

Attachment 1

After recording, return to:

Seattle City Light
Real Estate Services
700 Fifth Avenue, Suite 3200
P.O. Box 34023
Seattle, WA 98124-4023

RECIPROCAL EASEMENT AGREEMENT

Reference Nos.: 20060922000172
Grantors: The City of Seattle; ELA, LLC;
Echo Lake Senior Apartments, a condominium;
The Young Men’s Christian Association of Greater Seattle
Grantees: The City of Seattle; ELA, LLC;
Echo Lake Senior Apartments, a condominium;
The Young Men’s Christian Association of Greater Seattle;
Ronald Wastewater District
Legal Description (abbreviated): ... Ptn Lots 3 and 4 and Tract A, BSP No. SHBSP-201571,
Recording No. 20060922000172, Vol 236 of Plats, pp 78-
82; King County, WA; and
Ptn Seattle-Everett Traction Co. ROW in NW¼ Sec. 6,
T26N, R4E, W.M., in King Co., WA
Assessor’s Tax Parcel Nos.: 1134700040, 1134700050, 2228000000, and Ptn
0626409028
Seattle City Light P.M. Nos.: 260406-4-303A

THIS RECIPROCAL EASEMENT AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, _____, by and between THE CITY OF SEATTLE, a Washington municipal corporation, acting by and through its SEATTLE CITY LIGHT department (“CITY”); ELA, LLC, a Washington limited liability company (“ELA”); ECHO LAKE SENIOR APARTMENTS, a condominium (“ELSA”); THE YMCA OF GREATER SEATTLE, a Washington nonprofit corporation (“YMCA”); and RONALD WASTEWATER DISTRICT, a Washington special district (“DISTRICT”).

RECITALS:

WHEREAS, the CITY is the owner of certain real property located in King County, Washington, described in **Exhibit A** attached hereto and incorporated herein by reference (the “CITY Property”); and

WHEREAS, ELA is the owner of certain real property located in King County, Washington, described in **Exhibit B** attached hereto and incorporated herein by reference (the “ELA Property”); and

WHEREAS, ELSA is the owner of certain real property located in King County, Washington, described on **Exhibit C** attached hereto and incorporated herein by reference (the “ELSA Property”); and

WHEREAS, the YMCA is the owner of certain real property located in King County, Washington described on **Exhibit D** attached hereto and incorporated herein by reference (the “YMCA Property”); and

WHEREAS, ELA, ELSA,, and the YMCA have developed a mixed-use project in Shoreline, Washington, providing 489 units of affordable, market rate, and senior apartments, retail, a family YMCA and child care center, and a restored wetland and natural area (the “Echo Lake Village”); and

WHEREAS, as part of the Echo Lake Village, ELA has constructed a new access road, as shown on the drawing attached hereto as **Exhibit E** and incorporated herein by reference, which area is more fully described on **Exhibits H through K** attached hereto and incorporated herein by reference (the “Access Road” or “Easement Area”); and

WHEREAS, ELA has also constructed a new retaining wall (the “Retaining Wall”) at the base of the elevated roadbed of the former interurban railroad, together with fencing and traffic control bollards, and a new stairway to connect the Access Road to the Interurban Trail (the “Stairway”), all on the CITY Property; the Retaining Wall, bollards, and fencing are shown on the drawing attached hereto as **Exhibit F** and incorporated herein by reference; the Stairway is shown on the drawing attached hereto as **Exhibit G** and incorporated herein by reference; and

WHEREAS the City owns and operates a transmission line corridor to the east and adjacent to the Echo Lake Village property and has historically used an access road through the south portion of said property to access its transmission corridor and facilities; and

WHEREAS, the DISTRICT operates a pump station facility to the north of and adjacent to the Echo Lake Village and has historically used the CITY’s transmission corridor access roadway to operate and maintain this facility; and

WHEREAS, the CITY, ELA, ELSA and the YMCA each desire to grant and receive a reciprocal easement for access, ingress, egress and use of the Access Road on the terms and conditions set forth herein; and

