

*When Recorded Return to:*

**CITY OF SEATTLE**  
Department of Transportation  
Attn: Diana Holloway  
P.O. Box 34996  
Seattle, WA 98124-4996

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**PUBLIC ACCESS, EASEMENT AND MAINTENANCE AGREEMENT**

<b>Grantor(s):</b>	<b>1) HOUSING AUTHORITY OF THE CITY OF SEATTLE 2) YESLER TERRACE OWNERS ASSOCIATION</b>
<b>Grantee(s):</b>	<b>1) THE CITY OF SEATTLE 2) YESLER TERRACE OWNERS ASSOCIATION</b>
<b>Legal Description:</b>	YESLER TERRACE COMMUNITY, VOL. _____ OF PLATS, PAGES _____ - _____, KING COUNTY, WASHINGTON
<b>Assessor's Tax Parcel Identification No(s):</b>	_____
<b>Reference No. of Related Documents:</b>	_____

**THIS PUBLIC ACCESS, EASEMENT AND MAINTENANCE AGREEMENT** ("Agreement") is made by the **HOUSING AUTHORITY OF THE CITY OF SEATTLE**, a public body corporate and politic under the laws of the State of Washington ("SHA" or "Grantor") and the **YESLER TERRACE OWNERS ASSOCIATION**, a Washington nonprofit corporation ("Association") for the benefit of **THE CITY OF SEATTLE**, a Washington municipal corporation (the "City"). The effective date of this Agreement is the date of recording of this Agreement, following execution and acknowledgement by the parties to this Agreement, and consent by 820 YESLER WAY LLLP, JPMorgan Chase Bank, N.A., and the City through its Office of Housing ("Effective Date").

**RECITALS**

**A.** SHA is the fee simple title owner of certain real property located in the City of Seattle, King County, Washington, legally described as Yesler Terrace Community, Volume \_\_\_\_\_ of Plats, Pages \_\_\_\_\_ - \_\_\_\_\_ (referred to as "Plat" or "Property"), and

the 820 YESLER WAY LLLP with SHA as the General Partner has a leasehold interest in Lot 6 of Block 2, as shown on the Plat. The Plat was recorded on \_\_\_\_\_, 2014.

**B.** The City Council granted preliminary approval with conditions of SHA's street vacation petition on September 4, 2012 (City of Seattle Clerk File 311389) ("Preliminary Street Vacation Approval"). One condition of the Preliminary Street Vacation Approval is that SHA develop and maintain specific public benefit elements, which are described in detail in the Preliminary Street Vacation Approval ("Public Benefit Elements"). Another condition of the Preliminary Street Vacation Approval is that SHA execute and record a Property Use and Development Agreement or other binding document to ensure that the Public Benefit Elements remain open and accessible to the public and to outline future maintenance obligations, programming and management for the Public Benefit Elements. The Public Benefit Elements located within the Plat include: 1) Pocket Parks in Tract A of Block 3 (Easement 3.1), Tract A of Block 5 (Easement 5.4), and Tract A of Block 7 (Easement 7.3) (each of which is a "Pocket Park" and all of which collectively are the "Pocket Parks"), 2) a multi-use trail in Tract B of Block 5 ("Multi-Use Public Trail"), and 3) the portion of the 10th Avenue Hillclimb located within Easement 6.8. (The remaining portion of the 10th Avenue Hillclimb and other Public Benefit Elements are located within City rights-of-way.) Lots, Tracts, Blocks and Easements are as depicted on the Plat.

**C.** Pursuant to the decision of the Seattle Hearing Examiner in MUP-13-016(SD), the City granted preliminary plat approval for the Property, subject to conditions, on August 30, 2013 ("Preliminary Plat Approval"). The Preliminary Plat Approval requires a document to be recorded in connection with final plat approval that is binding on the Property and the Owners of Lots within the Property ("Owners") by which public access to the Pocket Parks is ensured, and by which easements are granted for the benefit of the public for: (i) public access pathways within Tract A of Block 2, and within Easements 5.2, 6.4 and 7.1, as depicted on the Plat (each of which is a "Public Access Pathway" and all of which collectively are the "Public Access Pathways"), and ii) the Multi-Use Public Trail.

**D.** The Preliminary Plat Approval also requires a covenant to be recorded in connection with final plat approval that is binding on the Property and the Owners by which the Owners agree to construct the facilities and improvements required by the Preliminary Plat approval. In fulfillment of that condition and to establish the required timing and responsibility for construction of the facilities and improvements required by the Preliminary Street Vacation Approval and Preliminary Plat Approval, a Covenant for Infrastructure Construction was made by SHA on behalf of itself and its successors and assigns for the benefit of the City and recorded under King County recording number \_\_\_\_\_ ("Covenant for Infrastructure Construction").

**E.** The Preliminary Plat Approval also requires a document to be recorded in connection with final plat approval that is binding on the Property and the Owners to: (i) ensure maintenance of the Public Access Pathways and Public Benefit Elements located on private property; and (ii) ensure reconstruction or replacement, as directed by the Seattle Department of

Transportation in its sole discretion, of Interim Sidewalks and Interim Pathways, installed pursuant to the Covenant for Infrastructure Construction, that become damaged or deteriorated.

**F.** The Preliminary Plat Approval provides that the Owners' obligations for maintenance, repair, reconstruction or replacement, as described in Recital E. above, may be performed by an owners maintenance corporation while ensuring that the ultimate responsibility remains that of the Owners as provided in Section 13.D.

**G.** The Preliminary Plat Approval also requires that each Owner pay assessments to the owners maintenance corporation to fund performance by the owners maintenance corporation of such maintenance, reconstruction and replacement obligations and that the owners maintenance corporation impose on each Lot within the Property a lien in favor of the owners maintenance corporation to secure the Owner's assessment payment obligation.

