 6, inclusive, Acre 5, Tract 4;
EXCEPT the east 10 feet conveyed to King County, Washington, under Recording Numbers 2611618, 2611617 and 1663511;

Lots 1 through 6, inclusive, Acre 4, Tract 4;

Lots 3 and 4, Acre 3, Tract 4;
EXCEPT portion lying westerly of the following described line:
Beginning at a point on the southerly line of said Lot 4, Acre 3, a distance of 35 feet westerly from the southeast corner thereof; Thence in a northerly direction 291.95 feet, more or less, to the northwest corner of said Lot 3;
TOGETHER WITH the south half of vacated Northeast 86th Street adjoining said Lot 3, Acre 3;
All in Maple Leaf Addition to Green Lake Circle, according to the plat thereof recorded in Volume 2 of Plats, page 115, in King County, Washington.



EXHIBIT B TO SUBORDINATION AGREEMENT

LEGAL DESCRIPTION OF PROPERTY COVERED BY CONSERVATION EASEMENT

The east 97 feet of Lots 3 to 6 inclusive, Acre 5, Tract 4 according to the plat of Maple Leaf Addition to Green Lake Circle recorded in volume 2, page 115 records of King County Washington;
EXCEPT the south 25 feet thereof;
AND EXCEPT the east 10 feet thereof;
AND EXCEPT for the 6'x10' area designated as "QWEST Easement" per King County, Washington Recording No. 20090910000012.



Exhibit E to Attachment 1

After Recording Return to:

Department of Parks and Recreation
800 Maynard Avenue South, Third Floor
Seattle, Washington 98134
Attention: Chip Nevins

SUBORDINATION AGREEMENT

1. John P. and Judith E. Mills, husband and wife (collectively referred to as “Subordinator”), are the beneficiaries of a deed of trust dated July 5, 2009, which is recorded under Recording No. 20090720002175, records of King County, Washington (“Deed of Trust”).

2. The Menachem Mendel Seattle Cheder, a Washington non-profit corporation (referred to as “Owner”), is the owner of all the real property described in the Deed of Trust. The legal description of the property (“Property”) is attached hereto as Exhibit A. The Owner is the grantor of a conservation easement (“Conservation Easement”), dated _____, over a portion of the Property. The portion of the Property covered by the Conservation Easement is legally described on Exhibit B. The Conservation Easement is to be recorded concurrently with this Subordination Agreement.

3. The City of Seattle (“City”) is the grantee of the Conservation Easement.

4. In consideration of benefits to Subordinator from Owner, receipt and sufficiency of which is hereby acknowledged, the Subordinator does hereby unconditionally subordinate the lien of the Deed of Trust to the Conservation Easement.

5. Subordinator acknowledges that, prior to the execution hereof, it has had the opportunity to examine the terms of the Conservation Easement and consents to and approves same.

6. It is understood by the parties hereto that the City would not accept the Conservation Easement without this Subordination Agreement.

7. This Subordination Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the liens or charges of the Deed of Trust to the Conservation Easement and shall supersede and cancel any prior agreements as to such.



Exhibit E to Attachment 1

8. The heirs, administrators, assigns, and successors in interest of the Subordinator shall be bound by this Subordination Agreement. In all instances, gender and number of pronouns are considered to conform to the undersigned.

Executed this _____ day of _____, 20__.

John P. Mills

Judith E. Mills

STATE OF WASHINGTON)

) ss.

COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in this instrument.

Dated _____

(signature)

(type or print name)

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

My appointment expires: _____

STATE OF WASHINGTON)

) ss.

COUNTY OF _____)



Exhibit E to Attachment 1

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in this instrument.

Dated _____

(signature)

(type or print name)
NOTARY PUBLIC in and for the State
of Washington residing at _____.
My appointment expires: _____



EXHIBIT A TO SUBORDINATION AGREEMENT

LEGAL DESCRIPTION OF PROPERTY COVERED BY DEED OF TRUST

Lots 3 to 6, inclusive, Acre 5, Tract 4;
EXCEPT the east 10 feet conveyed to King County, Washington, under Recording Numbers 2611618, 2611617 and 1663511;

Lots 1 through 6, inclusive, Acre 4, Tract 4;

Lots 3 and 4, Acre 3, Tract 4;
EXCEPT portion lying westerly of the following described line:
Beginning at a point on the southerly line of said Lot 4, Acre 3, a distance of 35 feet westerly from the southeast corner thereof; Thence in a northerly direction 291.95 feet, more or less, to the northwest corner of said Lot 3;
TOGETHER WITH the south half of vacated Northeast 86th Street adjoining said Lot 3, Acre 3;
All in Maple Leaf Addition to Green Lake Circle, according to the plat thereof recorded in Volume 2 of Plats, page 115, in King County, Washington.



