

EXHIBIT A

FORM OF EASEMENT FOR PUBLIC ACCESS

EASEMENT FOR PUBLIC ACCESS (hereinafter, the “**Easement Agreement**”)

PARTIES

- Fire Station Seven Associates, a Washington nonprofit mutual corporation (hereinafter, the “**FS7A**”);
- City of Seattle, a Washington municipal corporation (hereinafter, the “**City**”).

BACKGROUND

- A. On May 28, 1987, pursuant to that certain special warranty deed recorded under King County recording number 198705281440 (hereinafter, the “**First Special Warranty Deed**”), the City conveyed to Capitol Hill Housing Improvement Program (a public corporation organized pursuant to Chapter 35.21 RCW and Seattle Municipal Corporation chapter 3.110), its right, title and interest (subject to certain restrictions as set forth in the First Special Warranty Deed) in that certain real property legally described in **Exhibit A** and depicted in **Exhibit B** (hereinafter, the “**Property**”).
- B. On June 2, 1987, pursuant to that certain special warranty deed recorded under King County recording number 198706020990 (hereinafter, the “**Second Special Warranty Deed**”) and apparently pursuant to the formation of FS7A and its initial funding, Capitol Hill Housing Improvement Program conveyed to FS7A its right, title and interest (subject to certain restrictions as set forth in the Second Special Warranty Deed) in the Property.
- C. Both the First Special Warranty Deed and Second Special Warranty Deed set forth a series of ten deed restrictions, the intent of which was to provide for the preservation of an historic building on the Property - Fire Station Seven, the construction of which dates back to 1920.
- D. Now, in order to address the concerns of its lender – a lender which is requiring the Property as collateral, FS7A wishes to have two deed restrictions extinguished. Such restrictions pertain to (a) prohibition of subsequent reconveyances, and (b) automatic reversion of the Property back to the City if Fire Station Seven is damaged by fire or casualty and its reconstruction is not practicable. In addition, FS7A has asked that five other deed restrictions also be extinguished, either because they have expired or have become an administrative burden.
- E. As is appears that the removal of the seven deed restrictions will not compromise the historic preservation of Fire Station Seven, the City does not object to their removal so long as it receives adequate consideration.

- F.** At the same time and in furtherance of meeting the need for parks and open space, the City wishes to secure an easement for public access across that part of the Property which is currently utilized as parking.
- G.** As consideration for the City's extinguishment of the seven deed restrictions and to aid the City in meeting the need for parks and open space, FS7A wishes to grant to the City an easement for public access across the Property's westerly eighteen feet.
- H.** The effective date of this Easement Agreement is the date of its recording ("**Effective Date**").

GRANT OF EASEMENT

NOW, THEREFORE, in consideration of these promises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed that the statements set forth in the recitals above are true and correct and are incorporated herein and made a part hereof, and that the parties hereto agree as follows:

1. Grant of Easement for Public Access.

- a. **The Easement in General.** Subject to the provisions below in the paragraph with the caption "Area Reserved for Seasonal Outside Dining", FS7A, as grantor, hereby grants, conveys and warrants, on behalf of itself and its successors and assigns, to the City and its successors and assigns, free and clear of all liens and encumbrances except as identified on **Exhibit C** (hereinafter, the "**Title Exceptions**") a perpetual easement for public access and use (hereinafter, the "**Easement**") over and across the following portion of the Property, subject to the terms and conditions of this Easement Agreement:

The westerly eighteen feet of the Property (hereinafter, the "**Easement Area**").

The Easement Area is depicted in Exhibit B.

- b. **City Access for Inspection and Enforcement.** FS7A's grant, conveyance, and warranty of the Easement will be construed to permit the City, its agents, employees and contractors with continuing access to the Easement Area at all times for inspection and enforcement related to the Easement Agreement.
- c. **Area Reserved for Seasonal Outside Dining.** Despite any provision to the contrary elsewhere in this Easement Agreement, FS7A, on behalf of itself, its successors and assigns, reserves the right to make exclusive use of that certain area within the Easement Area, as depicted in Exhibit D, for outside dining from June 15 through September 15 of each year.

