

CONFORMED COPY

20111026001289

MCCULLOUGH HIL AG 74.00
PAGE-001 OF 013
10/26/2011 15:08

AFTER RECORDING RETURN DOCUMENT TO:

John C. McCullough
McCullough Hill, PS
701 Fifth Avenue, Suite 7220
Seattle, Washington 98104

Reference Number of Related Document: N/A
Grantor(s): LAKE UNION III LLC
Grantee(s): CITY OF SEATTLE
Abbreviated Legal Description: Lots 1-12, Block 102, D. T. Denny's 1st Addition
to North Seattle, Vol. 1 of Plats, p. 79, King County, Washington.
Additional Legal Description is on pages 1 and 2 of Document
Assessor's Property Tax Parcel or Account No: 1983200293; 1983200270; 1983200260

PROPERTY USE AND DEVELOPMENT AGREEMENT

THIS AGREEMENT (Agreement) is made this date in favor of the CITY OF SEATTLE, a municipal corporation of the State of Washington (City) by LAKE UNION III LLC, a Washington limited liability company, owner of the within described property (Owner).

WITNESSETH:

WHEREAS, the Owner is vested in fee simple title and has a substantial beneficial interest in the property located in King County, Washington, described as follows (Property):

Lots 1 through 12 inclusive, Block 102, D. T. Denny's 1st Addition to North Seattle, according to the Plat thereof, recorded in Volume 1 of Plats, page 79, in King County, Washington.

and

WHEREAS, the Owner has redeveloped the Property with new office buildings (the Development); and

WHEREAS, in connection with the Development, a petition was filed in 2000 (C.F. No. 304098) pursuant to RCW Ch. 35.79 and Seattle Municipal Code Ch. 15.62, by the Owner to vacate the alley in Block 102, D. T. Denny's 1st Addition to North Seattle; and

WHEREAS, the City Council granted preliminary approval of the vacation subject to conditions, including the condition that the surface plaza area of the Development (Plaza Area) that is depicted on Exhibit A and legally described on Exhibit B remain undeveloped and accessible to the public; and

WHEREAS, the Owner now seeks final vacation of the alley in Block 102, D. T. Denny's 1st Addition to North Seattle;

NOW, THEREFORE, the Owner covenants, bargains, and agrees on behalf of itself, its successors, and assigns to the following:

Section 1. The Plaza Area shall not be developed with buildings at grade level, and shall be developed with a plaza, landscaping, benches, artwork, lighting, signs and other open space and pedestrian amenities. The Plaza Area shall be open to the public to pass through or use the plaza during daylight hours regardless of whether such use by the public is associated with the Development. Public use of the Plaza Area is, however, subject to the conditions contained in this Agreement. The Owner shall provide signage in the Plaza Area indicating the Plaza Area is open for public use in accordance with the terms of this Agreement.

The Plaza Area does not include: below-grade or subsurface areas, which are occupied by the subsurface parking garage for the Development; or portions of structures that may extend over the ground surface of the Plaza Area, provided the portions of structures located over the Plaza Area do not restrict the public's use of the Plaza Area.

The Owner reserves the right to use the Plaza Area for any purposes not inconsistent with the terms of this Agreement. The areas identified as "Restricted Public Use Areas" on Exhibit A may be dedicated from time to time by the Owner, through leases or other written instrument to building tenants, as areas for outdoor seating for eating or drinking establishments located in the Development. In such cases, access to these areas shall be limited to use by patrons of the eating or drinking establishments.

Section 2. The Plaza Area currently has and shall continue to include the following public amenities: 15 trees, 1,200 square feet of landscape planting area, 1,000 lineal feet of steps appropriate for seating, and one large-scale art piece. The Owner shall keep all amenities in good repair. After installation of these amenities, the amount or types of amenities may be modified by the Owner after receiving the written consent of the Director of the Department of Transportation; provided, the quality of the amenities shall not be diminished and the modified amenities shall be designed to continue to activate the Plaza Area with public uses and pedestrian activity.

