



200406040148

Skagit County Auditor

6/4/2004 Page 1 of 8 3:51PM

AFTER RECORDING RETURN TO:

Charles H. Barefield
P.O. Box 445
Anacortes, WA 98221

FIRST AMERICAN TITLE CO.
ACCOMMODATION RECORDING ONLY

A76573

**JOINT USE AND MAINTENANCE AGREEMENT FOR BEACH ACCESS STAIRWAY
AND RECIPROCAL ACCESS EASEMENT**

THIS JOINT USE AND MAINTENANCE AGREEMENT AND RECIPROCAL ACCESS EASEMENT is made by and between **CHARLES H. BAREFIELD and ROBIN J. BAREFIELD**, husband and wife (hereinafter referred to as "Property Owner 1"), and **SCOTT R. GORDON and KELLY M. GORDON**, husband and wife, (hereinafter referred to as "Property Owner 2").

RECITALS

A. Property Owner 1 is the owner of certain real property commonly known as **11168 Marine Drive, Anacortes, Washington 98221** (hereinafter referred to as "Property 1") which is referenced as Tax Parcels P111195 and P32512 and more particularly described as follows:

Legal description is attached hereto as Exhibit A which, by this reference, is incorporated herein.

B. Property Owner 2 is the owner of certain real property adjacent to Property 1, commonly known as **11172 Marine Drive, Anacortes, Washington 98221** which is referenced as Tax Parcels P61845 and P32513 (hereinafter referred to as "Property 2") and which is more particularly described as follows:

Legal description is attached hereto as Exhibit B which, by this reference, is incorporated herein.

C. Property Owner 1 and Property Owner 2 acknowledge the existence of a stairway located approximately on the property line separating the properties but found in part on each

such property, such stairway extending to the beach and tidelands which are part of their respective properties (the "Stairway"). The parties desire to enter an agreement regarding the continued use of the stairway for beach access to benefit both Property 1 and Property 2 and to memorialize the parties' maintenance responsibilities relating to the Stairway.

NOW, THEREFORE, in and for mutual covenants herein and other good and valuable consideration which has been acknowledged and received, the parties agree as follows:

AGREEMENT

1. **Continued Right to Use the Stairway.** The parties mutually acknowledge and agree to the continued joint use of the Stairway for beach access to benefit the residential use of both Property 1 and Property 2.

2. **Agreement to Run with Land.** This joint use agreement shall run with the land and shall be binding on and shall inure to the benefit of the parties to this Agreement, and their respective heirs, successors, or assigns, EXCEPT as to the conditions set forth under Paragraph 12 herein..

3. **Maintenance and Repair of Stairway.** Property Owner 1 and Property Owner 2 shall be equally responsible for all maintenance and repair of the Stairway which is caused by general wear and tear or by an act of god. With respect to damage which is caused specifically by Property Owner 1 or Property Owner 2, or their respective family members, agents, employees, invitees, successors and assigns, the party causing such damage shall be responsible for all such repairs at their sole cost and expense.

4. **Failure of Contribution.** In the event either party fails to maintain and repair the Stairway, or the party causing damage to the Stairway fails to perform repairs for damage caused by that party, the other party may perform such repairs and maintenance at its sole election and discretion and shall have a right of reimbursement against the non-performing party. It is agreed that such unpaid amounts shall accrued interest at the annual rate of eight percent (8%) until paid in full by the non-contributing party.

5. **Indemnity and Hold Harmless.** With the exception of the obligations of the parties which are set forth herein, the parties agree to release, defend, indemnify and hold each other harmless from and against all liabilities, damages, causes of action, and/or costs and expenses, including attorneys' fees, arising from and relating to each parties' respective use of the Stairway, or that of their respective family members, agents, employees, invitees, successors and assigns.

6. **Good Faith.** The parties agree to exercise their best efforts in good faith to perform their respective obligations hereunder and/or to resolve any disputes which may arise concerning this Agreement or the subject matter hereof.



7. **Dispute Resolution.** Should the parties, their heirs, successors or assigns, be unable or unwilling to resolve any dispute concerning this Agreement, including the interpretation and application of the terms of the Agreement, then the parties or their heirs, successors or assigns herein shall submit the matter to binding arbitration under the Rules of Mandatory Arbitration of Skagit County Superior Court, Skagit County, Washington, regardless of the nature of the dispute or the amount in controversy, if any, and the prevailing party shall be entitled to an award of reasonable attorney's fees and costs of arbitration. The parties further agree that arbitration may interpret this agreement to determine and resolve any and all disputes between the parties and not be limited to monetary damages.

8. **Governing Law.** It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Washington.

