

AGREEMENT FOR PURCHASE AND SALE OF EASEMENT

This PURCHASE AND SALE AGREEMENT (“Agreement”) is entered into by and between THE CITY OF SEATTLE, a Washington municipal corporation (“Buyer”), and HISTORIC SEATTLE PRESERVATION AND DEVELOPMENT AUTHORITY, a public development authority and Washington non-profit corporation (“Seller”), as of the date this Agreement has been executed by both Buyer and Seller (“Effective Date”). Seller and Buyer may be referred to hereinafter individually as “Party” or collectively as the “Parties.”

Whereas, Seller purchased real property located at 2336 15th Avenue South, Seattle, WA 98144 on December 23, 2021; and

Whereas, this real property purchased by Seller includes an historic building and surrounding vacant land that is suitable for park, open space, and recreation use in an identified service gap area in the 2017 Park Plan; and

Whereas, Buyer and Seller wish to enter into this agreement for Buyer’s purchase of a conservation and recreation easement over an area of the property; and

Whereas, Seller will manage the easement area on behalf of Buyer under a maintenance and operations agreement; and

Whereas, the parties intend for Buyer’s easement to include restrictive conservation covenants that will extinguish development rights on the area encumbered by the easement for Seller and any future owners of the real property; and

Whereas the parties intend for the easement and associated restrictive covenants to run with the land in perpetuity;

NOW THEREFORE,

Intending to be legally bound, for good and valuable consideration, including the mutual covenants and promises of the parties, the adequacy and receipt of which is hereby acknowledged, the parties agree as follows:

1. Property. “Seller’s Property” is real property located at located at 2336 15th Ave South, Seattle, WA 98144, Tax Parcel Number 912200-0345, and more particularly and legally described in Exhibit A. The “Easement Use Area” is those portions of Seller’s Property more particularly and legally described in Exhibit B (“Legal Description – Easement Area”) and depicted in Exhibit C together with all buildings, structures and other permanent improvements, if any, thereon (“Easement Use Area”). The Easement Area includes a gazebo structure but does not include the house located on Seller’s Property outside the Easement Area.

2. Purchase. Seller shall sell and convey an “Easement” to Buyer consisting of all property rights, including easements for Buyer and the public and covenants (positive and negative) as set out in the Easement and Restrictive Covenant Agreement for Conservation, Recreational Use and Access by the Public (“Easement Agreement”) attached as Exhibit D. Pursuant to Buyer’s authority as a first-class city and as further and specifically authorized by RCW 64.04.130, Buyer shall purchase the Easement on the terms, covenants and conditions set forth in this Agreement. The Easement touches and concerns the land of Seller’s Property and the Easement Agreement shall be recorded against Seller’s title to Seller’s Property. As set out in the Easement Agreement, the Easement shall include:

- (a) A transfer to Buyer of development rights for the Easement Area.
- (b) Restrictive covenants barring Seller from attempting to make any use of Seller’s Property that would impair the public benefits of the Easement Area.
- (c) Recreational use and access rights in the Easement Area for the City to be exercised by the City and the public.
- (d) Seller will further provide maintenance and operation services to Buyer at the Easement Area under the terms and conditions set out in the Memorandum of Agreement for Maintenance and Operations between Seattle Parks and Recreation and Historic Seattle at Beacon Hill Garden House (“Maintenance and Operations Agreement - Memorandum of Agreement between Seattle Parks and Recreation and Historic Seattle Concerning the Beacon Hill Garden House”), attached as Exhibit E. The Maintenance and Operations Agreement is a separate agreement that will be subject to and expire on its terms. Buyer’s Easements rights shall not be limited or terminated by the Maintenance and Operations Agreement.

3. Purchase Price.

3.1. Amount. The purchase price (“Purchase Price”) for the Easement is One Million Eight Hundred Forty-two Thousand Five Hundred and no/100 Dollars (\$1,842,500.00).

3.2. Payment. Buyer shall pay Seller the Purchase Price at Closing. All references to dollars shall mean those amounts in United States currency.

3.3 Deposit. Within ten (10) days of the Effective Date, Buyer will open an escrow account with First American Title Company, 555 South Renton Village Place; #760; Renton, WA 98057, (referred to hereafter as “Escrow Holder” or “Title Company”) and shall deliver to Escrow Holder Five Thousand and NO/100 Dollars (\$5,000.00) (the “Deposit”) in immediately available funds, together with the original of the fully executed Agreement. Escrow Holder shall place the Deposit in an interest-bearing account for the benefit of the Parties. Escrow Holder shall apply or disburse the Deposit together with interest, if any, as provided in this Agreement. At Closing, Escrow Holder shall apply the Deposit together with interest, if any, to the Purchase Price.

4. Title.

4.1. Condition of Title. Seller shall convey to Buyer the Easement, subject only to the Permitted Exceptions (defined in Subsection 4.3 below). Consistent with the Condition of Title in this section, Seller agrees that Title insurance to Seller's Property shall be issued as a standard owner's policy of title insurance, unless Buyer elects to obtain an ALTA extended coverage owner's policy as provided in Section 4.2 below.

4.2. Title Insurance Commitment. Buyer has obtained a current title insurance commitment issued by Title Company, No. 4209-3526702, dated July 17, 2020 ("Commitment") and subsequent updates. Buyer may elect to obtain a 2006 ALTA Owner's Extended Coverage Policy of title insurance (the "Title Policy"). 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 expense. Seller shall provide the ALTA affidavits required under Section 8.1(c).

4.3. Permitted Exceptions. Those exceptions to title listed on Exhibit F attached hereto, if any, together with any additional exceptions to title approved in writing by Buyer constitute permitted exceptions ("Permitted Exceptions"). Seller, at its sole cost and expense, shall remove all exceptions other than Permitted Exceptions.

5. Conditions Precedent.

5.1. Conditions Precedent to Buyer's Obligation to Purchase. Buyer's obligations with respect to purchase of the Easement and the Closing are subject to fulfillment, or waiver thereof by Buyer in writing, of all conditions contained within this Agreement ("Buyer's Conditions Precedent"), including the following, not later than the Closing Date (unless an earlier date is specified):

(a) Seller in Title. The Seller owns Seller's Property.

(b) Title Policy. The Title Company shall be prepared to issue the Title Policy in the amount of the Purchase Price subject only to preprinted general exceptions contained in the Commitment and Permitted Exceptions (defined Subsection 4.3 above).

(c) Moratorium. No reassessment, reclassification, rezoning or other change to the zoning of Property by judicial or administrative decision or proceedings (including amendments and modifications of any of the foregoing) pending or proposed to be imposed by any governmental or quasi-governmental authority or any public or private utility having jurisdiction over Seller's Property shall have occurred that would adversely impact Buyer's intended use of the Easement.

(d) Zoning; Survey. There are no uncured violations of zoning ordinances or other laws, ordinances or restrictions applicable to Seller's Property, and there are no encroachments upon Seller's Property other than as shown on the survey by Duncanson Company, Inc. dated April 9, 2019, a copy of which has been provided to Buyer.

(e) Noncompliance - Violation. Existing uses of Seller's Property are in full compliance with all applicable zoning laws (and applicable variances) and any other local, municipal, regional, state or federal requirements, and the improvements on Seller's Property comply with all applicable building, safety, health, zoning, environmental, subdivision and other laws, ordinances and regulations.

(f) No Actions or Proceedings. There is no action or proceeding pending or threatened, with respect to the title, ownership, maintenance, use or operation of Seller's Property.

(g) No Environmental Violations. Seller's Property is not in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on, under, above or about Seller's Property, including but not limited to soil and groundwater conditions.

(h) Representations, Warranties and Covenants of Seller. Seller shall have performed each agreement to be performed by Seller under this Agreement, and Seller's representations and warranties in this Agreement shall be true and correct as of Closing.

(i) No Adverse Changes. As of Closing, there shall have been no adverse change in the physical condition of Seller's Property from the date of this Agreement.

(j) Seller's Deliveries. RESERVED.

(k) Investigation. Buyer shall have notified Seller that the condition stated in Subsection 6.3 has been satisfied or waived within the time period required therein.

(l) Ordinance. On or before the Closing Date, an ordinance shall be in effect authorizing the transaction contemplated in this Agreement and appropriating funds to complete this transaction.

(m) No Seller Bankruptcy. If at any time prior to Closing, (i) there shall 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 the same is not discharged or dismissed before Closing; (ii) a receiver or liquidator is appointed for all or substantially all of Seller's property; (iii) or Seller makes an assignment for the benefit of creditors or takes any other similar action for the benefit or protection of creditors, then Buyer shall have the right in its sole and absolute discretion and in addition to all other remedies available to Buyer pursuant to this Agreement or at law or in equity to cancel and terminate this Agreement after which the Deposit shall be returned to Buyer and neither party shall have any further rights or obligations under this Agreement.

(n) Debris and Personal Property. On the Date of Closing, the Easement Area shall be free of garbage, waste, debris, and personal property.

5.2. Benefit of Buyer. The Buyer's Conditions Precedent is solely for the benefit of Buyer and may be waived only in writing by Buyer. Buyer shall have the right to waive any condition. The waiver by Buyer of any condition in any specific circumstances shall not be a waiver of such condition with respect to any other circumstances or a waiver of any other condition and shall not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant or agreement of Seller, unless the waiver expressly so provides.

5.3. Termination. If any Buyer's Condition Precedent is not satisfied or waived prior to Closing (or such earlier date as provided elsewhere in this Agreement), then Buyer, in Buyer's sole discretion, shall have the right to terminate this Agreement by written notice to Seller and Escrow Holder, and the parties shall have no further obligations under this Agreement, except that Buyer shall be entitled to return of the Deposit together with interest, if any, and Seller and Buyer shall be entitled to return of any documents deposited with Escrow Holder.

6. Investigation of Seller's Property.

6.1. Seller's Initial Deliveries. RESERVED.

6.2. Entry. Without limiting any other rights of Buyer under this Agreement, as of the Effective Date, Buyer and Buyer's agents and employees shall have the right to enter Seller's Property to conduct investigations regarding the Easement ("Investigations") at Buyer's sole expense. Seller agrees to cooperate with any Investigations made by or at Buyer's direction and to allow Buyer reasonable access to Seller's Property both within and without the Easement Area for Investigation purposes. The exercise by Buyer of any of the preceding rights or any other act of Buyer shall not negate any representation, warranty or covenant of Seller, or modify any of Buyer's rights or Seller's obligations in the event of any breach by Seller of any of its representations, warranties or covenants under this Agreement. To the extent permitted by applicable law, Buyer shall indemnify and hold Seller harmless from any and all damages, expense, liens or claims (including attorneys' fees) arising from Buyer's exercise of its rights under this Subsection 6.2 or failure to pay third parties, and the provisions of this indemnity shall survive termination of this Agreement.

6.3. Period for Investigations. RESERVED.

7. Seller's Obligations. From the Effective Date until the Closing Date, Seller shall, at its sole expense:

7.1. Promptly notify Buyer upon learning of any fact or event that would make any of the representations or warranties of Seller contained in this Agreement or any Buyer's Conditions Precedent untrue or misleading in any material respect or that would cause Seller to be in violation of any of its covenants or other obligations hereunder.

7.2. Notify Buyer promptly upon receiving notice of a claim or pending litigation affecting Seller's Property, or notice of any event, transaction, or occurrence before Closing that would materially adversely affect the Easement.

7.3. 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 Seller's Property or any interest therein, including but not limited to development rights, or part thereof without Buyer's consent.

7.4. Maintain Seller's Property in good order, condition and repair, and otherwise operate Seller's Property and maintain its business records in the same manner as before the making of this Agreement, the same as though Seller were not transferring the Easement.