EXHIBIT B TO SUBORDINATION AGREEMENT

LEGAL DESCRIPTION OF PROPERTY COVERED BY CONSERVATION EASEMENT

The east 97 feet of Lots 3 to 6 inclusive, Acre 5, Tract 4 according to the plat of Maple Leaf Addition to Green Lake Circle recorded in volume 2, page 115 records of King County Washington;

EXCEPT the south 25 feet thereof;

AND EXCEPT the east 10 feet thereof;

AND EXCEPT for the 6'x10' area designated as "QWEST Easement" per King County, Washington Recording No. 20090910000012.



FISCAL NOTE FOR CAPITAL PROJECTS ONLY

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Parks and Recreation	Donald Harris / 684-8018	Jennifer Devore / 615-1328

Legislation Title:

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the acquisition of a conservation easement on property located in the Maple Leaf neighborhood and commonly known as Waldo Woods; authorizing acceptance of the deed of conservation easement for open space purposes; increasing appropriations to the Department of Parks and Recreation in the 2010 Budget; all by a three-fourths vote of the City Council.

Summary and background of the Legislation:

The proposed legislation authorizes the acquisition of a conservation easement on a wooded portion of the historic Waldo Hospital property in the Maple Leaf neighborhood of northeast Seattle (Waldo Woods) for \$300,000 and increases the appropriation in the 2010 Adopted Budget.

Waldo Woods is located on the former grounds of the region's first osteopathic hospital, opened in 1924 by Dr. William Waldo. About six years after Dr. Waldo's death in 1962, Camp Fire USA of Central Puget Sound bought the property and used the former hospital as its headquarters. Three years ago, Camp Fire USA was in talks with Prescott Development, which wanted to buy the site to build townhomes. The proposed development would have cut a swath of trees in the 85-year-old grove. Ultimately, Prescott Development decided not to acquire the property.

Meanwhile, The Maple Leaf Community Council sought funds from King County and contributions from the community to preserve Waldo Woods as open space. The King County Council subsequently awarded \$300,000 for the "Waldo Woods Conservation Easement" project in the 2009 Conservation Futures Levy allocations ("CFL") list of Seattle Projects Funded.

In 2009, the Waldo Hospital property was acquired by the Menachem Mendel Seattle Cheder, a private school. The school desires to protect the trees and is willing to sell a conservation easement to the City of Seattle for the amount of the CFL funding. The difference between the fair market value of the conservation easement and the purchase price (\$300,000) will provide the 50% match required to receive CFL reimbursement for the purchase.



Project Name:	Project I.D.	Project Location:	Start Date:	End Date
Waldo Woods Conservation Easement	Project K730011	Maple Leaf	September, 2009	April, 2010

- Please check any of the following that apply:

 This legislation creates, funds, or anticipates a new CIP Project. (Please note whether the current CIP is being amended through this ordinance, or provide the Ordinance or Council Bill number of the separate legislation that has amended/is amending the CIP.)

 This legislation does not have any financial implications. (Stop here and delete the remainder of this document prior to saving and printing.)

 X **This legislation has financial implications.** (Please complete all relevant sections that follow.)

Appropriations:

Fund Name and Number	Department	Budget Control Level*	Existing 2010 Appropriation	New 2010 Appropriation (if any)	2011 Anticipated Appropriation
2008 Parks Levy Fund (33860)	Parks and Recreation	2008 Parks Levy – Green Space Acquisition K720011		\$300,000	
TOTAL				\$300,000	

Notes: The funds for the purchase of the conservation easement will initially come from the 2008 Parks Levy, the Green Space Acquisition Fund. The money will be reimbursed by an already awarded, but not yet received, King County Conservation Futures Levy grant.