2. Terms of Public Access.

- a. **Commencement of Public Access.** Public access to and use of the Easement Area will commence on or before the first anniversary of the Effective Date.
- b. **Hours of Access.** The hours of public access for the Easement Area are 6:00 AM to 10:00 PM each day of the year, except for temporary closure as provided for below in the section with the caption “Temporary Closures” or in case of emergency.
- c. **Activities in the Easement Area.**
 - i. Within the Easement Area, the public may engage in all activities allowed on a public sidewalk, except that FS7A, its successors and assigns, may exclude or restrict activities that would require a street use permit if conducted on a public sidewalk. The public may engage in free speech activities, including hand billing, signature gathering, and holding signs, so long as such activities do not obstruct access to or through the Easement Area, or to adjacent buildings or property. FS7A, its successors and assigns, may not ask members of the public who are engaging in allowed activities to leave the Easement Area, unless their conduct unreasonably interferes with the enjoyment of the space by others. FS7A, its successors or assigns, may participate in the Seattle Police Department’s Criminal Trespassing Program (SMC 12A.08.040) to restrict access to the Easement Area for reasons of public safety.
 - ii. Except as provided for above in the section above with the caption “Area Reserved for Outside Dining”, seating reserved for customers of restaurants or other commercial uses is prohibited within the Easement Area.

- 3. **Temporary Closures.** FS7A may reasonably and temporarily limit public access to the Easement Area in order to carry out:
 - a. its maintenance obligations with respect to the Easement Area, as set forth below in the section with the caption “Maintenance Obligations”; and
 - b. the maintenance and repair of that part of the Property which adjoins the Easement Area.
 - c. The construction of certain improvements to the Easement Area, as provided for in the section below with the caption “Improvements to Easement Area”.
- 4. **Motorized Vehicles.** Motorized vehicles (including the parking of motorized vehicles) and equipment are not permitted within the Easement Area, except:
 - a. motorized wheelchairs or similar equipment to permit access by disabled users;

- b. emergency or maintenance vehicles;
 - c. to the extent necessary in connection with the construction of improvements within the Easement Area as contemplated in the section below with the caption “Improvements to Easement Area”.
- 5. **Improvements to Easement Area.** To bring the Easement Area into a condition suitable for public access, FS7A will, on or before the first anniversary of the Effective Date and at its own cost and expense, improve the Easement Area with the improvements depicted in **Exhibit D**.
- 6. **Maintenance Obligations.**
 - a. **Binding Commitments.** FS7A as owner of the Property hereby irrevocably covenants and commits to maintain, repair and reconstruct improvements within the Easement Area.
 - b. **Standards.** At its sole cost and expense and at all times, FS7A will keep the Easement Area in a clean, good and operable condition, all in accordance with the following standards:
 - i. Perform grounds custodial work including litter pick-up; garbage and illegal dumping collection and disposal; cleaning of hard surfaces; sweeping of paths; keeping drainage facilities clean and free of debris or obstructions and in good working order; performing all path and sidewalk maintenance, repair and reconstruction;
 - ii. Maintain all flora in a healthy condition, including lawn and garden care, and tree and shrub pruning and mulching;
 - iii. Irrigate landscaped areas and maintaining irrigation equipment for such purposes;
 - iv. Repair damage due to vandalism or accidental damage or destruction and replacing or reconstructing if repair is not adequate or possible;
 - v. Promptly remove graffiti on all surfaces;
 - vi. Perform all pest management and rodent control, in compliance with Health Department standards and directives; and
 - vii. Maintain, repair and replace equipment, including, without limitation, play equipment, benches, picnic tables, litter receptacles, exercise equipment, and signs.

7. **Signage.** FS7A is responsible for placing and maintaining signage in the Easement Area, from and after the completion of the improvements to the Easement Area, as provided for above in the section with the caption “Improvements to the Easement Area” and as depicted in Exhibit D. Such signage will:
- a. identify the Easement Area as space open to the public;
 - b. specify the hours of public use;
 - c. furnish a telephone number to call for further information on terms of public use;
 - d. contain information on who is responsible for maintenance of the Easement Area; and
 - e. provide contact information for reporting maintenance, repair and other issues.

The location, content and number of any such sign or signs is subject to the City’s prior written approval, **provided that**, such approval will not be unreasonably withheld.

8. **Enforcement.** This Easement Agreement is made for the benefit of the City and the City may institute and prosecute any proceeding in law or in equity to enforce this Easement Agreement.