WHEREAS, ELA, ELSA, the CITY and the YMCA each desire to memorialize their understanding concerning the responsibility for construction, maintenance and use of the Access Road and the Retaining Wall; and

WHEREAS, ELA, ELSA, the CITY and the YMCA each desire to grant the DISTRICT an easement to use the Access Road for ingress and egress to the DISTRICT's pump station;

NOW, THEREFORE, in consideration of the foregoing recitals, and in further consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt, value and sufficiency of which is hereby acknowledged, the parties mutually covenant and agree as follows:

AGREEMENT:

1. Grant of Easement – CITY. The CITY hereby grants to ELA, ELSA, the YMCA, and the DISTRICT a perpetual non-exclusive easement for pedestrian and vehicular access, ingress, and egress over and upon a portion of the CITY Property; the area of the easement granted by the CITY is described in **Exhibit H** attached hereto and incorporated herein by reference.
2. Grant of Easement – ELA. ELA hereby grants to the CITY, ELSA, the YMCA, and the DISTRICT a perpetual non-exclusive easement for pedestrian and vehicular access, ingress, and egress over and upon a portion of the ELA Property; the area of the easement granted by the ELA is described in **Exhibit I** attached hereto and incorporated herein by reference.
3. Grant of Easement – ELSA. ELSA hereby grants to the CITY, ELA, the YMCA and the DISTRICT a perpetual non-exclusive easement for pedestrian and vehicular access, ingress and egress over and upon a portion of the ELSA Property; the area of the easement granted by the ELSA is described in **Exhibit J** attached hereto and incorporated herein by reference.
4. Grant of Easement – YMCA. The YMCA hereby grants to the CITY, ELA, ELSA, and the DISTRICT a perpetual non-exclusive easement for pedestrian and vehicular access, ingress, and egress over and upon a portion of the YMCA Property; the area of the easement granted by the YMCA is described in **Exhibit K** attached hereto and incorporated herein by reference.
5. Reciprocal Parking Easement between the CITY and ELA. In addition to the reciprocal easement granted for the Access Road, the CITY hereby grants to ELA a perpetual non-exclusive easement to use the CITY Property for parking spaces as depicted on that drawing entitled Echo Lake Mixed Use Village; dated August 2, 2007; by Bush, Roed & Hitchings, Inc.; drawing no. 2005145.03; on file in the real estate records of Seattle City Light.
6. Retaining Wall, Fence, and Stairway Easement. In addition to the reciprocal easement herein, the CITY hereby grants to ELA a perpetual, non-exclusive easement for the

placement, maintenance, and repair of a Retaining Wall and associated fence and bollards as shown on the drawing attached hereto as **Exhibit F** and incorporated herein by reference, and to the Stairway as shown on the drawing attached hereto as **Exhibit G** and incorporated herein by reference.

7. **Non-Exclusive Easement.** The reciprocal easements and other rights granted herein are not exclusive, and each of the parties to this Agreement reserves unto itself and to the future owners of its property the right to utilize that portion of the Easement Area on its property for such purposes as do not unreasonably endanger or interfere with the reciprocal easements and other rights granted herein. Each of the parties to this Agreement shall have the right to grant such other easements, rights or privileges to other persons and/or entities for use of that parties' property outside the Easement Area for such purposes as each party in its sole discretion may elect, so long as such purposes do not unreasonably endanger or interfere with the reciprocal easements and other rights granted herein. This section is not intended to allow any single party to this Agreement to grant any other person or entity an easement to use the Access Road.

8. **Nature of Easement.** The reciprocal easements and rights granted under the terms of this Agreement shall be appurtenant to and run with the land, shall be binding on and obligate all persons and/or entities having or acquiring any right, title, or interest in the land, and shall inure to the benefit of each owner, tenant, subtenant, agent, employee or invitee thereof.

9. **Scope of Easement.** The parties intend that the reciprocal easements granted herein are to allow for the construction and maintenance of the Access Road, for access to each party's property in the locations in existence at the time of this Agreement, and to allow the CITY to use the Access Road for the operation of vehicles and equipment necessary for the installation, maintenance, operation and repair of transmission lines and related uses on the CITY's property. Any additional, new or expanded use, including but not limited to driveways or access points from the Access Road to any party's property, will be deemed an expansion of the scope of the easements granted herein and will require the written approval of the parties hereto, which approval may be withheld in that party's discretion.

