SEATTLE CITY COUNCIL

Legislative Summary

CB 118691

Record No.: CB 118691 **Type:** Ordinance (Ord) **Status:** Passed

Version: 1 **Ord. no:** Ord 125055 **In Control:** City Clerk

File Created: 04/12/2016

Final Action: 06/17/2016

Title: AN ORDINANCE relating to Parks and Recreation; authorizing the Superintendent of Parks and Recreation Department to execute, accept and record a Restrictive Covenant, Easement and Contract Concerning Real Property on behalf of The City of Seattle; placing the property rights and interests conveyed by the easements under the jurisdiction of the Department of Parks and Recreation; and ratifying and confirming certain prior acts.

Notes:

Sponsors: Juarez

	Date
Filed with City Clerk:	6/17/2016
Mayor's Signature:	6/17/2016
Vetoed by Mayor:	
Veto Overridden:	
Veto Sustained:	

Attachments: Att 1 - Restrictive Covenant

Drafter: Chip Nevins

Filing Requirements/Dept Action:

History of Legislative File **Legal Notice Published:** ☐ Yes ☐ No

Ver-sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	04/26/2016	Mayor's leg transmitted to Council	City Clerk			
	Action Text: The Council Bill (CB) was Mayor's leg transmitted to Council. to the City Clerk						
	Notes:						
1	City Clerk	04/26/2016	sent for review	Council President's Office			
	Action Text: The Council Bill (CB) was sent for review. to the Council President's Office						
	Notes:						
1	Council President's Office	04/29/2016	sent for review	Parks, Seattle Center, Libraries, and Waterfront Committee			

Action Text: The Council Bill (CB) was sent for review. to the Parks, Seattle Center, Libraries, and Waterfront Committee
Notes:

1	Full Council	05/23/2016	referred	Parks, Seattle Center, Libraries, and Waterfront Committee	

Action Text: The Council Bill (CB) was referred. to the Parks, Seattle Center, Libraries, and Waterfront Committee
Notes:

1	Parks, Seattle Center, Libraries, and Waterfront Committee	06/02/2016			
1	Full Council	06/06/2016	passed		Pass

Action Text: The Council Bill (CB) was passed by the following vote, and the President signed the Bill:
Notes:

In Favor: 8 Councilmember Bagshaw, Councilmember Burgess, Councilmember González , Councilmember Herbold, Councilmember Johnson, Councilmember Juarez, Councilmember O'Brien, Councilmember Sawant

Opposed: 0

1	City Clerk	06/09/2016	submitted for Mayor's signature	Mayor	

Action Text: The Council Bill (CB) was submitted for Mayor's signature. to the Mayor
Notes:

1	Mayor	06/10/2016	Signed		

Action Text: The Council Bill (CB) was Signed.
Notes:

1	Mayor	06/17/2016	returned	City Clerk	

Action Text: The Council Bill (CB) was returned. to the City Clerk
Notes:

1	City Clerk	06/17/2016	attested by City Clerk		

Action Text: The Ordinance (Ord) was attested by City Clerk.
Notes:

CITY OF SEATTLE

ORDINANCE 125055

COUNCIL BILL 118691

AN ORDINANCE relating to Parks and Recreation; authorizing the Superintendent of Parks and Recreation Department to execute, accept and record a Restrictive Covenant, Easement and Contract Concerning Real Property on behalf of The City of Seattle; placing the property rights and interests conveyed by the easements under the jurisdiction of the Department of Parks and Recreation; and ratifying and confirming certain prior acts.

WHEREAS, in 2009, with the cooperation of the University Heights Center for the Community Association (Association) and under the authority of Ordinance 123017, the 2000 Neighborhood Parks, Green Spaces, Trails, and Zoo Levy (Levy), The City of Seattle (City) purchased a portion of the former University Heights school grounds from the Seattle School District for park, open space, and recreation purposes; and

WHEREAS, in 2009, the Association acquired the remaining portion of the University Heights school property from the Seattle School District and since that time has been operating it as a community center, including providing certain outdoor public recreational activities and amenities; and

WHEREAS, the 2008 Parks and Greenspaces Levy, authorized by Ordinance 122749, established an Opportunity Fund that may be used to implement community-initiated projects including the development of neighborhood parks; and

WHEREAS, Ordinance 123560 authorized an Opportunity Fund award of $747,000 to develop "a multi-use open space" on the City property and on a portion of the Association property for the University Heights South Lot Development (South Lot); and