7.5. Maintain all casualty, liability and hazard insurance currently in force with respect to Seller's Property through Closing without diminution in coverage.

7.6. Remedy any violations of law or municipal ordinances or regulations of any federal, state, local or other governmental departments of which Seller is aware.

7.7. Take no action that will adversely affect title to Seller's Property nor take action that impairs the issuance of the Title Policy as described in Section 4 of this Agreement.

7.8. Notify Buyer of each event of which Seller becomes aware affecting Seller's Property or any part thereof immediately upon learning of the occurrence of such event.

8. Deliveries to Escrow Holder.

8.1. By Seller. Seller shall deliver or cause to be delivered to Escrow Holder on or prior to the Closing Date the following items, the delivery of each of which shall be a condition to the performance by Buyer of its obligations under this Agreement:

(a) Easement for Open Space, Recreational Use and Access by the Public. An executed Easement Agreement in the form set out in Exhibit D and conveying to Buyer agreed easement rights and development rights and setting out covenants to run with Seller's Property, subject only to the Permitted Exceptions.

(b) Memorandum of Agreement for Maintenance and Operations between Seattle Parks and Recreation and Historic Seattle at Beacon Hill Garden House. An executed Maintenance and Operations Agreement in the form set out in Exhibit E.

(c) FIRPTA Affidavit. A certificate evidencing that Seller is exempt from the withholding requirements of Section 1445 of the Internal Revenue Code.

(d) ALTA Affidavits. Any affidavits, certifications or instruments, including any lien affidavits or mechanic's lien indemnifications, duly executed and acknowledged by Seller, as reasonably may be required by the Title Company in order to issue the Title Policy.

(e) Closing Certificates. A certificate of Seller dated as of the Closing Date certifying that all of Seller's representations and warranties remain true as of the Closing Date, or if not, specifying the respect in which any representation or warranty is no longer true.

(f) Certificates of Authority. Such certificates as are necessary or required by Buyer or the Title Company to evidence the authority of Seller and its signatories to execute the instruments to be executed by Seller in connection with this transaction, and evidence that the execution of such instruments has been properly authorized by Seller.

(g) Excise Tax Affidavit. A real estate excise tax affidavit signed by Seller.

(h) Such other instruments or documents as may be reasonably required by the Title Company, or pursuant to the provisions of this Agreement, or as mutually agreed by Seller and Buyer to be necessary to fully consummate the transaction contemplated hereby.

8.2. By Buyer. Buyer shall deliver or cause to be delivered to Escrow Holder on or prior to the Closing Date the following items:

(a) Purchase Price. Buyer shall deliver or cause to be delivered to Escrow Holder on or before the Closing Date cash by federal funds, wire transfer or cashier's check in the amount necessary to pay the balance of the Purchase Price and Buyer's share of closing costs and prorations.

(b) Excise Tax Affidavit. A real estate excise tax affidavit signed by Buyer.

(c) Such other instruments or documents as may be reasonably required by the Title Company, or pursuant to the provisions of this Agreement, or as mutually agreed by Seller and Buyer to be necessary to fully consummate the transaction contemplated hereby.

9. Close of Escrow.

9.1. Time. Closing shall occur in the office of Escrow Holder on a date mutually agreeable to Buyer and Seller after Buyer's Conditions Precedent have been satisfied or waived, but in any event no later than _____, unless further extended by written agreement or unless accelerated by written agreement if the Parties conclude an earlier Closing is possible. 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.

9.2. Closing Costs and Prorations.

(a) Closing Costs. Buyer shall pay the cost of recording the Easement, escrow fees, the title insurance premium charged by the Title Company for Buyer's Title Policy and the endorsements required by Buyer, and the cost of any survey required by the Title Company (if any). Additionally, Buyer shall reimburse Seller in the amount not to exceed One Hundred Forty Thousand and no Dollars (\$140,000.00) ("Maximum Reimbursement Amount") for Seller-paid costs associated with the Easement and this transaction, including attorney fees for legal services related to this Agreement,

appraisal, Phase 1 environmental investigation, survey to establish legal descriptions, and easement share of broker commission, title and escrow fees, real estate excise tax, prorated property taxes to the date of closing, and carrying costs on any bridge financing paid by Seller (collectively, “Seller Transaction Costs”). Any such Seller Transaction Costs must be reflected in invoice copies submitted to Escrow at closing and are subject to Buyer’s approval, which shall not be unreasonably withheld or denied. as costs associated with the Easement. Seller shall pay real estate excise tax, if any due. Buyer will pay the Maximum Reimbursement Amount to escrow for delivery to Seller and/or repayment back to Buyer of any funds not necessary to reimburse approved Seller Transaction Costs. Buyer and Seller shall each otherwise pay their own costs and fees, including attorneys’ fees except for approved Seller Transaction Costs up to the Maximum Reimbursement Amount.

9.3. Procedure. Escrow Holder shall close escrow as follows:

- (a) Obtain the release of the Easement from any liens described in the Commitment, and delivery of all documents by Seller, and in this Agreement except the Permitted Exceptions;
Seller;
- (b) Confirm with Buyer satisfactory evidence of delivery of all documents by Seller;
- (c) Confirm with Seller satisfactory evidence of delivery of all documents by Buyer;
- (d) Pay applicable real estate transfer excise taxes and record the Easement Agreement;
Buyer;
- (e) Complete the prorations and credits;
- (f) Issue and deliver the Title Policy to Buyer;
- (g) Deliver any other documents deposited by Seller with Escrow Holder to Buyer;
- (h) Deliver the Purchase Price less Seller’s closing costs and prorations and Buyer credits, if any, to Seller; and
- (i) Forward to Buyer any invoices evincing Seller Transaction Costs and, upon receiving approval from Buyer, deliver to Seller reimbursement payment for such Seller Transaction Costs reimbursement in an amount directed by Seller and not to exceed the Maximum Reimbursement Amount.

(i) Forward to Buyer and Seller, in duplicate, a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited with Escrow Holder, with such recording and filing date endorsed thereon.

9.4. Incorporation of Escrow Instructions. This Agreement shall serve as escrow instructions, and an executed copy of this Agreement shall be deposited by Buyer with Escrow Holder following its execution. The parties may execute additional escrow instructions provided that such additional escrow instructions shall not change the terms of this Agreement.

9.5. Easement. The Easement, and all rights to Buyer and commitments by Seller, shall be delivered to Buyer upon Closing.

9.6. Deliveries Outside of Escrow. On the Closing Date Seller shall deliver to Buyer outside of escrow all original books and records of account, contracts, leases and leasing correspondence, receipts for deposits, unpaid bills and other papers pertaining to the Easement, architectural and engineering plans, drawings and specifications for the improvements to the Easement Area, all “As-Built” plans and specifications, original operating permits and certificates relating to use, occupancy or operation of the Easement Area, all advertising materials, booklets, keys and other items, if any, used in Seller’s operation of the Easement Area.

10. Brokerage Commission. Seller warrants to Buyer and Buyer warrants to Seller that each party’s sole contact with the other and with the Easement regarding this transaction has been directly with the other party and has not involved any broker or finder. Seller and Buyer further warrant to each other that no broker or finder can properly claim a right to a commission or finder’s fee based upon contacts between the claimant and that party with respect to the other party or the Easement. To the extent permitted by applicable law, each party shall indemnify, defend and hold the other party harmless from and against any loss, cost or expense, including, but not limited to, attorneys’ fees and court costs, resulting from any claim for a fee or commission by any broker or finder in connection with the Easement and this Agreement resulting from the indemnifying party’s actions.

11. Condemnation. If there is a condemnation (by an entity other than Buyer) of all or part of Seller’s Property initiated before Closing, Seller shall promptly notify Buyer and Buyer shall have the option for ten (10) days following the date the notice is received (a) to proceed with the Closing, in which event all condemnation proceeds already received by Seller by the Closing shall be paid to Buyer and the right to receive such proceeds not yet received by Seller shall be assigned to Buyer at the Closing, or (b) to terminate this Agreement. Unless this Agreement is terminated, Seller shall take no action with respect to any condemnation proceeding without the prior written consent of Buyer. Buyer shall take no action to initiate a condemnation proceeding for all or any portion of Seller’s Property

12. Representations, Warranties and Covenants.

12.1. Seller’s Representations and Warranties. In addition to the representations, warranties and covenants contained elsewhere in this Agreement, Seller, as of the Effective Date and as of the Closing Date, makes the following representations, warranties and covenants:

(a) Title. Seller is the sole owner of Seller’s Property.

(b) Agreements to Transfer or Encumber. Seller has not committed nor obligated itself in any manner whatsoever to sell or encumber Seller's Property or any interest therein to any party other than Buyer, nor committed or obligated to lease all or any portion of Seller's Property.

(c) Compliance with Law. To the best of Seller's knowledge, Seller's Property complies in all material respects (both condition and use) with all applicable statutes, ordinances, codes, rules and regulations of any governmental authority having jurisdiction over Seller's Property (including those related to zoning, building, subdivision, engineering, and Environmental or Safety Laws) that remains uncured.

(d) Bankruptcy, Etc. No bankruptcy, insolvency, rearrangement or similar action involving Seller or Seller's Property, whether voluntary or involuntary, is pending, threatened, by a third party, or contemplated by Seller.

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

(f) Notices. Seller have not received any written notices from any insurance companies, governmental agencies or from any other parties with respect to any violations or other matters concerning Seller's Property.

(g) Taxes and Assessments. Other than amounts disclosed by the Commitment, to the best of Seller' knowledge, no other property taxes have been or will be assessed against Seller's Property for the current tax year, and there are no general or special assessments or charges that have been levied, assessed or imposed on or against Seller's Property.

(h) Tax Returns. Seller has filed all local, state and federal tax forms that are required to be filed by Seller, have 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 the Closing.

(i) Underground Storage Tanks; Hazardous Substances. To the best of Seller' knowledge, (i) there are no cisterns, wells, subterranean storage or underground storage tanks on Seller's Property, (ii) no underground storage tanks have been removed from Seller's Property, (iii) there are no Hazardous Substances currently located in, on, or under Seller's Property in a manner or quantity that presently violates any Environmental or Safety Law, and (iv) there is no pending or threatened investigation or remedial action by any governmental agency regarding the release of Hazardous Substances or the violation of Environmental or Safety Laws at Seller's Property.

(j) Violation of Property Restrictions. To the best of Seller' knowledge, Seller's Property and the current use, occupation and condition thereof do not violate any applicable deed restrictions or other covenants, restrictions or agreements (including, without limitation, any of the Permitted Exceptions), site plan approvals, zoning or urban redevelopment plans applicable to Seller's Property.

(k) Tax Valuation/Assessment. Seller has no knowledge and has not received any notice of: (a) proceedings pending for the correction of the assessed valuation of Real Property, or (b) any other pending or threatened special assessments affecting the Real Property.

(l) Authority. Seller has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by Seller and constitute the Seller's legal, valid and binding obligation enforceable against Seller in accordance with its terms. The consummation by Seller of the sale of the Easement is not in violation of or in conflict with nor does it constitute a default under any of the terms of any agreement or instrument to which Seller is or may be bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

(n) No Omissions. All representations and warranties made by Seller in this Agreement, and all information contained in any certificate furnished by Seller to Buyer in connection with this transaction, are free from any untrue statement of material fact and do not omit to state any material facts necessary to make the statements contained herein or therein not misleading. The copies of any documents furnished to Buyer in connection with this transaction are true and complete copies of the documents they purport to be.

