

Exhibit A
Form of Negative Easement

AFTER RECORDING RETURN TO:

City of Seattle
Department of Finance and Administrative Services
Seattle Municipal Tower
700 Fifth Avenue, Suite 5200
P.O. 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): Negative Easement for Preservation of Development Rights
Reference Number(s) of Documents assigned or released: None Additional reference numbers on page(s) _____ of document.
Grantor(s) (Last name, first name, initials) BYRD BARR PLACE, a Washington non-profit corporation <input type="checkbox"/> Additional names are on page(s) _____ of document.
Grantee(s) (Last name first, then first name and initials) THE CITY OF SEATTLE, a Washington municipal corporation <input type="checkbox"/> Additional names are on page(s) _____ of document.
Legal description (abbreviated: i.e. lot, block, plat or section, township, range) Lots 4-5, Block 28, EDES & KNIGHTS ADD SUPPL Plat, SW-33-25-4 <input checked="" type="checkbox"/> Additional legal description is on Exhibit A of this document.
Assessor's Property Tax Parcel/Account Number <input type="checkbox"/> Assessor Tax # not yet assigned 22545-02235
The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

NEGATIVE EASEMENT FOR PRESERVATION OF DEVELOPMENT RIGHTS

This NEGATIVE EASEMENT FOR PRESERVATION OF DEVELOPMENT RIGHTS (“**Easement**”) is granted by BYRD BARR PLACE, a Washington non-profit corporation (the “**Grantor**”) in favor of THE CITY OF SEATTLE, a Washington municipal corporation (“**Grantee**”).

1. RECITALS

- 1.1. Grantor is the sole owner in fee simple determinable of that certain real property (hereinafter, “**Property**”) located in King County, Washington, more particularly described in “**Exhibit A**” (Legal Description of Property Subject to Easement) and shown on “**Exhibit B**” (Site Map), both of which are attached and incorporated herein. The Property consists of 15,360 square feet and is improved with a 17,210-square foot building constructed in or about 1908 (the “**Existing Building**”).
- 1.2. The City of Seattle is facing an acute shortage of affordable housing. The scarcity of suitable land is an important factor in this shortage.
- 1.3. The Property is zoned LR-1(M), a zoning designation under which multi-story residential buildings are permitted. The Property’s current use as a social services community institution is recognized as a legal, permitted non-conforming use.
- 1.4. Additionally, the Property’s suitability for development of housing is further enhanced by the Property’s proximity to transportation networks, services, employment centers, as well as its access to utilities necessary for its redevelopment.
- 1.5. Therefore, in light of the shortage of affordable housing and the suitability of the Property for housing, the development potential of the Property is of great importance to Grantor, Grantee and the citizens of the City of Seattle.
- 1.6. Grantor acquired title to the Property from Grantee, and Grantee’s willingness to convey the Property to Grantor was conditioned, in part, on Grantor’s execution and recording of this Easement immediately after conveyance of title, to be effective on the date of recording of this Easement in the public records of King County (the “**Effective Date**”).
- 1.7. The parties intend that the additional development potential of the Property be preserved and utilized in perpetuity for the purpose of affordable housing.

2. CONVEYANCE AND CONSIDERATION

- 2.1. NOW THEREFORE, in consideration of the foregoing recitals which are made a part of this Easement, and for other valuable consideration, the receipt of which is hereby acknowledged, Grantor grants and conveys to Grantee a negative easement as further described in Section 3 in perpetuity in, on, over and across the Property, subject to all of the terms in this Easement.

- 2.2. Grantor expressly intends that this Easement conveys certain rights and a non-possessory interest in the Property to the Grantee.
- 2.3. Grantor expressly intends that this Easement run with the land and that this Easement shall be binding upon Grantor’s personal representatives, heirs, successors, assigns, agents, employees, tenants, and occupants of the Property.