WHEREAS, the City designed and contracted for installation of certain improvements to make the South Lot more useful to the public; and

WHEREAS, in order to assure that Opportunity Fund monies are used to benefit the general public, the Association and the City have agreed to the terms of a Restrictive Covenant, Easement and Contract Concerning Real Property that restricts the use of the Association's property, which includes requiring that the South Lot be open for public recreational use for a period of 15 years, and otherwise defines the terms and conditions under which the South Lot is to be improved, managed, operated, and maintained on a day-to-day basis;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of Parks and Recreation (Superintendent), or the Superintendent's designee, is authorized to execute, accept and record a Restrictive Covenant, Easement and Contract by and between the University Heights Center for the Community Association and The City of Seattle (City) in substantially the form described and set forth in Attachment 1 to this ordinance.

Section 2. The Superintendent is further authorized to carry out any applicable City responsibilities under the Restrictive Covenant, Easement and Contract including, without limitation, developing such forms and procedures, and executing and recording such additional documents as the Superintendent deems necessary or desirable, and which are otherwise necessary to carry out this ordinance.

Section 3. The real property rights conveyed by the Restrictive Covenant, Easement and Contract by the University Heights Center for the Community Association to the City shall be placed under the jurisdiction of the Department of Parks and Recreation.

Section 4. Any act consistent with the authority of this ordinance and taken prior to its effective date are hereby ratified and confirmed.

Section 5. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the 6th day of June, 2016, and signed by me in open session in authentication of its passage this 6th day of June, 2016.

President Pro Tem of the City Council

Approved by me this 10th day of June, 2016.

Edward B. Murray, Mayor

Filed by me this 17th day of June, 2016.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:
Attachment 1 – Restrictive Covenant, Easement and Contract Concerning Real Property at the University Heights Center for the Community

Att 1 - Restrictive Covenant
V1

Return Address:
The City of Seattle
Department of Parks and Recreation
Property & Acquisition Services
800 Maynard Ave S.
Seattle, WA 98134-1336

20150331000910
SEATTLE PARKS COV 162.00
PAGE-001 OF 019
03/31/2015 12:05
KING COUNTY, WA

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

Document Title(s) (or transactions contained therein) (all areas applicable to your document **must** be filled in)
1. Restrictive Covenant 2. Easement and
3. Contract Concerning 4. Real Property

Reference Number(s) of Documents assigned or released:
Additional reference #'s on page 1 of document

Grantor(s) Exactly as name(s) appear on document
1. University Heights Center for the Community Assoc.
2. _____
Additional names on page _____ of document.

Grantee(s) Exactly as name(s) appear on document
1. The City of Seattle
2. _____
Additional names on page _____ of document.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)
Lots 14 through 17, Block 6, University Heights Addition, Vol 9 of Plats, pg. 41.
Additional legal is on page _____ of document.

Assessor's Property Tax Parcel/Account Number ☐ Assessor Tax # not yet assigned 881640-0912 and 881640-0900

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

"I am signing below and paying an additional $50 recording fee (as provided in RCW 36.18.010 and referred to as an emergency nonstandard document), because this document does not meet margin and formatting requirements. Furthermore, I hereby understand that the recording process may cover up or otherwise obscure some part of the text of the original document as a result of this request."

_____ Signature of Requesting Party

Note to submitter: Do not sign above nor pay additional $50 fee if the document meets margin/formatting requirements

Unofficial Document

FILED FOR RECORD AT REQUEST OF
AND WHEN RECORDED RETURN TO:

The City of Seattle
Department of Parks and Recreation
Property & Acquisition Services
800 Maynard Ave. S.
Seattle, WA 98134-1336

Document title:	Restrictive Covenant, Easement and Contract Concerning Real Property
Grantor:	University Heights Center for the Community Association
Grantee:	The City of Seattle
Legal Description:	Lots 14 through 17, Block 6, University Heights Addition, Vol. 9 of Plats, pg. 41.

Tax Parcel Account Numbers: 881640-0912 and 881640-0900

RESTRICTIVE COVENANT, EASEMENT AND CONTRACT CONCERNING REAL PROPERTY

This Restrictive Covenant, Easement and Contract Concerning Real Property ("Covenant and Easement"), is entered into as of this 19th day of March, 2015, by and between the University Heights Center for the Community Association, a Washington nonprofit corporation ("Grantor") and The City of Seattle, a municipal corporation of the State of Washington ("City" or "Grantee"), acting by and through its Superintendent of Parks and Recreation ("Superintendent").

