

Return Address:

Ken Lederman

Foster Pepper PLLC

1111 Third Avenue, #3000

Seattle, WA 98101



20180305000567

COVENANT Rec: \$95.00

3/5/2018 3:02 PM

KING COUNTY, WA

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

Document Title(s) (or transactions contained therein): (all areas applicable to your document **must** be filled in)

- 1. Environmental Covenant _____ 2. _____
- 3. _____ 4. _____

Reference Number(s) of Documents assigned or released:

Additional reference #'s on page _____ of document

Grantor(s) Exactly as name(s) appear on document

- 1. 1631 15th Ave W LLC (formerly known as Triad Interbay LLC) _____
- 2. _____

Additional names on page _____ of document.

Grantee(s) Exactly as name(s) appear on document

- 1. State of Washington, Department of Ecology _____
- 2. _____

Additional names on page _____ of document.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

The East 200 Feet of Lot 12, Block 131, Seattle Tidelands, in King County, Washington as shown on the official maps on file in the Office of the Commissioner of Public Lands at Olympia, Wa

Additional legal is on page _____ of document.

Assessor's Property Tax Parcel/Account Number

assigned 766620-1610 and 766620-1617

Assessor Tax # not yet

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

"I am signing below and paying an additional \$50 recording fee (as provided in RCW 36.18.010 and referred to as an emergency nonstandard document), because this document does not meet margin and formatting requirements. Furthermore, I hereby understand that the recording process may cover up or otherwise obscure some part of the text of the original document as a result of this request."

Signature of Requesting Party

Note to submitter: Do not sign above nor pay additional \$50 fee if the document meets margin/formatting requirements

After Recording Return
Original Signed Covenant to:
Mr. Michael Warfel
Toxics Cleanup Program
Washington State Department of Ecology
Northwest Regional Office
3190 160th Avenue Southeast
Bellevue, Washington 98008-5452

Environmental Covenant

Grantor: 1631 15th Ave W LLC (formerly known as Triad Interbay LLC)

Grantee: State of Washington, Department of Ecology (hereafter "Ecology")

Brief Legal Description: SEATTLE TIDE LDS E 200 FT LESS POR COND

Tax Parcel Nos.: 766620-1610 and 766620-1617

Cross Reference: No Further Action Opinion at a Property Associated with a Site, VCP Project NW2957, FSID 85657897, CSID 3373, Interbay Lofts Property, 1631 and 1641 15th Avenue West, Seattle, WA 98119, March 2018.

RECITALS

- a. This document is an environmental (restrictive) covenant (hereafter "Covenant") executed pursuant to the Model Toxics Control Act ("MTCA"), chapter 70.105D RCW, and Uniform Environmental Covenants Act ("UECA"), chapter 64.70 RCW.
- b. The Property that is the subject of this Covenant is part or all of a MTCA site commonly known as **Interbay Lofts Property (Interbay Work Lofts) located at 1631 15th Avenue West, Seattle, Washington 98119, and Ecology Facility Site ID 85657897** (hereafter "Property"). The Property is legally described in Exhibit A, and illustrated in Exhibits B and C, both of which are attached. If there are differences between these Exhibits, the legal description in Exhibit A shall prevail.

c. The Property is the subject of remedial action conducted under MTCA. This Covenant is required because residual contamination remains on and off the Property after completion of remedial actions. Specifically, the following principal contaminants remain on the Property:

Medium	Principal Contaminants Present
Soil	None
Groundwater	Arsenic
Surface Water/Sediment	Not Applicable

d. It is the purpose of this Covenant to restrict certain activities and uses of the Property to protect human health and the environment and the integrity of remedial actions conducted at the site. This Covenant includes the following Exhibits:

Exhibit A – Legal Description

Exhibit B – Property Maps

Exhibit C – Maps Illustrating Locations of Restrictions

Exhibit D – Lender’s Consent and Subordination

Exhibit E – Summary of Confirmational Groundwater Monitoring Plan

Exhibit F – Summary of Operation, Maintenance, and Contingency Plan for Remediation Systems

Records describing the extent of residual contamination and remedial actions conducted are available through Ecology. This includes the following documents:

Sound Environmental Strategies. *Cleanup Action Report, 15th Avenue LLC, 1633 15th Avenue West (Lot 12), Seattle, Washington.* April 26, 2001.

SoundEarth Strategies (SoundEarth). *Cleanup Action Report, Interbay Lofts – Parcel B, 1631 15th Avenue West, Seattle, Washington.* December 18, 2014.

SoundEarth. *Supplemental Post-Cleanup Investigation Report, Interbay Lofts – Parcel B, 1631 15th Avenue West, Seattle, Washington, VCP No. NW2957.* July 14, 2016.

SoundEarth. *Feasibility Study and Disproportionate Cost Analysis Report, Interbay Work Lofts, 1631 15th Avenue W, Seattle, WA, VCP No. NW2957.* February 2018.

SoundEarth. *Confirmational Groundwater Monitoring Plan, Interbay Work Lofts, 1631 15th Avenue West, Seattle, Washington.* February 2018.