**H.** Pursuant to articles of incorporation filed with the Secretary of State of the State of Washington on March 7, 2013, and restated articles of incorporation filed with the Secretary of State of the State of Washington on \_\_\_\_\_, 2014, SHA formed the Association. One function of the Association is to maintain the Pocket Parks, Public Access Pathways, Multi-Use Public Trail, 10th Avenue Hillclimb (portion within Easement 6.8 depicted on the Plat and the portion within City rights-of-way), as well as other Public Benefit Elements, Interim Pathways, and Interim Sidewalks.

**I.** Pursuant to the Declaration of Covenant to Convey Tracts, made by SHA for the benefit of the City and recorded on or about the date of recording of this Agreement, SHA has made a binding commitment to convey Tract A of Block 2, Tract A of Block 3, Tract A of Block 5, Tract B of Block 5, and Tract A of Block 7 (all as depicted on the Plat) to the Association.

## AGREEMENT

In consideration of the foregoing and the covenants and agreements contained in or referenced by this Agreement, the parties agree as follows:

**1. Definitions.** The definitions contained in the Recitals above are incorporated into the Agreement. Capitalized terms not otherwise defined in this Agreement have the meanings defined on the Plat or in the Covenant for Infrastructure Construction.

**2. Purpose.** This Agreement is entered into in fulfillment of certain conditions of the Preliminary Street Vacation Approval and Preliminary Plat Approval concerning public access, programming and maintenance.

**3. Grant of Easement for Public Access Pathways and Multi-Use Public Trail.**

**A.** SHA, as Grantor, hereby grants, conveys and warrants, on behalf of itself and its successors and assigns, to the City of Seattle and its successors and assigns, free and clear of all liens and encumbrances except as identified on Exhibit A attached hereto and incorporated herein ("Title Exceptions"), a perpetual easement for public access and use ("Easement") over,

under, across and through the following portions of the Property, subject to the terms and conditions of this Agreement:

- of 32 feet); (i) The area depicted as Tract A in Block 2 on the Plat (having a width
- of 23 feet); (ii) The area depicted as Tract B in Block 5 on the Plat (having a width
- 34 feet); (iii) The area depicted as Easement 5.2 on the Plat (having a width of
- 32 feet); and (iv) The area depicted as Easement 6.4 on the Plat (having a width of
- 32 feet), (v) The area depicted as Easement 7.1 on the Plat (having a width of

(each of which is an "Easement Area" and all of which collectively are the "Easement Areas").

**B. Required Widths for Pathways and Trail.** SHA has committed, for itself, its successors and assigns, through the Covenant for Infrastructure Construction, to the timing and requirements for construction of Interim Pathways, Public Access Pathways, and the Multi-Use Public Trail within the Easement Areas among other required infrastructure. Within each of the Easement Areas described in Section 3.A, the required minimum width of the area accessible to the general public that will include the Public Access Pathway or Multi-Use Public Trail is as follows (the "Required Width"):

Tract A in Block 2:	15 feet
Tract B in Block 5:	12 feet
Easement 5.2:	6 feet
Easement 6.4:	15 feet
Easement 7.1:	6 feet

**C. Partial Release of Easement.** Following completion and City acceptance of construction of a Public Access Pathway within all or part of the length of an Easement Area as provided in the Covenant for Infrastructure Construction, the City agrees, upon completed written request by SHA, its successors or assigns (as provided below), to release the Easement over those portions of an Easement Area along the length of the constructed Public Access Pathway that are outside of the area accessible to the general public, which area must be at least the Required Width. Following completion and acceptance of construction of the Multi-Use Public Trail within the entire length of Tract B of Block 5, as provided in the Covenant for Infrastructure Construction, the City agrees, upon completed written request by SHA, its successors or assigns (as provided below), to release the Easement as to Tract B of Block 5 outside of the area accessible to the general public, which area must be at least the Required Width. The non-released portion of each Easement Area shall be a perpetual, exclusive

easement for public access and use, subject to applicable Public Utility Easements granted on the Plat.

A completed written request must be delivered to the Director of Transportation, or functional successor, must contain the signature of the fee owner of the property to be released, must include as-built plans of the accepted Public Access Pathway or Multi-Use Public Trail, information and documentation about the area accessible to the general public, which together with the constructed pathway or trail must be at least the Required Width, as well as a diagram and legal description of: (i) the area that is the subject of the release, (ii) the area that is still subject to the Easement, and (iii) the area of any new public access easements needed to provide public access to Public Access Pathways or Multi-Use Public Trail as actually designed and constructed that may be outside the boundaries of the applicable Easement or Tract, along with payment of fees for review as determined by the City. Each release of an Easement shall be accomplished by execution by the Director of Transportation, or functional successor, of a document titled "Partial Release of Public Access Easement," and each new easement shall be accomplished by execution of a document titled "Public Access Easement," in form and substance satisfactory to the City, and by recording of the Partial Release of Public Access Easement or Public Access Easement in the records of King County at the cost of the entity requesting the same.

Construction of an Interim Pathway shall not be cause for release of the Easement as to any area.

**4. Easements for Pocket Parks.** SHA, as Grantor, has granted on the face of the Plat a perpetual exclusive easement for public access and use over, across and through, but not under, the following portions of the Property, subject to the terms and conditions of this Agreement:

- (i) Easement 3.1 in the area depicted as Tract A of Block 3 on the Plat;
- (ii) Easement 5.4 in the area depicted as Tract A of Block 5 on the Plat; and
- (iii) Easement 7.3 in the area depicted as Tract A of Block 7 on the Plat,

(each of which is a "Pocket Park Easement Area" and all of which collectively are the "Pocket Park Easement Areas").