(o) Leases, Service Contracts or Other Contracts. As of the Date of Closing, no leases, service contracts, or other contracts are in place regarding or related to Seller's Property. As of the Date of Closing, no leases, service contracts, or other contracts will be in place regarding or related to Seller's Property.

(p) Mechanic's Liens. No labor, material or services have been furnished in, on or about Seller's Property or any part thereof that has not been paid in full prior to Closing.

12.2 Effect of Buyer's Inspections. The effect of the representations and warranties made by Seller in this Agreement shall not be diminished or deemed to be waived by any inspections, tests or investigations made by Buyer or its agents.

12.3 Assumption of Liabilities. Buyer, by virtue of the purchase of the Easement, will not be required to satisfy any obligation of Seller related to Seller's Property.

12.4 Provide Further Information. From the Effective Date through the Closing Date, Seller will notify Buyer of each event of which Seller becomes aware affecting Seller's Property or any part thereof promptly upon learning of the occurrence of such event.

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

13.1. Hazardous Substances. Except for petroleum products in connection with motor vehicles, lawn mowers, and underground storage tank for heating oil, Seller has not used or stored on, under or about Seller's Property or transported to or from Seller's Property any Hazardous Substance or allowed any other person or entity to do so. Seller has not, generated, manufactured, produced, stored, released, discharged or disposed of on, under, above or about Seller's Property (or off-site of Seller's Property that might affect Seller's Property) or transported to or from Seller's 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 Property (or off-site of Seller's Property that might affect Seller's Property) or transported to or from Seller's Property by any entity, firm or person, or from any source whatsoever.

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

13.3. Environmental Indemnity. Seller shall protect, indemnify, hold harmless and defend Buyer and its directors, officers, contractors, employees, agents, parents, subsidiaries, successors and assigns 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 Section 13 including, without limitation, (a) all consequential damages, and (b) the costs of any required or necessary repairs, cleanup or detoxification of Seller's 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.

13.4. Definitions. For the purpose of this Section 13, the following terms shall be defined as provided below unless the context clearly requires a different meaning:

- (a) "Environmental or Safety Law" means the Federal Water Pollution Control Act, the Clean Air Act, the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Superfund Amendment and Reauthorization Act, the Toxic Substances Control Act ("TSCA"), the Occupational Safety and Health Act, the Hazardous Materials Transportation Act, the Hazardous Materials Transportation Uniform Safety Act, the Oil Pollution Act of 1990, the Washington Water Pollution Control Act, the Clean Air Washington Act, the Washington Hazardous Waste Management Act ("HWMA"), the Washington Model Toxics Control Act ("MTCA"), the Washington Industrial Safety and Health Act, the Washington Worker and Community Right to Know Act, and the Washington Oil and Hazardous Substance Spill Prevention and Response Act, together with all regulations promulgated under any such authority, and any and all other federal, state, regional, local or international statutes, regulations, rules, ordinances, orders, court or regulatory agency directives, permits, licenses, governmental authorizations and common law causes of action that apply to (1) any hazardous substance or material regulated or restricted under CERCLA, RCRA, TSCA, MTCA, or the HWMA; (2)

any other pollutant, contaminant, or waste; (3) the health or safety of persons; or (4) the protection of the environment or land use. "Environmental or Safety Law" includes past and future amendments and supplements.

(b) "Hazardous Substances" means any hazardous, toxic, or dangerous substance, waste, or material that is regulated under any Environmental or Safety Law.

14. As-Is Sale; Release; Seller Disclosure Form.

14.1. As-Is Sale. Buyer acknowledges that, except for the representations and warranties of Seller set forth in this Agreement and the Purchase Documents, the Easement is being purchased on an "as is" basis, and that no implied or express representations or warranties have been made by Seller except as expressly provided in this Agreement. Buyer acknowledges that (a) Buyer has had or will have, pursuant to this Agreement, an adequate opportunity to make such legal, factual and other inquiries and investigation as Buyer deems necessary, desirable or appropriate with respect to Seller's Property, and (b) except as otherwise expressly set forth in Section 12.1 of this Agreement, neither Seller, nor anyone acting for or on behalf of Seller, has made any representation, warranty, promise or statement, express or implied, to Buyer, or to anyone acting for or on behalf of Buyer, concerning Seller's Property or the condition, use or development thereof. Buyer represents that, in entering into this Agreement, Buyer has not relied on any representation, warranty, promise or statement, express or implied, of Seller, or anyone acting for or on behalf of Seller, other than as expressly set forth in Section 12.1 of this Agreement, and that Buyer shall purchase the Easement based upon Buyer's own prior investigation and examination of Seller's Property. If Buyer elects to proceed to Closing, such election will be made at Buyer's absolute discretion, in reliance solely upon the tests, analyses, inspections and investigations that Buyer makes, or had the right to make and opted not, or otherwise failed, to make, and not in reliance upon any alleged representation made by or on behalf of Seller, except as set forth in Section 12.1.

14. Survival. Subject to the limitations in Section 12.4, the covenants, agreements, representations and warranties made in this Agreement shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof.

15. Entire Agreement. This Agreement contains the entire integrated agreement of the parties, including all of the covenants and conditions between the parties with respect to the subject matter of this Agreement, and supersedes all prior correspondence, agreements and understandings, both verbal and written. No addition or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by Seller and Buyer. The parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the parties.

16. Default; Remedies, Specific Performance.

16.1 Seller Default. This Agreement pertains to the conveyance of real property, the unique nature of which is hereby acknowledged by the parties. Consequently, if Seller breaches or defaults under this Agreement or any of the representations, warranties, terms, covenants, conditions or provisions hereof, Buyer shall have, in addition to a claim for damages for such breach or default, and in addition and without prejudice to any other right or remedy available under this Agreement or at law or in equity, the

right (a) to specific performance of this Agreement; or (b) to terminate this Agreement upon written notice without liability to Seller.

16.2 Buyer Default. If Buyer fails to perform its obligations pursuant to this Agreement at or prior to Closing for any reason except (a) failure of any condition precedent to Buyer's obligations to Close or (b) failure by Seller to perform its obligations hereunder, then Seller, as its sole and exclusive remedy, may terminate this Agreement and receive the Deposit as liquidated damages and not as penalty, in full satisfaction of claims against Buyer hereunder (except for claims arising under Section 5). Seller and Buyer agree that Seller's damages resulting from Buyer's default are difficult, if not impossible, to determine, and the Deposit is a fair estimate of those damages and has been agreed to in an effort to cause the amount of damages to be certain.

17. Notices. All written notices required to be given pursuant to the terms hereof shall be either delivered personally; deposited in the United States mail, certified mail, return receipt requested, postage prepaid and addressed to the addresses listed below with copies to the parties listed after such address (if any) sent by facsimile transmission to the numbers below or sent by electronic transmission to the email address below, with receipt acknowledged:

SELLER:

Kji Kelly, Executive Director
Historic Seattle Preservation and Development Authority
1117 Minor Ave
Seattle, WA 98101
Facsimile: (206) 622-1197 Telephone: (206) 622-6952 ext 223
Email: kjik@historicseattle.org

BUYER:

Seattle Department of Parks and Recreation
300 Elliott Ave W; Suite 100
Seattle, WA 98119
Attn: Lise Ward
Facsimile: (206) 233-7038 Telephone: (206) 733-9106
Email: lise.ward@seattle.gov

The foregoing addresses may be changed by written notice to the other party as provided herein. Mailed notice properly given shall be deemed received two (2) days after deposit in the mail. Facsimile transmission, with receipt confirmed by the recipient by telephone, or email transmission with receipt confirmed by email, of any signed original document or notice, and retransmission of any signed facsimile or email transmission, shall be the same as personal delivery of an original. At the request of either party, or the Escrow Holder, the parties will confirm facsimile or email transmitted signatures by signing an original document.

18. Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this

Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

19. Waivers. No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in this Agreement. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

20. Construction. Captions are solely for the convenience of the parties and are not a part of this Agreement. This Agreement shall not be construed as if one of the parties had prepared it, but rather as if both parties had prepared it. If the date on which Buyer or Seller are required to take any action under the terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day.

21. Time. Time is of the essence of every provision of this Agreement.

22. Force Majeure. Performance by Seller or Buyer of their obligations under this Agreement shall be extended by the period of delay caused by force majeure. Force majeure is war, natural catastrophe, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, riot, civil disorder, or any similar cause beyond the reasonable control of the party who is obligated to render performance (but excluding financial inability to perform, however caused). For purposes of this Agreement, the parties agree that the current state of the COVID-19 pandemic does not constitute a force majeure, regardless of any declared state of emergency.

23. Successors. The terms, conditions and covenants contained in this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

24. Applicable Law. This Agreement shall be interpreted and governed by the laws of the State of Washington. The venue of any legal action or claim related to this Agreement shall be in the Superior Court for King County.

25. No Third Party Beneficiary. The parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the parties, and therefore, nothing in this Agreement express or implied shall confer upon any person any right or interest whatsoever, other than directly to the parties and their heirs, executors, personal representatives, successors and assigns.

26. Reservation of Rights and Responsibilities. Except as set forth in this Agreement, Buyer and Seller retain all rights, privileges, obligations and remedies as set forth under applicable federal, state or local laws.

27. Entire Agreement. This Agreement (a) constitutes the sole and only agreement of the parties hereto with respect to the subject matter hereof (b) supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter hereof, and (c) cannot be changed except by their written consent.

28. Counterparts. The parties may execute this Agreement in one or more identical counterparts, all of which when taken together will constitute one and the same instrument. A facsimile or electronic mail transmission shall be binding on the party or parties whose signatures appear thereon. If so

executed, each counterpart is to be deemed an original for all purposes, and all counterparts shall, collectively, constitute one agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one counterpart.

29. No Recording of Agreement. Neither party (nor any of their respective agents or representatives) shall record this Agreement (or any memorandum or short form of this Agreement) without the prior written consent of the other.

30. Incorporation of Exhibits. All exhibits hereto and all other documents and instruments referred to herein or in any exhibit or attachments hereto are incorporated by reference as a part of this Agreement. The Exhibit List to this Agreement shall be as follows:

- Exhibit A: Legal Description - Seller's Property
- Exhibit B: Legal Description – Easement Area
- Exhibit C: Easement Use Area Map
- Exhibit D: Easement Agreement – Easement and Restrictive Covenant Agreement for Conservation, Open Space, Recreational Use and Access by the Public
- Exhibit E: Maintenance and Operations Agreement - Memorandum of Agreement for Maintenance and Operations between Seattle Parks and Recreation and Historic Seattle at Beacon Hill Garden House
- Exhibit F: Permitted Exceptions - First American Title Co. Order No. 4209-3526702

Signatures of the Parties to this Agreement are on the following pages.

Exhibit A

LEGAL DESCRIPTION – SELLER’S PROPERTY

Real property in the County of King, State of Washington, described as follows:

LOTS 1, 2 AND 3, BLOCK 7, WALKER’S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 6 OF PLATS, PAGE 43, IN KING COUNTY, WASHINGTON.