SoundEarth. *Operation, Maintenance, and Contingency Plan for Remediation Systems, Interbay Work Lofts, 1631 15th Avenue West, Seattle, Washington.* February 2018.

e. This Covenant grants Ecology certain rights under UECA and as specified in this Covenant. As a Holder of this Covenant under UECA, Ecology has an interest in real property, however, this is not an ownership interest which equates to liability under MTCA or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.* The rights of Ecology as an “agency” under UECA, other than its’ right as a holder, are not an interest in real property.

COVENANT

1631 15th Ave W LLC, as Grantor and owner of the Property, hereby grants to the Washington State Department of Ecology, and its successors and assignees, the following covenants. Furthermore, it is the intent of the Grantor that such covenants shall supersede any prior interests the GRANTOR has in the property and run with the land and be binding on all current and future owners of any portion of, or interest in, the Property.

Section 1. General Restrictions and Requirements.

The following general restrictions and requirements shall apply to the Property:

- a. **Interference with Remedial Action.** The Grantor shall not engage in any activity on the Property that may impact or interfere with the remedial action and any operation, maintenance, inspection or monitoring of that remedial action without prior written approval from Ecology.
- b. **Protection of Human Health and the Environment.** The Grantor shall not engage in any activity on the Property that may threaten continued protection of human health or the environment without prior written approval from Ecology. This includes, but is not limited to, any activity that results in the release of residual contamination that was contained as a part of the remedial action or that exacerbates or creates a new exposure to residual contamination remaining on the Property.
- c. **Continued Compliance Required.** Grantor shall not convey any interest in any portion of the Property without providing for the continued adequate and complete operation, maintenance and monitoring of remedial actions and continued compliance with this Covenant.
- d. **Leases.** Grantor shall restrict any lease for any portion of the Property to uses and activities consistent with this Covenant and notify all lessees of the restrictions on the use of the Property.
- e. **Preservation of Reference Monuments.** Grantor shall make a good faith effort to preserve any reference monuments and boundary markers used to define the areal extent of coverage of this Covenant. Should a monument or marker be damaged or destroyed, Grantor shall have it replaced by a licensed professional surveyor within 30 days of discovery of the damage or destruction.

Section 2. Specific Prohibitions and Requirements.

In addition to the general restrictions in Section 1 of this Covenant, the following additional specific restrictions and requirements shall apply to the Property.

a. No Groundwater Extraction. The groundwater beneath the Property shall not be extracted for any purpose other than investigation, monitoring, or remediation performed in accordance with requirements imposed by Ecology for the Property. Drilling of a well for any water supply purpose on or beneath the Property is strictly prohibited. Groundwater extracted from the Property for any purpose shall be considered potentially contaminated and any discharge of this water shall be done in accordance with state and federal law.

b. Confirmational Groundwater Monitoring Plan. Sampling and monitoring of groundwater for the Property shall be performed in accordance with the Confirmational Groundwater Monitoring Plan that is summarized in Exhibit E to this covenant, incorporated as a referenced document in Recital (d) of this covenant, and is hereby incorporated by reference. Five groundwater monitoring wells (MW101 through MW105) are located on the Property to monitor the performance of the remedial action. The Grantor shall maintain clear access to these devices and protect them from damage. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any damage to any monitoring device. Unless Ecology approves of an alternative plan in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

c. Operation, Maintenance, and Contingency Plan for Remediation Systems.

Operation, maintenance, and periodic inspections of the Property building systems that protect the integrity of the remediation shall be performed in accordance with the Operation, Maintenance, and Contingency Plan (OMCP) for Remediation Systems that is summarized in Exhibit F to this covenant, incorporated as a referenced document in Recital (d) of this covenant, and is hereby incorporated by reference. The two building systems are the sub-slab drainage network and sump pump, and the combined concrete wall and sheet-pile shoring wall system along the north and west side of underground parking garage. The Grantor covenants and agrees that it shall annually inspect these two building systems described in Exhibit F and report within thirty (30) days of the inspection the condition of these building systems and any changes to the systems that would impair their performance.

Any activity on the Property that will compromise the integrity of the these building systems (including drilling; digging; piercing with a sampling device, post, stake or similar device; grading; excavation; installation of underground utilities; removal of system components; or application of loads in excess of the load bearing capacity) is prohibited without prior written approval by Ecology. The Grantor shall report to Ecology within forty-eight (48) hours of the discovery of any

damage to these systems. Unless an alternative plan has been approved by Ecology in writing, the Grantor shall promptly repair the damage and submit a report documenting this work to Ecology within thirty (30) days of completing the repairs.

Section 3. Access.

- a. The Grantor shall maintain clear access to all remedial action components necessary to construct, operate, inspect, monitor and maintain the remedial action.
- b. The Grantor freely and voluntarily grants Ecology and its authorized representatives, upon reasonable notice, the right to enter the Property at reasonable times to evaluate the effectiveness of this Covenant and associated remedial actions, and enforce compliance with this Covenant and those actions, including the right to take samples, inspect any remedial actions conducted on the Property, and to inspect related records.
- c. No right of access or use by a third party to any portion of the Property is conveyed by this instrument.

Section 4. Notice Requirements.

