

AFTER RECORDING RETURN TO:

City of Burien  
Public Works Department  
400 SW 152<sup>nd</sup> Street, Suite #300  
Burien, WA 98166-1973

Reference Number of Related Document: \_\_\_\_\_

Grantor(s): \_\_\_\_\_

Grantee(s): \_\_\_\_\_

Abbreviated Legal Description: \_\_\_\_\_

Additional Legal Description is on attached Exhibit B

Assessor's Property Tax Parcel No.: \_\_\_\_\_

### PERMANENT PUBLIC RIGHT OF WAY EASEMENT

THIS EASEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2018, between the Port of Seattle ("Grantor") and the City of Burien, a municipal corporation of the State of Washington ("Grantee").

#### RECITALS

- A. Grantor owns the real property located in the City of Burien, King County, Washington, legally described and depicted on Exhibit A attached hereto and incorporated herein by this reference, and ground leased to a third party for redevelopment ("Premises").
- B. Grantor owns the real property located in the City of Burien, King County, Washington, and legally described and depicted on Exhibit B attached hereto and incorporated herein by this reference, and located adjacent to the Premises and S. 146<sup>th</sup> Street.
- C. As a condition to granting the certificate of occupancy for the Premises, Grantee has requested that Grantor grant to Grantee a permanent public right-of-way easement over the Easement Area (defined below) for the purposes described below.

D. In order to facilitate development of the Premises, Grantor has agreed to grant Grantee the requested easement for good and valuable consideration related to the terms and conditions set forth in this Easement Agreement as well as the benefits associated with development of the Premises.

NOW, THEREFORE, the parties agree as follows:

Grantor, for valuable consideration, the receipt of which is hereby acknowledged, does hereby grant and convey to the Grantee, its successors and assigns, agents, and licensees a permanent easement for public right-of-way purposes, including but not limited to, vehicular and pedestrian traffic, together with the attendant customary uses, including drainage and utilities, specifically including any utilities placed under the terms of a franchise agreement with, or other permission from, the Grantee, and all other purposes not inconsistent with the Grantee's use, across, under, over, and upon the following described land which the Grantor owns, to wit:

**All that portion of the parcel of land described as set forth in attached Exhibit B (hereinafter "the Easement Area")**

The scope and terms of this Easement shall be as follows:

1. Grantee shall have the right to construct, install, operate, maintain, repair and/or replace the following improvements on the Easement Area:

Roadways, sidewalks, curbs and gutters, pavement, signals, street trees, irrigation systems, drainage facilities, streetlights, underground conduits, utilities, retaining walls, and cuts, slopes and fills.

2. Grantor agrees to allow Grantee the right of ingress and egress on the Easement Area for the purpose of construction, operation, maintenance, repair and/or replacement of the improvements described in Paragraph 1.

3. Grantor shall not interfere with the public's right to access and use the improvements installed on the Easement Area pursuant to this Easement.

4. Grantee shall be responsible for ensuring that activities within the Easement Area comply with all applicable federal, state and local laws, regulations, orders, covenants and restrictions.

4.1 Grantee shall restrict the height of structures, objects of natural growth and other obstructions on the Easement Area to an elevation of not more than 416 feet Datum NAVD 88.

4.2 Grantee shall ensure the use of the Easement Area does not interfere with landing or taking off of aircraft at Seattle Tacoma International Airport (“Airport”), or otherwise constitute an “airport hazard.” Any uses that create electrical interference with navigational signals or radio communication between the Airport and aircraft, make it difficult for pilots to distinguish between Airport lights and other, result in glare in the eyes of pilots using the Airport, impair visibility in the vicinity of the Airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff or maneuvering of aircraft intending to use the Airport shall be deemed an airport hazard.

## 5. Nondiscrimination.

5.1 Grantee, for itself, its heirs, personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated on the Easement Area, for a purpose for which a United States Department of Transportation/Federal Aviation Administration program or activity is extended or for another purpose involving the provision of similar services or benefits, Grantee shall maintain and operate such facilities and services in compliance with all requirements imposed by the “Acts and Regulations” (as may be amended) such that no person on the grounds of race, color or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities. The “Acts and Regulations” referenced in this Section mean Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the secretary, part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964 and as said Regulations and Acts may be amended.