**5. Easement for Portion of 10th Avenue Hillclimb within Lot 15 in Block 6 (Easement 6.8) on the Plat.** SHA, as Grantor, has granted on the face of the Plat a perpetual non-exclusive easement for public access and use over, under, across and through the area depicted as Easement 6.8 on the Plat, which contains the portion of the 10th Avenue Hillclimb located on Lot 15 in Block 6 on the Plat ("Hillclimb Public Access Easement Area").

**6. Grant of Temporary Easement for Interim Pathways and Interim Sidewalks.**

The locations of Interim Pathways and Interim Sidewalks will be determined as individual Lots are developed within the Plat. If Grantor, or its successors or assigns, in connection with Development of a Lot proposes to locate any Interim Pathway outside of an Easement Area or any Interim Sidewalk outside of street right-of-way, then the location must be approved by the City in connection with City review of permit applications for such Lot, and Grantor, its successors and assigns, shall grant, convey and warrant to the City of Seattle and its successors and assigns a temporary easement for public access and use over, across and through the approved temporary easement areas. The temporary easement areas are referred to in this Agreement as Interim Pathway Easement Areas and Interim Sidewalk Easement Areas. The grant of temporary easements shall be a condition of approval of permits for Development. The temporary easements shall be consistent with the provisions of this Agreement, and shall be in form and substance satisfactory to the City's Director of Transportation, or functional successor. Each City-approved temporary easement shall be recorded in the records of King County prior to issuance of a Temporary Certificate of Occupancy for the Development that is the subject of the permit(s). Following completion, as defined in the Covenant for Infrastructure Construction in Section 2.B.1, of a Public Access Pathway, and/or a permanent sidewalk within City right-of-way, as applicable, the City agrees, upon completed written request by the temporary easement grantor, to release applicable temporary easements for the Interim Pathway(s) and Interim Sidewalk(s).

**7. Terms of Public Access and Use.**

**A. Commencement of Public Access and Use.** Public access and use of each Interim Pathway Easement Area, Interim Sidewalk Easement Area, the Easement Areas, the Hillclimb Public Access Easement Area, and each Pocket Park Easement Area, commences upon substantial completion of construction of the applicable Required Infrastructure in the applicable easement area, and inspection and conditional acceptance by the City, as provided in the Covenant for Infrastructure Construction. Each of the foregoing, upon substantial completion of construction and conditional acceptance by the City, is a "Publicly Accessible Area" and together are referred to collectively as "Publicly Accessible Areas." The right of public access to the Publicly Accessible Areas is subject to the limitations contained in this Section 7.

**B. Hours of Access for Publicly Accessible Areas.**

(i) For Interim Pathways, whether constructed in an Easement Area or an Interim Pathway Easement Area, and Public Access Pathways, the hours of public access are from 6:00 AM to 10:00 PM each day of the year, except as provided in Subsection 7.D. below or in case of emergency, unless different hours are agreed to in writing by the City, as evidenced by a written and recorded amendment to this Agreement.

(ii) For Interim Sidewalks, whether constructed in street right-of-way or in Interim Sidewalk Easement Areas, the Multi-Use Public Trail, and the Hillclimb Public Access Easement Area, the hours of public access are 24 hours each day of the year, except as provided in Subsection 7.D. below or in case of emergency, unless different hours are agreed to in writing by the City, as evidenced by a written and recorded amendment to this Agreement.

(iii) For the Pocket Park Easement Areas, the hours of public access shall be the same hours as the neighborhood park to be constructed by the City on Block 1, as depicted on the Plat; provided, however, if a Pocket Park is constructed prior to the neighborhood park, then until the neighborhood park opens, the hours of public access are 6:00 AM to 10:00 PM each day of the year, except as provided in Subsection 7.D. below or in case of emergency, unless different hours are agreed to in writing by the City, as evidenced by a written and recorded amendment to this Agreement.

Even when closed to public access, SHA, its successors and assigns, may not gate or otherwise physically close off all or any portion of the Publicly Accessible Areas. As described in Section 14, Grantor shall provide signage identifying the Publicly Accessible Areas as public space and identifying their hours of public use.

**C. Activities in Publicly Accessible Areas.**

(i) The public may engage in all activities allowed on a public sidewalk, except that SHA, its successors and assigns, may exclude or restrict activities (except on Interim Sidewalks within the public right-of-way) 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 Publicly Accessible Areas, or to adjacent buildings or property. SHA, its successors and assigns, may not ask members of the public who are engaging in allowed activities to leave Publicly Accessible Areas, unless their conduct unreasonably interferes with the enjoyment of the space by others. SHA, its successors or assigns, may participate in the Seattle Police Department's Criminal Trespassing Program (SMC 12A.08.040) to restrict access to Publicly Accessible Areas for reasons of public safety.

(ii) Seating reserved for customers of restaurants or other commercial uses is prohibited in Pocket Parks.

**D. Temporary Closures.** The Association may reasonably and temporarily limit public access to Publicly Accessible Areas in order to carry out its maintenance obligations.

**E. Motorized Vehicles.** Motorized vehicles and equipment are not permitted on Publicly Accessible Areas, except (i) motorized wheelchairs or similar equipment to permit access by disabled users, (ii) emergency or maintenance vehicles, (iii) to the extent necessary in connection with permitted development of Easement 6.5 as it intersects with Easement 6.4, and (iv) to the extent necessary for permitted development requiring limited vehicle crossings over the Public Access Pathways in Easements 5.2 and 7.1.