10. **Maintenance of New Road, Bollards, Retaining Wall and Fence.** At its sole cost and expense, ELA shall be responsible for maintaining the Access Road, bollards, Retaining Wall, and fence in a safe and good condition so that the parties may obtain the benefits of the reciprocal easements granted herein. Additionally, ELA acknowledges that the CITY's willingness to allow the construction of the Access Road on the CITY Property was conditioned upon the Access Road meeting the CITY's heavy vehicle loading requirements, and ELA agrees to maintain the Access Road in a manner that continues to meet the City's heavy vehicle loading requirements. Each party shall refrain from causing any damage to the Access Road, the Retaining Wall, and/or the reciprocal easements granted herein, other than ordinary wear and tear consistent with the use rights granted, and each party shall immediately repair any damage caused by that party or its agents, employees, contractors, vendors or other invitees, at that party's sole cost and expense.

11. **No interference with Utility Use.** Each party acknowledges that the CITY needs large vehicle access on the Access Road at all times in order for the CITY to operate and

maintain its utility facilities on the CITY Property, and that obstructions on the Access Road will interfere with utility use. As a result, dumpsters, recycling bins, structures, parked vehicles and obstructions are prohibited on the Access Road. Additionally, the CITY may temporarily close the Access Road or areas of the Parking Easement as necessary for maintenance and repair of the CITY's facilities.

12. Property Taxes/Insurance. Each party to this Agreement shall continue to be responsible for and pay (or cause to be paid) all insurance and taxes, including, without limitation, real estate taxes and special assessments, applicable to each party's property, regardless of the reciprocal easements and interests granted or created by this Agreement.

13. Liability Insurance. Each party to this Agreement shall maintain a policy of general liability insurance ("Liability Insurance") with adequate single and combined liability limits in force at all times, insuring all activities, conditions, operations and usage on or about each party's property within the Easement Area that is burdened by the reciprocal easements granted herein. Such Liability Insurance shall be issued by insurance companies with a reliable general policyholder's rating and financial rating, and qualified to do business in the State of Washington. Each party shall, upon request of any other party, provide evidence of Liability Insurance coverage in accordance with this section. The parties recognize that the CITY is self-insured, and the parties accept the CITY's program of self-insurance as compliant with the requirements in this paragraph.

14. Indemnification.

14.1 Indemnification Obligation Regarding Construction and Maintenance of New Road, Parking Area, and Retaining Wall. ELA hereby agrees to defend, indemnify and hold harmless each party to this Agreement, including each party's successors, assigns, officers, employees and agents, from and against all claims, damages, losses and expenses, including reasonable attorney's fees and costs, arising out of the construction or maintenance of the New Access Road, parking area, fence and the New Retaining Wall. However, in compliance with RCW 4.24.115 as in effect on the date of this Agreement, ELA's obligation to defend and indemnify the parties against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate (i) shall not apply to damages caused by or resulting from the sole negligence of any other party to this Agreement, its agents or employees. ELA's indemnification obligation in this paragraph for liability caused by or resulting from the concurrent negligence of (a) any other party or its agents or employees, and (b) ELA or ELA's agents or employees, shall apply only to the extent of ELA's negligence.

14.2 General Indemnification Obligation. Each party to this Agreement, and each of their successors and assigns, shall indemnify and hold the other parties to this Agreement and their respective successors, assigns, agents, and employees harmless from and against all claims, damages, losses and expenses, including reasonable attorney fees and costs, arising out of or resulting from the use of the Easement Area or the reciprocal easements granted herein, provided and to the extent that any such claim, damage, loss or expense is caused in whole or in

part by any intentional act, negligent act or omission, or breach of this Agreement by that party or its agents, contractors, subcontractors, vendors or employees.