Section 3. The Owner shall have the right to temporarily close or obstruct the Plaza Area for: (1) construction; (2) maintenance and repair; (3) temporary use for private functions directly related to the Development or the Owners; (4) the maintenance of security for the Development or persons using the Development, or (5) other circumstances beyond the Owner's control.

Section 4: The Owner may adopt reasonable rules and regulations regarding the use of and access to the Plaza Area as are necessary to ensure the security of the users of the Plaza Area and the Development. The rules and regulations shall be consistent with the terms of this Agreement. A summary of the current rules and regulations may be posted in a several visible locations in the Plaza Area.

Section 5. The Owner and the City through its Parks Department, Department of Neighborhoods, or other City agency, may coordinate programming of community and public events or other public functions in the Plaza Area. Any such events shall be coordinated between the City and Owner not less than six months in advance.

Section 6. This Agreement shall be recorded in the records of King County and the covenants of this Agreement shall attach to and run with the Property and shall be binding upon the Owner, its heirs, successors, and assigns.

Section 7. This Agreement may be amended or modified by agreement between the Owner and the City; provided the amended Agreement shall be approved by the City Council by ordinance. Nothing in the Agreement shall be construed as a surrender of the City's governmental powers.

Section 8. This Agreement is made for the benefit of the City and the public, and the City may institute and prosecute any proceeding at law or in equity to enforce this Agreement.

Section 9. Upon the effective date of the vacation ordinance, the Owner shall provide and thereafter maintain in full force and effect, commercial general liability insurance providing for a limit of not less than \$1,000,000 per occurrence for all damages arising out of bodily injuries or death. The insurance policies obtained shall be approved as to form by the City Risk Manager, and shall name the City as an additional insured.

Section 10. Owner shall indemnify, hold harmless, and defend the City and its officers, agents and employees, from any and all claims, losses, liabilities, liens, costs, or expenses including attorney's fees, resulting from or arising out of public use of the Plaza Area, except to the extent resulting from the negligence or intentional acts of the City. If any claim covered by this paragraph is asserted against the City, Owner, upon notice thereof from the City, shall defend the same at its sole cost and expense, and shall pay any final judgment rendered upon such claim.

Section 11. The Owner reserves the right to use the Plaza Area for any purpose which does not interfere with the public's use of the Plaza Area, including but not limited to the right to use the Plaza Area as described in this Agreement and the right to grant easements within the Plaza Area, provided the easements are consistent with the public's use of the Plaza Area.

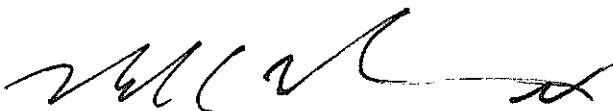
Section 12. Notwithstanding the covenants contained in this Agreement, nothing in this Agreement shall constitute a public dedication of any portion of the Property.

Section 13. In the event any covenant or condition or any portion thereof in this Agreement is judicially determined to be invalid or void, such invalidity or voidness shall in no way affect any other covenant, condition or restriction contained in this Agreement.

Dated this 6TH day of OCTOBER, 2011.

OWNER:

LAKE UNION III LLC
By: S/I Lake Union III, LLC



Michael C. Nelson
Sr. Investment Director

EXHIBIT A

Drawing of Plaza Area

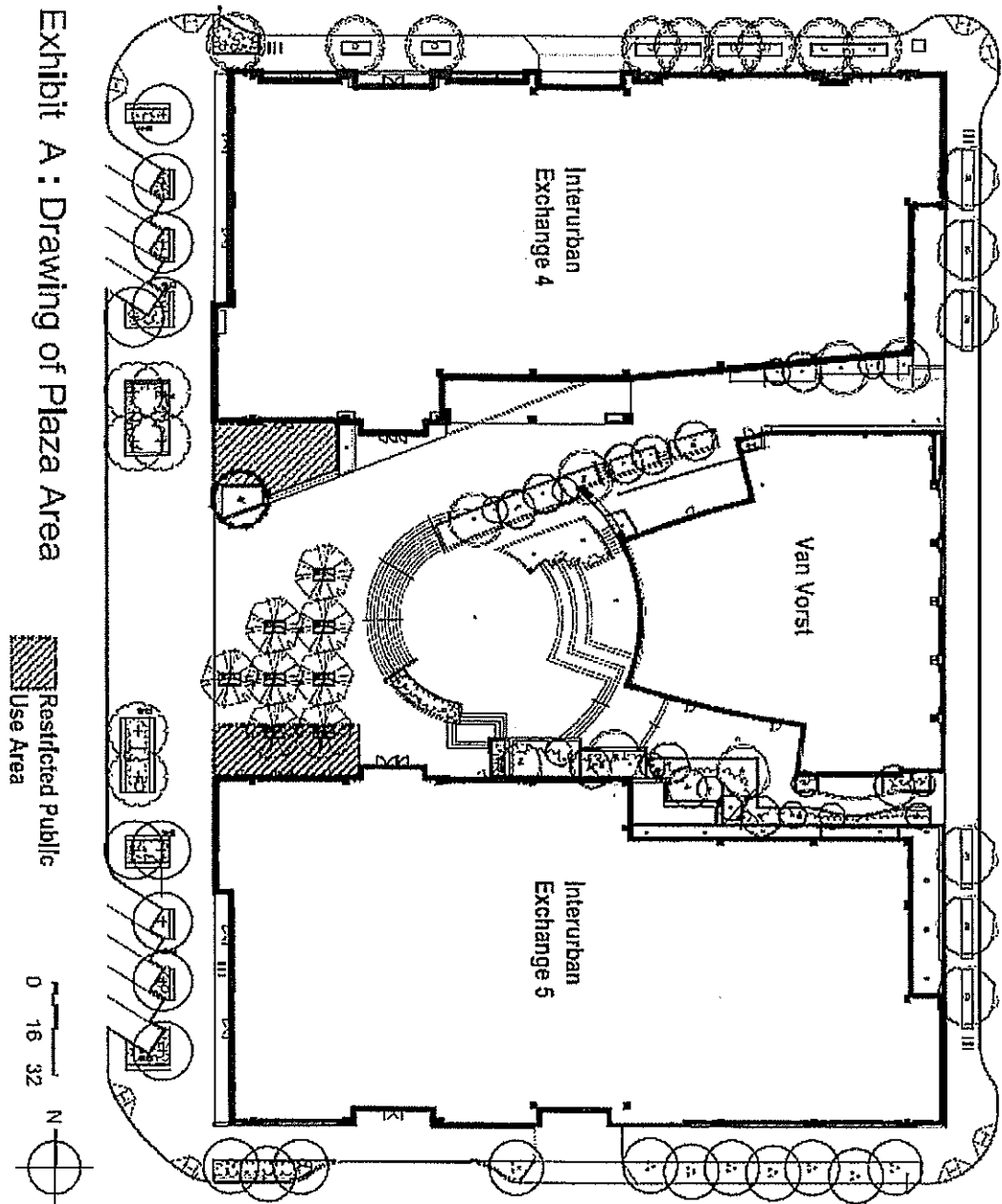


EXHIBIT B

Legal Description of Plaza Area

LEGAL DESCRIPTION

THOSE PORTIONS OF LOTS 2, 3, 4, 5, 9, 10, AND 11 IN BLOCK 102 OF DENNY'S FIRST ADDITION TO NORTH SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 79, RECORDS OF KING COUNTY, WASHINGTON, TOGETHER WITH THOSE PORTIONS OF PROPOSED PUBLIC ALLEY VACATION BISECTING SAID BLOCK 102, WHICH UPON VACATION, WOULD ATTACH ITSELF TO SAID LOTS 2, 3, 4, 9, 10, AND 11 BY OPERATION OF LAW, (ALL LYING ABOVE A BOTTOM LIMIT, VARYING IN ELEVATION, AND COINCIDENT WITH THE EXISTING FINISHED GRADE SURFACE, AND LYING BELOW A TOP LIMIT, VARYING IN ELEVATION, BEING 10.00 FEET ABOVE SAID EXISTING FINISHED GRADE SURFACE, AND COINCIDING WITH ANY AND ALL CHANGES IN GRADIENT OR ELEVATION), AND MORE PARTICULARLY DESCRIBED AS A WHOLE AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID BLOCK 102;

SAID POINT OF COMMENCEMENT BEING 33.00 FEET DISTANT AND AT RIGHT ANGLES TO THE CENTERLINE OF RIGHT-OF-WAY OF BOREN AVENUE NORTH AND ALSO BEING 33.00 FEET DISTANT AND AT RIGHT ANGLES TO THE CENTERLINE OF RIGHT-OF-WAY OF HARRISON STREET;