5.2 Grantee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that: (i) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (ii) in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from

participation in, denied benefits of, or otherwise be subjected to discrimination, and (iii) Grantee shall use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

5.3 Grantee assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision obligates Grantee or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates Grantee or any transferee for the longer of the following periods: (i) the period during which the Easement Area is used for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (ii) the period during which the Port or any transferee retains ownership or possession of the Easement Area. In the case of contractors, this Provision binds the contractors from the bid solicitation period through the completion of the contract.

5.4 Grantee will, at the timely request of the Port, (a) provide access to records, facilities and staff as necessary to comply with DOT/FAA compliance reviews and/or complaint investigations conducted by the DOT/FAA; and (b) provide information needed for preparation of necessary reports or to meet evaluation requirements of the DOT/FAA.

5.5 Grantee hereby assures that it will include the above clauses in any subcontract(s) and cause subcontractor(s) to similarly include clauses in further subcontracts.

## 6. Indemnification.

6.1 At Grantee's sole expense, Grantee shall indemnify, hold harmless, and defend Grantor from and against any and all claims, lawsuits, damages, liabilities, fines, expenses, fees and costs of any kind, arising from Grantee's intentional misconduct, negligence, or breach of the representations or warranties contained herein or default in the performance of Grantee's responsibilities under the provisions of this Easement. As used in this Section 4, the term "Grantee" shall include employees, agents, contractors, and persons entering the Premises under the express or implied invitation of Grantee.

6.2 Upon written notice from Grantor, Grantee agrees to assume the defense of any lawsuit or other proceeding brought against Grantor by any entity, relating to any matter covered by this Easement for which Grantee has an obligation to assume liability for and/or save and hold harmless Grantor. Grantee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

7. Insurance. Grantee shall provide the following insurance coverage which it shall obtain from commercial insurance carriers and this coverage shall be maintained throughout the term of the Easement.

7.1 Required Coverage.

7.1.1 Commercial General Liability insurance on ISO Form CG 00 01 10 01 (or an equivalent policy form) for third party property damage, bodily injury, personal and advertising injury, and medical payments in an amount which is not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Grantee's insurance shall be primary and non-contributory with respect to any insurance the Port carries and apply separately to each insured. The Port shall be named as an additional insured on this policy.

7.1.2 Automobile Liability Insurance on a combined single limit basis for bodily injury and property damage using with a limit of not less than \$1,000,000 per occurrence.

7.1.3 Pollution liability coverage with the Port named as an additional insured on the policy, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The policy coverage shall extend to all sudden and accidental incidents, claims, damages, and losses, including defense costs that are caused by pollution incidents that arise from the operations of the Grantee.

7.2 Insurance Certificates. Grantee shall submit to the Port a Certificate of Insurance which shows that it has obtained the required coverage(s) and a copy of the additional insured endorsement for the commercial general liability insurance policy and the pollution liability policy. The stated insurance limits shall not be construed as to relieve the Grantee from liability in excess of the limits. All deductibles or self-insurance retentions are the responsibility of Grantee.

7.3 Self Insurance. Grantee shall have the option of providing a program of self-insurance in lieu of commercial insurance. "Self-Insurance" shall mean that Grantee is acting as though it were the insurance company providing the required insurance. Grantee will have to provide evidence to the Port that Grantee's self-insurance program demonstrates a financial worth of sufficient capacity to finance claims, losses, and defense obligations that would otherwise be covered by the commercial insurance specified above. If the Port does not accept in whole or in part, Grantee's self-insurance program, Grantee shall provide commercial insurance as required by this Section.

8. This Easement shall be governed by and construed to be in accordance with the laws of the State of Washington. In any action brought to enforce this Easement or to determine the rights of the parties under this Easement, the prevailing party shall be entitled to collect, in addition to any judgment awarded by a court, a reasonable sum as attorney's fees, and all costs and expenses incurred in connection with such a lawsuit. For the purpose of this Easement, the prevailing party shall be that party in whose favor final judgment is rendered or who substantially prevails if both parties are awarded judgment.

9. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Grantee:

City of Burien

400 SW 152nd Street, Suite 300

Burien, WA 98166

Attention: Public Works Director

Copy to: City Attorney

If to Grantor:

Port of Seattle  
P.O. Box 1209  
Seattle, WA 98111  
Attention: \_\_\_\_\_  
Copy to: General Counsel

10. This document contains the entire easement between the parties and any previous easement between the parties dealing with this subject is declared by the parties to be null, void and of no effect whatsoever. There are no verbal or other easements that modify this Easement. Any modification of this Easement must be made in writing and must be signed by the party against whom enforcement of the modification is sought. If any part of this Easement is held invalid, the remainder of this Easement shall not be affected and shall continue in full force and effect. The obligations of the parties hereunder shall survive termination of the Easement.

11. The rights and obligations of the parties shall inure to the benefit of and be binding upon their successors and assigns.

12. This Permanent Public Right-of-Way Easement shall run with the land and be binding upon the grantees, lessees, successors, and assigns of the parties hereto, unless vacated by the City pursuant to State law.

IN WITNESS WHEREOF, Grantor has hereunto set its hand the day and year first above written.

GRANTOR:

PORT OF SEATTLE

\_\_\_\_\_

By: (Type/Print Name)

Title: \_\_\_\_\_

GRANTEE:

CITY OF BURIEN

---

By: (Type/Print Name)

Title: \_\_\_\_\_

DRAFT

STATE OF WASHINGTON )

) ss.

COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ 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 \_\_\_\_\_ of the PORT OF SEATTLE, a municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE OF WASHINGTON )

) ss.

COUNTY OF KING )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ 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 \_\_\_\_\_ of the CITY OF BURIEN, a municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Print Name: \_\_\_\_\_