3. PURPOSE AND GRANT OF EASEMENT

- 3.1 **Purpose and Definition of Development Value and Affordable Housing.** The purpose of this Easement is to forever preserve Development Value of the Property for the purposes of social services facilities, or Affordable Housing, or both. As used in this Easement, “**Development Value**” means any expansion of the Existing Building above or below grade, or any construction of a new facility, building, structure or other fixture or appurtenance upon the Property. “**Affordable Housing**” means a housing development that creates and maintains housing units on the Property with a mix of unit sizes which are affordable to and serve households with income levels up to 80% of area median income (“**AMI**”), and with a majority of units serving households with incomes up to 60% of AMI.
- 3.2. **Grant of Easement.** Grantor hereby covenants for the benefit of Grantee to preserve and use the Development Value of the Property for the purposes of social services facilities, for Affordable Housing, or both. Grantor hereby grants to Grantee a negative easement in perpetuity providing Grantee the right to take any actions permitted by law or equity to ensure that the Development Value of the Property is used by Grantor solely for the creation and maintenance of social services facilities, for the creation and maintenance of Affordable Housing, or both (the “**Easement**”). The parties further agree that the rights in the Development Value may not be used or transferred from the Property, as it now or hereafter may be bounded or described, to any other property without the prior written approval of the Grantee. Any purported transfer of the Development Value without Grantee’s prior written approval shall be deemed null and void.
- 3.3. **Interpretation of the Easement; Grantee’s Rights.** The parties intend that this Easement be interpreted (a) in a manner consistent with its stated purpose, and (b) so as to confine the Grantor’s use of the Property to such activities that are consistent with the purpose and terms of this Easement. At the same time, the parties intend, and this Easement is structured, to give Grantor discretion to undertake activities that are consistent with the Easement’s purpose and terms. Accordingly, Grantor shall provide Grantee at least sixty (60) days’ notice and obtain Grantee’s written approval before Grantor submits an application to any regulatory body for any permit that utilizes the Development Value. In such circumstance, at the option of Grantee, Grantor shall enter into a regulatory agreement with Grantee, on a form to be provided by Grantee, to ensure that housing units constructed on the Property serve and are affordable to households with income levels up to 80% of AMI and a majority up to 60% of AMI.

- 3.4. **No Public Rights Conveyed Through Easement.** The parties acknowledge that, except as specifically provided herein, Grantor does not grant, expand or extend any rights to the general public through this Easement, including without limitation, any rights of public access to, on or across, or public use of, the Property.

4. ADDITIONAL RIGHTS CONVEYED TO GRANTEE

- 4.1 The following additional rights are conveyed to Grantee by this Easement:

4.1.1 Access by Grantee. As provided for and limited herein, Grantor hereby grants to Grantee reasonable and non-exclusive access once per year (to be coordinated with Grantor in advance) across the Property solely for the purposes of monitoring and enforcing Grantee's rights under this Easement. Specifically, Grantee shall have the right:

- (a) To enter upon, inspect, observe and study the Property, with such persons as Grantee may require, once per year at mutually agreeable dates and times and upon reasonable prior notice to the Grantor, for the purpose of monitoring the uses and activities on the Property to determine whether they are consistent with this Easement; and
- (b) To enter upon the Property with no less than five days' written notice and during business hours if Grantee has a good faith basis for believing that a violation of this Easement is occurring.

4.1.2 Grantee shall exercise its access rights in compliance with applicable law and the terms of this Section 4.1 in a manner that will not materially disturb or interfere with Grantor's reserved rights, any other person's lawful use of the Property, or Grantor's ongoing operations or quiet enjoyment of the Property.

4.1.3 Grantor shall not unreasonably withhold or delay its consent to dates and times of access proposed by Grantee under Subsection 4.1.1.

- 4.2 **Enforcement.** Grantee shall have the right to enforce the terms of this Easement, in accordance with Sections 6 and 7.

