

16745

Attachment A

AFTER RECORDING, MAIL TO:
City of Seattle
Human Services Department
700 Fifth Avenue, Suite 5800
P.O. Box 34215
Seattle, WA 98124-4215
Attn: Community Facilities

COVENANTS AND RESTRICTIONS FOR CHILD CARE SPACE

GRANTOR: King County

GRANTEE: The City of Seattle

ABBR. LEGAL: Lots 2, 3, 6 and 7, Blk 37, C.D. Boren's Add to the City of Seattle, Vol 1 of Plats, page 25, records of King County (Full legal description on Ex. A)

TAX PARCEL NUMBERS: 0942001105

DOCUMENT AMENDED: 20070223002398

These COVENANTS AND RESTRICTIONS ("Covenant") are made as of the _____ day of _____, 2009, for the benefit of The City of Seattle, a municipal corporation of the State of Washington (hereinafter called "City"), whose address is Human Services Department, Community Facilities, Suite 5800, 700 Fifth Avenue, P.O. Box 34215 Seattle, WA 98124-4215, by the County of King, a Washington political subdivision ("King County") whose address is Real Estate Services, 500 Fourth Avenue, Room 500, Seattle, WA 98104 (together with its successors in interest, King County is referred to as "Grantor").

WHEREAS King County is the owner of the land at 401 Fifth Avenue, Seattle, in King County, Washington, described on Exhibit A to this Covenant, which is incorporated herein by this reference ("Land"), and is the lessee under a Project Lease Agreement dated as of January 1, 2005, as amended by a First Amendment to Project Lease and to Memorandum of Project Lease dated October, 2005 (as so amended, the "Lease") of the building developed thereon (the Land and all improvements now and hereafter thereon are referred to as the "Property"); and

WHEREAS Goat Hill Properties, a Washington nonprofit corporation ("GHP"), is leasing the land from King County under a Ground Lease dated as of January 1, 2005 ("GHP Ground Lease"), and has developed a building on such land ("Building") with revenue obtained

through issuance of tax-exempt bonds ("Bond Proceeds"), and has leased the Building thereon to King County under the Lease;

WHEREAS such building is to include the portions described and depicted as a child care facility on Exhibit B hereto, which is incorporated herein by this reference ("Child Care Space"), and King County has subleased the Child Care Space to Northwest Center, a Washington nonprofit corporation ("NWC") pursuant to a sublease dated __, 2009 ("Sublease");

WHEREAS the improvements on the above property are being developed pursuant to a Master Use Permit issued by the Seattle Department of Planning and Development, Project 2401763, which includes allowance of certain bonus floor area based in part upon the voluntary agreement to provide child care space pursuant to SMC Section 23.49.012, using the "performance option" as described therein, as set forth in that certain Covenant Regarding Bonus Floor Area recorded under King County recording no. 20070223002398 ("DPD Covenant"), which stated that it rescinded a covenant recorded under King County recording no. 20051007001784;

WHEREAS NWC has negotiated with the City's Human Services Department ("HSD," which term shall include any successor department or agency of the City) for additional funding, from cash contributions made with respect to permits for other properties under SMC 23.49.012, for certain capital costs of the Child Care Space; and

WHEREAS HSD has approved such funding subject to various conditions, including the granting of this Covenant, pursuant to a Child Care Facility Agreement between City and NWC ("HSD Agreement"); and

WHEREAS, in partial satisfaction of conditions to bonus floor area under SMC 23.49.012 and in order to induce the City to provide additional funding to NWC for improvements to the Child Care Space, Grantor is willing to grant this Covenant;

NOW, THEREFORE, in consideration of the foregoing, Grantor hereby grants, agrees to, and imposes upon the Grantor's fee interest in the Land ("Fee Interest"), and on any interest in Property hereafter acquired by Grantor, the following covenants and restrictions; provided that so long as the GHP Ground Lease and the Lease remain in effect, nothing herein shall constitute an encumbrance upon King County's or GHP's leasehold interests or interests in the Building:

1. Lease and Sublease; Development of Child Care Space.

(a) King County represents and warrants that it is the sole lessee of the Building under the Lease, with a term expiring December 31, 2029; that the Lease has not been modified and is in full force and effect; that in compliance with the Lease King County has subleased the entire Child Care Space to NWC pursuant to the Sublease with a minimum term ending no earlier than the earlier of five years after the Child Care Space is placed into service or NWC

receives the Department of Early Learning license required for provision of child care services in the Child Care Space; that the Sublease has not been modified and is in full force and effect; that King County has approved the improvements to the Child Care Space to be made pursuant to the "Plans" as referenced in the HSD Agreement or as amended in accordance with the HSD Agreement; and that King County has taken all actions necessary to direct GHP to cause a part of the improvements to the Child Care Space to be designed, permitted and constructed with \$295,000 of Bond Proceeds held by GHP.