THENCE NORTH $01^{\circ}25'35''$ EAST ALONG THE EAST LINE OF SAID BLOCK 102, A DISTANCE OF 103.84 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH $88^{\circ}11'12''$ WEST 4.66 FEET;

THENCE NORTH $00^{\circ}04'13''$ EAST 5.53 FEET;

THENCE NORTH $88^{\circ}54'06''$ WEST 9.21 FEET TO THE BEGINNING OF A NON-TANGENTIAL CURVE, CONCAVE SOUTH, HAVING A RADIUS OF 25.97 FEET, A CENTRAL ANGLE OF $16^{\circ}30'41''$, AND TO WHICH RADIAL LINE BEARS NORTH $01^{\circ}35'39''$ EAST;

THENCE WESTERLY ALONG SAID CURVE 7.48 FEET TO THE BEGINNING OF A NON-TANGENTIAL CURVE, CONCAVE NORTH, HAVING A RADIUS OF 37.02 FEET, A CENTRAL ANGLE OF $29^{\circ}41'05''$, AND TO WHICH A RADIAL LINE BEARS SOUTH $13^{\circ}59'04''$ EAST;

THENCE WESTERLY ALONG SAID CURVE A DISTANCE OF 19.18 FEET TO THE BEGINNING OF A NON-TANGENTIAL CURVE, CONCAVE SOUTH, HAVING A RADIUS OF 27.68 FEET, A CENTRAL ANGLE OF $21^{\circ}37'02''$, AND TO WHICH A RADIAL LINE BEARS NORTH $19^{\circ}51'20''$ EAST;

THENCE WESTERLY ALONG SAID CURVE A DISTANCE OF 10.44 FEET;

THENCE NORTH $88^{\circ}54'30''$ WEST 11.61 FEET;

THENCE NORTH $00^{\circ}47'29''$ EAST 17.19 FEET;

THENCE NORTH $88^{\circ}30'11''$ WEST 40.03 FEET;

THENCE NORTH $02^{\circ}52'46''$ EAST 3.05 FEET;

THENCE NORTH $88^{\circ}21'19''$ WEST 22.27 FEET;

THENCE NORTH $01^{\circ}26'32''$ EAST 3.12 FEET;