- a. **Conveyance of Any Interest.** The Grantor, when conveying any interest in any part of the Property, including but not limited to title, easement, leases, and security or other interests, must:
 - i. Provide written notice to Ecology of the intended conveyance at least thirty (30) days in advance of the conveyance.
 - ii. Include in the conveying document a notice in substantially the following form, as well as a complete copy of this Covenant:

NOTICE: THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT GRANTED TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY ON [DATE] AND RECORDED WITH THE KING COUNTY AUDITOR UNDER RECORDING NUMBER [RECORDING NUMBER]. USES AND ACTIVITIES ON THIS PROPERTY MUST COMPLY WITH THAT COVENANT, A COMPLETE COPY OF WHICH IS ATTACHED TO THIS DOCUMENT.
 - iii. Unless otherwise agreed to in writing by Ecology, provide Ecology with a complete copy of the executed document within thirty (30) days of the date of execution of such document.
- b. **Reporting Violations.** Should the Grantor become aware of any violation of this Covenant, Grantor shall promptly report such violation in writing to Ecology.
- c. **Emergencies.** For any emergency or significant change in site conditions due to Acts of Nature (for example, flood or fire) resulting in a violation of this Covenant, the Grantor is authorized to respond to such an event in accordance with state and federal law. The Grantor must

notify Ecology in writing of the event and response actions planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.

d. Notification procedure. Any required written notice, approval, reporting or other communication shall be personally delivered or sent by first class mail to the following persons. Any change in this contact information shall be submitted in writing to all parties to this Covenant. Upon mutual agreement of the parties to this Covenant, an alternative to personal delivery or first class mail, such as e-mail or other electronic means, may be used for these communications.

Kelli Jo Norris 1631 15th Ave W LLC 2801 Alaskan Way Seattle, Washington 98101 206-484-8283	Environmental Covenants Coordinator Washington State Department of Ecology Toxics Cleanup Program P.O. Box 47600 Olympia, Washington 98504-7600 360-407-6000 ToxicsCleanupProgramHQ@ecy.wa.gov
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Section 5. Modification or Termination.

a. Grantor must provide written notice and obtain approval from Ecology at least sixty (60) days in advance of any proposed activity or use of the Property in a manner that is inconsistent with this Covenant. For any proposal that is inconsistent with this Covenant and permanently modifies an activity or use restriction at the site:

- i. Ecology must issue a public notice and provide an opportunity for the public to comment on the proposal; and
- ii. If Ecology approves of the proposal, the Covenant must be amended to reflect the change before the activity or use can proceed.

b. If the conditions at the site requiring a Covenant have changed or no longer exist, then the Grantor may submit a request to Ecology that this Covenant be amended or terminated. Any amendment or termination of this Covenant must follow the procedures in MTCA and UECA and any rules promulgated under these chapters.

c. By signing this agreement, per RCW 64.70.100, the original signatories to this agreement, other than Ecology, agree to waive all rights to sign amendments to and termination of this Covenant.

Section 6. Enforcement and Construction.

a. This Covenant is being freely and voluntarily granted by the Grantor.

b. Within ten (10) days of execution of this Covenant, Grantor shall provide Ecology with an original signed Covenant and proof of recording and a copy of the Covenant and proof of recording to others required by RCW 64.70.070.

c. Ecology shall be entitled to enforce the terms of this Covenant by resort to specific performance or legal process. All remedies available in this Covenant shall be in addition to any and all remedies at law or in equity, including MTCA and UECA. Enforcement of the terms of this Covenant shall be at the discretion of Ecology, and any forbearance, delay or omission to exercise its rights under this Covenant in the event of a breach of any term of this Covenant is not a waiver by Ecology of that term or of any subsequent breach of that term, or any other term in this Covenant, or of any rights of Ecology under this Covenant.

d. The Grantor shall be responsible for all costs associated with implementation of this Covenant. Furthermore, the Grantor, upon request by Ecology, shall be obligated to pay for Ecology's costs to process a request for any modification or termination of this Covenant and any approval required by this Covenant.

e. This Covenant shall be liberally construed to meet the intent of MTCA and UECA.

f. The provisions of this Covenant shall be severable. If any provision in this Covenant or its application to any person or circumstance is held invalid, the remainder of this Covenant or its application to any person or circumstance is not affected and shall continue in full force and effect as though such void provision had not been contained herein.

g. A heading used at the beginning of any section or paragraph or exhibit of this Covenant may be used to aid in the interpretation of that section or paragraph or exhibit but does not override the specific requirements in that section or paragraph.

The undersigned Grantor warrants he/she holds the title to the Property and has authority to execute this Covenant.

EXECUTED this 13th day of February, 2018.

Kelli Jo Norris [SIGNATURE]

by: Kelli Jo Norris [PRINTED NAME]

Title: Authorized Signatory

CORPORATE ACKNOWLEDGMENT

STATE OF Washington

COUNTY OF KING

On this 13th day of February, 2018, I certify that Kelli Jo Norris personally appeared before me, acknowledged that **he/she** is the authorized signatory of the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said corporation.