RECITALS

WHEREAS, the former University Heights Elementary School building now functions as a community center, owned and operated by Grantor, that provides space for a variety of community events and activities; and

WHEREAS, with the cooperation of Grantor, the City, under authority of Ordinance 123017, purchased a portion of the former school grounds from the Seattle School District for park, open space and recreation purposes; and

WHEREAS, the 2008 Parks and Green Spaces Levy, authorized by Ordinance 122749, established an Opportunity Fund that may be used to implement community-initiated projects including the development of neighborhood parks; and

WHEREAS, Ordinance 123560 authorized Opportunity Fund awards, including $747,000 for "University Heights – South Lot Development" to be used to develop "a multi-use open space" on the park property and on a portion of the Grantor property; and

WHEREAS, to assure the Opportunity Fund monies are used to provide benefit to the neighborhood and the general public, Grantor and the City seek enter into this Restrictive Covenant, Easement and Contract Concerning Real Property to define the terms and conditions under which the University Heights – South Lot will be improved, managed, operated, and maintained on a day-to-day basis.

NOW, THEREFORE, in consideration of the mutual promises made herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee agree as follows:

AGREEMENT

Section 1. Definitions

Access, Maintenance and Use Terms and Conditions: Grantee's rights to access and use Grantor's Property or to permit others to do so, and the parties' rights and obligations regarding ongoing maintenance and operations, as described in and subject to the conditions set forth in Exhibit A hereto.

City: The City of Seattle and its successors.

Covenant and Easement: This Restrictive Covenant, Easement and Contract Concerning Real Property between University Heights Center for the Community Association as Grantor and the City as Grantee.

Grantee: The City of Seattle and its successors.

Grantee's Property: Lots 10 through 13, Block 6, University Heights Addition, King County, Washington; Vol. 9 of Plats, pg. 41.

Grantor: University Heights Center for the Community Association, a Washington non-profit corporation and its successors and assigns.

Unofficial Document

Grantor's Property: Lots 14 through 17, Block 6, University Heights Addition, King County, Washington; Vol. 9 of Plats, pg. 41.

Term: The period beginning on the date this Covenant and Easement is fully executed and ending on the date that is fifteen (15) years later.

Section 2. Restrictive Covenant

For the period of time beginning on the day after the improvements described in Section 4 are declared substantially complete and ending on the earlier of the expiration of the Term or any prior termination of this Covenant and Easement, Grantor covenants that Grantor's Property shall be used principally for public open space and recreation purposes and related uses, parking, and for no other purpose whatsoever.

Section 3. Easement

Grantor bargains, sells and conveys to Grantee an easement in gross for the use of and access to Grantor's Property by Grantee and by the general public throughout the Term, as specifically set forth and subject to the terms and conditions contained in Exhibit A.

Section 4. Consideration

As consideration for this Covenant and Easement, Grantee will expend approximately $ 747,000.00 to construct those certain improvements designed at the direction of the Seattle Department of Parks and Recreation dated April 21, 2014 and designated "University Heights Open Space Improvements" on Grantor's Property. Grantor hereby grants Grantee and Grantee's agents and contractors the right to enter, occupy and perform such work on Grantor's Property, including the rights of ingress and egress.

Section 5. Term and Termination

This Covenant and Easement shall terminate, and all easements, covenants and obligations in it shall be of no further force or effect upon the expiration of the Term hereof.

No documentation or other action shall be required to confirm a termination of this Covenant and Easement in accordance with this Section 5, and any such termination shall be automatic and self-operative. However, upon the request of either party, Grantor and Grantee shall execute and deliver a Memorandum of Termination in recordable form, which shall confirm the date of termination of this Covenant and Easement. Either Grantor or Grantee may record such Memorandum of Termination with the King County Recorder's Office.

Section 6. Transfer of Property; Termination of Restrictive Covenant

a. As a condition of closing any conveyance, assignment or other transfer of ownership of Grantor's Property (each, a "Transfer"), Grantor agrees to cause any transferee, successor in interest or assign of Grantor's Property (each, a "Transferee") to execute at closing an assumption of Grantor's obligations hereunder and an acknowledgement that said Transferee

is bound by all of Grantor's obligations set forth herein. The form and substance of such document must be reasonably satisfactory to Grantor, Grantee and Transferee, and shall be delivered to Grantee for its review at least thirty (30) days prior to Transfer.

b. Grantor may terminate this Restrictive Covenant and Easement at any time by paying Grantee in immediately available funds the sum equal to the number of years remaining as of the date of payment in the term of this Covenant and Easement multiplied by $ 35,380 and prorated to account for any partial year.