THENCE NORTH 88°28'03" WEST 31.61 FEET;
THENCE SOUTH 01°56'06" WEST 12.31 FEET TO A POINT LYING
NORTHERLY OF, AND 0.60 FEET DISTANT AND AT RIGHT ANGLES TO THE
SOUTH LINE OF SAID LOT 9;
THENCE NORTH 88°32'50" WEST ALONG A LINE 0.60 FEET DISTANT AND
AT RIGHT ANGLES TO SAID SOUTH LINE OF LOT 9, A DISTANCE OF
21.38 FEET;
THENCE NORTH 01°55'42" EAST 3.47 FEET;
THENCE NORTH 88°31'55" WEST 23.98 FEET;
THENCE SOUTH 01°55'41" WEST 3.47 FEET TO A POINT LYING
NORTHERLY OF, AND 0.60 FEET DISTANT AND AT RIGHT ANGLES TO THE
SOUTH LINE OF SAID LOT 9;
THENCE NORTH 88°32'50" WEST ALONG A LINE 0.60 FEET DISTANT AND
AT RIGHT ANGLES TO SAID SOUTH LINE OF LOT 9, A DISTANCE OF
48.89 FEET TO THE EAST MARGIN OF THAT PORTION OF SAID BLOCK
102 CONDEMNED BY KING COUNTY SUPERIOR COURT CAUSE NUMBER
162246, RECORDS OF KING COUNTY, WASHINGTON;
THENCE NORTH 01°25'10" EAST ALONG SAID EAST MARGIN, A DISTANCE
OF 118.69 FEET TO A POINT LYING SOUTHERLY OF, AND 0.70 FEET
DISTANT AND AT RIGHT ANGLES TO THE NORTHERLY LINE OF SAID LOT
10;
THENCE SOUTH 88°32'56" EAST ALONG A LINE 0.70 FEET DISTANT AND
AT RIGHT ANGLES TO SAID NORTHERLY LINE OF SAID LOT 10, A
DISTANCE OF 42.29 FEET;
THENCE SOUTH 01°16'00" WEST 17.19 FEET;
THENCE NORTH 70°26'10" EAST 6.45 FEET;
THENCE NORTH 01°47'58" EAST 12.28 FEET TO A POINT LYING
SOUTHERLY OF, AND 3.30 FEET DISTANT AND AT RIGHT ANGLES TO
SAID NORTH LINE OF LOT 10;
THENCE SOUTH 88°32'56" EAST ALONG A LINE 3.30 FEET DISTANT AND
AT RIGHT ANGLES TO SAID NORTHERLY LINE OF SAID LOT 10, A
DISTANCE OF 25.94 FEET;
THENCE SOUTH 00°47'06" WEST 2.39 FEET;
THENCE NORTH 70°49'15" EAST 58.40 FEET;
THENCE SOUTH 88°36'56" EAST 12.89 FEET;
THENCE NORTH 86°27'49" EAST 34.80 FEET;
THENCE SOUTH 00°39'00" WEST 3.58 FEET;
THENCE SOUTH 88°45'00" EAST 30.55 FEET;
THENCE NORTH 05°06'48" EAST 2.23 FEET;
THENCE SOUTH 88°37'59" EAST 31.47 FEET;
THENCE NORTH 00°03'00" WEST 2.93 FEET;
THENCE SOUTH 88°53'50" EAST 11.88 FEET TO THE EAST LINE OF
SAID BLOCK 102;
THENCE SOUTH 01°25'35" WEST ALONG SAID EAST LINE A DISTANCE OF
19.69 FEET;