Abbey Reed

Notary Public in and for the State of Washington

Residing at Seattle

My appointment expires 08-10-21



The Department of Ecology, hereby accepts the status as GRANTEE and HOLDER of the above Environmental Covenant pertaining to the Interbay Lofts Property, 1631 15th Avenue West, Seattle, Washington, Facility Site ID 85657897.

STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

 [SIGNATURE]

by: ROBERT W. WARREN [PRINTED NAME]

Title: NWRO SECTION MANAGER

Dated: 2-26-18

Exhibit A

LEGAL DESCRIPTION

Parcel A:

The East 200 feet of Lot 12, Block 131, Seattle Tidelands, in King County, Washington, as shown on the official maps on file in the Office of the Commissioner of Public Lands at Olympia, Washington;

Except that portion condemned by the City of Seattle for widening of 15th Avenue West in King County Superior Court Cause No. 516133 and provided for in City of Seattle Ordinance No. 86751.

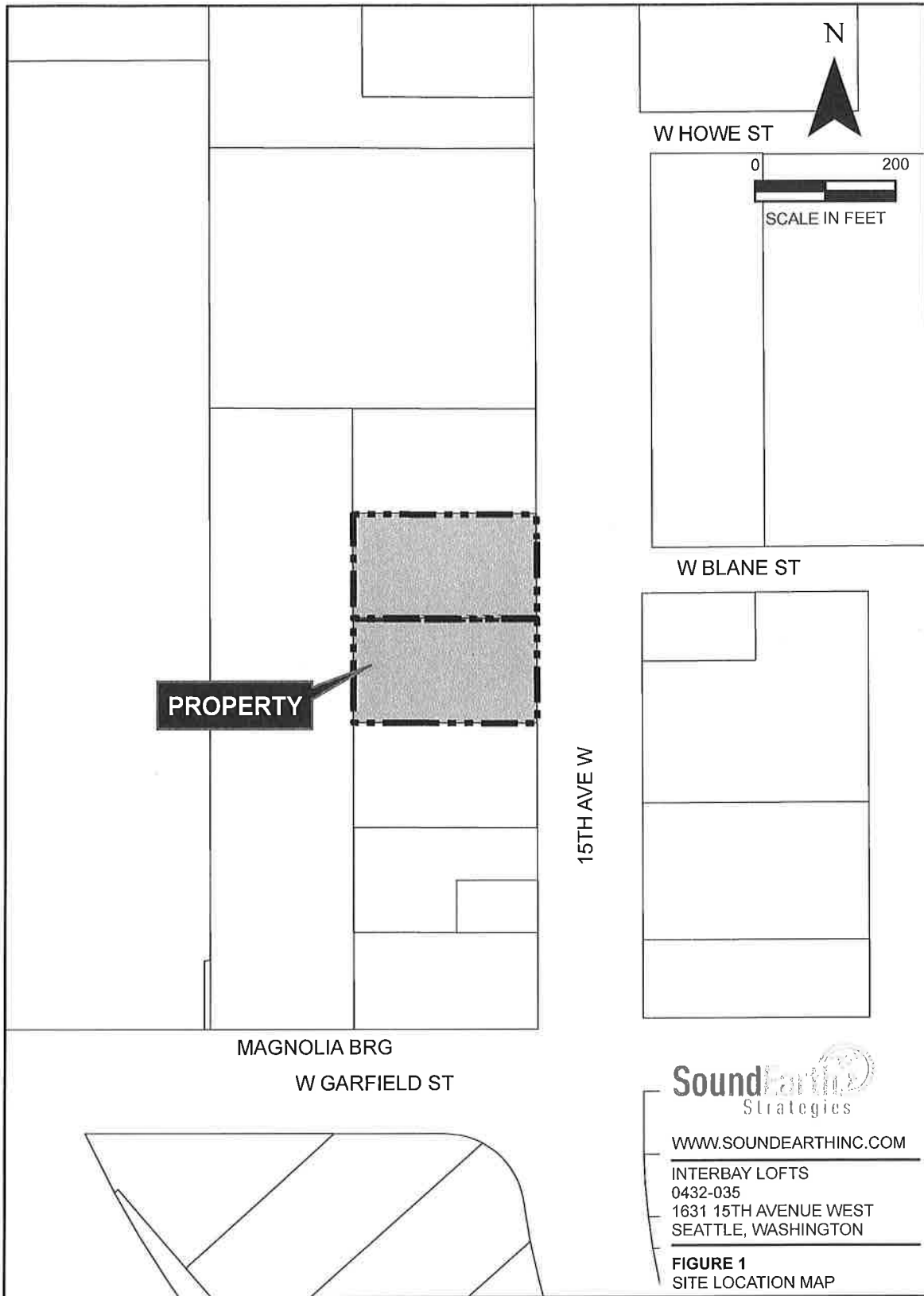
Parcel B:

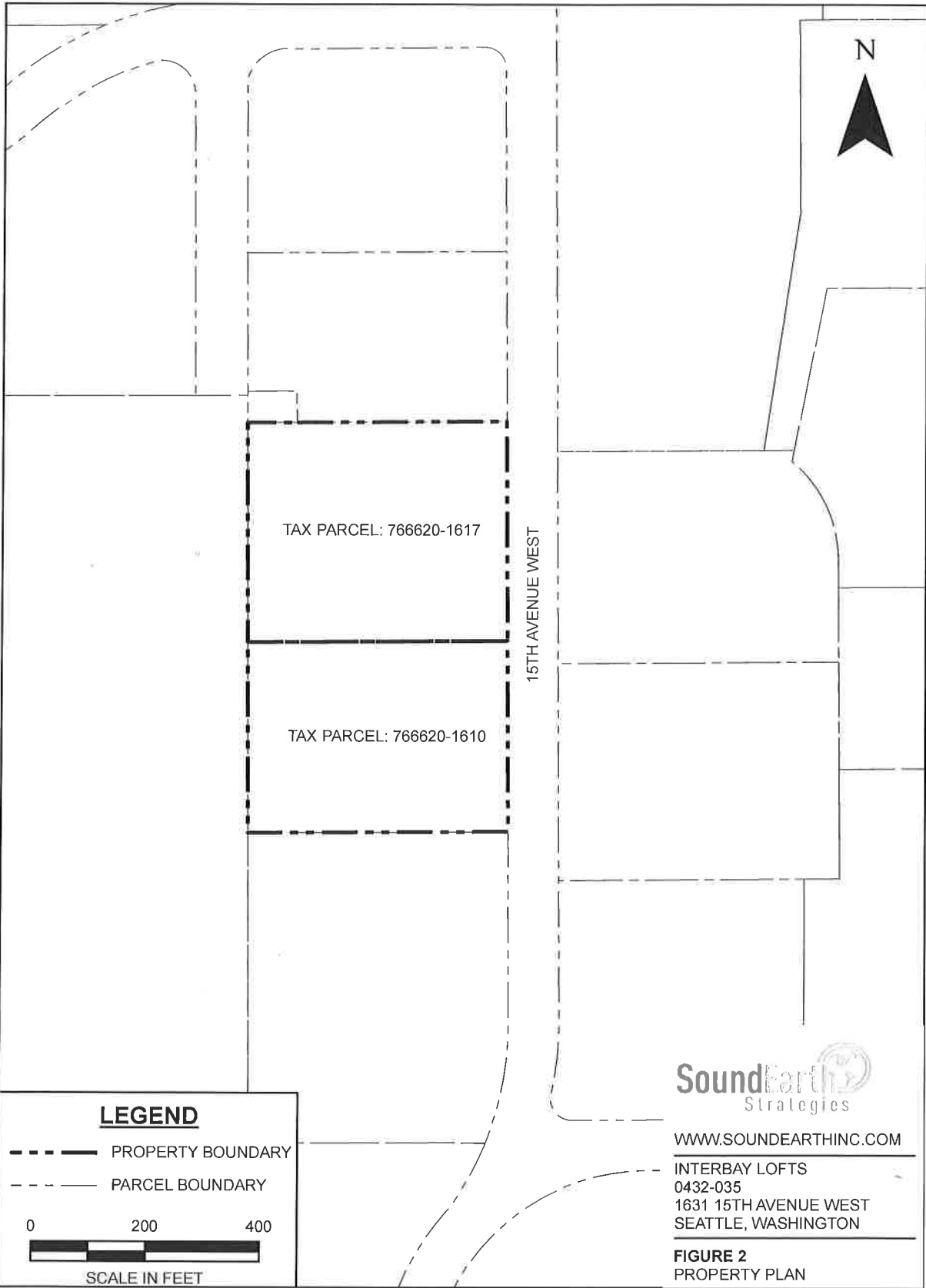
The East 200 feet of Lot 13, Block 131, Seattle Tidelands, in King County, Washington, as shown on the official maps on file in the Office of the Commissioner of Public Lands at Olympia, Washington;

Except that portion condemned by the City of Seattle for widening of 15th Avenue West in King County Superior Court Cause No. 516133 and provided for in City of Seattle Ordinance No. 86751.