Section 7. Lease, Rental or Permission for Use of Property

If the Grantor leases, rents or otherwise permits any person to use Grantor's Property in any manner whatsoever, Grantor shall remain bound by this Covenant and Easement and shall not be released from any of Grantor's obligations hereunder.

Section 8. Reporting; Allowance and Adjustment of Grantee Access and Use Rights

A. Grantor shall keep records and shall provide Grantee with an annual performance report describing the use and maintenance of Grantor's Property, Grantee's Property and the adjacent alley during the reporting period. Reports shall include data for the period since the previous report, in fiscal year periods, covering:

(i) Days and hours of Grantee's exclusive use of Grantor's Property
(ii) Days and hours Grantor's Property was closed to public use by Grantor, including the reasons therefor
(iii) Any repairs to Grantor's Property, Grantee's Property or the adjacent alley that exceed $5,000.00
(iv) A narrative description of routine maintenance performed by or on behalf of Grantor to Grantor's Property, Grantee's Property or to the adjacent alley.

B. Reports shall in such form and with such supporting documents as are reasonably satisfactory to Grantee and Grantor. Annual reports shall be delivered to the Superintendent, to the attention of Property & Acquisition Services, together with the annual documentation of insurance required by Section 13.C annually on June 30, and the final report shall be delivered no later than sixty (60) days after termination of this Covenant and Easement.

C. Grantee shall have access at any time during normal business hours and as often as necessary to any of Grantor's books, records, documents, files, reports and papers relating in any way to this Covenant and Easement for the purpose of examination and audit.

Section 9. Damage or Destruction

If Grantor's Property is destroyed or damaged by vandalism, fire or other casualty during the Term of this Covenant and Easement, Grantor, to the extent of available insurance proceeds, shall commence restoration of Grantor's Property within eighteen (18) months after the event of loss and diligently pursue such restoration to completion. In such event, the Term

shall be extended by the number of months that Grantor's Property was closed due to casualty loss.

Section 10. Grantor's Representations and Warranties

Grantor represents and warrants as follows:

(i) Grantor is a nonprofit corporation duly organized and in good standing in accordance with the laws of the State of Washington; that Grantor has the right, power and authority to execute, deliver and perform this Covenant and Easement; and that all requisite actions of Grantor to enter, deliver and perform this and to authorize the execution by the person signing on behalf of Grantor (including the consent of third parties if applicable) have been taken.

(ii) No provision of this Covenant and Easement is in conflict with any provision of any other agreement or instrument by which Grantor is bound or to which Grantor's Property is subject; nor shall the execution, delivery or performance of this Covenant and Easement constitute an event of default under any such agreement or instrument.

(iii) Grantor is the Owner of Grantor's Property.

(iv) This Covenant and Easement is legal, valid, and binding upon Grantor, and is enforceable in accordance with its terms, subject to the effect of bankruptcy, reorganization and other similar laws and general principles of equity.

Section 11. Easement, Covenants and Obligations Run With Property

The parties intend that this Covenant and Easement and the easements, covenants, restrictions and obligations contained herein shall, for the Term or until any earlier termination of this Covenant and Easement, be covenants running with Grantor's Property and equitable servitudes that touch and concern Grantor's Property, and shall be binding upon Grantor, its successors and assigns and all subsequent owners of Grantor's Property and their grantees, successors, heirs, devisees or assigns.

Section 12. Force Majeure

The time period or deadline required for performance of Grantor's obligations under this Covenant and Easement shall be extended for events of Force Majeure, and such extension shall be for such time period as such events shall continue. An event of "Force Majeure" shall mean (1) a strike, labor shortage or unavailability of materials, (2) a riot, insurrection or war, (3) a flood, earthquake, fire or other casualty or act of God, (4) a governmental order or decree, or (5) any other event or occurrence beyond the reasonable control of Grantor and which, by the exercise of due diligence, Grantor was unable to have avoided or overcome. Lack of or inability to procure funds to fulfill Grantor's obligations hereunder shall not be an event of Force Majeure. The Term shall be extended by the length of the event of Force Majeure.