Tax Parcel ID No. 912299-0345-08

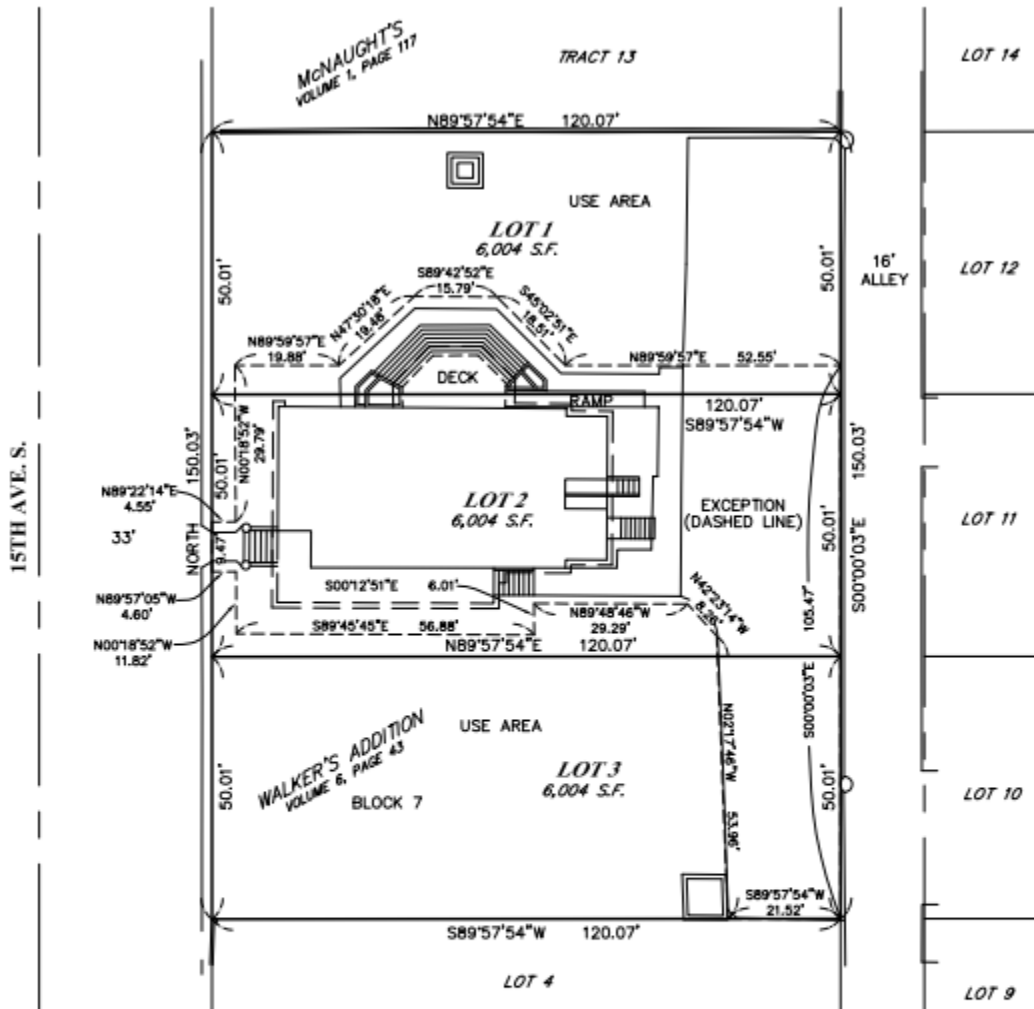
Exhibit B

LEGAL DESCRIPTION – EASEMENT AREA

LOTS 1, 2 AND 3, BLOCK 7 OF WALKER'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 6 OF PLATS, PAGE 43, IN KING COUNTY, WASHINGTON;
EXCEPT THAT PORTION DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 3;
THENCE S89°57'54"W ALONG THE SOUTH LINE OF SAID LOT 3, A DISTANCE OF 21.52 FEET; THENCE N02°17'46"W, 53.96 FEET;
THENCE N42°23'14"W, 8.26 FEET;
THENCE N89°48'46"W, 29.29 FEET;
THENCE S00°12'51"E, 6.01 FEET;
THENCE S89°45'45"E, 56.88 FEET;
THENCE N00°18'52"W, 11.82 FEET;
THENCE N89°57'05"W, 4.60 FEET TO THE EAST MARGIN OF 15TH AVENUE SOUTH;
THENCE NORTH ALONG THE EAST MARGIN OF 15TH AVENUE SOUTH, 9.47 FEET;
THENCE N89°22'14"E, 4.55 FEET; THENCE N00°18'52"W, 29.79 FEET;
THENCE N89°59'57"E, 19.88 FEET;
THENCE N47°30'18"E, 19.48 FEET;
THENCE S89°42'52"E, 15.79 FEET;
THENCE S45°02'51"E, 18.51 FEET;
THENCE N89°59'57"E, 52.55 FEET TO THE WEST MARGIN OF AN ALLEY;
THENCE S00°00'03"E ALONG THE WEST MARGIN OF AN ALLEY, 105.47 FEET TO THE POINT OF BEGINNING.

Exhibit C

EASEMENT USE AREA MAP



NOT TO SCALE



DATE: 2-22-2022

Exhibit D

EASEMENT AGREEMENT

EASEMENT AND RESTRICTIVE COVENANT AGREEMENT FOR CONSERVATION, OPEN SPACE,
RECREATIONAL USE AND ACCESS BY THE PUBLIC

After recording return to:

City of Seattle
Department of Parks and Recreation
300 Elliott Avenue West; Suite 100
Seattle, Washington 98119
Attention: Property Management

EASEMENT AND RESTRICTIVE COVENANT AGREEMENT FOR CONSERVATION, OPEN SPACE, RECREATIONAL USE AND ACCESS BY THE PUBLIC

GRANTOR: Historic Seattle Preservation and Development Authority, a public development authority and Washington nonprofit corporation
GRANTEE: City of Seattle, a municipal corporation of the State of Washington
LEGAL DESCRIPTION (abbreviated): Lots 1-3, Blk 7, Walkers Add. To the City of Seattle, Vol. 6, p 43, King County
ASSESSOR'S PARCEL NUMBERS: 912200-0345-08

EASEMENT AND RESTRICTIVE COVENANT AGREEMENT FOR CONSERVATION, OPEN SPACE, RECREATIONAL USE AND ACCESS BY THE PUBLIC

THIS EASEMENT AND RESTRICTIVE COVENANT AGREEMENT FOR CONSERVATION, OPEN SPACE, RECREATIONAL USE AND ACCESS BY THE PUBLIC (this “**Easement Agreement**”) is made as of June 2, 2022 (the “**Effective Date**”), by and between Historic Seattle Preservation and Development Authority, a public development authority, (“**Grantor**”) and The City of Seattle, a Washington municipal corporation (“**City**”).

RECITALS

A. Grantor is the sole owner in fee simple of certain real property (“Property”) in King County, Washington, more particularly described as:

LOTS 1, 2 AND 3, BLOCK 7, WALKER’S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 6 OF PLATS, PAGE 43, IN KING COUNTY, WASHINGTON.

Tax Parcel ID No. 912299-0345-08

B. The Property’s street address is 2336 15th Avenue South, Seattle, WA 98144.

C. The Property possesses open space values of great importance to the people of Seattle.

D. Grantor intends, as owner of the Property, to convey to the City conservation rights and the right for the Public to use the property for park, recreation and open space uses in perpetuity and to create restrictive covenants running with the property related to those purposes.

E. Grantor intends, as owner of the Property, to protect and rehabilitate the house located at 2336 15th Avenue South, and work with the community to activate and use the house as an affordable venue for community use and enjoyment.

F. City has full authority to purchase easements as a first-class City of the State of Washington and, additionally, is specifically authorized to acquire easements, development rights and covenants for conservation purposes under RCW 64.04.130.

G. The Public Easement herein conveyed to the City was purchased with King County Conservation Futures Tax Levy funds and is subject to open space use restrictions and restrictions on alienation as specified in RCW §84.34.200, et seq., and King County Code §26.12.005, et seq.

NOW, THEREFORE, for and in consideration of good and valuable consideration, receipt of which is acknowledged, the City and Grantor agree as follows:

1. Public Easement.

1.1. Public Access Easement. Grantor hereby grants, dedicates and conveys to the City, its successors and assigns, as a covenant running with the land, an easement (the “**Public Easement**”) on the portion of the Property more particularly described in Exhibit A attached hereto and depicted in Exhibit B

attached hereto (the “**Easement Area**”) and incorporated by this reference for the purposes described below, subject to the terms and conditions set forth herein, on, over, across and above the surface of the Property.

1.2. Purposes. Subject to the conditions set forth herein, the Public Easement is granted to the City for open space, landscape, recreation, pedestrian and recreational use and access by the public.

1.3 Use of the Easement Area. City will have the right, but not the obligation, to manage and program the Easement Area through its Department of Seattle Parks and Recreation (“SPR”) unless otherwise agreed in writing through such separate agreements that City and Grantor may, from time to time, enter as they deem convenient and advisable regarding the management of the Easement Area consistent with the Public Easement. Unless otherwise provided in such written agreement between City and Grantor consistent with the Public Easement, the public may use the Easement Area to engage in activities allowed in any City-owned park under the City of Seattle Parks Code (Seattle Municipal Code Chapter 18.12). Grantor reserves the right to take such lawful action as Grantor deems necessary or advisable under the circumstances to prevent, respond to, or terminate any activity prohibited by the Parks Code or that otherwise poses a danger, nuisance, or threat of injury or damage to Grantor’s Property, its occupants or invitees, or users of the Public Easement, including without limitation to temporarily close the Easement Area for no longer than twenty-four (24) hours. Grantor will promptly notify City of any temporary closure and, with City’s consent, may extend the temporary closure of the Easement Area if necessary to mitigate or respond to prohibited activity or danger to the public. The Easement Area otherwise will be open to the general public during daylight hours, without charge, during reasonable and predictable hours, for a minimum of eight (8) hours each day of the year (“Public Access Hours”).

1.4. Maintenance and Repair. The Grantor shall provide, at its sole expense, all maintenance and repair services for any improvements to the Easement Area, including the cost of all utilities associated with operation of those improvements.

1.5. Grantor’s Use of the Easement Area. Grantor, its agents, affiliates, designees, and assigns (severally and collectively, “Grantor’s Affiliates”), and their respective invitees, shall have the same rights to use the Easement Area as the general public during Public Access Hours and may also use the Easement Area during hours when it is not open to the general public as described in Subsection 1.3 above. Grantor and Grantor’s Affiliates shall also have the right to reserve and limit public access to the north and/or south portions of the Easement Area from time to time (including, without limitation, during Public Access Hours) so long as such reserved use does not exceed fifteen (15) days per month, nor include more than four (4) weekend days (Saturday or Sunday) or City-recognized public holidays per month. Of these allowed reserved uses, the full Easement Area (north and south portions together) shall not be closed for more than eight days per month. City and Grantor acknowledge and agree that community events open to the general public will not constitute a reserved use or closure as provided herein. City and Grantor may set or modify the procedures (including notice to City and the Public) for Grantor’s Affiliates to reserve portions of the Easement Area or change the frequency of these allowed Grantor uses in a separate written agreement subject to annual review by the Parties.

1.6 No Construction by City in the Easement Area. Nothing herein shall authorize the City to undertake any construction or modification of the Easement Area or install any fixtures, landscaping or improvements in the Easement Area.

2. Development Rights.

Grantor hereby and irrevocably grants, conveys and transfers to City all of the following development rights (collectively, the “Development Rights”) associated with the Easement Area:

- 2.1 The right to subdivide or otherwise segregate the Easement Area.
- 2.2 The right to alter or adjust any boundary lines of or pertaining to the Easement Area.
- 2.3 The right to erect, construct, or place any new structure on the Easement Area.

The Development Rights are hereby severed from Grantor’s fee interest in the Property and transferred to Buyer through the Easement Agreement. Grantor voluntarily relinquishes the Development Rights for all time, notwithstanding any future change that may occur to the zoning of the Easement Area or to other land use laws applicable to the Easement Area. The rights to redevelop the area of the Property outside the Easement Area are not severed and shall remain part of Grantor’s fee interest in the Property. Notwithstanding the foregoing, City shall not exercise any of the Development Rights on the Property without the express written consent of Grantor.