Exhibit B

FIGURE 1, PROPERTY LOCATION MAP
FIGURE 2, PROPERTY PLAN





TAX PARCEL: 766620-1617

TAX PARCEL: 766620-1610

15TH AVENUE WEST

LEGEND

- PROPERTY BOUNDARY
- - -** PARCEL BOUNDARY



SCALE IN FEET

N



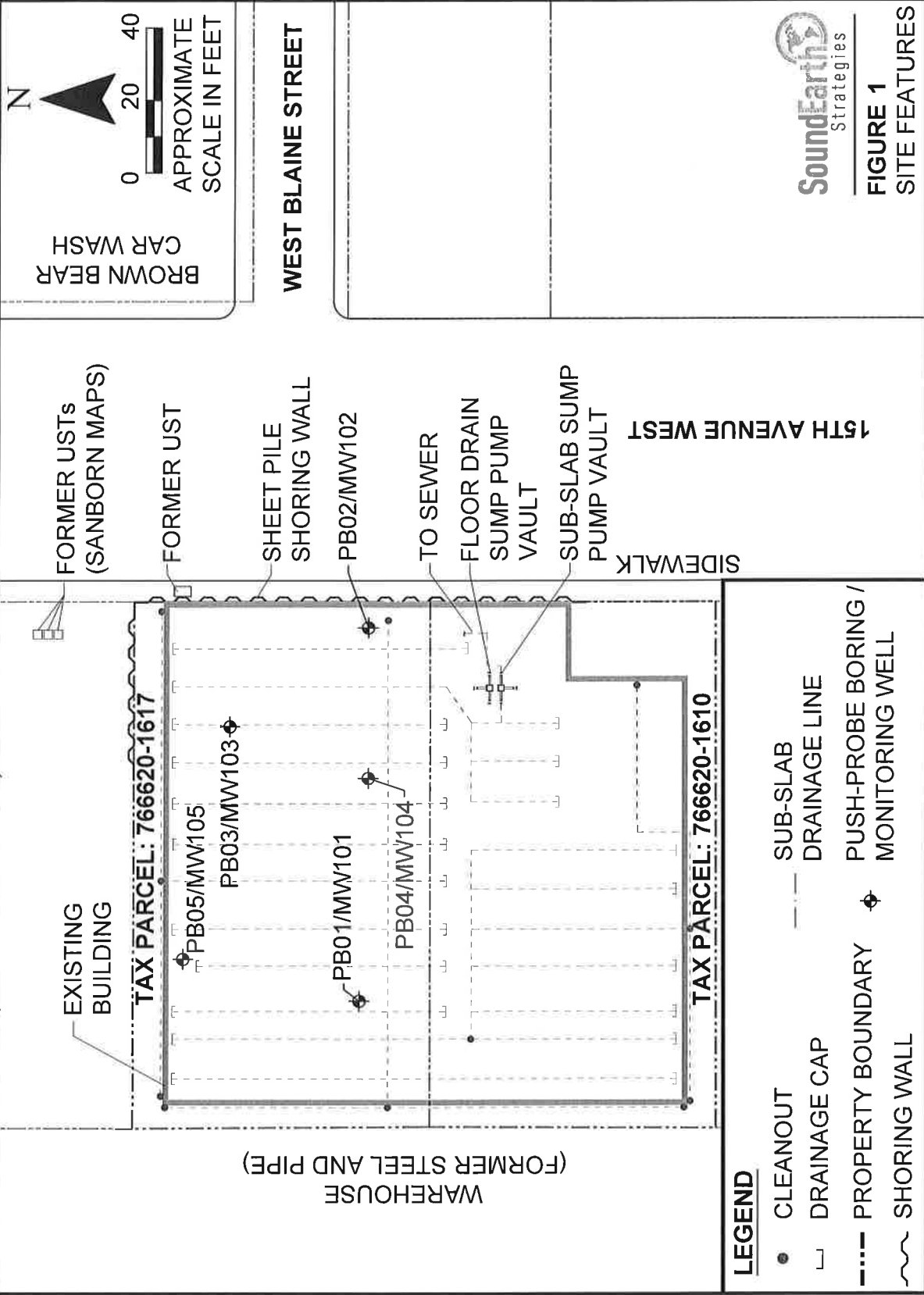
WWW.SOUNDEARTHINC.COM

INTERBAY LOFTS
 0432-035
 1631 15TH AVENUE WEST
 SEATTLE, WASHINGTON

FIGURE 2
 PROPERTY PLAN