**8. Grantor Use of Publicly Accessible Areas.**

**A.** With respect to Interim Pathway Easement Areas, Interim Sidewalk Easement Areas, the Easement Areas, and the Hillclimb Public Access Easement Area, SHA agrees for itself, its successors and assigns, that new easements may not be granted and construction of any kind is prohibited within these Publicly Accessible Areas unless (a) the

easement or construction are consistent with, and do not preclude, construction of the Interim Pathways, Interim Sidewalks, Public Access Pathways, the Multi-Use Public Trail, and the portion of the 10th Avenue Hillclimb within Easement 6.8; (b) the Development proposal includes construction required in connection with such Development pursuant to the Covenant for Infrastructure Construction; (c) the Development is consistent with the provisions of the Planned Action Ordinance (Ordinance 123962), Land Use Code (Title 23 of the Seattle Municipal Code, as amended), and Yesler Terrace Design Guidelines, adopted by Ordinance 123963; and (d) the Development does not include any gross floor area of a structure, nor any motorized vehicle access in the particular easement area, except as provided in Subsection 7.E. above. For purposes of this Section 8, "construction" does not include installation of City public utilities in Public Utility Easements (as defined in the Covenant for Infrastructure Construction and granted and depicted on the Plat).

**B.** With respect to the Pocket Park Easement Areas, SHA agrees for itself, its successors and assigns that new easements may not be granted and surface and above-grade development of any kind is prohibited except the Pocket Park. Any development beneath the grade level of a Pocket Park Easement Area shall be designed so as not to preclude landscaping at grade level as shown in the plans approved by the Seattle Department of Transportation ("SDOT"), and no elements of below-grade construction are allowed on or above the surface of the Pocket Park, including without limitation, vents or other structures or equipment accessory to below-grade parking.

**9. City Access to Publicly Accessible Areas.** SHA agrees for itself, its successors and assigns that the City, its agents, employees and contractors are granted continuing access to all Publicly Accessible Areas at all times for inspection and enforcement related to this Agreement and other covenants and agreements recorded in connection with the Plat, and for emergencies.

**10. Design Process and Improvements for Pocket Parks.**

**A.** The design and programming for the Pocket Parks shall be reviewed by the Design Commission at both the schematic and design development phases and shall require final approval by SDOT.

**B.** Each Pocket Park must be designed and programmed to be inviting to and usable by the general public and must not be designed to serve only residents in the immediate vicinity. Particular design elements may vary among the Pocket Parks in order that each Pocket Park is designed to complement adjacent uses; for example, programming of the Pocket Park in Block 7 may vary from the other Pocket Parks in recognition of nearby nonresidential development, should such occur. Pocket Parks must be designed, and distinguished from adjacent private development, so that they are clearly delineated as public space and not perceived as private or semi-private open space. Without limitation, that includes conformance with the prohibition on customer use of Pocket Parks as described in Subsection 7.C.(ii) above.

**C.** Programming and design guidance must consider the following elements for inclusion in each Pocket Park:

(i) Lawn area: flexible space for picnics, informal play, gathering. Locate adjacent to plaza for combined gathering.

(ii) Plaza: flexible space for multiple users, for seating, gathering, overlooks, watching children's play. Use as a gateway to the site, can be open to sidewalk to create greater sense of space.

(iii) Plantings: Use to create edges, borders, and buffers from adjacent uses. Consider visibility into and from site for security and user interest.

(iv) Play opportunities: Considering available space and adjacent uses, prioritize for young children who will not as easily venture as far from home as older children. Manufactured play equipment is not mandatory, simpler play opportunities may suffice.

(v) Circulation: Include sufficient seating opportunities. Consider looping routes for children with wheeled toys, walking for exercise.

(vi) Exercise stations may be included in some or all of the Pocket Parks.

(vii) Include pedestrian-level lighting, and for those Pocket Parks bounded in part by a private access drive, bollards or another form of separation between the roadway surface and the park space.

**D.** Improvements within the Pocket Parks shall conform to the requirements of Section 8.B.

**E.** The boundaries of the Pocket Parks and their associated Pocket Park Easement Areas, as depicted on the Plat, may be revised through approval of a Lot Boundary Adjustment by the Department of Planning and Development (or functional successor), with the prior written approval of the Director of Transportation (or functional successor), provided that the general location, size, and lineal street frontage requirements for the Pocket Parks in the Preliminary Street Vacation Approval continue to be met, and subject to approval of a City Council ordinance authorizing the revised Pocket Park Easement Area.

## **11. Public Benefit Elements Within Public Right-of-Way and Wayfinding Kiosks.**

The Public Benefit Elements listed in Subsections 11.A., B., C., E. and F. will be constructed within public right-of-way, as authorized by the Street Improvement Permit ("SIP") process, as described in the Right-of-Way Manual and Client Assistance Memos, and street use permits required under Title 15 of the Seattle Municipal Code, all as amended from time to time. The Public Benefit Elements listed in Subsection 11.D. (wayfinding kiosks) will be constructed outside of the public right-of-way.

**A. Green Street Loop.** The Green Street Loop will be located in the following rights-of-way: S. Washington Street from Yesler Way to 10th Avenue S.; 10th Avenue S. from S. Washington Street to E. Yesler Way; 10th Avenue from E. Yesler Way to E. Fir Street; E. Fir Street from 10th Avenue to Broadway; Fir Street from Broadway to 8th Avenue; 8th Avenue from Fir Street to Yesler Way.

(i) The timing and responsibility for construction of the applicable Street Infrastructure (as defined in the Covenant for Infrastructure Construction) and the Green Street Loop are provided in the Covenant for Infrastructure Construction.

(ii) The final design, configuration and placement of Green Street Treatment on the Green Street Loop will be determined by the SDOT as part of the SIP process. Green Street Treatment means the Green Street Loop amenities, including widened sidewalks, pedestrian-scale lighting, street trees and additional landscaping, street furniture, and no fewer than five exercise stations, and may include special paving, painted pavement, and signs. The SDOT-approved SIP plans constitute the required Green Street Treatment for the Green Street Loop.