3. Restrictive Covenants.

Grantor hereby grants, dedicates and conveys to the City, its successors and assigns, as a covenant running with the land, an easement. As part of the Easement, Grantor makes the following covenants (collectively, the “Restrictive Covenants”) to the City, its successors and assigns. The Restrictive Covenants shall run with Property and bind Grantor and Grantor’s successors in title for all time:

- 3.1 Grantor shall not attempt to exercise any of the Development Rights relinquished in Section 1 of this Easement Agreement.
- 3.2 Grantor shall not attempt to make any use of the Property that would impair or diminish the functions and values of the Easement Area that comprise the public benefit conferred by this Easement Agreement.
- 3.3 Grantor retains all responsibilities and shall bear all costs and liability of any kind related to ownership, operation, upkeep, and maintenance of the Property, including the Easement Area.
- 3.4 Grantor shall continue to be solely responsible for payment of any applicable taxes and assessments levied against the Property.

4. Notices. Notices and other communications under this Easement Agreement shall be in writing and shall be effective when received by personal delivery to the other party, or received via a national overnight delivery service such as FedEx, or received by certified mail, return receipt requested (which receipt shall be deemed to occur five days after mailing), sent by fax with a machine printed or other written confirmation of receipt by the other party, or via electronic mail upon electronic mail reply confirming

receipt, in each case to the address or fax number set forth below, directed to the attention of the person identified. Either party may change the address to which notices may be given by giving notice as above provided.

Grantor:

Historic Seattle Preservation and Development Authority
1117 Minor Avenue
Seattle, WA 98101
Fax: 206-622-1197

City:

Seattle Department of Parks and Recreation
Manager, Property and Acquisition Services
300 Elliott Avenue West; Suite 100
Seattle, WA 98119
Fax: 206-233-7038

5. Complete Agreement. This Easement Agreement (including the Exhibits hereto) is the entire agreement of the City and the Grantor concerning use of the Easement Area, and supersedes all prior or contemporaneous writings or discussions between the City and the Grantor relating to the easements and other obligations provided for herein. This Easement Agreement may not be modified except in writing signed by the City and the Grantor or assigns. This Easement Agreement neither amends nor supersedes any agreements, permits or requirements entered into or imposed by DPD or any other agency or department of the City.

6. Successors and Assigns. The terms and provisions of this Easement Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto and shall be assigned to any successor in interest to Grantor. Upon assignment and assumption of all obligations under this Easement Agreement by the assignee, Grantor shall be released from all obligations under this Easement Agreement.

7. Record Notice. This Easement Agreement shall be recorded with the King County Recorder.

8. Applicable Law. This Easement Agreement shall be construed and interpreted under the laws of the State of Washington. The parties agree that venue of any action between the parties relating to this Easement Agreement shall be in King County, Washington.

9. Time of the Essence. Time is of the essence of this Easement Agreement and the performance of all obligations hereunder.

10. Warranty and Representation of Authority. Grantor represents that the person executing this Easement Agreement for Grantor has authority to do so and to bind the Grantor hereunder. All consents, permissions and approvals related to entry into this Easement Agreement, and the obligations hereunder, have been obtained by Grantor. This Easement Agreement is not binding upon the City until accepted by the Superintendent of Parks and Recreation after the date that a Seattle City Council ordinance authorizing the Superintendent of Parks and Recreation to enter into this Easement Agreement is in effect.

11. Negation of Partnership. None of the terms or provisions of this Easement Agreement shall be deemed to create a partnership between or among the parties, nor shall it cause them to be considered joint ventures or members of any joint enterprise. No party shall have the right to act as an agent for another party, unless expressly authorized to do so herein or by separate written instrument signed by the party to be charged.

12. Singular and Plural. Whenever required by the context of this Easement Agreement, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa.

13. Severability. Invalidation of any of the provisions contained in this Easement Agreement, or of the application thereof to any person, by judgment or court order shall in no way affect any of the other provisions thereof or the application thereof to any other person and the same shall remain in full force and effect.

14. Captions and Capitalized Terms. The captions preceding the text of each section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Easement Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Easement Agreement.

15. Non-Waiver. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

16. No Merger of Estates. This Easement Agreement shall not extinguish or terminate by operation of the doctrine of merger or otherwise due to the existing or future common ownership of any of the real property described herein.

17. Remedies. Both Grantor and City acknowledge and agree that damages are not a sufficient remedy for default or breach of obligations by either party under this Easement Agreement. Therefore, an aggrieved party is entitled to seek equitable remedies, including specific performance under this Easement Agreement. Enforcement by the City is at the discretion of the City and any forbearance by the City of exercise its rights under this Agreement shall not be deemed or construed to be a waiver by the City.

[END OF TEXT ON THIS PAGE]

Exhibit List

Exhibit A: Easement Area Legal Description

Exhibit B: Depiction of Easement Area

DATED this _____ day of _____, 2022.

HISTORIC SEATTLE PRESERVATION AND DEVELOPMENT AUTHORITY, a public development authority and Washington nonprofit corporation

By: _____

Its

THE CITY OF SEATTLE, a Washington municipal corporation acting through its Department of Parks and Recreation

By: _____

Its Interim Superintendent

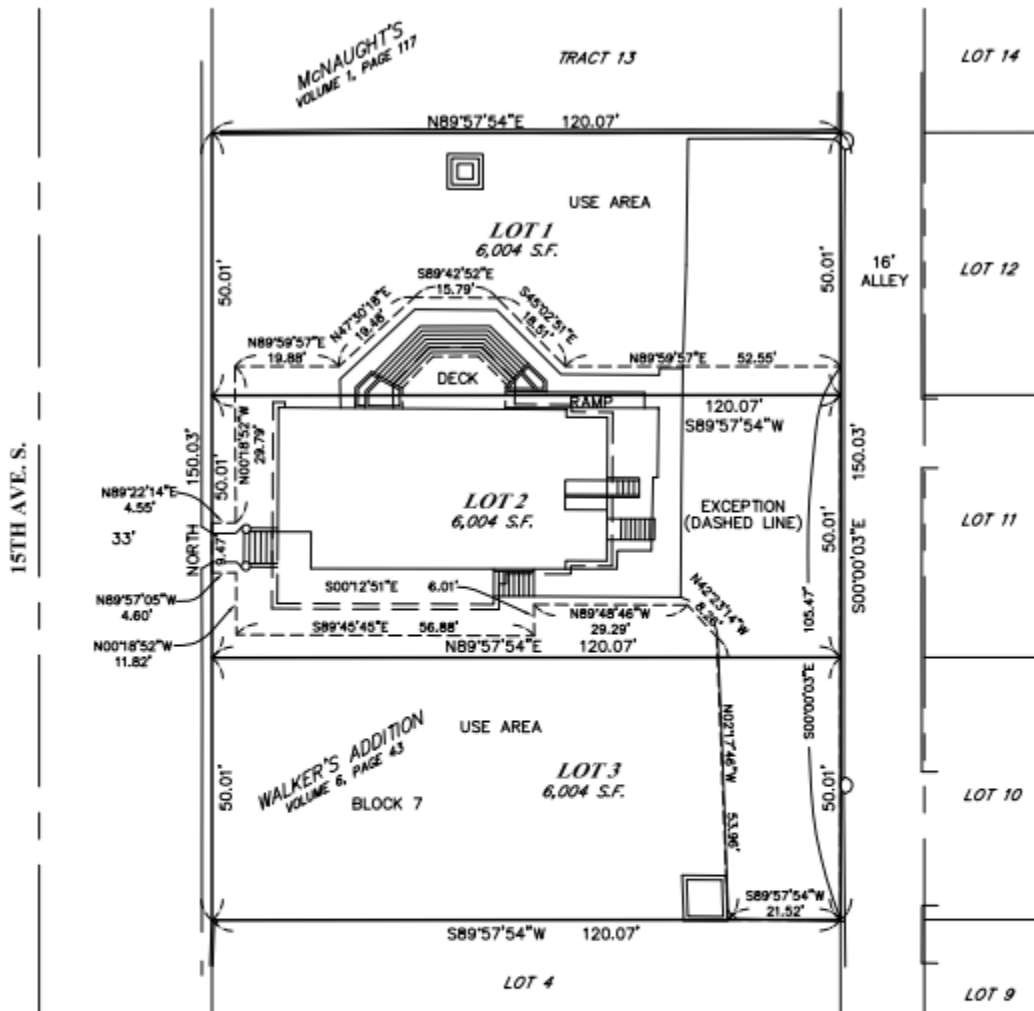
EXHIBIT A

EASEMENT AREA LEGAL DESCRIPTION

LOTS 1, 2 AND 3, BLOCK 7 OF WALKER'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 6 OF PLATS, PAGE 43, IN KING COUNTY, WASHINGTON; EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 3; THENCE S89°57'54"W ALONG THE SOUTH LINE OF SAID LOT 3, A DISTANCE OF 21.52 FEET;
THENCE N02°17'46"W, 53.96 FEET; THENCE N42°23'14"W, 8.26 FEET;
THENCE N89°48'46"W, 29.29 FEET;
THENCE S00°12'51"E, 6.01 FEET; THENCE S89°45'45"E, 56.88 FEET;
THENCE N00°18'52"W, 11.82 FEET;
THENCE N89°57'05"W, 4.60 FEET TO THE EAST MARGIN OF 15TH AVENUE SOUTH;
THENCE NORTH ALONG THE EAST MARGIN OF 15TH AVENUE SOUTH, 9.47 FEET;
THENCE N89°22'14"E, 4.55 FEET; THENCE N00°18'52"W, 29.79 FEET; THENCE N89°59'57"E, 19.88 FEET; THENCE N47°30'18"E, 19.48 FEET;
THENCE S89°42'52"E, 15.79 FEET;
THENCE S45°02'51"E, 18.51 FEET;
THENCE N89°59'57"E, 52.55 FEET TO THE WEST MARGIN OF AN ALLEY;
THENCE S00°00'03"E ALONG THE WEST MARGIN OF AN ALLEY, 105.47 FEET TO THE POINT OF BEGINNING

EXHIBIT B
DEPICTION OF EASEMENT AREA



NOT TO SCALE



DATE: 2-22-2022

Exhibit E

MAINTENANCE AND OPERATIONS AGREEMENT

Memorandum of Agreement between Seattle Parks and Recreation
And
Historic Seattle
Concerning
The Beacon Hill Garden House

This Memorandum of Agreement for Maintenance and Operations (“**Agreement**”) is entered into, as of the final date of signature hereto (“**Effective Date**”), by and between City of Seattle (“**City**”), a municipal corporation, acting through Seattle Parks and Recreation (“**SPR**”) and its Superintendent, and Historic Seattle Preservation and Development Authority, a public development authority and Washington non-profit corporation (“**Historic Seattle**”), for the purpose of defining a maintenance and operations plan for Historic Seattle property (“**Easement Area**”) encumbered by an Easement and Restrictive Covenant Agreement for Open Space, Recreation Use, and Access by the Public recorded under recording number _____ (“**Easement**”) located on the property shared with Beacon Hill Garden House, historically known as the Turner-Koepf House and Garden located at 2336 15th Avenue South, Seattle, Washington 98144 (“**Beacon Hill Garden House**”), the legal description of Easement attached hereto as Exhibit A and a depiction of the Easement attached hereto as Exhibit B.