5. PERMITTED USE

The Existing Building shall be maintained in good and sound repair. Grantor will not commit or permit waste (i.e., abuse, unreasonable use, and/or deterioration other than normal wear and tear) of the Existing Building. Accordingly, Grantor may undertake any activities on the Property which are reasonable and necessary to maintain the Existing Building so long as the activities do not frustrate the purpose of preserving the Development Value for social services facilities and Affordable Housing.

6. NOTICE AND CONSENT

- 6.1. **Addresses for Notices.** Any notice, demand, request, consent, concurrence, approval, or communication that any party desires or is required to give to the other under this Easement shall be given in writing and to the party's address below or such other address as any party shall designate in writing from time to time. Notice shall be served personally, or sent by first class registered or certified mail, postage pre-paid, or overnight courier with proof of delivery and shall be deemed given on the earlier of (a) acknowledgement of actual receipt, or (b) the date of delivery affidavit or three business days after deposit in U.S. Mail.

To Grantor: Byrd Barr Place
Attention: Executive Director
722 18th Avenue
Seattle, WA 98122
Telephone: 206-812-4940

To Grantee: City of Seattle
Department of Finance and Administrative Services
Attention: Real Estate Services Director
700 Fifth Avenue
Suite 5200
P.O. Box 94689
Seattle, WA 98124-4689

- 6.2. Where notice from Grantee to Grantor of entry upon the Property is required under this Easement, Grantee may notify any appropriate agent of Grantor by telephone, mail, or in person prior to such entry.

7. REMEDIES

- 7.1. **Notice of Non-Compliance.** If Grantee reasonably determines that the Grantor is in violation of the terms of this Easement or that a violation is likely to occur, Grantee shall give written notice to Grantor specifying the violation and the corrective action sufficient to cure the violation. Where the violation involves injury or damage to the Property resulting from any use or activity inconsistent with the Easement's purpose or terms, Grantor shall restore the portion of the Property so injured to its prior or potential condition in accordance with a plan to which Grantee has consented.
- 7.2. **Grantor's Failure to Respond.** Grantee may bring an action as provided in Section 7.3 if Grantor:
- 7.2.1. Fails to cure a violation of this Easement within thirty (30) days after receipt of written notice thereof from Grantee; or

- 7.2.2. Under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to diligently pursue the cure to completion.
- 7.3. **Grantee's Action.** Grantee may bring an action at law or in equity, or both, to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary and as allowed under the applicable civil rules, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement, or injury to any of the Development Values, including damages for the loss of the Development Values; and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. All such actions for injunctive relief may be taken without Grantee being required to post bond or provide other security.
- 7.4. **Immediate Action Required.** Despite any other provision of this Easement to the contrary, if Grantee, in its reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Development Values, Grantee may pursue its remedies under this Section 7 with prior notice to Grantor but without waiting for the period provided for cure to expire.
- 7.5. **Nature of Remedy.** Grantee's rights under this Section 7 apply equally in the event of either actual or threatened violations of the terms of this Easement and Covenant. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement may be inadequate, and that Grantee shall be entitled to the injunctive relief described in this Section 7 both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section 7 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including Grantee's rights under the deed conveying title to Grantor.
- 7.6. **Costs of Enforcement.** If Grantor or Grantee finds it necessary to bring an action at law or other proceeding against the other party to enforce or interpret any of the terms, covenants, or conditions of this Easement, each party shall bear its own attorneys' and consultants' fees.
- 7.7. **Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of the Grantee in accordance with the terms of this Easement. Any forbearance by Grantee to exercise its rights under this Easement if Grantor breaches any of the Easement's terms shall not be deemed or construed to be a waiver by Grantee of such term or of any of Grantee's rights under this Easement. Grantee's delay or omission in the exercise of any right or remedy upon any breach by Grantor shall not impair such right or remedy or be construed as a waiver.