**B. 10th Avenue Hillclimb.** The 10th Avenue Hillclimb consists of: a series of stairways, ramps, and landings; retaining walls; pedestrian amenities including benches and artwork; landscaping; lighting; special paving; and a public plaza at the top. The 10th Avenue Hillclimb lies within: the existing rights of way of 10<sup>th</sup> Avenue S. and S. Main Street; additional land dedicated by SHA to widen the right of way of 10<sup>th</sup> Avenue S.; and a public access easement on SHA property designated as Easement 6.8 on the Plat. The 10th Avenue Hillclimb commences at the northern end of the currently developed 10<sup>th</sup> Avenue S., approximately 130 feet north of the north margin of S. Jackson Street, and ends at the intersection of S. Main Street and the new extension of 10<sup>th</sup> Avenue S.

(i) The design for the 10th Avenue Hillclimb has been reviewed and approved by the Design Commission on April 4, 2013 and September 19, 2013.

(ii) The final design, configuration and placement of the 10<sup>th</sup> Avenue Hillclimb will be determined by SDOT as part of the SIP process.

(iii) SHA shall complete the 10<sup>th</sup> Avenue Hillclimb, including the portion within Easement 6.8, no later than December 31, 2016, as provided in the Preliminary Street Vacation Approval.

**C. Enhanced Connection to Little Saigon Community.** An enhanced connection between the Property and the Little Saigon community will be achieved through the construction of the 10<sup>th</sup> Avenue Hillclimb, SIP process, and construction of Required Infrastructure under the Covenant for Infrastructure Construction.

**D. Wayfinding Kiosks.** No fewer than four wayfinding kiosks shall be located within the Property. The location and design of the kiosks are subject to review by the Design Commission and approval by SDOT through the SIP process.

**E. Wider Rights-of-Way than Typical City Requirements.** The wider rights-of-way identified in the Preliminary Street Vacation Approval are depicted and dedicated, as applicable, on the Plat.

**F. Curb Bulbs at Intersections and Mid-Block.** Subject to SDOT review and approval during the SIP process, street designs will include curb bulbs to accommodate trees larger than minimum City requirements and to enhance the pedestrian environment.

## **12. Grantor Responsibilities for Encroaching Structures.**

**A. Date for Removal of Structures.** As of the Effective Date of this Agreement, structures encroach on the following easements depicted on the Plat (“Encroaching Structures”): Easement 3.1, Easement 5.1, Easement 5.4, Easement 7.1, Easement 7.2, and Easement 7.3. No later than 30 days after the date all dwelling units in an Encroaching Structure cease to be occupied as public housing, SHA shall apply to the United States Department of Housing and Urban Development (“HUD”) for approval to demolish the Encroaching Structure (if such approval is required) and shall apply to the City for all applicable permits related to demolition of the Encroaching Structure. SHA also agrees for itself, its successors and assigns to remove each Encroaching Structure within 18 months after the Removal Date (as defined in Subsection B. below) of an Encroaching Structure.

**B. Definitions Applicable to Section 12.** Removal Date means the later of: the date all dwelling units in the Encroaching Structure cease to be occupied as public housing; the date HUD issues written approval to demolish the Encroaching Structure (if such approval is required); or the date the City issues a permit to demolish the Encroaching Structure. Removal of an Encroaching Structure shall include (1) removal of the building and all appurtenances that are or have ever been related to the operation of the building, including but not limited to foundations, utilities, impervious surfaces, and other infrastructure; (2) clean up of any environmental contamination that has resulted from the building or its operation, in accordance with and to the standard required by all applicable federal, state, and local environmental regulations; (3) grading of all disturbed areas to match adjacent grades; and (4) installation of temporary erosion and sedimentation control as per City requirements for affected areas of private property.

## **13. Maintenance Obligations.**

### **A. Binding Commitments.**

(i) SHA as owner of all of the Property hereby irrevocably covenants and commits to maintain, repair, reconstruct and replace, as appropriate, the areas described below (each of which is an “Area of Common Responsibility” and collectively are “Areas of Common Responsibility”):

(a) The Interim Pathways;

(b) Public Access Pathways located in: Tract A of Block 2, Easement 5.2, Easement 6.4, and Easement 7.1, all as depicted on the Plat;

(c) The Pocket Parks located in: Tract A of Block 3, Tract A of Block 5, and Tract A of Block 7, all as depicted on the Plat;

(d) The Multi-Use Public Trail located in Tract B of Block 5, as depicted on the Plat;

(e) The Green Street Treatment in the Green Street Loop;

(f) Wayfinding kiosks;

(g) The 10th Avenue Hillclimb, including the portion within Easement 6.8;

(h) All areas between the back of curb and the property line of each Lot and Tract in the Property, including, without limitation, planting strips, landscaping, sidewalks, and curb bulbs; and

(i) Interim Sidewalks.

(ii) SHA makes this covenant and commitment for itself and all future owners of Lots or Tracts within the property (“Owners”) with the intention that it will inure to and be binding upon all future Owners of the Property; provided, however, that SHA intends for such obligations to be performed by the Association.

**B. Grant of Easement to Association.** SHA, as owner of all of the Property, hereby grants and conveys, on behalf of itself and its successors and assigns, to the Association and its successors and assigns, a perpetual non-exclusive easement over, under, across and through each of the Areas of Common Responsibility, to the extent necessary, for purposes of performing the maintenance, repair, reconstruction and replacement obligations described in this Agreement.

**C. Association Agreement to Perform Obligations.** By executing this Agreement, the Association hereby irrevocably commits to perform the maintenance, repair, reconstruction and replacement obligations of the Owners for the Areas of Common Responsibility, to impose on Owners the obligation to pay assessments to the Association for performance of the obligations, and to lien Lots of non-paying Owners. Owners are deemed to have consented to the Association’s performance of all such obligations.