Spending Plan and Future Appropriations for Capital Projects:

Spending Plan and Budget	2010	2011	2012	2013	2014	2015	Total
Spending Plan							
Current Year Appropriation	\$300,000						\$300,000
Future Appropriations							

Notes:



Funding source:

Funding Source (Fund Name and Number, if applicable)	2010	2011	2012	2013	2014	2015	Total
Conservation Futures Levy Grant	\$300,000						\$300,000
TOTAL	\$300,000						\$300,000

Notes:

Bond Financing Required: N/A

Type	Amount	Assumed Interest Rate	Term	Timing	Expected Annual Debt Service/Payment
TOTAL	N/A	N/A	N/A	N/A	N/A

Uses and Sources for Operation and Maintenance Costs for the Project: N/A

O&M	2010	2011	2012	2013	2014	2015	Total
Uses							
Start Up							
On-going							
Sources (itemize)	N/A						

Notes: The City has no obligations under the conservation easement that would require O&M costs. Public access will be limited and stewardship of the forest will be undertaken by a community stewardship organization, as specified in the conservation easement agreement. DPR staff will make an annual visit to the site to ensure that the provisions of the easement are being met – that the trees are still standing.

Periodic Major Maintenance costs for the project: N/A

Major Maintenance Item	Frequency	Cost	Likely Funding Source
TOTAL	N/A	N/A	N/A

Funding sources for replacement of project: The project is the purchase of a conservation easement; as such, there would be no replacement costs.



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	2009 Positions	2009 FTE	2010 Positions **	2010 FTE **
TOTAL	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Notes:

- **Do positions sunset in the future?** N/A
- **What is the financial cost of not implementing the legislation?** The City would forgo the \$300,000 CFL grant from King County if this legislation is not adopted.
- **Does this legislation affect any departments besides the originating department?** No
- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** No alternatives have been identified, other than foregoing the reimbursement or abandoning the project.
- **Is the legislation subject to public hearing requirements?** No
- **Other Issues:** There has been strong community support for preserving Waldo Woods from development. Purchasing the conservation easement with CFL funds, with the match coming from Menachem Mendel Seattle Cheder is the only viable solution that has emerged.

Please list attachments to the fiscal note below:

None





City of Seattle

Michael McGinn, Mayor

Office of the Mayor

February 9, 2010

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

Dear Council President Conlin:

I am transmitting the attached proposed Council Bill, which authorizes the acquisition of a conservation easement on a portion of the historic Waldo Hospital property in the Maple Leaf neighborhood of northeast Seattle and increases the appropriation for the 2010 budget accordingly.

The property covered by the conservation easement includes a grove of mature Douglas fir trees, now referred to as Waldo Woods. The trees were planted on the grounds of the region's first osteopathic hospital to benefit the health of the patients and now provide much needed open space in the Maple Leaf neighborhood. A grant of \$300,000 from the King County Conservation Futures Levy provides the funding for the purchase of the conservation easement. The current property owner, a private school, supports preservation of the trees and will be contributing the matching funds required by the County grant.

Purchase of the conservation easement will bring to a close the four-year effort by the community to save Waldo Woods and will help Seattle fulfill its tree canopy goals. Thank you for your consideration of this legislation. Should you have questions, please contact Donald Harris at 684-8018.

Sincerely,

A handwritten signature in black ink, appearing to read "m m j".

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council



STATE OF WASHINGTON – KING COUNTY

--SS.

252210
CITY OF SEATTLE, CLERKS OFFICE

No. 123248, 123249, 123250

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.

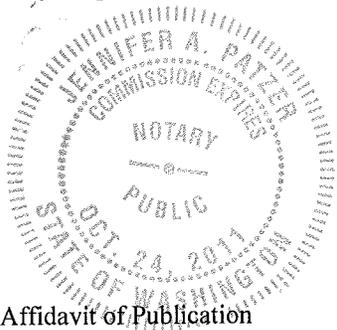
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT: TITLE ONLY ORDINANCE

was published on

03/22/10

The amount of the fee charged for the foregoing publication is the sum of \$ 54.60, which amount has been paid in full.



Affidavit of Publication

Subscribed and sworn to before me on

03/23/10

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 March 8, 2010, and published here by title only, will be mailed upon request, or can be accessed at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 123248

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the acquisition of a conservation easement on property located in the Maple Leaf neighborhood and commonly known as Waldo Woods; authorizing acceptance of the deed of conservation easement for open space purposes; increasing appropriations to the Department of Parks and Recreation in the 2010 Budget; all by a three-fourths vote of the City Council.

ORDINANCE NO. 123249

AN ORDINANCE authorizing the Superintendent of Parks and Recreation to execute an amendment to the concession agreement between the City of Seattle and Arena Sports Magnuson Park LLC for the renovation and use of Building 27 at Warren G. Magnuson Park.

ORDINANCE NO. 123250

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

RESOLUTION NO. 31190

A RESOLUTION urging the U.S. Department of Defense to select The Boeing Company to build the next mid-air refueling tanker.

Date of publication in the Seattle Daily Journal of Commerce, March 22, 2010.

3/22(252210)