DRAFT

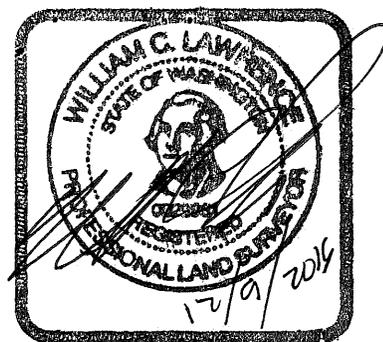
**EXHIBIT "A"**

**PORT OF SEATTLE  
NERA 2 Lease Area  
Property Description**

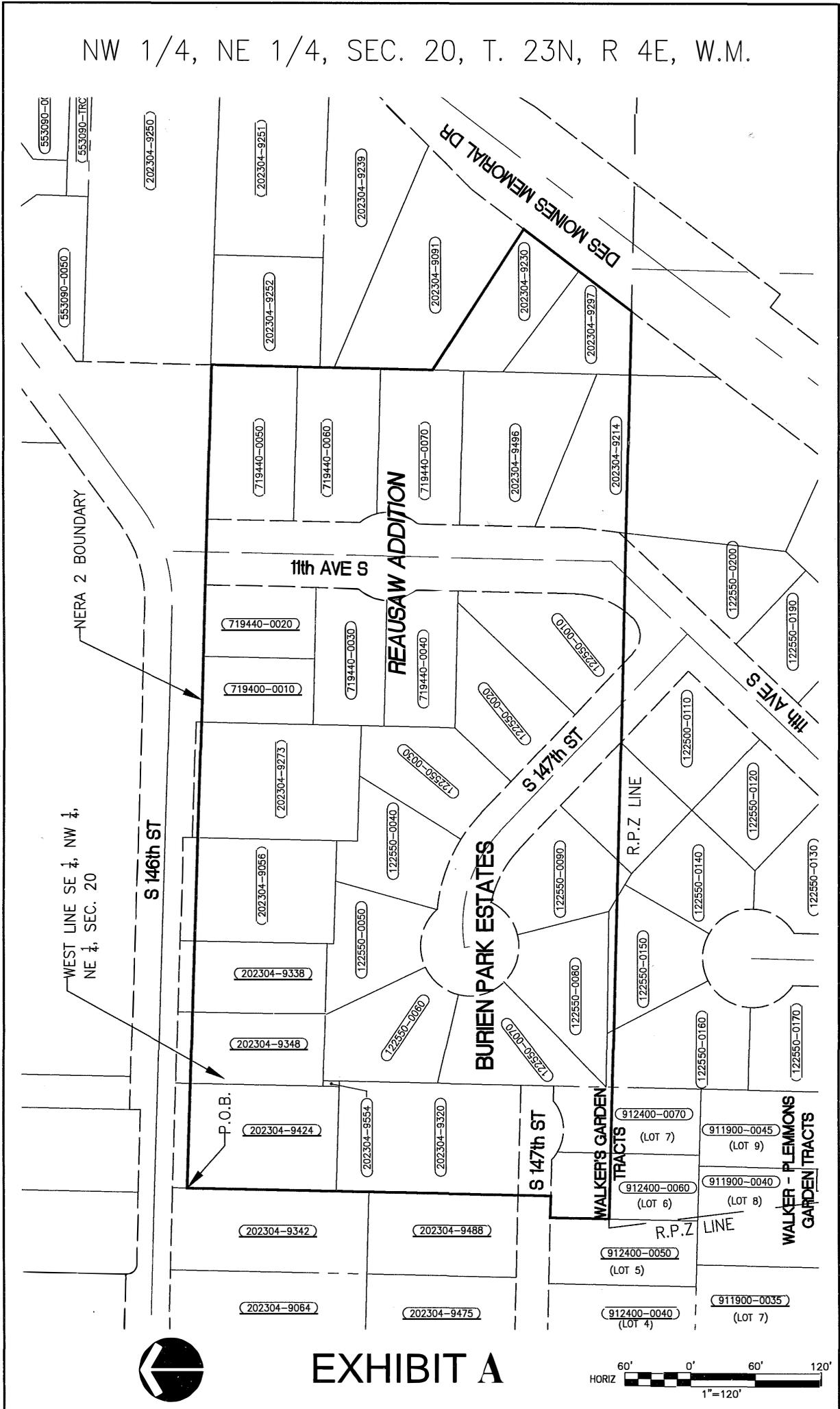
That portion of property lying within the South Half of the Northwest Quarter of the Northeast Quarter of Section 20, Township 23 North, Range 4 East, Willamette Meridian, in King County, Washington, described as follows:

Beginning at a point on the south margin of South 146<sup>th</sup> Street that is the intersection with the west line of the east 100 feet of the Southwest Quarter of the Northwest Quarter of the Northeast Quarter of the Northeast Quarter of said Section 20;  
thence S01°10'50"W along said west line, 333.12 feet to the south margin of South 147<sup>th</sup> Street as dedicated in the plat of Walker's Garden Tracts recorded in Volume 61 of Plats at Page 97, King County, Washington;  
thence N88°24'13"W, along said south margin 19.95 feet to the northeast corner of Lot 5 of said plat;  
thence S01°10'40"W, along the east line of said Lot 5, a distance of 53.89 feet to the Runway Protection Zone (RPZ) Line as shown on Sea-Tac International Airport Layout Plan, Runway Protection Zone, R/W 16R-34L, Sheet 17 of 18;  
thence S88°33'15"E along said RPZ Line, 828.15 feet to the northwest margin of Des Moines Memorial Drive;  
thence N37°12'53"E along said road margin, 123.63 feet to the most easterly corner of that parcel of land described in Deed In Lieu of Condemnation, recorded in King County Auditor File Number 20070711000733;  
thence N56°55'36"W along the north line of said parcel, 153.45 feet to the east line of the plat of Reausaw Addition recorded in Volume 54 of Plats at Page 99, King County;  
thence N01°17'50"E along said east line, 202.40 feet to the northeast corner of said plat;  
thence N88°16'01"W, along the north line of said plat also being the south margin of South 146<sup>th</sup> Street 140.88 feet to the northwest corner of said plat and being 30 feet south of the road right of way center line of South 146<sup>th</sup> Street;  
thence continuing N88°16'01"W parallel and 30.00 feet south of the road right of way center line of South 146<sup>th</sup> Street, 610.21 feet to the west line of the east 100 feet of the Southwest Quarter of the Northwest Quarter of the Northeast Quarter of said Section 20 and being the Point of Beginning.

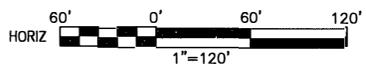
Containing 6.998 acres, more or less.