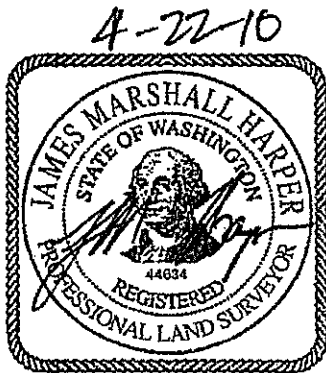
NORTH 88°31'31" WEST 63.56 FEET;
THENCE SOUTH 10°34'41" EAST 2.10 FEET;
THENCE SOUTH 77°26'32" WEST 8.03 FEET;
THENCE NORTH 25°01'25" WEST 0.38 FEET;
THENCE SOUTH 75°59'59" WEST 1.05 FEET;
THENCE SOUTH 12°11'34" EAST 6.39 FEET;
THENCE SOUTH 75°23'49" WEST 24.18 FEET;
THENCE SOUTH 73°13'35" WEST 17.38 FEET;
THENCE SOUTH 20°16'57" EAST 8.97 FEET TO THE BEGINNING OF A
NON-TANGENTIAL CURVE, CONCAVE SOUTHEAST, HAVING A RADIUS OF
298.90 FEET, A CENTRAL ANGLE OF 03°36'59", AND TO WHICH A
RADIAL LINE BEARS NORTH 20°16'57" WEST;
THENCE SOUTHWESTERLY ALONG SAID CURVE A DISTANCE OF 18.87
FEET;
THENCE SOUTH 34°39'14" EAST 4.28 FEET;
THENCE SOUTH 26°31'44" EAST 5.81 FEET;
THENCE NORTH 70°37'08" EAST 4.99 FEET;
THENCE SOUTH 19°05'10" EAST 6.20 FEET;
THENCE NORTH 73°03'17" EAST 4.86 FEET TO THE BEGINNING OF A
NON-TANGENTIAL CURVE, CONCAVE WEST, HAVING A RADIUS OF 57.36
FEET, A CENTRAL ANGLE OF 40°46'58", AND TO WHICH A RADIAL LINE
BEARS NORTH 74°26'44" EAST;
THENCE SOUTHERLY ALONG SAID CURVE A DISTANCE OF 40.83 FEET TO
THE BEGINNING OF A NON-TANGENTIAL CURVE, CONCAVE NORTHEAST,
HAVING A RADIUS OF 338.99 FEET, A CENTRAL ANGLE OF 10°29'05",
AND TO WHICH A RADIAL LINE BEARS SOUTH 19°42'16" WEST;
THENCE SOUTHEASTERLY ALONG SAID CURVE A DISTANCE OF 62.03
FEET;
THENCE SOUTH 09°13'11" WEST 17.22 FEET;
THENCE SOUTH 00°33'47" EAST 5.46 FEET;
THENCE SOUTH 88°54'30" EAST 1.01 FEET TO THE BEGINNING OF A
NON-TANGENTIAL CURVE, CONCAVE SOUTH, HAVING A RADIUS OF 32.68
FEET, A CENTRAL ANGLE OF 21°02'49", AND TO WHICH A RADIAL LINE
BEARS NORTH 01°32'03" WEST;

THENCE EASTERLY ALONG SAID CURVE A DISTANCE OF 12.00 FEET TO
THE BEGINNING OF A NON-TANGENTIAL CURVE, CONCAVE NORTH, HAVING
A RADIUS OF 32.02 FEET, A CENTRAL ANGLE OF 29°19'01", AND TO
WHICH A RADIAL LINE BEARS SOUTH 15°24'03" WEST;
THENCE EASTERLY ALONG SAID CURVE A DISTANCE OF 16.38 FEET TO
THE BEGINNING OF A NON-TANGENTIAL CURVE, CONCAVE SOUTH, HAVING
A RADIUS OF 30.97 FEET, A CENTRAL ANGLE OF 16°23'22", AND TO
WHICH A RADIAL LINE BEARS NORTH 14°50'14" WEST;
THENCE EASTERLY ALONG SAID CURVE A DISTANCE OF 8.86 FEET;
THENCE SOUTH 88°54'06" EAST 9.29 FEET;

THENCE NORTH 01°51'48" EAST 5.59 FEET; TO A POINT ON THE NORTH
LINE OF SAID LOT 5;
THENCE SOUTH 88°32'52" EAST ALONG SAID NORTH LINE, A DISTANCE
OF 4.68 FEET TO THE EAST LINE OF SAID BLOCK 102;
THENCE SOUTH 01°25'35" WEST ALONG SAID EAST LINE A DISTANCE OF
16.15 FEET TO THE POINT OF BEGINNING;