9. **Insurance.**

- a. **Standard insurance coverages and limits of liability required.** FS7A, will, through the term of this Easement Agreement and at its sole cost and expense, maintain in full force and effect a commercial general liability insurance policy including coverage for: Premises/Operations, Products/Completed Operations, Personal/Advertising Injury, and Contractual Liability. Minimum limits of liability shall be: \$ 1,000,000 each occurrence Combined Single Limit bodily injury and property damage (“CSL”); \$2,000,000 Products/Completed Operations Aggregate; \$2,000,000 General Aggregate. The policy shall name “the City of Seattle” as an additional insured and shall be primary and non-contributory with any insurance or self-insurance coverage or limits of liability maintained by the City, and in the form of a duly issued additional insured endorsement and attached to the policy or by the appropriate blanket additional insured policy wording. The City reserves the right to alter minimum coverages pursuant to a periodic review of the appropriateness of such minimum coverages in view of inflation or changing industry conditions and to require an increase in such minimum coverages upon ninety days prior written notice.
- b. **Evidence of insurance.** FS7A must provide the following list of evidence of insurance: A certificate of liability insurance evidencing coverages, limits of liability and other terms and conditions as specified herein; an attached City of Seattle designated additional insured endorsement or blanket additional insured wording to the CGL; a copy of all other amendatory policy endorsements or exclusions of FS7A’s

insurance CGL policy that evidences the coverage required. At any time upon the City's request, FS7A shall also cause to be timely furnished a copy of declarations pages and schedules of forms and endorsements. In the event that the City tenders a claim or lawsuit for defense and indemnity invoking additional insured status, and the insurer either denies the tender or issues a reservation of rights letter, FS7A shall also cause a complete and certified copy of the requested policy to be timely furnished to the City of Seattle.

- c. **Required separation of insured provision; cross-liability exclusion and other endorsement prohibited.** FS7A's insurance policy shall include a "separation of insureds" or "severability" clause that applies coverage separately to each insured and additional insured, except with respect to the limits of the insurer's liability. FS7A's insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City of Seattle from coverage or asserting a claim under the FS7A's insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. FS7A's CGL policy shall NOT include any of the following Endorsements (or their equivalent endorsement or exclusions):

- i. Contractual Liability Limitation (CGL Form 21 39 or equivalent);
- ii. Amendment Of Insured Contract Definition (CGL Form 24 26 or equivalent);
- iii. Limitation of Coverage to Designated Premises or Project (CGL Form 21 44 or equivalent);
- iv. any endorsement modifying or deleting the exception to the Employer's Liability exclusion;
- v. any "Insured vs. Insured" or "cross-liability" exclusion; and
- vi. any type of punitive, exemplary or multiplied damages exclusion.

10. **Release and Indemnity.** FS7A, its successors and assigns, hereby covenants and agrees to forever release, defend, indemnify, and hold harmless the City, its officials, officers, employees, and agents, from any and all costs, claims, demands, causes of action, judgments, damages, or expenses, or liabilities of every kind or description, including reasonable attorney fees and necessary litigation expenses, resulting from any actual or alleged bodily injury (including death) or actual or alleged damage to property arising out of, in connection with, or that are related to the performance of the respective acts or omissions of FS7A or any parties for which such FS7A is legally liable with respect to the Easement Area, to the extent permitted by RCW 4.24.115. Solely to give full force and effect to the indemnity obligations contained herein and for the benefit of the City only, FS7A, for itself, its successors and assigns, specifically and expressly waives any immunity it may have under the Washington State Industrial Insurance Act, Title 51 RCW or any other industrial insurance, workers' compensation or similar laws and acknowledges that this waiver was mutually negotiated by the parties as part of the consideration for this Easement Agreement. This provision will not be interpreted or construed as a waiver of FS7A's right to assert such immunity, defense or

protection directly against any of its own employees. In no event will FS7A's, or its successor's or assign's, indemnification obligations under this Easement Agreement be limited to the extent of any insurance available to or provided by FS7A, its successors or assigns. The indemnification obligations under this Easement Agreement do not apply to any liabilities, claims, causes of action, judgments or expenses resulting from bodily injury or property damage caused by the sole negligence or intentional acts of the public or the City, its officers, employees, elected officials, agents or subcontractors.