Section 13. Insurance

A. General.

Grantor shall maintain at all times during the Term the following insurance:

(i) All risk property insurance on Grantor's Property. The amount of insurance shall be not less than the current replacement cost of the improvements on Grantor's Property as established upon each annual insurance policy renewal. The City of Seattle shall be an additional insured and loss payee as its interest may appear.

(ii) Commercial general liability insurance written on an occurrence form at least as broad as ISO CG 00 01, with Minimum Limits of Liability:

$1,000,000 per Occurrence
$2,000,000 General Aggregate
$2,000,000 Products/Completed Operations Aggregate
$1,000,000 Personal/Advertising Injury Liability
$1,000,000 Damage to Premises Rented to You

Coverage shall include: Premises and Operations; Broad Form Property Damage (Including Completed Operations); Liability assumed under an Insured Contract (including tort liability of another assumed in a business contract); Personal Injury and Advertising Liability; Independent Contractors; Severability of Interest Clause; Waiver of Subrogation endorsement in favor of Grantee as required by contract; General Aggregate Limits of Insurance shall apply separately; "Claims Made" and "Modified Occurrence" policy forms are not acceptable.

The limits of liability described above are minimum limits of liability only. Regardless of provisions to the contrary under the terms of any insurance policy maintained by Grantor, the specification of any such minimum limits shall neither be (a) intended to establish a maximum limit of liability to be maintained by Grantor as respects this Agreement, nor (b) construed as limiting the liability of any of Grantor's insurers, which must continue to be governed by the stated limits of liability of the relevant insurance policies.

The City of Seattle shall be an additional insured for primary and non-contributory limits of liability.

Each insurance policy required hereunder shall be (1) subject to reasonable approval by Grantee that it conforms with the requirements of this Section 13, and (2) be issued by an insurer rated A–:VII or higher in the then-current A. M. Best's Key Rating Guide and licensed to do business in the State of Washington unless procured under the provisions of chapter 48.15 RCW (Unauthorized insurers).

B. Waiver of Subrogation

Unless such waiver would void the property insurance coverage to be provided pursuant to this section, the Grantee and Grantor waive all subrogation rights each may have against the other, or any subtenant, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Premises

C. Evidence of Insurance

On or before the first day of the Term, and thereafter not later than the last business day prior to the expiration date of each such policy, the following documents must be delivered to Grantee at its notice address shown in Section 18 as evidence of the insurance coverage required to be maintained by Grantor:

(i) certification of insurance documenting compliance with the coverage, minimum limits and general requirements specified herein; and

(ii) a copy of the policies' declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements specifying all endorsements listed on the policy including any company-specific or manuscript endorsements; and

(iii) a copy of the CGL insurance policy provision(s) documenting the City of Seattle and its officers, elected officials, employees, agents and volunteers as additional insureds (whether on ISO Form CG 20 26 or an equivalent additional insured or blanket additional insured policy wording), showing the policy number, and the original signature and printed name of the representative of the insurance company authorized to sign such endorsement.

Section 14. Indemnification

A. Grantor's Indemnification.

Grantor shall have control over and responsibility for the day-to-day operation and maintenance of Grantor's Property in addition to the maintenance obligations for Grantee's Property and the adjacent alley, as more particularly described on Attachment 1 to Exhibit A. These obligations are in addition to any requirements that may be contained in the annual Street Use Permit referred to in Exhibit A, Section I.D. Grantor agrees to defend, indemnify, and hold the City of Seattle, its elected officials, officers, employees, and agents harmless from any and all damages, claims, liabilities, losses, and/or costs of any kind, including attorney's fees, that arise on account of Grantor's negligence in the use or maintenance of Grantor's Property, Grantee's Property and the adjacent alley.

B. Grantee's Indemnification

Grantee shall indemnify and defend Grantor for any injury to persons, damage to Grantor's Property, and any other claim, expense or liability incurred by Grantor, other than normal wear and tear, caused by the acts or omissions of Grantee, its agents, employees,

contractors or invitees in connection with uses by Grantee pursuant to this Covenant and Easement.

C. Survival of Indemnification Obligations; Waiver of Immunity

This indemnity obligations contained in this Section 14 shall survive any termination of this Covenant and Easement. Grantor and Grantee each waive, solely with respect to the other party hereto and only with respect to this Covenant and Easement, its immunity under RCW Title 51, Industrial Insurance. Grantor and Grantee acknowledge that this waiver has been specifically negotiated and that neither would have entered into this Agreement absent this waiver.