NW 1/4, NE 1/4, SEC. 20, T. 23N, R 4E, W.M.



# EXHIBIT A



**otak**  
 HanmiGlobal Partner  
 11241 Willows Road NE  
 Suite 200  
 Redmond, Washington 98062  
 Phone: (425) 822-4446  
 FAX: (425) 827-9577  
 www.otak.com

## BURIEN NERA

### PORT OF SEATTLE PROPERTIES

### NERA 2 BOUNDARY

12/05/16

31235P  
Project No.

Drawing No.

EXHIBIT "B"

RIGHT-OF-WAY DEDICATION

THAT PORTION OF THE FOLLOWING DESCRIBED PARCEL LYING NORTH OF A LINE WHICH LIES 30.00 FEET SOUTH OF AND PARALLEL WITH THE CENTERLINE OF SOUTH 146<sup>TH</sup> STREET.

PARCEL DESCRIPTION:

A TRACT OF LAND SITUATE WITHIN THE NW 1/4 AND THE NE 1/4 OF THE NE 1/4 OF SECTION 20, TOWNSHIP 23 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN BURIEN, KING COUNTY, WASHINGTON, AND BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH MARGIN OF SOUTH 146TH STREET THAT IS THE INTERSECTION WITH THE EAST LINE OF THE EAST 100 FEET OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 20;

THENCE ALONG THE NORTHERLY BOUNDARY OF THE TRACT HEREIN DESCRIBED, THE FOLLOWING FIVE (5) COURSES:

S 88°16'50" E A DISTANCE OF 219.54 FEET;  
S 1°14'07" W A DISTANCE OF 8.50 FEET;  
S 88°16'50" E A DISTANCE OF 106.00 FEET;  
S 1°14'07" W A DISTANCE OF 5.00 FEET;  
S 88°16'50" E A DISTANCE OF 325.53 FEET TO THE NORTHEAST CORNER OF THE TRACT HEREIN DESCRIBED;

THENCE ALONG THE EASTERLY BOUNDARY OF THE TRACT HEREIN DESCRIBED, THE FOLLOWING TWO (2) COURSES:

S 1°17'41" W A DISTANCE OF 196.10 FEET;  
S 57°01'41" E A DISTANCE OF 157.20 FEET TO A POINT ALONG THE NORTHWESTERLY RIGHT-OF-WAY LINE OF DES MOINES MEMORIAL DRIVE;

THENCE CONTINUING ALONG THE EASTERLY BOUNDARY OF THE TRACT HEREIN DESCRIBED, COINCIDENT WITH SAID NORTHWESTERLY RIGHT-OF-WAY LINE OF DES MOINES MEMORIAL DRIVE, S 37°12'56" W A DISTANCE OF 353.99 FEET TO THE SOUTHEAST CORNER OF THE TRACT HEREIN DESCRIBED;

THENCE ALONG THE SOUTHERLY BOUNDARY OF THE TRACT HEREIN DESCRIBED, LEAVING SAID NORTHWESTERLY RIGHT-OF-WAY LINE OF DES MOINES MEMORIAL DRIVE, THE FOLLOWING TWELVE (12) COURSES:

N 65°14'50" W A DISTANCE OF 91.29 FEET;  
S 43°05'07" W A DISTANCE OF 25.16 FEET;  
N 46°26'05" W A DISTANCE OF 92.57 FEET;  
N 46°30'31" W A DISTANCE OF 24.00 FEET;  
S 43°29'29" W A DISTANCE OF 75.45 FEET;  
N 46°30'31" W A DISTANCE OF 24.00 FEET;

N 46°26'05" W A DISTANCE OF 170.00 FEET;  
N 60°41'30" W A DISTANCE OF 11.15 FEET;  
S 30°15'54" W A DISTANCE OF 133.30 FEET;  
N 89°02'58" W A DISTANCE OF 120.63 FEET  
N 1°10'34" E A DISTANCE OF 43.88 FEET;

N 88°24'40" W A DISTANCE OF 120.00 FEET TO THE SOUTHWEST CORNER OF THE TRACT HEREIN DESCRIBED;