**D. Assessments.** Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Property, is deemed to reconfirm this Agreement and the covenant and commitment to maintain, repair, reconstruct and replace the Areas of Common Responsibility and to agree to pay assessments levied by the Association for its performance of the maintenance, repair, reconstruction and replacement of the Areas of Common

Responsibility. Such assessments shall be adequate to meet the standards in Subsection 13.F. (the "Standards"). If the assessments are not adequate to meet the Standards, then the Owners shall cause the Association to levy an additional or special assessment to generate sufficient funds to meet the Standards. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

**E. Lien.** The Association shall have the right to impose a lien against each Lot to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Washington law) and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments and other levies that by law would be superior and (b) the lien or charge of any recorded first mortgage (meaning any recorded mortgage with first priority over other mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment and judicial or nonjudicial foreclosure by the Association.

**F. Standards.**

(i) Each Publicly Accessible Area, or segment of such Area, as applicable, shall be kept at the cost of the Owners, in a clean, good and operable condition at all times from and after commencement of public access and use as described in Subsection 7.A.;

(ii) For the Green Street Treatment in the Green Street Loop, the wayfinding kiosks, and the 10th Avenue Hillclimb in City rights-of-way, the maintenance standards shall be as specified in required and approved street use permits;

(iii) The following standards apply to all Areas of Common Responsibility located outside of City rights-of-way:

(a) Performing 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;

(b) Maintaining all flora in a healthy condition, including lawn and garden care, and tree and shrub pruning and mulching;

(c) Irrigating landscaped areas and maintaining irrigation equipment for such purposes;

(d) Repairing damage due to vandalism or accidental damage or destruction and replacing or reconstructing if repair is not adequate or possible;

(e) Promptly removing graffiti on all surfaces;

(f) Performing all pest management and rodent control, in compliance with Health Department standards and directives; and

(g) Maintaining, repairing and replacing equipment, including, without limitation, play equipment, benches, picnic tables, litter receptacles, exercise equipment, and signs.

**G. Hazardous Materials.** SHA and the Association agree that the Association, its employees and agents shall not unnecessarily utilize or store in the Areas of Common Responsibility any hazardous, toxic or dangerous substance, waste or material regulated under federal, state, or local laws and regulations, except to the extent such materials are used in the ordinary course of performing the types of maintenance, repair, reconstruction or replacement obligations under this Agreement.

**H. Permits.** SHA and the Association acknowledge and agree, on behalf of themselves, their successors and assigns, that in carrying out the obligations of this Agreement, the Association is responsible for applying for, obtaining, and complying with all necessary permits, including, without limitation, street use permits required under Title 15 of the Seattle Municipal Code, as it may be amended from time to time, for Areas of Common Responsibility located in City rights-of-way.

**14. Signage.** SHA and the Association are responsible for placing and maintaining signage in Publicly Accessible Areas, from and after the date construction of improvements is completed, that identifies the Publicly Accessible Areas as space open to the public and the hours of public use, along with a phone number to call for further information on terms of public use. Such signage shall also contain information on who is responsible for maintenance of the Publicly Accessible Area, and contact information for reporting maintenance, repair and other issues. The location, content and number of signs shall conform to requirements established by the City during the permit process for each applicable Publicly Accessible Area.

**15. Reporting.** SHA shall provide reports to the City, at the address provided in Section 19 below (or such other address as designated by the City), on March 31 and September 30 each year beginning March 31, 2015, and ending with a final report after completion of all Public Benefit Elements and all other conditions of the Preliminary Street Vacation Approval. Each report shall contain an update on development activity on the Property, and the schedule and progress towards meeting all conditions of the Preliminary Street Vacation Approval.

**16. Enforcement.** This 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 Agreement.

**17. Insurance.** SHA shall, at its sole cost and expense, maintain in full force and effect the following minimum limits of insurance throughout the entire term of this Agreement:

**A. Commercial General Liability (CGL)** written on an occurrence form at least as broad as ISO CG 00 01, with Minimum Limits of Liability:

\$1,000,000 per Occurrence  
\$2,000,000 General Aggregate  
\$2,000,000 Products/Completed Operations Aggregate  
\$1,000,000 Personal/Advertising Injury Liability

Coverage shall include: Premises and Operations; Liability assumed under an Insured Contract (including tort liability of another assumed in a business contract); Personal Injury and Advertising Liability; Independent Contractors; Severability of Interest Clause; Waiver of Subrogation endorsement in favor of Owner as required by contract; General Aggregate Limits of Insurance shall apply separately; "Claims Made" and "Modified Occurrence" policy forms are not acceptable.

The limits of liability described above are minimum limits of liability only. Regardless of provisions to the contrary under the terms of any insurance policy maintained by SHA, the specification of any such minimum limits shall neither be (1) intended to establish a maximum limit of liability to be maintained by SHA as respects this Agreement, nor (2) construed as limiting the liability of any of SHA's insurers, which must continue to be governed by the stated limits of liability of the relevant insurance policies.

**B. Umbrella or Excess Liability** insurance if and as necessary to maintain total CGL and Automobile Liability insurance limits of \$2,000,000 Each Occurrence and be no less broad than coverages described above.

General Requirements for SHA's Insurance. City shall have the right to periodically review and revise insurance coverages and/or limits of liability as necessary to reflect changes in exposure to risk, inflation, industry conditions or other relevant circumstances upon ninety days prior written notice.

The insurance shall include "The City of Seattle, its officers, officials, employees, agents and volunteers" as additional insureds. SHA's insurance shall be primary and non-contributory to any insurance maintained by or available to the City. SHA and its insurers expressly acknowledge that (a) coverages and limits of liability requirements herein are strictly intended to specify minimum levels of coverage and limits of liability, and (b) where the City is to be included as an additional insured, such additional insured status shall, notwithstanding any insurance policy language to the contrary, extend to the total limits of all insurance and/or self-insurance limits of liability maintained by SHA, whether such limits are primary, excess, contingent or otherwise.