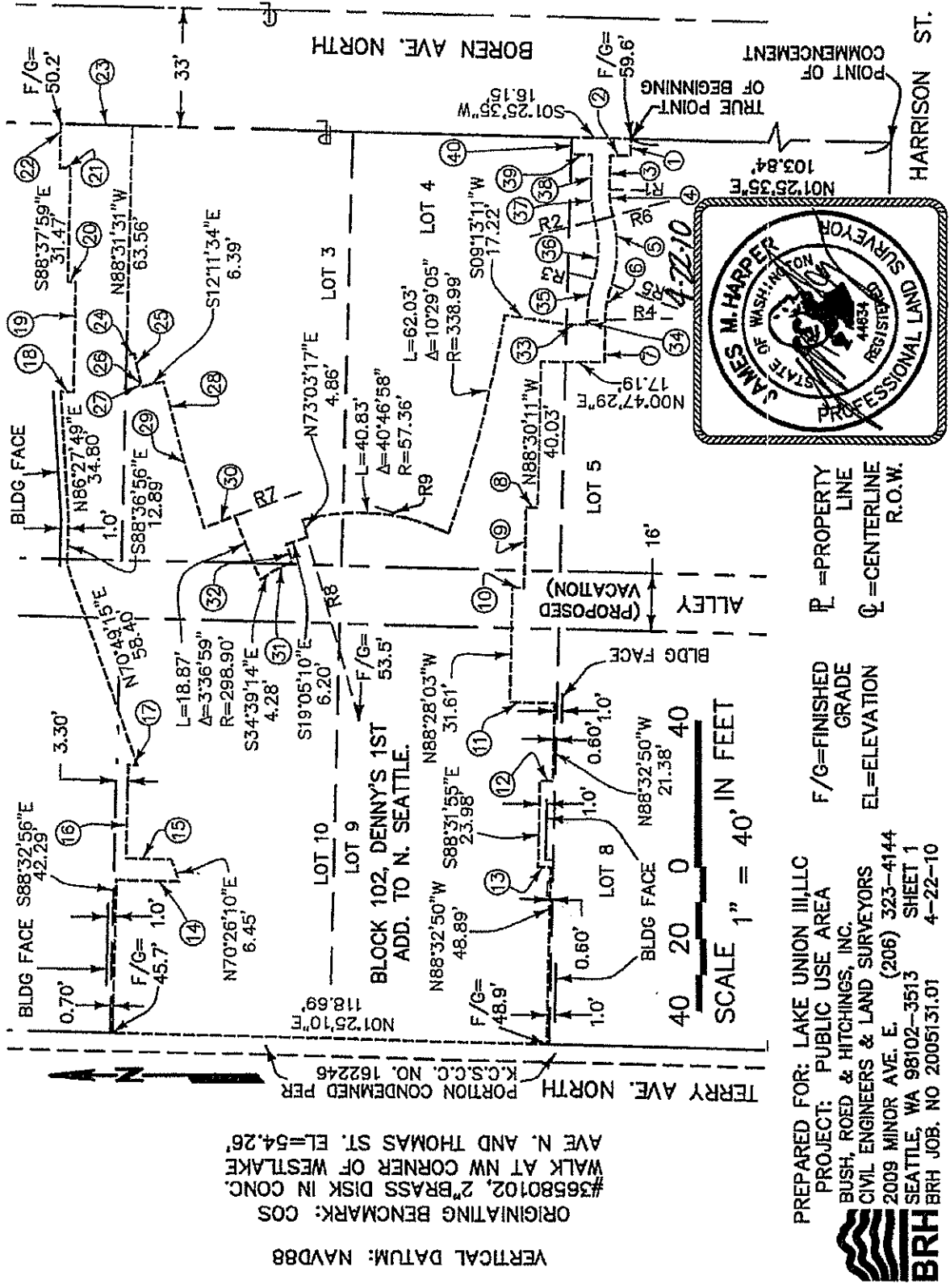
THE ABOVE DESCRIBED PARCELS AS A WHOLE, LESS EXCEPTIONS,
CONTAINING 20,839 SQUARE FEET (0.4784 ACRE), MORE OR LESS;