Section 15. No Waiver

No failure of a party to insist upon the strict performance of any covenant or obligation of this Covenant and Easement or to exercise any right or remedy upon a breach thereof shall constitute a waiver of any such breach or of any other covenant or obligation. In its sole discretion, a party may waive any of its rights or waive any covenant or obligation of the other party hereunder. No waiver shall alter this Covenant and Easement, and every term hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

Section 16. Entire Agreement

This Covenant and Easement includes the Recitals and the Exhibit and attachments hereto. The provisions of this Covenant and Easement represent the entire agreement of Grantor and Grantee with respect to the subject matter hereof.

Section 17. Construction

The terms of this Covenant and Easement shall not be amended, revised or terminated except by an instrument in writing duly executed by the Grantee and Grantor and recorded. This Covenant and Easement shall be construed liberally to accomplish the public benefits intended hereby and shall not be construed strictly against the drafter.

The captions used in this Covenant and Easement are for convenience only and do not control or affect the meaning or construction of any provisions of this Covenant and Easement.

Section 18. Notices

Any notices required or permitted hereunder shall be effective when hand-delivered during normal business hours or two (2) business days after mailed, postage prepaid, to a party at the address set forth below for such party, or such other address as such party may provide by written notice in accordance with this Covenant and Easement.

Grantor: University Heights Center for the Community Association

Unofficial Document

5031 University Way NE
Seattle, WA 98105
Attn: Executive Director

Grantee: The City of Seattle
Department of Parks and Recreation
Property & Acquisition Services
800 Maynard Ave. S.
Seattle, WA 98134-1336

Section 19. Governing Law; Venue

This Covenant and Easement shall be construed and enforced in accordance with and governed by the laws of the State of Washington. Venue of any action hereunder shall be in King County, Washington.

Section 20. Counterparts

This Covenant and Easement may be executed in counterpart, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Covenant and Easement.

Section 21. Compliance with Law

Throughout the Term of this Covenant and Easement, Grantor shall comply at its sole expense with all applicable laws of the United States and the State of Washington; the Charter, Municipal Code, and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof (all of the foregoing are referred to as "applicable laws").

Without limiting the generality of the foregoing, Grantor shall comply, and cause all contractors and subcontractors working on Grantor's Property to comply, with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and the City of Seattle, including but not limited to Chapters 14.04, 14.10 and 20.42 of the Seattle Municipal Code (SMC), or any successor provisions, and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

Section 22. Attorneys' Fees

If by reason of any default or breach under this Covenant and Easement by either Grantor or Grantee, it becomes necessary to institute suit, the prevailing party in such suit shall be entitled to recover, as part of any judgment, fees and costs incurred by its attorneys and paralegals in such suit (including any appeal) determined as follows: (a) if both Grantor and Grantee have used in- house counsel, the fees and costs reasonably incurred by attorneys and paralegals of the prevailing party shall be calculated at the

actual rate of such employees; or (b) if one party has used outside counsel and the other party has used in-house counsel, (i) if the party using outside counsel prevails, the fees and costs reasonably incurred by its attorneys and paralegals shall be calculated at their actual rates; and (ii) if the party using in-house counsel prevails, the fees and costs reasonably incurred by its attorneys and paralegals shall be calculated at the rates charged by attorneys and paralegals in private practice in a downtown Seattle law firm, comparable in size to that party's internal Law Department, who have been working as such for approximately the same period of time as have the in-house attorneys and paralegals representing that party.

Section 23. Right of First Refusal

In the event of any offer acceptable to Grantor, or to Grantor's successor in interest, at any time or times during the Term hereof, for the sale of all or any portion of Grantor's Property or for a lease thereof exceeding 5 years, prior to acceptance thereof, Grantor shall give Grantee, with respect to each such offer, written notice thereof and a copy of said offer including the name and address of the proposed purchaser or lessee. Grantee shall have the option and right of first refusal for sixty (60) days after receipt of such notice within which to elect to purchase or lease Grantor's Property, as the case may be, on the terms of said offer. If Grantee shall elect to purchase or lease Grantor's Property pursuant to the option and first refusal herein granted, it shall give notice of such election within such sixty (60) day period. Grantee's failure at any time to exercise its option under this paragraph shall not affect this lease and the continuance of Grantee's rights and options under this and any other paragraph herein. The right of first refusal granted herein shall not be applicable to the encumbrance of Grantor's Property by Grantor of any deed of trust or mortgage in favor of an institutional lender or governmental entity nor any foreclosure sale of all of any portion of Grantor's Property by such lender or governmental entity.