(b) King County represents, warrants and agrees that NWC has, and shall have for the term of the Sublease, all rights of access, ingress and egress to and from the Child Care Space, both interior and exterior, reasonably necessary for the operation of the Child Care Space.

2. **Use.** For so long as this Covenant shall remain in effect, the Child Care Space, consisting of no less than 6,934 square feet of interior space and 2,926 square feet of exterior play area, shall be used solely as a child care facility in compliance with the terms of this Covenant.

3. **Term.** This Covenant shall be in effect from the date hereof through December 31, 2029, unless the City shall execute and record a document expressly terminating this Covenant on or as of an earlier date ("Term"). The first date upon which this Covenant is no longer in effect is referred to as the "Termination Date". The foregoing notwithstanding, if during any period or periods while this Covenant is in effect the Child Care Space or any part thereof shall be in any use inconsistent with the terms of this Covenant, and if the City shall record a notice or notices of such inconsistent use, the term of this Covenant shall be extended for a cumulative period equal to the total of all periods of use inconsistent with this Covenant. For any period in which the Child Care Space is used in any manner inconsistent with the terms of this Covenant or any period in which the provision of child care services ceases due wholly or in material part to the actions of the City, such period or periods shall be subtracted from the Term.

4. **Covenants for Child Care Use.** Grantor covenants and agrees for the benefit of the City as follows:

(a) Grantor shall, through its sublease, operating agreement or similar arrangement require that the Child Care Space shall be operated in substantial conformance with the following documents as approved by the City and as they may be amended with the consent of the City: the Sublease, or a replacement sublease or operating agreement with a licensed child care provider for the operation of the Child Care Space; and the management plan prepared by NWC dated _____, 2009 or another management plan prepared by a substitute child care provider for the Child Care Space. Each sublease or operating agreement shall provide that the child care provider agrees to operate the Child Care Space consistent with the terms of this Covenant, and to provide reports and documentation to the City to demonstrate such compliance.

(b) A proposed amendment to a sublease, operating agreement or management plan for the Child Care Space may be submitted by the Grantor and the child care provider to the City, under cover of a transmittal stating the reasons for the proposed changes, the time for review under this section and the effect of failure to respond. Proposed changes shall be submitted in the form of marked text to show clearly the specific words to be deleted, if any, and the new text proposed. HSD will consent to (with or without conditions), deny, or waive review of the proposed changes, or give notice to the Grantor and the child care provider that HSD requires more information to respond, in each case by delivery of written notice to the County and child care provider within ten (10) Working Days of receipt of the proposed changes, unless HSD finds that the proposed changes are so extensive that further time is required for review, in which case HSD may give notice within that ten (10) working day period that the review period is extended by up to ten (10) more working days. If the City requires further information, and the County and child care provider provide that information in writing, the City will approve (with or without conditions), deny, or waive review of the proposed changes within ten (10) Working Days of the receipt of the information. If HSD denies, or consents with conditions, the City shall set forth reasons for its actions. The City shall not unreasonably delay or deny approval, or impose any conditions not reasonably related to the purpose of assuring the provision of child care consistent with this Covenant; provided that the City shall not in any circumstances be liable in damages for any delay, denial, or condition or any loss or damage caused thereby. If HSD fails to respond within the applicable period, such failure will be deemed as consent by HSD to the changes, except to the extent that the changes would be contrary to the express requirements for child care space provided under the performance option pursuant to SMC 23.49.012 as in effect on June 1, 2009, a copy of which requirements is attached to this Covenant as Exhibit C and incorporated herein by this reference. No approval by HSD of or consent by HSD to any sublease, management plan, or changes shall constitute or be construed as a waiver of the requirements of any applicable ordinance, regulation or permit or as any assurance that the terms of any document or actions thereunder will conform to the requirements of any law, ordinance, regulation, or permit.

For purposes of this Agreement, a "Working Day" is a day that is not a Saturday, Sunday, or City of Seattle holiday.

(c) Grantor shall, through its sublease, operating agreement or similar arrangement require that the Child Care Space, with capacity for approximately sixty (60) children, subject to licensing limitations, ages six (6) weeks through six (6) years shall be licensed and maintained in operation, with no less than required staffing, at least eleven (11) hours per day, five (5) days per week, fifty (50) weeks per year. Capacity to serve one child is referred to as a "child care slot" herein.