Exhibit C

MAPS ILLUSTRATING LOCATIONS OF RESTRICTIONS



BROWN BEAR
CAR WASH

N

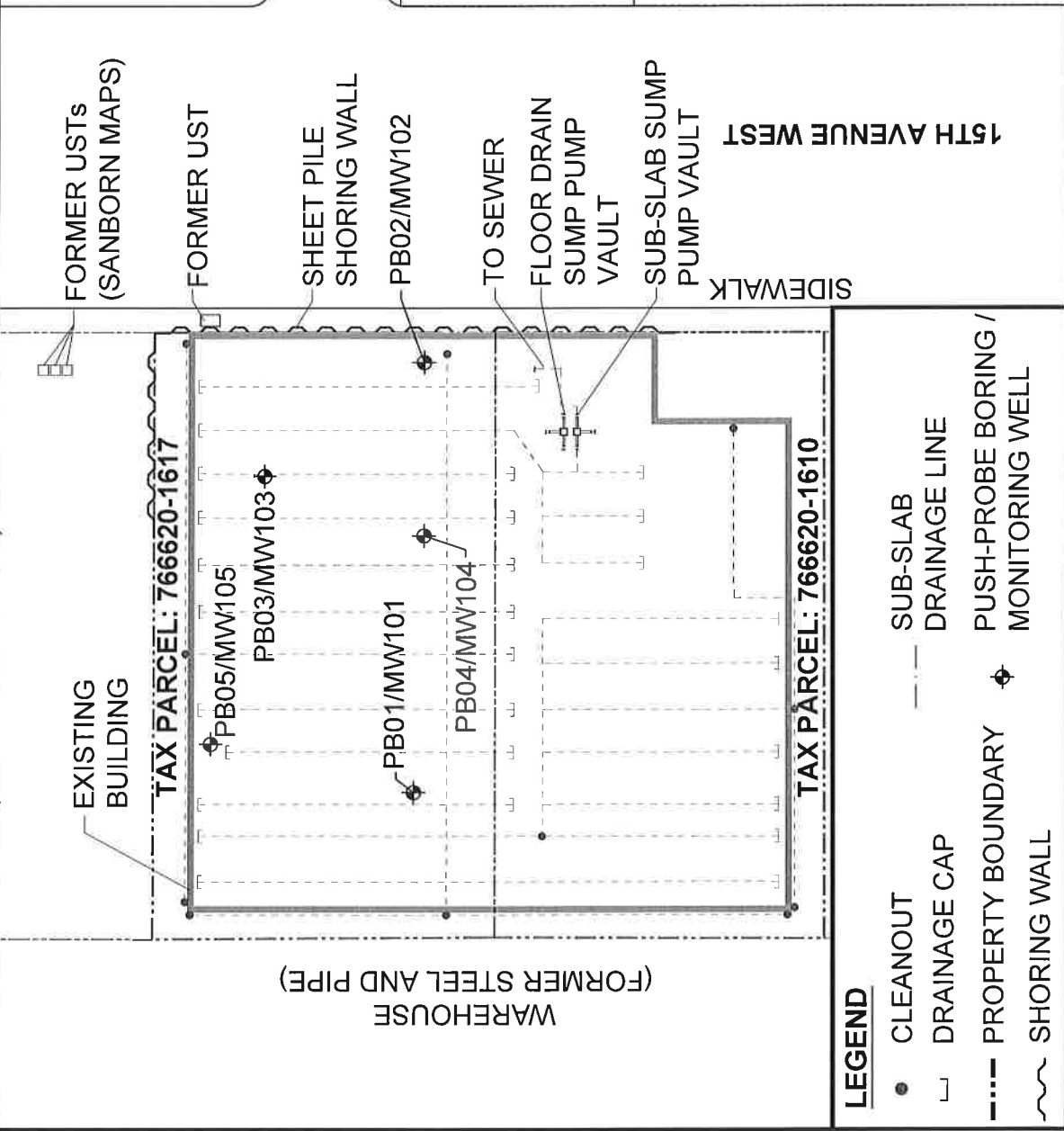
0 20 40
APPROXIMATE
SCALE IN FEET

WEST BLAINE STREET

15TH AVENUE WEST

SoundEarth
Strategies

FIGURE 1
SITE FEATURES



LEGEND

- CLEANOUT
- ⌊ DRAINAGE CAP
- PROPERTY BOUNDARY
- ~ SHORING WALL
- SUB-SLAB DRAINAGE LINE
- ◆ PUSH-PROBE BORING / MONITORING WELL