Coverage shall not be cancelled without forty-five (45) day written notice of such cancellation, except ten (10) day written notice as respects cancellation for non-payment of premium, to the City at its notice address except as may otherwise be specified in Revised Code of Washington (RCW) 48.18.290 (Cancellation by insurer). The City and SHA mutually agree that for the purpose of RCW 48.18.290(1)(e), for both liability and property insurance, the City

is deemed to be a “mortgagee, pledge, or other person shown by (the required insurance policies) to have an interest in any loss which may occur thereunder.”

Each insurance policy required hereunder shall be (1) subject to reasonable approval by City that it conforms with the requirements of this Section, and (2) be issued by an insurer rated A–:VII or higher in the then-current A. M. Best's Key Rating Guide and licensed to do business in the State of Washington unless procured under the provisions of chapter 48.15 RCW (Unauthorized insurers).

Any deductible or self-insured retention (“S.I.R.”) must be disclosed to, and shall be subject to reasonable approval by, the City. SHA shall cooperate to provide such information as the City may reasonably deem to be necessary to assess the risk bearing capacity of SHA to sustain such deductible or S.I.R. The cost of any claim falling within a deductible or S.I.R. shall be the responsibility of SHA. If a deductible or S.I.R. for CGL or equivalent insurance is not “fronted” by an insurer but is funded and/or administered by SHA or a contracted third party claims administrator, SHA agrees to defend and indemnify the City to the same extent as the City would be protected as an additional insured for primary and non-contributory limits of liability as required herein by an insurer.

Evidence of Insurance. On or before the Effective Date, and thereafter not later than the last business day prior to the expiration date of each such policy, the following documents must be delivered to City at its notice address as evidence of the insurance coverage required to be maintained by SHA:

Certification of insurance documenting compliance with the coverage, minimum limits and general requirements specified herein; and

A copy of the policy’s declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements specifying all endorsements listed on the policy including any company-specific or manuscript endorsements;

A copy of the CGL insurance policy provision(s) documenting the City of Seattle and its officers, elected officials, employees, agents and volunteers as additional insureds (whether on ISO Form CG 20 26 or an equivalent additional insured or blanket additional insured policy wording), showing the policy number, and the original signature and printed name of the representative of the insurance company authorized to sign such endorsement;

Pending receipt of the documentation specified in this Section 17, SHA may provide a copy of a current complete binder. An ACORD certificate of insurance will not be accepted in lieu thereof.

Original certification of insurance shall be issued to the City as described in Section 17.

Operator’s Responsibility: The procuring of the policies of insurance required by this Agreement shall not be construed to limit SHA’s liability hereunder.

**18. Release and Indemnity.** SHA and the Association (each, an “Indemnitor”), each for itself, its successors and assigns, hereby covenant and agree 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, expenses, or liabilities, including reasonable attorneys’ 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 such Indemnitor or any parties for which such Indemnitor is legally liable with respect to the Publicly Accessible Areas, 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, each Indemnitor, 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 Agreement. This provision shall not be interpreted or construed as a waiver of each Indemnitor’s right to assert such immunity, defense or protection directly against any of its own employees. In no event shall an Indemnitor’s, or its successors’ or assigns’, indemnification obligations under this Agreement be limited to the extent of any insurance available to or provided by such Indemnitor, its successors or assigns. The indemnification obligations under this 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.

**19. Notice.** All notices, demands, requests, consents and approvals that may, or are required to, be given by any party to any other party hereunder shall 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 19. Notices are effective as follows: Notices that are delivered in person shall be effective when delivered. Notices that are 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. Notices that are mailed shall 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.

SHA: Executive Director  
Seattle Housing Authority  
190 Queen Anne Avenue N.  
Seattle, WA 98109-1028

ASSOCIATION: Yesler Terrace Owners Association  
c/o Seattle Housing Authority  
190 Queen Anne Avenue N.  
Seattle, WA 98109-1028

CITY: SDOT Director

Department of Transportation  
City of Seattle  
P.O. Box 34996  
Seattle, WA 98124-4996

**20. Amendment; Modification.** This Agreement may be changed, modified or amended in whole or in part only by a written and recorded agreement executed by the City and Grantor and, if required as determined by the City, approved by City of Seattle ordinance.

**21. 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 Agreement shall be construed as a waiver of or acquiescence in any breach of the terms and conditions set forth herein.

**22. Severability.** If any provision of this 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.

**23. Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Washington.

**24. Authorization.** By signing this Agreement, the parties agree that the City or an agent selected by the City is authorized to insert dates, recording numbers, and ordinance number in the spaces provided in this Agreement prior to recording this Agreement.

**25. Binding Effect.** The obligations and agreements of the Grantor contained in this Agreement are deemed to attach to and run with the Property and are binding on Grantor and its successors, heirs, and assigns.

*(Signatures follow on next page)*

SHA:

**HOUSING AUTHORITY OF THE CITY OF SEATTLE**, a public body corporate and politic under the laws of the State of Washington

By: *Andrew J. Lofton*  
Name: ANDREW J. LOFTON  
Its: EXECUTIVE DIRECTOR

STATE OF WASHINGTON }  
COUNTY OF KING } ss.

On this day personally appeared before me Andrew J. Lofton, to me known to be the EXECUTIVE DIRECTOR of the **HOUSING AUTHORITY OF THE CITY OF SEATTLE**, a public body corporate and politic under the laws of the State of Washington that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such limited liability company, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 7<sup>th</sup> day of August



Rebecca Anne Taylor  
Printed Name: REBECCA ANNE TAYLOR  
Notary Public in and for the State of Washington,  
residing at TRENTON, WA  
My Commission Expires: 4-19-16

**CITY:**

**THE CITY OF SEATTLE,**  
a Washington municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF WASHINGTON

COUNTY OF KING

} ss.