11. **Control.** Nothing in this Easement Agreement shall be construed as giving rise to any right or ability on behalf of the City to exercise physical or managerial control over the day-to-day operations of the Property, or any of FS7A's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of either the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or Washington's Model Toxic Control Act, as amended.
12. **Notices.** All notices, demands, requests, consents and approvals that may, or are required to, be given by any party to any other party hereunder must be in writing and sent to the address below or such other address as a party designates in writing and delivers as required by this section. Notices are effective as follows:
- a. Notices delivered in person shall be effective when delivered.
 - b. Notices sent by overnight courier shall be effective on the next business day after delivery to the courier with charges therefor prepaid or credit extended by the courier to the sender.
 - c. Mailed notices will be effective on the earlier of delivery (or first attempted delivery) or three (3) business days after deposit in the U.S. mail, postage prepaid, return receipt requested.
 - d. Addresses for notices are as follows:

For FS7A:

Fire Station Seven Associates
402 15th Avenue East
Seattle, WA 98112

For the City:

City of Seattle
Department of Finance and
Administrative Services/
Attention: Real Estate Services
Seattle Municipal Tower
700 Fifth Avenue, Suite 5200
P.O. Box 94689
Seattle, WA 98124

13. **General.**

- a. **Governing Law.** This Easement Agreement shall be construed and enforced in accordance with the laws of the State of Washington.
- b. **Entire Agreement.** This Easement Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, and replaces and supersedes all prior or contemporaneous written or oral agreements and understandings. There are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this agreement which are not fully expressed or incorporated herein.
- c. **Further acts.** Each party shall execute such further documents and take such further actions as may be reasonably requested by the other party to carry out the purposes of this Easement Agreement
- d. **Contra proferentem.** The parties agree that this Easement Agreement is the product of negotiation, and expressly waive the rule of interpreting an instrument against its drafter.
- e. **Authority.**
 - i. The individuals signing below, if signing on behalf of an entity, represent and warrant that they have the requisite authority to bind the entity on whose behalf they are signing.
 - ii. By signing this Easement Agreement, FS7A acknowledges that the City or an agent selected by the City is authorized to insert dates, recording numbers, and ordinance numbers in the spaces provided in this Easement Agreement prior to recording this Easement Agreement.
- f. **Severability.** If any provision of this Easement Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remainder of such provision or any other provisions hereof
- g. **Attorneys' Fees.** In the event of any dispute regarding the interpretation or enforcement of this Easement Agreement, the prevailing party in such dispute will be entitled to recover its reasonable attorney's fees and costs.
- h. **Waiver.** A party may, at any time or times, at its election, waive any of its rights or any of the other party's obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by the party to be bound by the waiver. No waiver shall be deemed a waiver of any other right or obligation or of a subsequent occurrence of the same or similar breach or other circumstance with respect to which the waiver was given. Additionally, no delay or omission on the part of a party in exercising any rights, power or remedy provided in this Easement Agreement shall be construed as a waiver of or acquiescence in any breach of the terms and conditions set forth herein.

i. **Binding Effect.** The obligations and agreements of FS7A as set forth in this Easement Agreement are deemed to attach to and run with the Property and are binding on FS7A and its successors and assigns.

j. **Time** is of the essence.

14. **Exhibits.** The following exhibits are hereby incorporated by this reference:

- | | |
|------------------|--|
| Exhibit A | Legal description of the Property |
| Exhibit B | Depiction of the Property, including the Easement Area |
| Exhibit C | Title Exceptions |
| Exhibit D | Improvements to the Easement Area/Depiction of Area Reserved for Seasonal Outside Dining |

FIRE STATION SEVEN ASSOCIATES, a
Washington nonprofit mutual corporation

CITY OF SEATTLE, a municipal corporation

By: **EXHIBIT ONLY – DO NOT SIGN**

Printed Name: _____

Title: _____

Date: _____

By: **EXHIBIT ONLY – DO NOT SIGN**

Printed Name: _____

Title: _____

Date: _____

[Notary blocks and exhibits follow]

Exhibit A Legal description of the Property

LOT 8 IN BLOCK 17 OF LAW'S ADDITION TO SEATTLE, AS PER PLAT RECORDED IN
VOLUME 1 OF PLATS, PAGE 51, RECORDS OF KING COUNTY AUDITOR;