- 7.8. **Waiver of Certain Defenses.** Grantor acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by legal counsel of its terms and requirements. In full knowledge of the provisions of this Easement and in view of the fact that Grantee will not be continually present on the Property, that Grantee has limited resources to monitor compliance with the Easement, and that activities inconsistent with the purpose and terms of this Easement could occur without Grantee's immediate knowledge, Grantor hereby waives any claim or defense it may have against Grantee or its successors in interest under or pertaining to this Easement based upon abandonment, adverse possession, prescription, laches, estoppel or changed circumstances relating to the Property or this Easement.
- 7.9. **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Property or to recover damages for any injury to or change in the Property resulting from actions by a trespasser upon the Property or causes beyond Grantor's control, including, without limitation, civil unrest, epidemic, natural disaster, fire, flood, storm, pest infestation, earth movement, and climate change, and from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. If the Easement terms are violated by acts of trespassers, and Grantor has not undertaken suit itself, Grantor agrees, at Grantee's option, to assign its right of action to Grantee or to appoint Grantee its attorney-in-fact, for purposes of pursuing enforcement action against the responsible parties. It shall be Grantor's burden to demonstrate that a violation was caused by a trespasser and that Grantor could not have anticipated or prevented such violation.

8. LIABILITIES, TAXES, AND ENVIRONMENTAL COMPLIANCE

- 8.1. **Liabilities and Insurance.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of liability insurance coverage with a liability limit of not less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate. Such insurance shall include Grantee's interest, name Grantee as an additional insured, and (if available) provide for at least thirty (30) days' notice to Grantee before cancellation and that the act or omission of one insured will not invalidate the policy as to the other insured party. The parties release and relieve the other and waive their entire right to recovery for loss or damage to the extent that the loss or damage is covered by the injured party's insurance. This waiver applies whether the loss is due to the negligent acts or omissions of Grantor or Grantee. Grantor remains solely responsible for obtaining any applicable governmental permits and approval for any construction or other activity or use permitted by this Easement. Grantor shall keep the Property free of any liens arising out of any work performed for, material furnished to, or obligations incurred by Grantor; **provided** that the Property shall be deemed to be free of such liens if I) Grantor or Grantee, as the case may be, is diligently challenging the application of such liens to the

Property; or ii) such liens are subordinated to this Easement and do not require any action or inaction inconsistent with the purpose and terms of this Easement.

- 8.2. **Compliance with Applicable Laws.** Grantor shall comply with all statutes, laws, ordinances, rules, regulations, codes, orders, guidelines, or other restrictions, or requirements applicable to the Property that have been enacted or otherwise promulgated by any federal, state, county, municipal, or other governmental or quasi-governmental agency, board, bureau, commission, court, department, panel, or other official body (whether legislative, administrative, or judicial), or by any competent official of any of the foregoing, including, but not limited to, those relating to pollution or the protection of human health or the environment.
- 8.3. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, charges of whatever description levied on or assessed against the Property by competent authority after the Effective Date, including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.
- 8.4. **Liability.** Grantor shall defend, indemnify and hold harmless the Grantee, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Grantee may be subject or incur relating to the Property, which may arise from, but are not limited to, Grantor's negligent acts or omissions or Grantor's breach of any covenant or agreements contained in this Easement, or violations of any Federal, State, or local laws, except to the extent arising from Grantee's negligent acts or omissions or Grantee's breach of this Easement, or violations of any Federal, State, or local laws.

9. CONDEMNATION and SUBSEQUENT TRANSFERS

- 9.1. **Condemnation.** If the Easement is taken, in whole or in part, by the exercise of the power of eminent domain by government or quasi-government agencies other than Grantee, Grantee shall be entitled to compensation in accordance with applicable law. If all or part of the Property is taken by the exercise of the power of eminent domain by public, corporate, or other authority (other than Grantee) so as to abrogate the restrictions imposed by this Easement, Grantor and Grantee shall cooperate in appropriate action(s) at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, it being expressly agreed that the Easement constitutes a compensable property right. The reasonable expenses of each party incurred in connection with such action(s) shall first be deducted from the total proceeds, and the remaining proceeds shall be divided consistent with the provisions of this Easement, based on the respective values of the interests of Grantor and Grantee, giving full credit to Grantor for any improvements to the Property made by Grantor.