Unsigned Document

IN WITNESS WHEREOF, the parties have executed this Covenant and Easement as of the day and year first above written.

University Heights Center for the Community Association, a Washington nonprofit corporation

By Maureen Ewing

Maureen Ewing,
Executive Director

The City of Seattle, a municipal corporation of the State of Washington

By Christopher Williams 3/26/15

Christopher Williams,
Acting Superintendent, Department of Parks and Recreation

NOTARY PUBLIC

Unofficial Document

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 19 day of MARCH, 2015, before me personally appeared MAUREEN EDLING to me known to be the Executive Director of UNIVERSITY HEIGHTS CENTER FOR THE COMMUNITY ASSOCIATION, a Washington nonprofit corporation, the nonprofit corporation that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said public corporation for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument.

In witness whereof, I have hereunto set my hand and affixed my official seal the day first above written.

Notary Public in and for the State of Washington residing at SEATTLE.

Print Name: NICHOLAS J HARTFORD

My commission expires 07/01/2018

NICHOLAS J HARTFORD
NOTARY PUBLIC
COMMISSION EXPIRES
07/01/2018
STATE OF WASHINGTON

Unofficial Document

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 26th day of MARCH, 2015, before me personally appeared Christopher Williams, to me known to be the Acting Superintendent of the Department of Parks and Recreation of THE CITY OF SEATTLE, the municipal corporation that executed the within and foregoing instrument and acknowledged 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 was authorized to execute said instrument.

In witness whereof, I have hereunto set my hand and affixed my official seal the day first above written.

Notary Public in and for the State of Washington residing at SEATTLE.

Print Name: JOSETTE L. VALENTINO

My commission expires 10/4/2015

Notary Public
State of Washington
JOSETTE L. VALENTINO
MY COMMISSION EXPIRES
October 4, 2015

Unofficial Document

Unofficial Document

EXHIBIT A
ACCESS, USE AND MAINTENANCE TERMS AND CONDITIONS

I. GENERAL TERMS AND CONDITIONS REGARDING USE OF GRANTOR'S PROPERTY

A. Grantor's Property shall generally be open and available to the public from dawn to dusk every day. Grantor may close Grantor's Property for private events or other purposes on no more than twelve (12) calendar days, annually. Grantor may also close Grantor's Property if the University Heights Community Center building is closed due to inclement weather. Closing for inclement weather is not included in the 12-day limit.

B. Except for Grantor's private events and excluding parking fees payable by tenants and invitees of Grantor's Property, Grantor shall not charge a fee to any member of the public for use of Grantor's Property.

C. There shall be no more than 34 parking stalls located on Grantor's Property. Grantor may install signs acceptable to Grantee on no more than 30 of the parking stalls, reserving them for use by building tenants and occupants only during the hours of 8:00 a.m. to 5:00 p.m. One space shall be reserved at all times for City of Seattle "D-Plate" vehicles and Grantee shall have the right to use such parking space 24-hours per day for parking of City vehicles. Grantee to provide signage. At all other times, Grantor's Property shall be available for free public parking.

D. Grantor shall obtain the annual Street Use Permit from the Seattle Department of Transportation for on-going use and occupancy of the alley located adjacent to Grantor's Property.

E. Grantor shall not make any revisions, alterations, or physical changes to Grantor's Property or to the adjacent alley that cause them to differ from the its final "as-built" condition as documented by Grantee's Department of Parks and Recreation at completion of installation of improvements funded under the Opportunity Fund program without the Superintendent's prior review and written approval, which approval may be granted, withheld or conditioned in such official's sole discretion. In making such determination, the Superintendent shall consider, among other things, the functionality of Grantor's Property as space that:

- is open, available, and inviting to public use
- complies with ADA accessibility requirements
- complies with applicable codes, regulations and standards
- is compatible with the use, design and function of Grantee's Property
- Complies with applicable requirements pertaining to landmarks and historic preservation

2. GRANTEE USE

A. On 12 occasions during each calendar year throughout the Term, upon making a reservation therefor, Grantee shall have the exclusive right to use Grantor's Property for City-sponsored functions and events; provided, that Grantor may deny such use by Grantee on Saturdays before 5:00 p.m. if Grantor's Property is required for another event.

B. Grantee shall observe rules adopted by Grantor respecting the manner of use of Grantor's Property for all persons other than Grantor.