RECITALS

WHEREAS, Historic Seattle is a historic preservation-focused public development authority chartered and established by the City of Seattle in 1973; and

WHEREAS, Historic Seattle is the sole owner in fee simple of the Beacon Hill Garden House and wishes to restore, operate, and make access to the grounds around the Beacon Hill Garden House available to, and affordable for, the Seattle community; and

WHEREAS, Historic Seattle is the sole owner in fee simple of certain real property in King County, Washington surrounding the Beacon Hill Garden House; and

WHEREAS, SPR’s Easement requires Historic Seattle to offer public access for park, open space, and recreation uses to the Easement Area; and

WHEREAS, Historic Seattle intends, as owners of the Property, to protect and rehabilitate the Beacon Hill Garden House, and work with the community to activate and use the House as an affordable venue for community use and enjoyment; and

WHEREAS, both parties agree the Easement Area possesses open space and recreation value of great importance to the people of Seattle;

NOW, THEREFORE, in consideration of the mutual promises made herein, Historic Seattle and SPR agree as follows:

1. **Purpose.** The purpose of this Agreement is to memorialize terms and conditions under which Historic Seattle will maintain and operate the Easement Area.
2. **Term.** The term of this Agreement shall commence ninety (90) days from the last of Historic Seattle and SPR to sign this Agreement (“**Effective Date**”) and end five (5) years following the Effective Date (“**Termination Date**”). Prior to the Termination Date, SPR and Historic Seattle will meet in good faith to negotiate a new agreement regarding maintenance and operations of the Easement Area consistent with the Easement. If no new agreement has been mutually executed by the parties prior to the Termination Date, then this Agreement shall continue on a month-to-month basis until such time as a new agreement is executed.
3. **Easement Area.** The Easement Area is that portion of the real property on which the Beacon Hill Garden House is located and which is subject to the Easement. (See Exhibit A for full legal descriptions).
4. **Maintenance Responsibility.** Historic Seattle shall provide, at its sole expense, all maintenance and repair services for the Easement Area, including the cost of all utilities associated with the property. The City shall not be responsible for any maintenance responsibility of Easement Area.
5. **Public Access.** Subject to Historic Seattle’s right to use the Easement Area for private reserved uses as provided below, Historic Seattle shall provide public access seven (7) days per week during daylight hours, during reasonable and predictable hours, for a minimum of eight (8) hours each day of the year (“**Public Access Hours**”). Historic Seattle, itself or through its agents, affiliates, designees, and/or assigns (severally and collectively, “**Affiliates**”) may from time to time reserve and limit public access to the north and/or south portions of the Easement Area during Public Access Hours, for private events, such limitation not to exceed eight (8) hours within any 24-hour period. This reserved use shall occur no more than fifteen (15) days per month, including not more than four (4) days per month on weekend days (Saturday or Sunday) or public holidays recognized by the City. Of these allowed reserved uses, Historic Seattle may only close the full Easement Area (north and south portions together) up to eight (8) days per month. Historic Seattle reserves the right to modify the specified use of the Easement Area to meet the financial requirements outlined within Section 7.2 of this Maintenance and Operations Agreement. Historic Seattle or its Affiliates will provide notice of such uses on its publicly accessible calendar and on-site signage (described in Section 6 below).
6. **Signage and Public Notices.** Historic Seattle shall provide, at its sole expense, signage about public use hours and signage notifying public of private, permitted events that may limit public access. Template signage shall undergo review and prior approval by SPR. SPR review will take no more than 30 calendar days. Additionally, Historic Seattle will provide an electronic publicly accessible calendar of at least a two-week schedule and on-site signage indicating to the Public which areas of the Easement Area are open and closed on each day.

7. **Permitting Process.**

7.1 **Event Permitting.** Historic Seattle, itself or through its Affiliates, will manage permitting and scheduling of activation, programming, concessions, and vending of the Easement Area.

7.2 **Fees and Charges.** Historic Seattle and its Affiliates may charge fees for reserved use of the Easement Area. Determination and administration of fee structure will be the sole responsibility of Historic Seattle and its Affiliates. Historic Seattle's use of the easement area as specified contributes to the economic viability and sustainability of both the Easement Area and Beacon Hill Garden House. Fees and charges will vary and will be dependent upon whether the use of the Easement Area is for a private event or public gathering. A private event will typically be charged at a higher rate than a public gathering. Fees and charges will be set and adjusted from time to time to help to underwrite Historic Seattle's obligations to care for the Easement Area and Beacon Hill Garden House.

7.3 **Protected First Amendment Activities.** Historic Seattle will regulate the permitting of, and maintain responsibility for, all free speech activities and events that may occur on the Easement Area. Historic Seattle will comply with local, state, and federal laws regarding any rules, policies, practices, or actions of Historic Seattle relating to free speech events occurring on the Easement Area. Historic Seattle will follow all City policies, practices, rules, and laws regarding the regulation of speech in City parks.

8. **Reporting.** Historic Seattle shall provide SPR with an annual report with activities, events, and public activities permitted and implemented on the Easement Area, due on January 31st of each year during the term.

9. **Temporary Closures for Maintenance.**

9.1 **Planned Maintenance.** Historic Seattle shall provide SPR with 30 days' notice for any planned Easement Area closures for planned maintenance.

9.2 **Unplanned Maintenance.** Historic Seattle shall provide SPR with no later than 24 hours' notice for Easement Area closures for unplanned maintenance related to vandalism, illegal dumping, unauthorized encampments, or any other matter requiring immediate resolution to restore full operations for either public use or Historic Seattle events. No such closure may last longer than 24 hours unless Historic Seattle requests a longer closure and SPR agrees that the unplanned maintenance requires a longer closure. No closure will last longer than is strictly necessary to allow for unplanned maintenance to conclude.

9.3 **Emergency Closure.** Historic Seattle will provide SPR notice as soon as possible but no less than 24 hours unless Historic Seattle must close the Easement Area due to an immediate threat to Historic Seattle's property or the health or safety of the public. This closure may last no longer than 24 hours unless Historic Seattle requests a longer closure and

SPR agrees that the circumstances require a longer closure. No closure will last longer than is strictly necessary to mitigate the threat to property, health, or safety.

9.4 No Overnight Use. Historic Seattle shall not allow any camping or overnight sleeping in the Easement Area. If any encampment becomes situated on the Easement Area in violation of this provision, Historic Seattle shall comply with all applicable governmental laws and regulations in remedying the violation.

10. **Care of Easement Area.**

10.1 Historic Seattle Obligations. Historic Seattle shall at its own expense, at all times, keep the Easement Area and areas immediately adjacent thereto, in a neat, clean, safe, and sanitary condition.

If, after SPR provides written notice to Historic Seattle regarding failure to comply with this section, Historic Seattle fails to take good care of the Easement Area, SPR, at its option, may do so at Historic Seattle's expense. In such event, upon receipt of written statements from SPR, Historic Seattle shall promptly pay the entire actual and reasonable cost incurred by SPR. SPR shall have the right to enter the Easement Area for such purposes. SPR shall not be liable for interference with light, air or view rights that Historic Seattle may have or assert.

10.2 Prohibition against Installation or Integration of Any Fixed and Permanent Work of Visual Art on Easement Area without City's Consent. City reserves to and for itself the right to approve or disapprove of the installation or integration on or in the Easement Area of any fixed and permanent "work of visual art," as that term is defined in the Visual Artists Rights Act of 1990, as now existing or as later amended, and to approve or disapprove of each and every agreement regarding any such installation or integration. Historic Seattle shall not install on or integrate into, nor permit any other person or entity to install on or integrate into, the Easement Area any such work of fixed and permanent visual art without City's prior, express, written consent. City's consent to the installation of any such artwork may be granted, granted upon one or more conditions, or withheld in City's discretion.

10.3 Historic Seattle's Indemnification of City against Liability under Visual Artists Rights Act of 1990. Historic Seattle shall protect, defend, and hold City harmless from and against any and all claims, suits, actions or causes of action, damages and expenses (including attorneys' fees and costs) arising as a consequence of (a) the installation or integration of any work of visual art on or into the Easement Area; or (b) the destruction, distortion, mutilation or other modification of the art work that results by reason of its removal; or (c) any breach of Subsection 10.3 of this Agreement; or (d) any violation of the Visual Artists Rights Act of 1990, as now existing or hereafter amended, by Historic Seattle or any of its officers, employees or agents. This indemnification obligation shall exist regardless of whether City or any other person employed by City has knowledge of such installation, integration, or removal or has consented to any such action or is not required to give prior consent to any such action. The indemnification obligation of this subsection shall survive the expiration or early termination of this Agreement.

11. Insurance.

11.1. Insurance. Historic Seattle shall procure and maintain at its own expense for the duration of this Agreement appropriate insurance including but not limited to the coverage described below against claims for injuries to persons or damages to property that may arise from, or in connection with, the performance of this Agreement hereunder by Historic Seattle or any of its agents, representatives including volunteers, and employees. And Historic Seattle shall ensure that its contractors and subcontractors of all tiers shall maintain in full force and effect during the period outline by the Historic Seattle, minimum types of insurance coverages (applicable to the service provided) with such minimum limits of liability and meeting such general conditions as are set forth below.

11.2. Minimum Coverage and Limits of Liability. Historic Seattle shall, at all times during the term of this Agreement, maintain continuously, at its own expense, minimum insurance coverages and limits of liability as specified below:

A. Commercial General Liability. Coverage shall be at least as broad as Insurance Services Office form number CG 00 01 covering COMMERCIAL GENERAL LIABILITY. \$2,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a \$4,000,000 aggregate limit.

(i) \$2,000,000 - Each occurrence combined single limit (CSL) bodily injury and property damage.

(ii) \$2,000,000 Products/Completed operations Aggregate.

(iii) \$4,000,000 General Aggregate.

(iv) \$2,000,000 each accident/disease – policy limit/disease

(Such insurance (1) may be evidenced with primary limits or any combination of primary and/or excess/umbrella limits, (2) shall include “The City of Seattle, its officers, elected officials, employees, agents, and volunteers” as additional insureds for primary and non-contributory limits of liability for the full limits of liability available under Historic Seattle’s liability insurance program and contractor and subcontractor liability program, whether such limits are primary, excess, contingent or otherwise.

B. Automobile Liability insurance, including coverage for owned, non-owned, leased or hired vehicles with a minimum limit of liability of \$1,000,000 CSL.

C. Worker’s Compensation for industrial injury to Licensor’s employees in accordance with the provisions of Title 51 of the Revised Code of Washington.

D. Property Insurance. Historic Seattle shall maintain at all times property insurance on all buildings, personal property, improvements and fixtures on an “All Risk” basis in an amount at least equal to the current one hundred percent (100%) replacement cost thereof, as established no less frequently than annually.

11.3. City As Additional Insured. Historic Seattle shall include “The City of Seattle, its officers, elected officials, employees, agents, and volunteers” as additional insureds under CGL and Automobile Liability insurance for primary and non-contributory limits of liability per the ISO CG 20 26 11 85 designated additional insured endorsement or its equivalent.

11.4. No Limitation of Liability. The limits of insurance coverage specified herein in subparagraph 1.A are minimum limits of insurance coverage only and shall not be deemed to limit the liability of Historic Seattle’s insurer except as respects the stated limit of liability of each policy. Where required to be an additional insured, the City of Seattle shall be so for the full limits of insurance coverage required by Licensor, whether such limits are primary, excess, contingent or otherwise. Any limitations of insurance liability shall have no effect on Historic Seattle’s obligation to indemnify the City.