9. **Notices.** Any notice provided for or concerning this Agreement shall be in writing and be deemed sufficiently given when sent by certified or registered mail if sent to the last known home address of each party.

10. **Entire Agreement.** This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

11. **Modification of Agreement.** Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.


12. **Amendment/Termination of Agreement.** Pursuant to Paragraph 2 above, this Agreement and Easement shall run with the land in perpetuity unless one of the following events occurs. In the event that either party or that party's heirs, successor or assigns constructs a beach access stairway that is located in its entirety on either Property 1 or Property 2, the terms and conditions of this Agreement regarding the maintenance and repair of the stairs shall cease and have no further effect on that party and the other party shall at such time become responsible for all maintenance, repair and use of the stairway. In the event that both parties or their heirs, successors, or assigns have each constructed a beach access stairway on their own respective properties, such non-exclusive easement and this Agreement will terminate at such time. Should the parties then choose to remove the old stairway, any costs associated therewith shall be borne equally by both parties, as it is a benefit to each party.

13. **Insurance.** Each party, and their heirs, successors and assigns of that party, shall maintain liability insurance for the Stairway in the minimum amount of \$500,000. Such insurance may be maintained separately or under the terms of a party's homeowner's insurance policy.


UNOFFICIAL DOCUMENT

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed on the 2nd day of June, 2004.

PROPERTY OWNER 1:



CHARLES H. BAREFIELD



ROBIN J. BAREFIELD

PROPERTY OWNER 2:



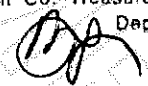
SCOTT R. GORDON



KELLY M. GORDON

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

JUN 4 - 2004

Amount Paid \$
Skagit Co. Treasurer
By  Deputy



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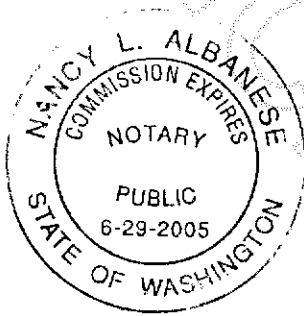
Skagit County Auditor

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this day personally appeared before me **Charles R. Barefield and Robin J. Barefield, husband and wife**, to me known or upon satisfactory evidence are shown to be the individuals described in and who executed the within and foregoing instrument, and acknowledged the execution of the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

2004

GIVEN under my hand and seal this 4th day of June,



Nancy L Albanese
Print Name: Nancy L Albanese
Notary Public in and for the State of Washington
Residing at: Anacortes
My appointment expires: 6-29-05

STATE OF WASHINGTON)
) ss.
COUNTY OF Skagit)

On this day personally appeared before me **Scott R. Gordon and Kelly M. Gordon**, to me known or upon satisfactory evidence shown to be the individuals described in and who executed the within and foregoing instrument, and acknowledged the execution of the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

2004.

GIVEN under my hand and seal this 2nd day of June,

Twana S. Rippe
Print Name: Twana S. Rippe
Notary Public in and for the State of Washington,
Residing at: Anacortes
My appointment expires: 4-3-07

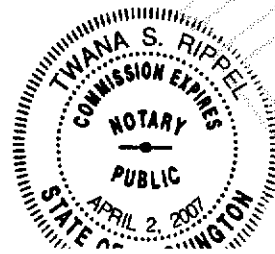


EXHIBIT "A"

Legal Description of Property 1:

TRACT A

*The North one half by distance, measured at right angles, from the North line of the following described tract:
The southerly 37.07' feet, as measured along the West line of tract 34; all of tracts 35 and 36; the North 14.64 feet of tract 37; all in the plat of ANACO BEACH", according to the plat thereof in volume 5 of plats, page 4, records of Skagit County, Washington.*

TOGETHER WITH that portion of Tract 1, Plate 2, Tide and Shore Lands of Section 34, Township 35 North, Range 1 East, W.M., Anacortes Harbor, as shown on Official Map thereof in the Office of the State Land Commissioner at Olympia, Washington, lying in front of, adjacent to, or abutting upon the hereinabove described property.



EXHIBIT "B"

Legal Description of Property 2:

TRACT B

The South one half by distance, measured at right angles, from the South line of the following described tract:

The Southerly 37.07 feet, as measured along the West line of tract 34; all of tracts 35 and 36; the North 14.64 feet of tract 37, all in the plat of "ANACO BEACH" according to the plat recorded in volume 5 of plats, page 4, records of Skagit County, Washington.



TOGETHER WITH that portion of Tract 1, Plate 2, Tide and Shore Lands of Section 34, Township 35 North, Range 1 East, W.M., Anacortes Harbor, as shown on Official Map thereof in the Office of the State Land Commissioner at Olympia, Washington, lying in front of, adjacent to, or abutting upon the hereinabove described property.