C. The scheduling of Grantee functions and events at Grantor's Property shall be arranged as follows: If Grantee uses Grantor's Property on fewer than six occasions in any calendar year, the balance shall carry forward and shall increase the minimum number of uses to which the Grantee is entitled in the following calendar year, but in no event shall the total number of uses by the Grantee under this Exhibit Section 2 exceed 18 occasions per calendar year.

3. GRANTOR'S USE, MAINTENANCE AND REPAIRS

A. Grantor is responsible, at its sole expense, for the routine day-to-day operation, maintenance and repair of Grantor's Property and the routine maintenance of Grantee's Property and the adjacent alley. All such maintenance shall be to a standard equal to or better than that employed at other public parks in northeast Seattle offering park amenities and recreation facilities comparable to those being installed in connection with this Covenant and Easement. The allocation of maintenance obligations between Grantor and Grantee is further described in Attachment 1 hereto. The obligation to maintain Grantee's Property and the adjacent alley does not allow Grantor to use Grantee's Property or any portion of it other than as a member of the general public except for occasional neighborhood events such as street fairs, Saturday markets or similar activities. Scheduling and payment for use of Grantee's Property for such purposes shall be pursuant to Grantee's special events policies as the same may be modified from time to time unless the parties agree to a separate procedure.

B. If Grantor fails to undertake any necessary repairs or maintenance, Grantee shall have the right but not the obligation upon reasonable prior notice to Grantor, to act in place of Grantor (for which purpose, only, Grantor hereby appoints the Grantee as its agent), to come onto Grantor's Property and to take such action as may be necessary to ensure compliance, all at Grantor's sole cost and expense.

Unofficial Document

Unofficial Document

EXHIBIT A
ATTACHMENT 1

University Heights South Lot Development
Maintenance and Operation Responsibilities

Portions of the University Heights South Lot Development project are on Seattle Parks and Recreation property, University Heights Center for the Community Association property, and a platted alley between the SPR and UHCCA properties that is under the jurisdiction of the Seattle Department of Transportation

Items in the South Lot Development on University Heights (Grantor) owned property			
Task/Item	To be maintained by		Comments
	Parks (Grantee)	UHCCA (Grantor)	
Benches		X	No Park Dept. responsibility
Irrigation system		X	After first three years shut off at valve if agreed it is no longer needed; all irr. water bills paid by Parks
Leaf removal		X	
Lights and electrical outlets		X	New light poles; LED light fixtures; power from UHCC building; No Park Dept. responsibility
Litter		X	
Pavement		X	
Rain garden soil		X	Current BMP indicates soil does not need cleaning/replacement for over 20 years.
Shrubs/groundcover		X	Includes plants in rain garden
Signs		X	No Seattle Park signs on UHCCA prop.
Trees		X	
UHCC play equip.		X	No Park Dept. responsibility

[redacted] Items in the South Lot Development on alley right-of-way property [redacted]			
Task/Item	To be maintained by		Comments
	Parks (Grantee)	UHCCA (Grantor)	
Pavement		X	Permit by Parks for construction; on-going use permit by UHCCA
Rain garden soil		X	Current BMP indicates soil does not need cleaning/replacement for over 20 years.

[redacted] Items in the South Lot Development on Parks (Grantee) owned property [redacted]			
Task/Item	To be maintained by		Comments
	Parks (Grantee)	UHCCA (Grantor)	
Basketball hoop	X replace/repair	X day-to-day	Day to day would include net replacement and graffiti removal
Benches	X replace/repair	X day-to-day	Day to day is cleaning and graffiti removal
East fence/chains	X replace/repair	X day-to-day	Day to day includes use for programs/schools
Irrigation system	X replace/repair	X	After first three years shut off at valve if agreed it is no longer needed; all irr. water bills paid by Parks; power for controller will come from UHCCA building.
Leaf removal		X	Seasonal removal of fallen leaves and disposal via UHCCA collection and container or on-site composting
Litter		X	Litter and trash pick-up and disposal via UHCCA dumpster
Mowing/trim grass	X replace/repair	X day-to-day	
Pavement	X replace/repair	X day-to-day	Day to day is cleaning/sweeping
Rain garden soil	X	X day-to-day	Current BMP indicates soil does not need cleaning/replacement for over

			20 years
Removable bollards	X replace/repair		Removal by Parks staff for service or scheduled events
Shrubs/groundcover	X replace/repair	X day-to-day	
Signs	X replace/repair	X day-to-day	Day to day is graffiti removal
Trees	X replace/repair	X day-to-day	High work by Parks

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