(d) Grantor shall, through its sublease, operating agreement or similar arrangement require that at least twenty (20) percent of the child care slots in the Child Care Space shall be reserved at all times for, and affordable to, families with annual incomes at or

below the U.S. Department of Housing and Urban Development Low Income Standard for Section 8 Housing based on family size (or, if such standard shall no longer be published, a standard established by the Human Services Director based generally on eighty (80) percent of the median family income of the Metropolitan Statistical Area, or division thereof, that includes Seattle, adjusted for family size). For each family with a child counted toward meeting such requirement, Grantor shall, through its sublease, operating agreement or similar arrangement require the day care provider to cause to be obtained and maintained a certification, in a form approved by the City, in which all of the adult members of the family over the age of eighteen (18) years certify household income on the date of initial application for enrollment, and no less frequently than annually thereafter, except that if the child care provider shall have received written notice from the City that participation in a particular program provides sufficient evidence of income eligibility, then documentation showing the family's participation in that program may substitute for income certification. Alternately, child care slots shall be deemed to meet these conditions if they serve, and are limited to, (i) children receiving child care subsidy from the City of Seattle, or State Department of Early Learning, and/or (ii) children whose families have annual incomes no higher than the above standard who are charged according to a sliding fee scale such that the fees paid by any family do not exceed the amount it would be charged, exclusive of subsidy, if the family were enrolled in the City of Seattle Child Care Subsidy Program.

(e) Grantor shall, through its sublease, operating agreement or similar arrangement, require that any child care provider operate the Child Care Space in full compliance with all applicable federal, State and local requirements.

(f) Grantor shall, through its sublease, operating agreement or similar arrangement require that the Child Care Space shall be maintained in decent, safe and sanitary condition, with all necessary utilities and fixtures for operation thereof. Grantor shall maintain in a decent, safe and sanitary condition, with all necessary utilities and fixtures for operation thereof, all parts of the Property providing access to the Day Care Space.

(g) If the Sublease, or any other sublease or operating agreement for the Child Care Space, shall be terminated, or if the sublessee or operator shall cease to operate the Child Care Space as a child care facility, the Grantor shall promptly notify the City, and shall make good faith efforts to secure a replacement sublessee or operator, unless the Grantor is a properly licensed child care provider and elects to operate the Child Care Space directly. Such efforts shall include, without limitation, offering to a qualified, reputable, experienced, licensed and financially capable child care operator that expresses interest and is acceptable to, or referred by, the City, a sublease or operating agreement on terms substantially the same as the sublease or operating agreement most recently in effect, with consent of HSD, for the Child Care Space, for a period of five (5) years or the remaining term of this Covenant, whichever is shorter. The Grantor shall not be required to provide subsidies for operation of the Child Care

Space in order to secure a new sublessee or operator. The Grantor agrees, however, that inability to secure a sublessee or operator shall not be grounds for relief from the restriction on use in Section 2 of this Covenant.

5. **Nondiscrimination.** Grantor shall, through its sublease, operating agreement or similar arrangement require that the Child Care Space shall be operated in full compliance with all applicable nondiscrimination laws, regulations and ordinances, including without limitation SMC Chapters 14.04 and 14.06 and that all of the child care slots shall be available to the general public and shall be offered to the public on terms no less favorable than those offered to employees of Grantor. Grantor further agrees that Grantor shall, through its sublease, operating agreement or similar arrangement require that with respect to the Child Care Space that the sublessee or operator shall not engage in, nor permit, any act or practice that would be prohibited by any such law, regulation or ordinance but for the existence of any present or future exemption therein, or other limit on the effect thereof, that is based on the type of organization, character, mission or beliefs of any entity owning, leasing, subleasing or operating the Child Care Space.

6. **No Adverse Effects.** Grantor shall refrain from any modifications to the Property or other actions that would adversely affect the suitability of the Child Care Space for the use intended by this Covenant, and shall not cause or permit any use of the Property that would materially impair the suitability of the Child Care Space for such use.

7. **Run with the Land; Remedies.** At all times prior to the Termination Date, this Covenant shall run with the Fee Interest in the Land and with any interest in the Property hereafter acquired by Grantor, and shall be binding on Grantor and its heirs, executors, administrators, devisees, successors and assigns of any of the foregoing, provided that so long as the GHP Ground Lease and the Lease remain in effect, nothing herein shall constitute an encumbrance upon King County's or GHP's leasehold interests or interests in the Building. Grantor shall not transfer the Property or any portion thereof that includes the Child Care Space or provides access thereto, or is otherwise reasonably necessary to the operation of the Child Care Space, to anyone unless the transferee agrees in writing to be bound by the provisions of this Covenant to the same extent as the transferor and the City receives a copy of the transferee's agreement prior to the transfer, but the covenants and restrictions herein shall be binding on any such transferee regardless of whether such written agreement is obtained. This Covenant may be enforced by The City of Seattle, which shall have all remedies available at law or in equity in case of any breach of the terms hereof. Grantor agrees that such remedies may include, without limitation, specific performance, injunctions, appointment of a receiver, and restitution of any unjust enrichment that may accrue to Grantor or its successors or assigns from any transfer or use of the Property or any part thereof contrary to the terms hereof.