11.5. Changes in Insurance Requirements. The City shall have the right to periodically review the adequacy of coverages and/or limits of liability in view of inflation and/or a change in loss exposures and shall have the right to require an increase in such coverages and/or limits upon ninety (90) days prior written notice to Historic Seattle. Should Historic Seattle, despite its best efforts, be unable to maintain any required insurance coverage or limit of liability due to deteriorating insurance market conditions, it may upon thirty (30) days prior written notice request a waiver of any insurance requirement, which request shall not be unreasonably denied.

11.6. Minimum Security Requirement. All insurers must be rated A- V or higher in the current A.M. Best's Key Rating Guide and licensed to do business in the State of Washington unless coverage is issued as surplus lines by a Washington Surplus lines broker.

11.7. Waiver of Subrogation. Property, CGL, Auto, and Employer’s Liability insurance required to be maintained hereunder shall contain a waiver of subrogation in favor of the City.

11.8. Self-Insurance. Any self-insured retention not fronted by an insurer must be disclosed. Any defense costs or claim payments falling within a self-insured retention shall be the responsibility of Historic Seattle.

11.9. Notice of Cancellation. Evidence of not less than 30 (thirty) days prior written notice of cancellation by insurer shall be provided, except 10 (ten) days as respects cancellation for non-payment of premium.

11.10. Evidence of Coverage. On an annual basis Historic Seattle shall provide certification of insurance acceptable to the City’s SPR department evidencing the minimum coverages and limits of liability and other requirements specified herein. Such certification must include a copy of the policy provision documenting that the City of Seattle is an additional insured for commercial general liability insurance on a primary and non-contributory basis.

12. **Indemnification; Release.**

12.1 Historic Seattle’s Indemnification. Except as limited by law or otherwise provided in this section, Historic Seattle shall indemnify, defend (using legal counsel reasonably acceptable to City) and save City, City’s officers, agents, employees and contractors harmless from all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable personnel and overhead costs and attorneys' fees, and other costs incurred in connection with claims, regardless of whether such claims involve litigation) resulting from any actual or alleged injury (including death) of any person or from any actual or alleged loss of or damage to, any property arising out of or in connection with (i) Historic Seattle’s occupation, use or improvement of the Easement Area, or that of any of its employees, agents, subtenants, or contractors, (ii) Historic Seattle’s breach of its obligations hereunder, or (iii) any act or omission of Historic Seattle or any employee, officer, agent, subtenant, Historic Seattle, invitee, assignee or lessee of Historic Seattle, or invitee of any of the same in or about the Easement Area. Historic Seattle’s obligation to indemnify the City shall not apply to any claim or liability resulting from the sole negligence of the City or any of its employees, contractors, tenants, or agents, and in the event of joint negligence, Historic Seattle’s obligations shall apply to the extent of Historic Seattle’s negligence or that of any of Historic Seattle’s employees, officers, agents, tenants, licensees, invitees, assignees. Historic Seattle agrees that the foregoing indemnity specifically covers actions brought by its own employees. As a result, the foregoing indemnity is specifically and expressly intended to constitute a waiver of Historic Seattle’s immunity under Washington's Industrial Insurance Act, RCW Title 51, but only as to the City and to the extent necessary to provide City with a full and complete indemnity as provided under this section. Historic Seattle shall promptly notify City of casualties or accidents occurring in or about the Easement Area. Historic Seattle’s obligation to defend and indemnify the City under this section shall survive the expiration or termination of this Agreement with respect to any claim or liability arising from acts, omissions, occurrences, or events occurring during the term.

12.2 Historic Seattle’s Release of Claims. Historic Seattle hereby fully and completely waives and releases all claims against City to the extent a loss or damage is covered by insurance for any losses or other damages sustained by Historic Seattle or any person claiming through Historic Seattle resulting from any accident or occurrence in or upon the Easement Area, including but not limited to any defect in or failure of Building equipment; any failure to make repairs; any defect, failure, surge in, or interruption of Building facilities or services; any defect in or failure of Common Areas; broken glass; water leakage; the collapse of any Building component; or any act, omission or negligence of co-tenants, Historic Seattle’s or any other persons or occupants of the Building.

12.3 SPR’s Release of Claims. City hereby fully and completely waives and releases all claims against Historic Seattle to the extent a loss or damage is caused by City’s negligence, willful misconduct, or breach of this Agreement.

13. **Assignment.** Except in case of an assignment of this Agreement in connection with the sale of the Property which shall not require City’s consent, Historic Seattle shall not assign or transfer any responsibilities or rights associated with this Agreement without the prior written consent of Superintendent (or Superintendent’s designee), whose consent shall be given or withheld in his or her sole discretion. The granting of consent to a given transfer of this Agreement shall not

constitute a waiver of the consent requirement as to future transfers. Any assignment or transfer of this Agreement without Superintendent (or designee)'s prior written consent, at the Superintendent (or designee)'s option, shall be void. Each assignment or transfer shall be by an instrument in writing in form satisfactory to Superintendent (or designee). If Historic Seattle is a corporation, then any transfer of this Agreement by merger, consolidation or liquidation, or any direct or indirect change, in the ownership of, or power to vote the majority of, Historic Seattle's outstanding voting stock, shall constitute an assignment for the purposes of this Agreement. If Historic Seattle is a partnership, then a change in general partners in or voting or decision-making control of the partnership shall also constitute an assignment. In the event Historic Seattle elects to sell the Property, Historic Seattle shall provide any such purchaser with a copy of this Agreement.

14. **Eminent Domain.**

14.1 Taking. If all of the Easement Area is taken by Eminent Domain, this Agreement shall terminate as of the date Historic Seattle is required to vacate the Easement Area and all Concession Fees and Additional Charges shall be paid to that date. The term "**Eminent Domain**" shall include the taking or damaging of property by, through or under any governmental or statutory authority, and any purchase or acquisition in lieu thereof, whether the damaging or taking is by government or any other person. If a taking of any part of the Easement Area by Eminent Domain renders the remainder thereof unusable for the business of Historic Seattle, in the reasonable judgment of City, the Agreement may, at the option of either party, be terminated by written notice given to the other party not more than thirty (30) days after City gives Historic Seattle written notice of the taking, and such termination shall be effective as of the date when Historic Seattle is required to vacate the portion of the Easement Area so taken.

14.2 Award. Except as otherwise provided below, Historic Seattle reserves all right to the entire damage award or payment for the taking of its interests by Eminent Domain other than the Easement and SPR reserves all right to the entire damage award or payment for the taking of its Easement interest. Historic Seattle, however, shall have the right to claim from the condemning authority all compensation that may be recoverable by Historic Seattle on account of any loss incurred by Historic Seattle in relocating Historic Seattle's business and moving Historic Seattle's merchandise, furniture, trade fixtures and equipment, and the cost of restoring its personal property and improvements made by it to the Easement Area.

15. **Default by Historic Seattle.**

15.1 Definition. If Historic Seattle violates, breaches, or fails to keep or perform any material term, provision, covenant, or any obligation of this Agreement; or if Historic Seattle fails to remedy any breach within sixty (60) days of being requested to do so by the Superintendent (or designee); or if Historic Seattle files or is the subject of a petition in bankruptcy, or if a trustee or receiver is appointed for Historic Seattle's assets or if Historic Seattle makes an assignment for the benefit of creditors, or if Historic Seattle is adjudicated insolvent, or becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or liquidated, voluntarily or otherwise; then Historic Seattle shall be deemed in default ("**Default**").

15.2 City Remedies. If Historic Seattle has materially defaulted under this Agreement and such Default continues or has not been remedied to the reasonable satisfaction of the Superintendent (or designee) within thirty (30) days after written notice thereof has been provided to Historic Seattle, then City shall have the following nonexclusive rights and remedies at its option: (i) to cure such default on Historic Seattle's behalf and at Historic Seattle's sole expense and to charge Historic Seattle for all actual and reasonable costs and expenses incurred by City in effecting such cure as an Additional Charge; (ii) to terminate this Agreement. If the nature of Historic Seattle's obligation (other than monetary obligations and other than vacation or abandonment of the Easement Area) is such that more than thirty (30) days is required for performance, then City shall not consider Historic Seattle to be in default if Historic Seattle commences performance within such thirty (30) day period and for as long as Historic Seattle is diligently prosecuting the same to completion. Historic Seattle's abandonment or vacation of the Easement Area shall not be subject to any extension of the thirty (30) day cure period without the express written permission of the Superintendent (or designee).

15.3 Reentry by City Upon Termination. Upon the termination of this Agreement, City may to the maximum extent allowed under the Easement reenter the Easement Area, take possession thereof, require Historic Seattle to stop all Permitted Use of the Easement Area, and remove all persons therefrom, for which actions Historic Seattle shall have no claim thereon or hereunder. Historic Seattle shall be liable and shall reimburse City upon demand for all actual and reasonable costs and expenses of every kind and nature incurred in retaking possession of the Easement Area. If City retakes the Easement Area, City shall have the right, but not the obligation, to remove therefrom all or any part of the personal property located therein and may place the same in storage at any place selected by City, including a public warehouse, at the expense and risk of Historic Seattle. City shall have the right to sell such stored property, after reasonable prior notice to Historic Seattle or such owner(s), after it has been stored for a period of sixty (60) days or more. The proceeds of such sale shall be applied first to the cost of such sale; second, to the payment of the charges for storage, if any; and third, to the payment of any other sums of money that may be due from Historic Seattle to City; the balance, if any, shall be paid to Historic Seattle.

15.4 Vacation or Abandonment. If Historic Seattle vacates or abandons the Easement Area in its entirety and fails to reoccupy it within thirty (30) days after City (1) delivers a notice to Historic Seattle's notice address set forth in Section 18.1 below demanding such re-occupancy; and (2) mails by certified or registered mail a copy of the notice to any forwarding address given by Historic Seattle to City in writing, Historic Seattle shall be in default under this Agreement.

15.5 City's Non-Exclusive Remedies upon Termination due to Default of Historic Seattle. Notwithstanding any reentry by City and anything to the contrary in this Agreement, in the event of the termination of this Agreement due to the Default of Historic Seattle, the liability of Historic Seattle for all sums due in connection with Historic Seattle's performance of its obligations under this Agreement provided herein shall not be extinguished for the balance of the Term of this Agreement; however, nothing herein shall be construed to require Historic

Seattle to continue to provide maintenance and repair or other services for, or incur any additional costs and expenses pertaining to, the Easement Area beyond the date of termination of this Agreement, other than Historic Seattle's obligations under the Easement. For purposes of illustration, Historic Seattle shall not be obligated to enter into any new service contracts or renew its existing contracts, and shall be required only to pay the sums due under the contracts in force at the time of termination.