15. General Provisions.

15.1 Entire Agreement. This Agreement (including the attached Exhibits) constitutes the entire agreement and understanding between the parties with respect to the subject matter contained herein, and supersedes any prior agreement and understanding about the subject matter hereof, including the Permit. This Agreement may only be modified or amended by a written instrument executed by the parties hereof.

15.2 Headings. The subject headings of the sections and paragraphs of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

15.3 Severability. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent of the law.

15.4 Waiver. No waiver of any breach of any of the easements, covenants and/or agreements herein contained shall be construed as, or constitute, a waiver of any other breach or a waiver, acquiescence in or consent to any further or succeeding breach of the same or any other covenant and/or agreement.

15.5 Successors and Assigns. Each covenant and condition contained in this Agreement shall inure to the benefit of and be binding on the parties to this Agreement and their respective heirs, executors, administrators, personal representatives, successors and assigns, except as otherwise provided herein.

15.6 Recording. This Reciprocal Easement Agreement shall be recorded in the Recorder's Office for King County, Washington.

15.7 Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Jurisdiction and venue will be King County Superior Court for any dispute relating to the Easement Area or any dispute arising under this Agreement.

15.8 Remedies. In addition to all other remedies allowed by law or equity, the parties, their successors and assigns, shall have the right to seek injunctive relief for the enforcement of the terms and conditions of this Agreement.

15.9 No Partnership/Joint Venture. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties or their respective businesses, nor shall it cause them to be considered joint venturers or members of any

joint enterprise. Each party shall be considered a separate owner, and no party shall have the right to act as an agent for another party, unless expressly authorized to do so in this Agreement.

15.10 Breach. It is expressly agreed that no breach of this Agreement shall entitle any party to unilaterally cancel, rescind or otherwise terminate this Agreement or the property rights granted herein. However, such limitation shall not affect in any manner any other rights or remedies which a party may have hereunder or under applicable law or equity by reason of any such breach, including any party’s right to seek judicial termination or rescission.

15.11 Counterparts. This Agreement may be executed in two or more duplicate counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

15.12. Mutually Negotiated Agreement. By signature hereunder, each party acknowledges that this Agreement was mutually negotiated and that each party had the opportunity to participate in drafting. As a result, this Agreement will not be construed against any party based upon drafting.

BY: THE CITY OF SEATTLE

a municipal corporation of the state of Washington, acting by and through its
SEATTLE CITY LIGHT DEPARTMENT

By: _____

Its: _____

STATE OF WASHINGTON)
) :ss
County of _____)

On this ____ day of _____, _____, before me personally appeared _____
_____, to me known to be the _____
of the CITY LIGHT DEPARTMENT of the CITY OF SEATTLE, the municipal corporation that

executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that _____ was authorized to execute the said instrument on behalf of said corporation.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year this certificate first above written.

Notary Public (Signature)

(Print Name)

My commission expires: _____

(Seal or Stamp)

BY: ELA, LLC
a Washington limited liability company

By: _____
Its: _____

STATE OF WASHINGTON)
) :ss
County of _____)

On this ____ day of _____, _____, before me personally appeared _____, to me known to be the _____ of ELA, LLC, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act of said company, for the uses and purposes therein mentioned, and on oath stated that _____ was authorized to execute the said instrument on behalf of said company.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year this certificate first above written.

Notary Public (Signature)

(Print Name)

My commission expires: _____

(Seal or Stamp)

BY: THE YOUNG MEN’S CHRISTIAN ASSOCIATION OF GREATER SEATTLE
 a Washington nonprofit corporation

By: _____

Its: _____

STATE OF WASHINGTON)
) :ss
 County of _____)

On this ____ day of _____, _____, before me personally appeared _____
 _____, to me known to be the _____
 of THE YOUNG MEN’S CHRISTIAN ASSOCIATION OF GREATER SEATTLE, the nonprofit
 corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free
 and voluntary act of said municipal corporation, for the uses and purposes therein mentioned, and on oath
 stated that _____ was authorized to execute the said instrument on behalf of said corporation.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year this certificate first above
 written.

 Notary Public (Signature)

 (Print Name)

My commission expires: _____

(Seal or Stamp)