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

Exhibit B Depiction of the Property, including the Easement Area

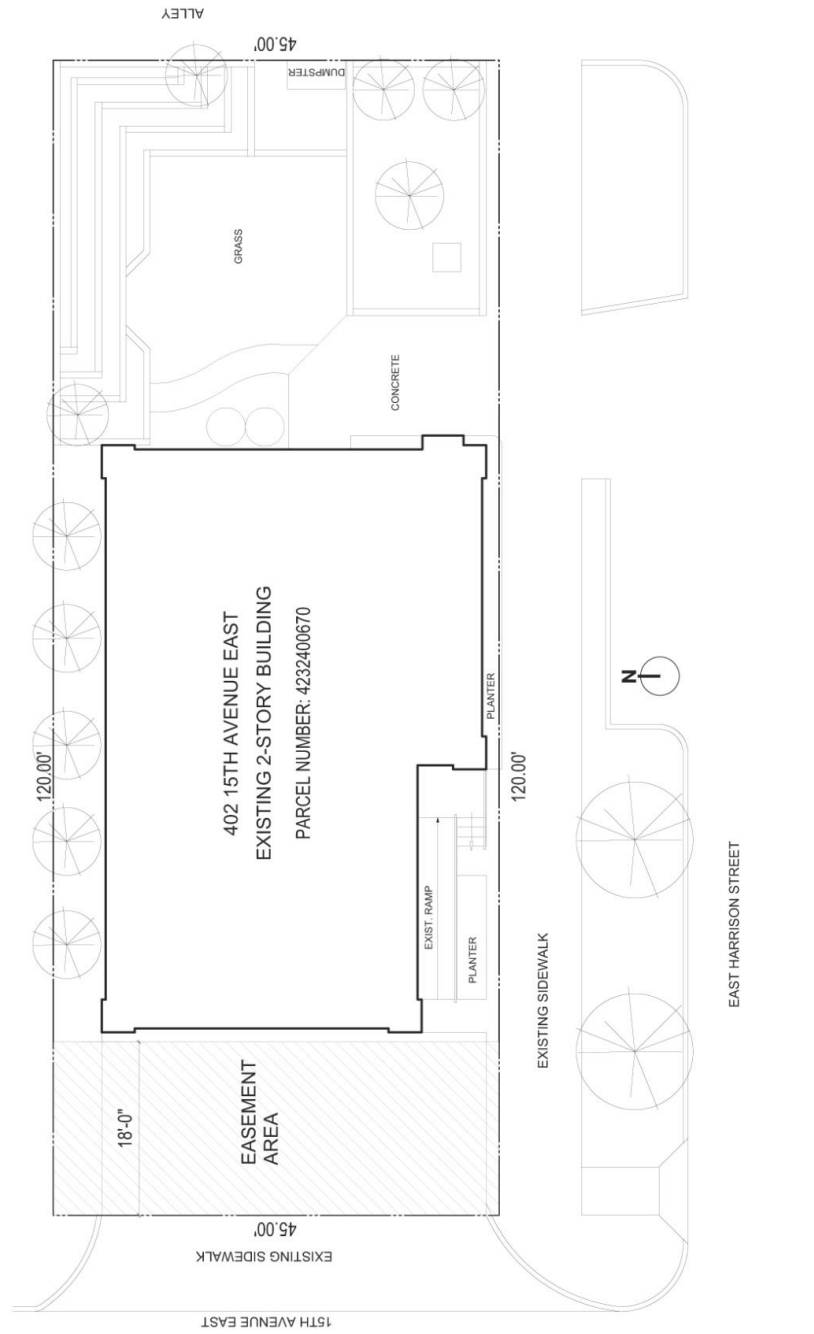
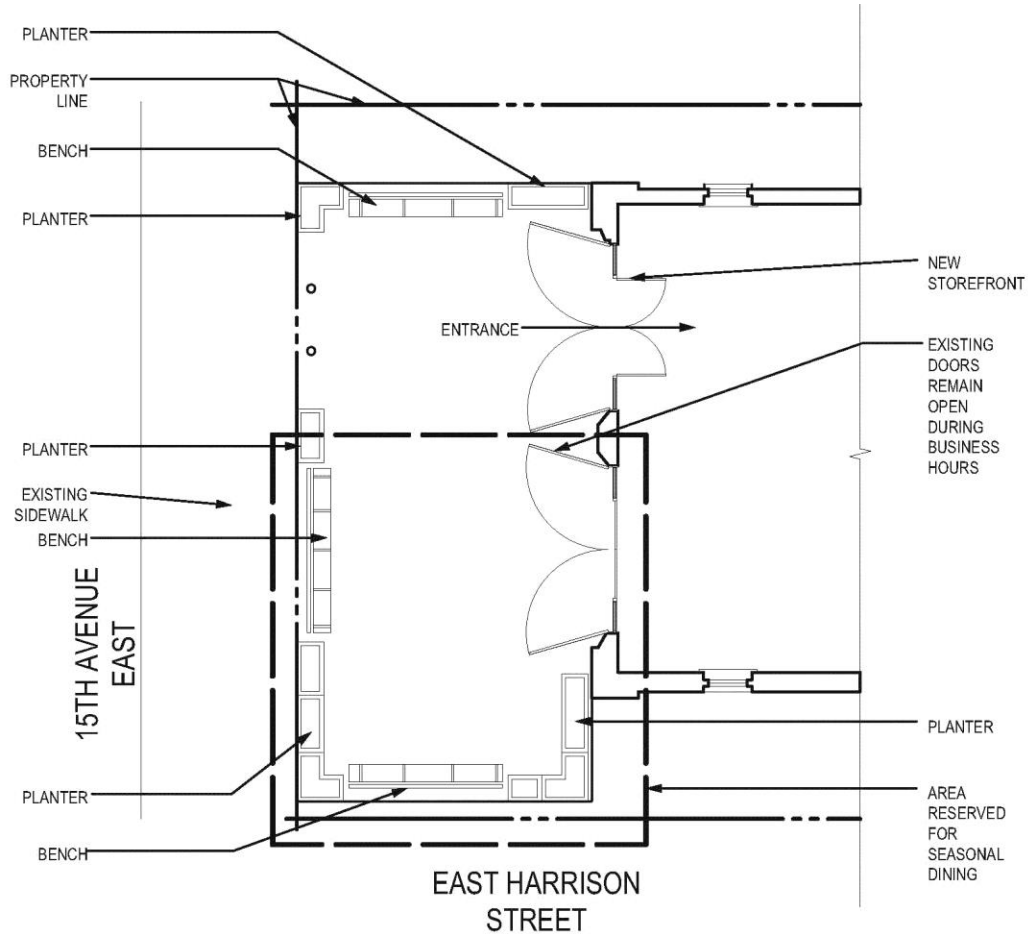