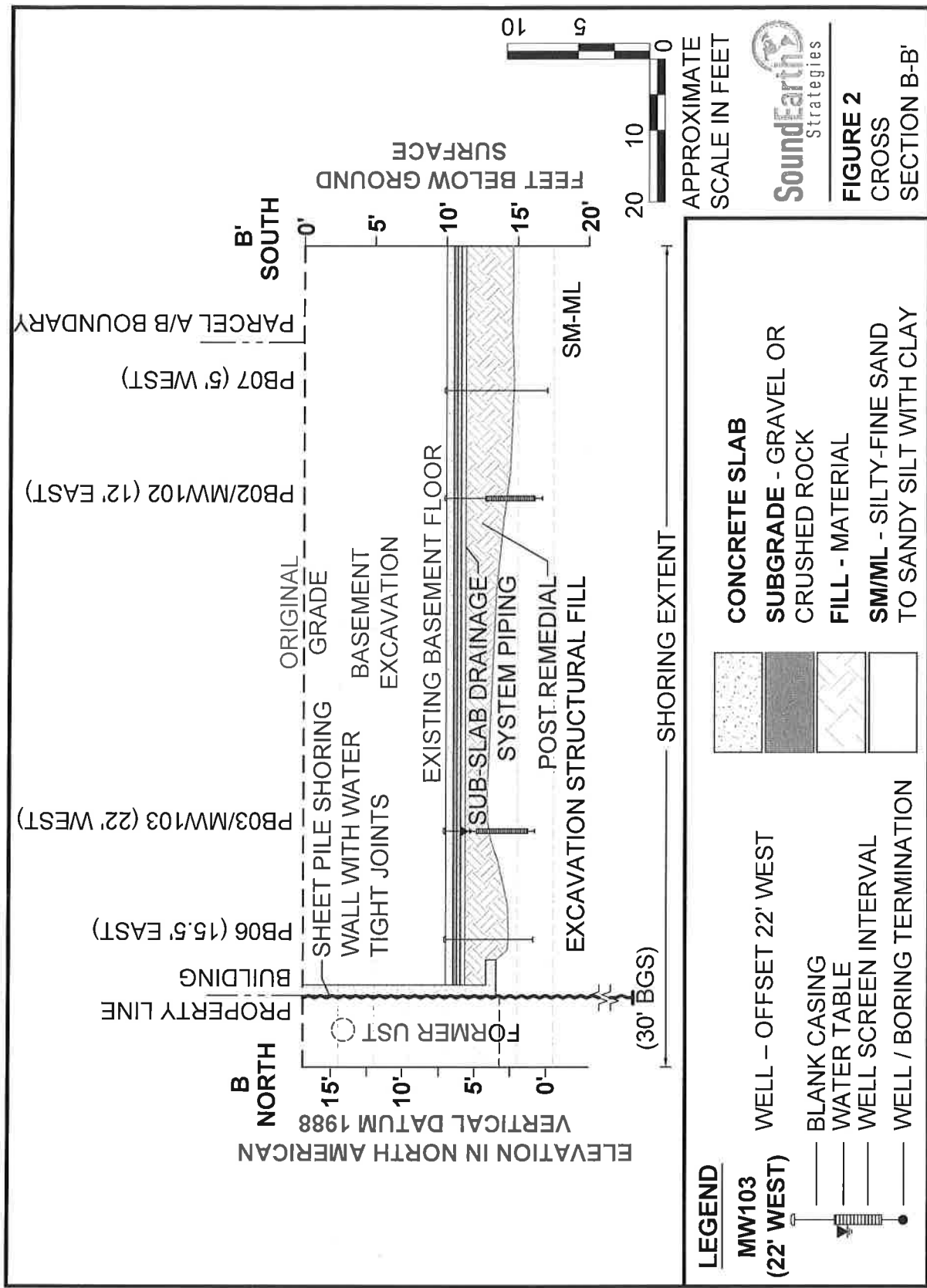


Exhibit D
LENDER'S CONSENT AND SUBORDINATION

LENDER'S CONSENT AND SUBORDINATION
(“Subordination”)

The undersigned, Wilmington Trust, National Association, as Trustee for the registered holders of Wells Fargo Commercial Mortgage Trust 2015-NXS2, Commercial Mortgage Pass-Through Certificates, Series 2015-NXS2 (“**Lender**”), holder of that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the “**DOT**”), executed by 1631 15th AVE W LLC (“**Grantor**”), in favor of Natixis Real Estate Capital LLC, and recorded May 19, 2015 as Document Number 20150519001026, in the Office of the Register of Deeds for King County, State of Washington (“**Official Records**”), as assigned to Lender pursuant to that certain Assignment of Deed of Trust, Assignment of Leases and Rents Security Agreement and Fixture Filing recorded August 3, 2015 as Document Number 20150803000909 in the Official Records, (i) hereby consents to that certain Environmental Covenant dated _____, 2018 (the “**Covenant**”) affecting the collateral premises located in King county, State of Washington, by and between Grantor and State of Washington, Department of Ecology to which this Subordination is attached, and (ii) hereby subordinates the lien of said DOT to the Covenant and agrees that the foreclosure of the DOT shall not terminate, impair or extinguish said Covenant.

The relationship between Lender and Grantor is that of a lender and a borrower only and neither of those parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party. The consent granted herein is expressly limited to the matters described herein and shall not be deemed a consent to or as a waiver of any other conditions or requirements in the DOT or in the other loan documents executed in connection therewith (collectively the “**Loan Documents**”) and shall not in any way affect, release, diminish, impair or waive the DOT or Loan Documents except to the extent expressly and specifically stated herein.

[SIGNATURE AND NOTARY ON NEXT PAGE]

Exhibit E

SUMMARY OF CONFIRMATIONAL GROUNDWATER MONITORING PLAN

The Confirmation Groundwater Monitoring Plan (CGMP) document is cited in Recital (d) of this covenant and includes the following elements:

- Monitoring Locations: MW101, MW102, MW103, MW104, and MW105; monitoring well locations are shown on Figure 1 in Exhibit C of this covenant
- Sampling Frequency: annually for a period of 5 years
- Sampling and Analysis Parameters for first annual sampling event:
 - Dissolved metals: arsenic, barium, cadmium, chromium, lead, mercury, and selenium
 - Volatile petroleum compounds: benzene, toluene, ethyl benzene, and xylenes
 - Fuel additives: methyl tertiary butyl ether; 1,2,4-trimethylbenzene; n-propylbenzene; sec-butylbenzene; iso-propylbenzene; and p-isopropyltoluene
 - Total petroleum hydrocarbons: gasoline-, diesel-, and oil-range
 - Total polychlorinated biphenyls
 - If concentrations of COCs other than arsenic are below the applicable cleanup levels for the first annual sampling event, the chemical parameters will be reduced to dissolved arsenic for the remaining four annual events.
- Sample Device Installation, Collection, and Handling Procedures
- Management of Investigation-Derived Waste
- Quality Assurance and Quality Control Samples
- Sample Labeling
- Chain of Custody Protocols
- Analysis and Reporting Procedures
- Health and Safety Procedures
- Figures, Tables, and Attachments

Exhibit F

OPERATION, MAINTENANCE, AND CONTINGENCY PLAN FOR REMEDIATION SYSTEMS

The Operation, Maintenance, and Contingency Plan (OMCP) for Remediation Systems is cited in Recital (d) of the covenant and includes the following elements:

- Project Organization and Responsibilities
- Operation and Maintenance Plan for the Sump Pump System
- Periodic Inspections of the Concrete Wall
- Record Keeping for the Building Systems Operation and Maintenance or Periodic Inspections
- Health and Safety Procedures
- Figures and Attachments