THENCE ALONG THE WESTERLY BOUNDARY OF THE TRACT HEREIN DESCRIBED, N 1°10'35" E A DISTANCE OF 135.02 FEET TO A POINT ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SOUTH 147TH STREET;

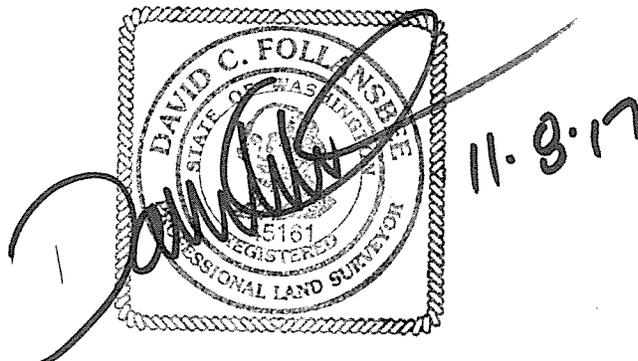
THENCE CONTINUING ALONG THE WESTERLY BOUNDARY OF THE TRACT HEREIN DESCRIBED, COINCIDENT WITH SAID SOUTHERLY RIGHT-OF-WAY LINE OF SOUTH 147TH STREET, S 88°24'40" E A DISTANCE OF 20.00 FEET;

THENCE CONTINUING ALONG THE WESTERLY BOUNDARY OF THE TRACT HEREIN DESCRIBED, LEAVING SAID SOUTHERLY RIGHT-OF-WAY LINE OF SOUTH 147TH STREET, N 1°10'34" E A DISTANCE OF 346.55 FEET TO THE NORTHWEST CORNER OF THE TRACT HEREIN DESCRIBED;

THENCE S 88°16'50" E ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SOUTH 146TH STREET, 100.00 FEET TO THE TRUE POINT OF BEGINNING;

THE TRACT CONTAINS 9.0888 ACRES OR 395,909 SQ. FT., MORE OR LESS.

SAID RIGHT-OF-WAY DEDICATION CONTAINS 4,843.74 SQ. FT., MORE OR LESS.



# EXHIBIT "B"

FOUND BRASS  
PLUG IN CASE AT  
16TH AVE AND  
144TH ST

S1° 32' 06"W 1314.29'

1305.04'

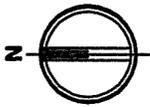
N1° 17' 41"E  
692.80'

DES MOINES  
MEMORIAL DRIVE

1299.45'  
N88° 31' 46"W

N1° 17' 41"E  
169.49'

AFN 2017090190002  
RECORDED 9/01/2017



1"=200'

S88° 01' 58"E 652.52'

SOUTH 146TH STREET

651.12'

S88° 16' 50"E  
425.53'

30'  
25'

AREA TO BE DEDICATED  
AS RIGHT-OF-WAY

T.P.O.B.

S1° 10' 34"W  
665.64'

NW¼, NE¼ SEC. 20,  
T 23 N., R 04 E.  
FOUND 2" BRASS  
IN CASE AT CL OF  
8TH AVE

652.52'

651.12'

S88° 16' 50"E  
16.5'

S1° 10' 34"W  
13.50'

S. 147TH ST

1299.45'  
N88° 31' 46"W

P.O.C.  
NW CORNER

S1° 03' 31"W  
668.48'

S1° 03' 31"W  
1336.95'

FOUND 2" IRON PIPE AT  
8TH AVE AND 152ND ST



11.9.17

JOB NO. 2160809.50 10/23/17  
RIGHT-OF-WAY DEDICATION  
LEGAL BY: AWM EXHIBIT BY: AWM  
N½, NE¼, S20, T23N, R4E  
w:\sdekproj\2016\2160809\2160809 row dedication.dwg



2215 North 30th Street,  
Suite 300,  
Tacoma, WA 98403  
253.383.2422 TEL  
253.383.2572 FAX

THIS EXHIBIT HAS BEEN PREPARED TO ASSIST IN THE INTERPRETATION  
OF THE ACCOMPANYING LEGAL DESCRIPTION. IF THERE IS A CONFLICT  
BETWEEN THE WRITTEN LEGAL DESCRIPTION AND THIS SKETCH, THE  
LEGAL DESCRIPTION SHALL PREVAIL.