16. **SPR's Remedies Cumulative; Waiver.** SPR's rights and remedies hereunder are not exclusive, but cumulative, and SPR's exercise of any right or remedy due to a default or breach by Historic Seattle shall not be deemed a waiver of, or alter, affect or prejudice any other right or remedy that City may have under this Agreement or by law or in equity. Neither any act or omission of City at any time or times after the happening of any event authorizing the cancellation or forfeiture of this Agreement shall operate as a waiver of any past or future violation, breach or failure to keep or perform any covenant, agreement, term or condition hereof or to deprive SPR of its right to cancel or forfeit this Agreement, upon the written notice provided for herein, at any time that cause for cancellation or forfeiture may exist, or be construed so as to estop City at any future time from promptly exercising any other option, right or remedy that it may have under any term or provision of this Agreement.
17. **Access by SPR.** SPR and its agents shall have the right to enter the Easement Area at any reasonable time to examine the same if Historic Seattle is not personally present to permit entry and an entry is necessary in an emergency, City may enter the same by master key or may forcibly enter the same, without rendering City liable therefor, except in the event of City's gross negligence or intentional misconduct. Nothing contained herein shall be construed to impose upon City any duty of repair or other obligation not specifically stated in this Agreement.
18. **Notices.** Any notice, demand, or request required hereunder, with the exception of notice requirements under Section 9 herein, shall be given in writing to the party's address set forth in Subsection 18.1 hereof by any of the following means: (a) personal service; (b) commercial or legal courier; or (c) registered or certified, first class mail, postage prepaid, return receipt requested. Such addresses may be changed by notice to the other parties given in the same manner as above provided. Notices shall be deemed to have been given upon the actual receipt, as evidenced by the deliverer's affidavit, the recipient's acknowledgment of receipt, or the courier's receipt, except in the event of attempted delivery during the recipient's normal business hours at the proper address by an agent of a party or by commercial or legal courier or the U.S. Postal Service but refused acceptance, in which case notice shall be deemed to have been given upon the day of attempted delivery, as evidenced by the messenger's affidavit of inability to deliver stating the time, date, place and manner in which such delivery was attempted and the manner in which such delivery was refused, or on the day immediately following deposit with such courier or, if sent pursuant to Section 18.(c), forty-eight (48) hours following deposit in the U.S. mail. Notwithstanding anything to the contrary, the notice requirements described in Section 9 shall be deemed satisfied if the applicable notice is delivered via email from Historic Seattle to such SPR personnel as SPR designates in writing.

18.1 Notice Addresses.

Historic Seattle:

Historic Seattle PDA
1117 Minor Avenue
Seattle, WA 98101

City:

Seattle Department of Parks and Recreation
Manager, Property and Acquisition Services
300 Elliott Avenue West, Suite 100
Seattle, WA 98119

19. **Successors or Assigns.** All of the terms, conditions, covenants and agreements of this Agreement shall extend to and be binding upon SPR, Historic Seattle, and, subject to the terms of Section 13, their respective heirs, administrators, executors, successors and permitted assigns, and upon any person or persons coming into ownership or possession of any interest in the Easement Area by operation of law or otherwise.
20. **No Partnership.** The City shall in no event be construed to be a partner, associate, or joint venturer of the Historic Seattle or any party associated with the Historic Seattle. The Historic Seattle shall not create any obligation or responsibility on behalf of the City or bind the City in any manner.
21. **Authority and Liability.** Historic Seattle warrants that this Agreement has been duly authorized, executed and delivered by Historic Seattle, and that Historic Seattle has the requisite power and authority to enter into this Agreement and perform its obligations hereunder. Historic Seattle covenants to provide City with evidence of its authority and the authorization of this Agreement upon request. All persons and entities named as Historic Seattle herein shall be jointly and severally liable for Historic Seattle's liabilities, covenants and agreements under this Agreement.
22. **Partial Invalidity.** If any court determines that any provision of this Agreement or the application hereof to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Agreement, or application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each other term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
23. **Force Majeure.** Neither SPR nor Historic Seattle shall be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to any cause beyond its reasonable control, including, but not limited to, an act of Nature, act of civil or military authority, fire, flood, windstorm, earthquake, strike or labor disturbance, civil commotion, delay in transportation, governmental delay, or war.

24. **Counterparts.** This parties may execute this Agreement in counterparts, which, taken together, constitute the entire Agreement.
25. **Headings.** The section headings used in this Agreement are used for purposes of convenience and do not alter in any manner the content of the sections.
26. **Context.** Whenever appropriate from the context, the use of any gender shall include any other or all genders, and the singular shall include the plural, and the plural shall include the singular.
27. **Execution by City and Historic Seattle; Effective Date.** Neither SPR nor Historic Seattle shall be deemed to have made an offer to the other party by furnishing the other party with a copy of this Agreement with particulars inserted. No contractual or other rights shall exist or be created between City and Historic Seattle until all parties hereto have executed this Agreement. This Agreement shall become effective on the Effective Date.
28. **Time of Essence; Time Calculation Method.** Time is of the essence with respect to this Agreement. Except as otherwise specifically provided, any reference in this Agreement to the word “day” means a “calendar day”; provided, however, that if the final day for any action required hereunder is a Saturday, Sunday or City holiday, such action shall not be required until the next succeeding day that is not a Saturday, Sunday or City holiday. Any reference in this Agreement to the word “month” means “calendar month.”
29. **Standards.** Historic Seattle recognizes that, although it is operating its facilities as an independent operator, SPR is organized and exists for the purpose of maintaining park and recreation facilities for the use and enjoyment of the general public. With respect to the Easement Area, Historic Seattle, its agents and employees, will devote their efforts toward rendering courteous service to the public as though they were employees of the City, with a view of adding to the enjoyment of the patrons of this recreational facility.

Historic Seattle shall operate and conduct the facilities on the Easement Area in a businesslike manner, and will not permit any conduct on the part of Historic Seattle’s employees which would be detrimental to the public’s enjoyment of the Easement Area for park, open space, and recreation use.

30. **Miscellaneous.**

30.1 **Entire Agreement.** This Agreement and the Exhibits attached hereto, and by this reference incorporated herein, set forth the entire Agreement of City and Historic Seattle concerning the Easement Area, and there are no other agreements or understanding, oral or written, between SPR and Historic Seattle concerning the Easement Area, other than the Easement to which this Agreement applies. Any subsequent modification or amendment of this Agreement shall be binding upon City and Historic Seattle only if reduced to writing and signed by them.

30.2 Applicable Law; Venue and Forum. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington and any dispute shall be finally resolved by King County Superior Court.

30.3 Negotiated Agreement. The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

SIGNATURES ON THE FOLLOWING PAGES

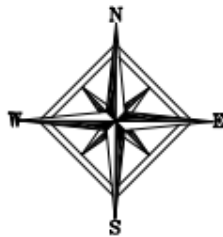
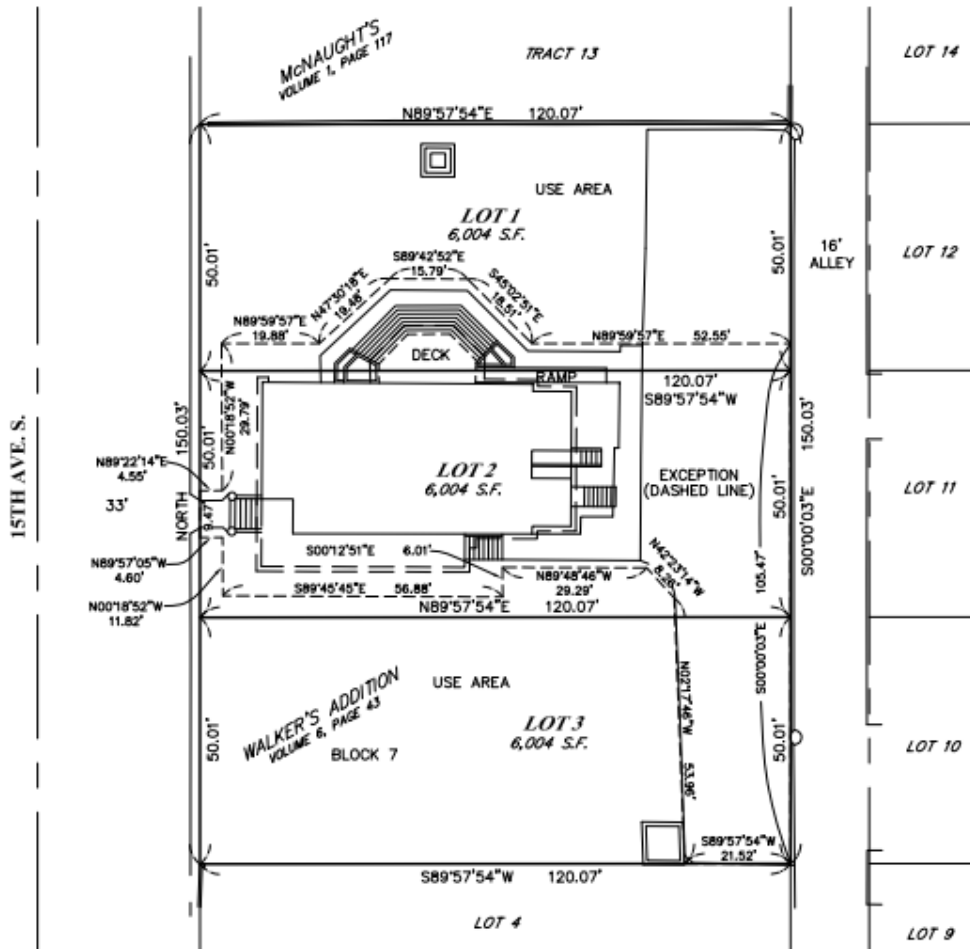
EXHIBIT A

EASEMENT AREA LEGAL DESCRIPTION

LOTS 1, 2 AND 3, BLOCK 7 OF WALKER'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 6 OF PLATS, PAGE 43, IN KING COUNTY, WASHINGTON; EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 3; THENCE S89°57'54"W ALONG THE SOUTH LINE OF SAID LOT 3, A DISTANCE OF 21.52 FEET;
THENCE N02°17'46"W, 53.96 FEET; THENCE N42°23'14"W, 8.26 FEET;
THENCE N89°48'46"W, 29.29 FEET;
THENCE S00°12'51"E, 6.01 FEET; THENCE S89°45'45"E, 56.88 FEET;
THENCE N00°18'52"W, 11.82 FEET;
THENCE N89°57'05"W, 4.60 FEET TO THE EAST MARGIN OF 15TH AVENUE SOUTH;
THENCE NORTH ALONG THE EAST MARGIN OF 15TH AVENUE SOUTH, 9.47 FEET;
THENCE N89°22'14"E, 4.55 FEET; THENCE N00°18'52"W, 29.79 FEET; THENCE N89°59'57"E, 19.88 FEET; THENCE N47°30'18"E, 19.48 FEET;
THENCE S89°42'52"E, 15.79 FEET;
THENCE S45°02'51"E, 18.51 FEET;
THENCE N89°59'57"E, 52.55 FEET TO THE WEST MARGIN OF AN ALLEY;
THENCE S00°00'03"E ALONG THE WEST MARGIN OF AN ALLEY, 105.47 FEET TO THE POINT OF BEGINNING.

EXHIBIT B
DEPICTION OF EASEMENT AREA



NOT TO SCALE



DATE: 2-22-2022

Exhibit F

PERMITTED EXCEPTIONS – First American Title Co. Order No. 4209-3526702

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I-Requirements are met.
2. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records.
3. Any facts, rights, interests, or claims which are not shown by the Public Records but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession thereof.
4. Easements, claims of easement or encumbrances which are not shown by the Public Records.
5. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the Public Records.
6. (A) Unpatented mining claims; (B) Reservations or exceptions in patents or in Acts authorizing the issuance thereof; (C) Water rights, claims or title to water; whether or not the matters excepted under (A), (B) or (C) are shown by the Public Records; (D) Indian Tribal Codes or Regulations, Indian Treaty or Aboriginal Rights, including easements or equitable servitudes.
7. Any lien, or right to a lien, for services, labor or materials or medical assistance heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
8. Any service, installation, connection, maintenance, construction, tap or reimbursement charges/costs for sewer, water, garbage or electricity.
15. Any and all offers of dedication, conditions, restrictions, easements, boundary discrepancies or encroachments, notes and/or provisions shown or disclosed by Short Plat or Plat of Walder's Addition to the City of Seattle recorded in Volume 6 of Plats, Page(s) 43.
16. Conditions, notes, easements, provisions and/or encroachments contained or delineated on the face of the Survey recorded under Recording Number 20181217900006.