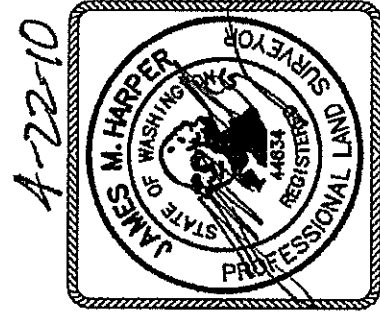
SITUATE IN THE CITY OF SEATTLE, KING COUNTY, WASHINGTON.



LAKE UNION III LLC
PUBLIC USE AREA
JAMES M HARPER, P.L.S.
BRH JOB NO. 2005131.01
APRIL 22, 2010

BUSH, ROED & HITCHINGS, INC.
2009 MINOR AVENUE EAST
SEATTLE, WA 98102
(206) 323-4144





- | | | |
|--|---|--|
| (R1) N01°35'39"E | (14) S01°16'00"W
17.19' | (28) S75°23'49"W
24.18' |
| (R2) S13°59'04"E | (15) N01°47'58"E
12.28' | (29) S73°13'35"W
17.38' |
| (R3) S15°24'03"W | (16) S88°32'56"E
25.94' | (30) S20°16'57"E
8.97' |
| (R4) N01°32'03"W | (17) S00°47'06"W
2.39' | (31) S26°31'44"E
5.81' |
| (R5) N19°51'20"E | (18) S00°39'00"W
3.58' | (32) N70°37'08"E
4.99' |
| (R6) N14°50'14"W | (19) S88°45'00"E
30.55' | (33) S00°33'47"E
5.46' |
| (R7) N20°16'57"W | (20) N05°06'48"E
2.23' | (34) S88°54'30"E
1.01' |
| (R8) N74°26'44"E | (21) N00°03'00"W
2.93' | (35) L=12.00'
A=21°02'49"
R=32.68' |
| (R9) S19°42'16"W | (22) S88°53'50"E
11.88' | (36) L=16.38'
A=29°19'01"
R=32.02' |
| (R10) S46°54'59"W | (23) S01°25'35"W
19.69' | (37) L=8.86'
A=16°23'22"
R=30.97' |
| (R11) S11°10'38"W | (24) S10°34'41"E
2.10' | (38) S88°54'06"E
9.29' |
| (R12) N22°29'34"E | (25) S77°26'32"W
8.03' | (39) N01°51'48"E
5.59' |
| (R13) N17°44'02"W | (26) N25°01'25"W
0.38' | (40) S88°32'52"E
4.68' |
| | (27) S75°59'59"W
1.05' | |
| (1) N88°11'12"W
4.66' | (2) N00°04'13"E
5.53' | (3) N88°54'06"W
9.21' |
| (4) L=7.48'
A=16°30'41"
R=25.97' | (5) L=19.18'
A=29°41'05"
R=37.02' | (6) L=10.44'
A=21°37'02"
R=27.68' |
| (7) N88°54'30"W
11.61' | (8) N02°52'46"E
3.05' | (9) N88°21'19"W
22.27' |
| (10) N01°26'32"E
3.12' | (11) S01°56'06"W
12.31' | (12) N01°55'42"E
3.47' |
| (13) S01°55'41"W
3.47' | | |

PREPARED FOR: LAKE UNION III, LLC
 PROJECT: PUBLIC USE AREA
 BUSH, ROED & HITCHINGS, INC.
 CIVIL ENGINEERS & LAND SURVEYORS
 2009 MINOR AVE, E. (206) 323-4144
 SEATTLE, WA 98102-3513 SHEET 2
 BRH JOB. NO 2005131.01 4-22-10