Exhibit C Title Exceptions

1. THE LIEN OF REAL ESTATE TAXES FOR THE CURRENT YEAR NOT YET DUE AND PAYABLE.
2. LIABILITY FOR SEWER TREATMENT CAPACITY CHARGES THAT MAY BE ASSESSED BUT NOT DISCLOSED IN THE PUBLIC RECORDS.
3. COVENANTS, CONDITIONS AND RESTRICTIONS IMPOSED BY INSTRUMENTS RECORDED ON MAY 28, 1987 AND JUNE 2, 1987, UNDER RECORDING NUMBERS 8705281440 AND 8706020990, AND AS AMENDED PURSUANT TO THOSE CERTAIN AMENDED AND RESTATED COVENANTS RECORDED CONTEMPORANEOUSLY WITH THIS EASEMENT FOR PUBLIC ACCESS.

Exhibit D

Improvements to the Easement Area/Depiction of Area Reserved for Seasonal Outside Dining



FIRE STATION 7
EXHIBIT D

Easement Area Improvements
Concept Drawing

June 19, 2015

AFTER RECORDING RETURN TO:

City of Seattle
Department of Finance and Administrative Services
700 Fifth Avenue, Suite 5200
PO Box 94689
Seattle, WA 98124-4689

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

Document Title(s) (or transactions contained therein): Easement for Public Access
Reference Number of Documents assigned or released 198705281440 and 198706020990
Grantor(s) (Last name, first name, initials) Fire Station Seven Associates <input type="checkbox"/> Additional names are on page(s) _____ of document.
Grantee(s) (Last name first, then first name and initials) City of Seattle <input type="checkbox"/> Additional names are on page(s) _____ of document.
Legal description (abbreviated: i.e. lot, block, plat or section, township, range) LOT 8 BLK 17 LAW'S ADD <input checked="" type="checkbox"/> Additional legal description is on <u>Exhibit A</u> of this document.
Assessor's Property Tax Parcel/Account Number <input type="checkbox"/> Assessor Tax # not yet assigned 423240-0670
Recorder will rely on the information provided on the form. Staff will not read the document to verify the accuracy/completeness of the indexing information provided herein.