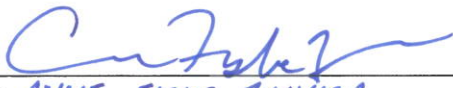
On this day personally appeared before me \_\_\_\_\_, to me known to be the \_\_\_\_\_ of **THE CITY OF SEATTLE**, a Washington municipal corporation, that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public in and for the State of Washington,  
residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**ASSOCIATION:**

**YESLER TERRACE OWNERS ASSOCIATION,**  
a Washington nonprofit corporation

By:   
Name: ANNE FISKE-ZUNIGA  
Its: PRESIDENT

STATE OF WASHINGTON  
COUNTY OF KING } ss.

On this day personally appeared before me ANNE FISKE ZUNIGA, to me known to be the PRESIDENT of the **YESLER TERRACE OWNERS ASSOCIATION**, a Washington nonprofit corporation, that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such nonprofit corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute such instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 7<sup>th</sup> day of August, 2014.



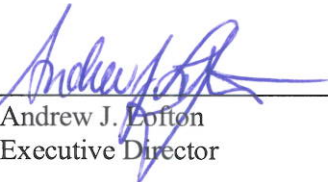
Rebecca Anne Taylor  
Printed Name REBECCA ANNE TAYLOR  
NOTARY PUBLIC in and for the State of Washington,  
residing at RENTON, WA  
My Commission Expires 4-19-16

### CONSENTS TO PUBLIC ACCESS, EASEMENT AND MAINTENANCE AGREEMENT

The 820 YESLER WAY LLLP has a leasehold interest in Lot 6 in Block 2 of Yesler Terrace Community, commonly known as 820 Yesler Way in Seattle, Washington (also known as tax parcel number 982170-0005-08) as evidenced by lease recorded on May 29, 2014 under King County Recording No. 20140529001713. The 820 YESLER WAY LLLP hereby consents to and agrees to be bound by the terms of the Public Access, Easement and Maintenance Agreement.

820 YESLER WAY LLLP

By: Housing Authority of the City of Seattle  
Its: General Partner

By:   
Andrew J. Lofton  
Executive Director

### ACKNOWLEDGEMENT

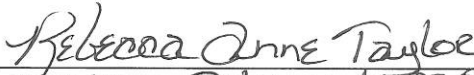
STATE OF WASHINGTON

COUNTY OF King } ss.

I certify that I know or have satisfactory evidence that Andrew J. Lofton is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Executive Director of the Housing Authority of the City of Seattle which is the General Partner of 820 YESLER WAY LLLP, a Washington limited liability limited partnership to be the free and voluntary act of such limited liability partnership for the uses and purposes mentioned in the instrument.

DATED this 7<sup>th</sup> day of August, 2014.



  
Printed Name REBECCA ANNE TAYLOR  
NOTARY PUBLIC in and for the State of  
Washington, residing at RENTON, WA  
My Commission Expires 4-19-16

JPMORGAN CHASE BANK, N.A. has a security interest in Lot 6 in Block 2 of Yesler Terrace Community, commonly known as 820 Yesler Way in Seattle, Washington (also known as tax parcel number 982170-0005-08) as evidenced by Deed of Trust recorded on May 29, 2014 under King County Recording No. 20140529001710. JPMORGAN CHASE BANK, N.A. hereby consents to the Public Access, Easement and Maintenance Agreement.

JPMORGAN CHASE BANK, N.A.

By: Chuck Weinstock  
Name: CHUCK WEINSTOCK  
Its: Authorized officer

ACKNOWLEDGEMENT

STATE OF WASHINGTON

COUNTY OF King } ss.

I certify that I know or have satisfactory evidence that Chuck Weinstock is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Authorized Officer of JPMORGAN CHASE BANK, N.A., a \_\_\_\_\_ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

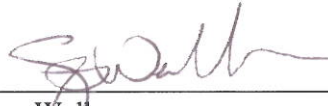
DATED this 11<sup>th</sup> day of August, 2014.



Dana L. Horton  
Printed Name Dana L. Horton  
NOTARY PUBLIC in and for the State of  
Washington, residing at 1301-2nd Ave.  
My Commission Expires 7/19/2015

THE CITY OF SEATTLE, through its OFFICE OF HOUSING, has a security interest in Lot 6 in Block 2 of the Plat of Yesler Terrace Community commonly known as 820 Yesler Way in Seattle, Washington (also known as tax parcel number 982170-0005-08) as evidenced by Deed of Trust recorded on May 29, 2014 under King County Recording No. 20140529001712. THE CITY OF SEATTLE, through its OFFICE OF HOUSING, hereby consents to the Public Access, Easement and Maintenance Agreement.

CITY OF SEATTLE, OFFICE OF HOUSING

By:   
Name: Steve Walker  
Title: Director

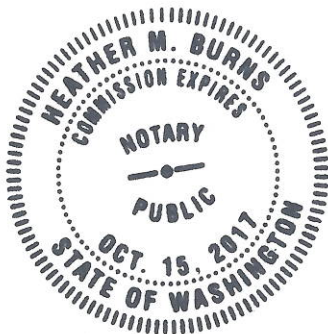
ACKNOWLEDGEMENT

STATE OF WASHINGTON

COUNTY OF King } ss.

I certify that I know or have satisfactory evidence that Steve Walker is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Director of the CITY OF SEATTLE, OFFICE OF HOUSING, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 13<sup>th</sup> day of August, 2014.



Heather M. Burns  
Printed Name Heather M. Burns  
NOTARY PUBLIC in and for the State of  
Washington, residing at Seattle, WA  
My Commission Expires 10-15-17