- 9.2. **Subsequent Transfers by Grantor.** Grantor shall: (1) incorporate by express reference the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in the Property, including without limitation any leasehold interest; and (2) describe this Easement in and append it to, any executory contract for the transfer of any interest in the Property. Grantor shall give written notice to the Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or such transferee's representative. The failure of the Grantor to perform any act required by this Section shall not impair the validity of this Easement or limit Grantor's right to enforce it in any way.
- 9.3. **Subsequent Transfers by Grantee.** This Easement is intended to bind any and all Grantor's heirs, successors and assigns to Grantee's rights in the Property, and is intended to be freely transferable by Grantee. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of any transfer or assignment. However, the failure of Grantee to give such notice shall not affect the validity of this Easement or limit Grantee's heirs, successors and assigns to enforce Grantee's rights against Grantor and its subsequent purchasers, heirs, or successors.

10. AMENDMENT

Grantor and Grantee recognize that circumstances could arise which justify amendment of certain of the terms, covenants or restrictions contained in this Easement and Covenant. Amendments will become effective when executed by an authorized representative of each party and recorded with the King County Recorder.

11. RECORDATION

Grantee shall record this instrument in a timely fashion in the official records of King County, Washington, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

12. GENERAL PROVISIONS

- 12.1. **Governing Law and Venue.** The laws of the State of Washington and applicable federal law shall govern the interpretation and performance of this Easement. By executing this Easement, Grantor submits to the jurisdiction of the courts of the State of Washington in this matter. In the event of a lawsuit involving this Easement, venue shall be proper in King County, Washington.
- 12.2. **Liberal Construction.** Despite any general rule of construction to the contrary, this Easement shall be liberally construed in favor of the grant to further the Purpose of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation

consistent with the purpose that would render the provision valid shall be favored over any interpretation that would render it invalid.

12.3. **Severability.**

12.3.1. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid or unenforceable by any court of competent jurisdiction or is superseded by state or federal legislation, rules, regulations or decision, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid or unenforceable, as the case may be, shall not be affected thereby.

12.3.2. If any material provision of this Easement or the application thereof to any person or circumstance, is found to be invalid or unenforceable by any court of competent jurisdiction or is superseded by state or federal legislation, rules, regulations or decision, so that the intent of this Easement is frustrated, the parties agree to immediately negotiate a replacement provision to fulfill the intent of the superseded provisions consistent with applicable law.

12.4. **Entire Agreement.** This instrument and the deed whereby Grantee originally conveyed title to the Property to Grantor sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the subject matter herein, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 10.

12.5. **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns, and to any party taking ownership of the Property, or any portion thereof, subsequent to the foreclosure of any mortgage or deed of trust, and shall continue as a servitude running with the Property in perpetuity.

12.6. **No Joint Venture.** Grantor and Grantee expressly disclaim the existence of any fiduciary relationship, partnership, joint venture or agency relationship between or amongst them with respect to matters arising out of or related to this Easement and Covenant.

12.7. **Authority.** The individuals signing below, if signing on behalf of any entity, represent and warrant that they have the requisite authority to bind the entity on whose behalf they are signing.