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| REVISION | BY | DATE |
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W.D. PURNELL
 CONSULTING ENGINEERS
 2128 MARSHALL STREET
 BIRMINGHAM, WA 98227
 P.O. BOX 2348
 (206) 426-9090
 F.M. 028-4825

JOB NO. 99071
 DRAWN BY: SA
 CHECKED BY: RTR
 DATE: APR 13 2004 5:46
AS-BUILT DRAWING
 Duane Knapp Residence
 Marine Drive Anacortes, Washington

1 of 1
 SHEET
 SITE PLAN
 DRAWING

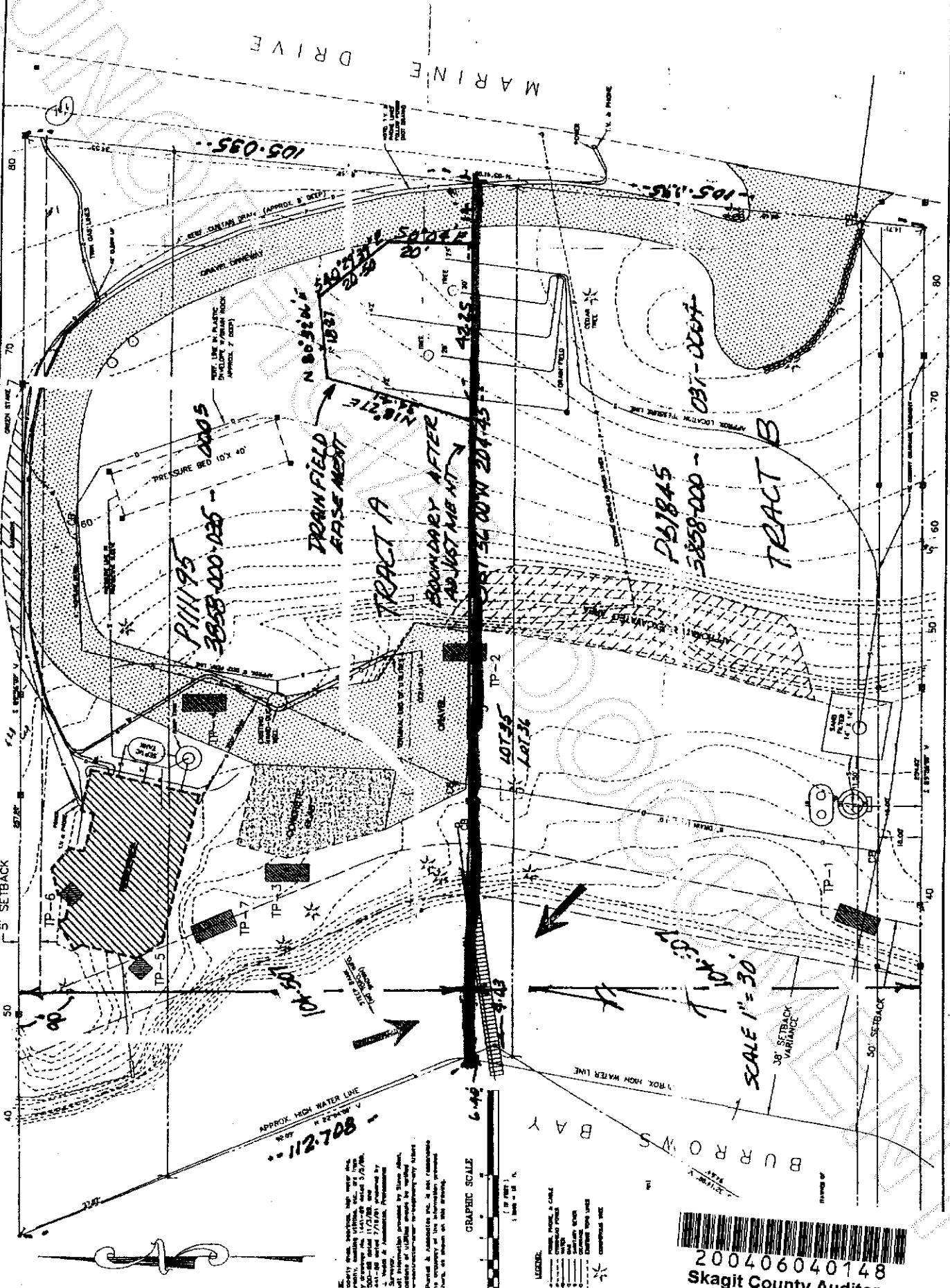


EXHIBIT "C"

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