8. **Casualty or Condemnation.**

A. *Grantor's Obligations.* In the event that all or part of the Child Care Space is damaged to the extent that it is rendered unusable for the purpose intended hereby, or the

Child Care Space is destroyed by fire or other casualty to the structure in which it located, or by the taking by condemnation or deed in lieu of condemnation, then Grantor may, in its sole discretion, elect to repair, restore or replace the lost Child Care Space. If the Grantor does repair, restore or replace the Child Care Space, then such space shall continue to be used consistent with this Covenant. If Grantor elects not to repair, restore or replace the Child Care Space, then this Covenant shall terminate. If this Covenant terminates under this subsection A and there are insurance or condemnation proceeds reasonably attributable wholly or in part to the Child Care Space (including its structural elements and fixtures), payable to or for the benefit of the Grantor, then in consideration for the funds provided by the City for the improvements to the Child Care Space, the City shall be entitled to receive a portion of those proceeds determined as follows: First, the total proceeds attributable to the Child Care Space shall be multiplied by a fraction equal to the total amount paid by the City to NWC for improvements to the Child Care Space under the HSD Agreement ("City Payment") divided by the sum of the City Payment plus the amount of Bond Proceeds applied to the design, permitting, construction and improvement costs reasonably attributable to the Child Care Space that were expended pursuant to the Lease. Second, the resulting amount shall be reduced by 1/20th of the resulting amount for each full year the Covenant had previously been in force and Grantor had been in compliance with the Covenant.

B. *Extension of Term for Loss of Use.* Notwithstanding Section 3 hereof, if any casualty loss or condemnation results in the loss of use of more than fifty percent (50%) of the Child Care Space for a period of one year or more, and the County elects to repair, restore or replace the lost Child Care Space, then the term of this Covenant shall be automatically extended beyond the original term hereof for a period equal to the period of time for which such loss of use continued beyond the period of one year.

9. **No Other Bonuses.** Grantor agrees that the Child Care Space shall not be eligible to satisfy bonus conditions under SMC Title 23 for any other project than the one identified above. Without limiting the foregoing, at no time shall any exterior portion of the Child Care Space include any area for which a bonus is or has been allowed under any provision of SMC Title 23 or former Title 24 other than for Child Care Space.

10. **Miscellaneous.** This Covenant shall be governed by the laws of the State of Washington. Grantor, for itself and its successors and assigns, consents to the jurisdiction of the courts of the State of Washington and to venue of any proceedings brought hereunder in King County, Washington. If any provision of this Covenant, or the application thereof to any conditions or circumstances, shall be found to be invalid or unenforceable, the parties intend that the validity or enforceability of the other provisions, or of such provision as applied to other conditions or circumstances, as the case may be, shall not be impaired. This Covenant is the product of negotiation and shall not be construed strictly against any party as the drafter of any part hereof.

11. **Time.** Time is of the essence of Grantor's obligations hereunder.

12. **Entire Agreement, Amendments.** This Covenant, together with the HSD Agreement, contains the entire agreement and understanding of the parties with respect to the subject matter hereof. This Covenant may be amended only by a written document signed by an authorized officer of the City and by an authorized officer of the Grantor, or its successor in interest. This Covenant modifies the DPD Covenant only with respect to the amount and location of Child Care Space that is committed to satisfy the conditions of SMC 23.49.012, and does not supersede or replace the DPD Covenant.

Exhibits:

- A. Legal description of Property
- B. Floor Plans of Child Care Space
- C. Excerpt from SMC 23.49.012

EXECUTED as of the day and year first above written.

COUNTY OF KING

Print Name: _____

Title: _____

The foregoing Covenant is accepted.

THE CITY OF SEATTLE

By: _____

Director, Human Services Department

THE CITY OF SEATTLE ACKNOWLEDGMENT

STATE OF WASHINGTON

COUNTY OF KING

| ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Director of the Human Services Department of THE CITY OF SEATTLE, a municipal corporation of the State of Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this ____ day of _____, 2009.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,
residing at

My appointment expires _____

COUNTY ACKNOWLEDGMENT

STATE OF WASHINGTON

| ss.

COUNTY OF KING

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

Dated this ____ day of _____, 2009.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Washington,
residing at

My appointment expires _____