13. SCHEDULE OF EXHIBITS

13.1. Exhibit A. Legal Description of Property Subject to Easement and Covenant

13.2. Exhibit B. Site Map

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EXHIBIT A

Legal Description of Property Subject to Easement and Covenant

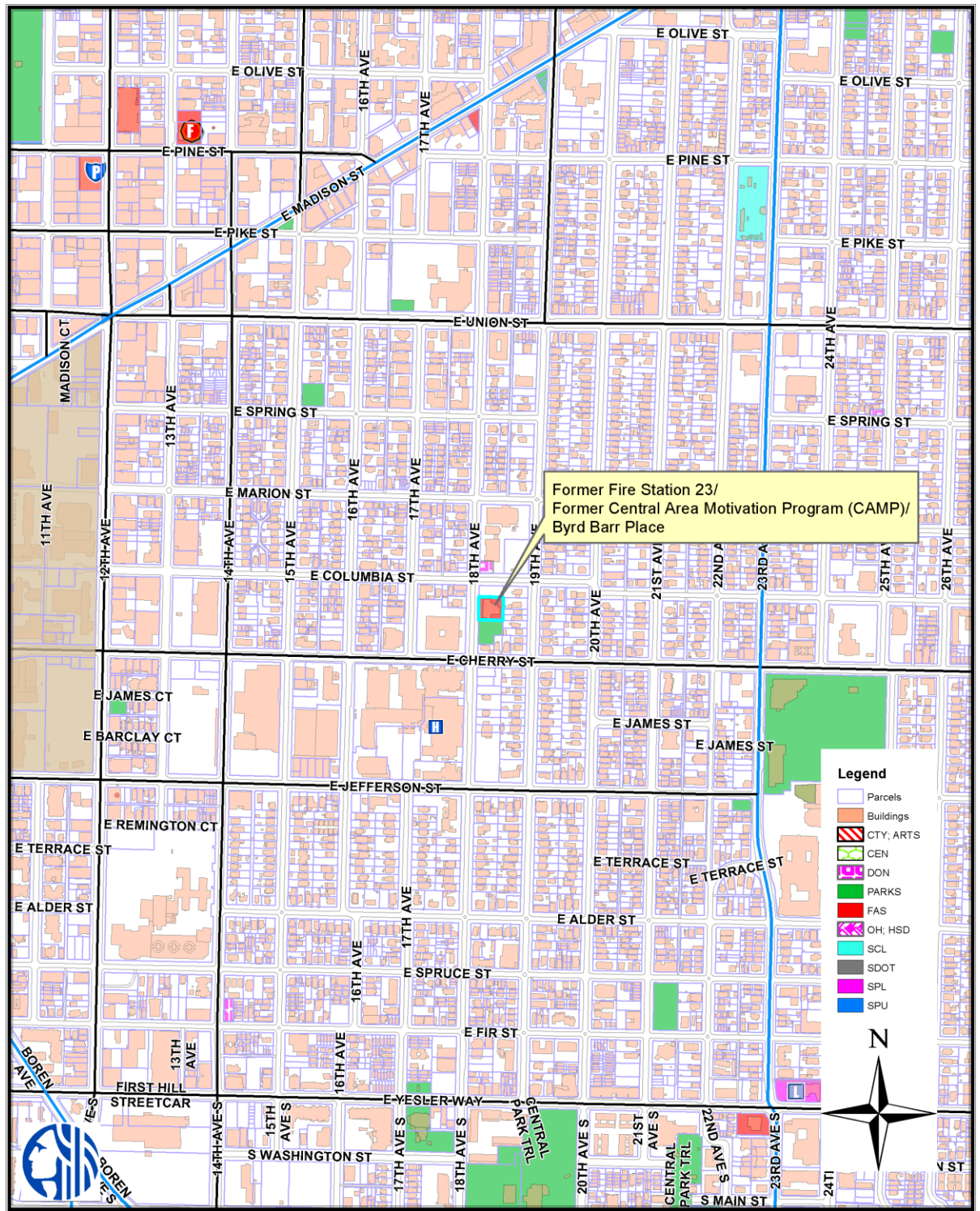
LOTS 4 AND 5 IN BLOCK 28 OF SUPPLEMENTAL PLAT OF EDES AND KNIGHT'S ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 2 OF PLATS AT PAGE 194, RECORDS OF KING COUNTY, WASHINGTON.

Situate in the County of King, State of Washington.



EXHIBIT B

Site Map



Former Fire Station 23 - CAMP - Byrd Barr Place

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No guarantee of any part implied, including accuracy, completeness or fitness of use.