



200705090059

Skagit County Auditor

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LAND TITLE OF SKAGIT COUNTY

RETURN TO:

DOCUMENT TITLE(S) (or transactions contained herein):

DECLARATION OF ACCESS AND UTILITY EASEMENT AND MAINTENANCE AGREEMENT

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

GRANTOR(S) (Last name, first name and initials):

1. XSI Properties, Inc, a California Corporation, and Goodyear Nelson Hardwood Lumber Co.
2. Goodyear Nelson Hardwood Lumber Co.

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

MAY 09 2007

GRANTEE(S) (Last name, first name and initials):

1. GOODYEAR NELSON HARDWOOD LUMBER CO
- 2.

Amount Paid \$
Skagit Co. Treasurer
By Deputy

Lp

LEGAL DESCRIPTION (Abbreviated: i.e., lot, block, plat or quarter, quarter, section, township and range).

LOTS 1-5 and 10-14 BLK 141 FIDALGO CITY

ASSESSOR'S PARCEL/TAX I.D. NUMBER:

P73178

**DECLARATION OF ACCESS AND UTILITY EASEMENT
AND MAINTENANCE AGREEMENT**

THIS DECLARATION OF ACCESS AND UTILITY EASEMENT AND MAINTENANCE AGREEMENT (this "Declaration") made this 8th day of May 2007, by **XSI Properties, Inc, a California Corporation, and Goodyear Nelson Hardwood Lumber Co.**, a Washington Corporation ("Declarant"), as their interests appear. (XSI Properties, Inc. is a 1031 exchange facilitator, and executes this agreement to facilitate the issuance of policies of title insurance on the affected real property, but shall have no obligation arising under this agreement.)

A. Declarant has an interest in certain real property in Skagit County, Washington, located in the SE ¼ of Section 18, Township 34 North, Range 2 East, WM, legally described as:

Lots 1 through 5 and Lots 10 through 14, inclusive, Block 141 as per the map of "Fidalgo City, Skagit County, Washington", recorded in Volume 2 of Plats, Pages 113 and 114, records of Skagit County, Washington, together with adjacent vacated rights of way.

Situated in Skagit County, Washington.

B. Declarant aggregated the Property into five (5) parcels as shown on *Exhibit 1* attached hereto and made a part hereof each of which shall be deemed a Parcel, and collectively, the Parcels.

C. Declarant recognizes that for the most favorable development of the Parcels it is desirable that the Parcels share (i) a common driveway to be known as "Common Driveway" to be constructed within a 20 foot easement area, the dimensions and location of which are as substantially shown on *Exhibit 1* (the "Easement Area"), legally described on *Exhibit 2*, to provide pedestrian and vehicular ingress and egress (the "Access Easement") which shall inure to the benefit of and bind the Subject Property, including the owner(s) therefore from time to time, and their respective successors and assigns (collectively the "Owners"); and (ii) a nonexclusive utility easement within the Easement Area for the purpose of installing, maintaining, repairing or replacing gas, water, electric, phone and cable lines, sewers, pipes and other services (collectively the "Utilities") to benefit the Subject Property or any portion thereof. For purposes of this agreement, the term "Owners" refers to parties who acquire an ownership interest such as fee title or contract purchaser's interest following the initial sale by Declarants, and shall not include the Declarants.

D. Declarant does not intend to construct, maintain nor insure the easement, but is providing this declaration for the use and benefit of Owners who purchase from Declarant or its assigns. Declarant shall have no responsibility for construction, maintenance nor insurance costs or responsibilities under this agreement.

NOW, THEREFORE, for and in consideration of the Introductory Statement, which is deemed a material and substantive part of this Declaration, and other good and valuable consideration, Declarant hereby declares, grants, covenants and agrees as follows:



1. **Driveway Easement.** Declarant hereby establishes and grants the following non-exclusive perpetual driveway Access Easement to provide unobstructed vehicular and pedestrian ingress and egress upon and as to each of the Parcels which shall benefit and burden each Parcel respectively, and all such easements, covenants, rights, benefits, obligations and liabilities created in this Declaration shall be deemed covenants and easements running with and binding upon the land as appurtenances to the dominant estates. The estate of the fee and easement created herein shall not be merged by reason of the same person or entity acquiring, owning or holding title to both.

- (i) The common curb cut and driveway as hereafter constructed within the Easement Area are for purposes of ingress, egress, passage and delivery, by vehicles and pedestrians (the "Access Easement").
- (ii) The Access Easement shall be kept open and unobstructed at all times, and nothing shall allow any Owner, or invitee thereof any right to work on or otherwise obstruct access within the Easement Area.
- (iii) The Access Easement shall be for the benefit of the Owners, but same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public nor shall it affect any real property outside of the Parcels.

2. **Utility Easement.** The Declarant does further grant a perpetual nonexclusive utility easement on, over and through the Easement Area for the purpose of installing, maintaining and/or repairing utilities and all necessary appurtenances thereto (the "Utility Easement" and collectively with the Access Easement, the "Easements"), subject to the covenants and conditions contained herein.

3. **Construction, Maintenance and Repair.**

(i) Unless otherwise agreed between the Owners, the owners of Parcels A, B, C, D and E as shown on *Exhibit 1* are designated to have the responsibility to arrange for the improvements within the Easement Area to be maintained, repaired and replaced, all so as to keep such areas at all times in a safe, sightly, good and functional condition .

(ii) The owner of the Parcels shall be responsible for all costs and expenses incurred in connection with the repair, replacement, and maintenance of common improvements within the Easement Area in proportion to their ownership interest based upon the number of parcels they own. Following conveyance of all the parcels by Declarant, the owner of each parcel shall be responsible for 20% of the cost of maintenance.

(iii) All work done in connection with the installation, maintenance or repair of any common improvements, shall be performed in a good and workmanlike manner, and such work shall be done expeditiously so as not to unreasonably interfere with or hinder the use and enjoyment of the Easement Area by any person or entity having a right to use the easements.

(iv) Declarant hereby grants and establishes temporary easements for the installation of improvements and for incidental encroachments upon the Parcels which may occur as a



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result of any construction work performed in the development, repair or maintenance of the Parcels, so long as such encroachments are kept within the reasonable requirements of construction work which is expeditiously pursued, and so long as customary insurance is maintained protecting the Owner of the Parcel on which work is being performed from the risks involved.

(v) Declarant shall have no responsibility under this agreement for insurance, construction or maintenance costs of the roadway or utilities. These obligations shall be apportioned among the Owners following conveyance of each parcel by Declarant, excluding the Declarant.

4. Default.

(i) In the event that any Owner fails to perform any provision in accordance with the requirements set forth herein, or provide insurance as required herein, or fail to pay or to perform any other obligation set forth within ten (10) days following written notice thereof, the remaining Owner(s) shall have the right, but not the obligation, to perform said construction, maintenance, repair or replacement and acquire said insurance, make payment or perform such obligation for the account of the non performing party (the "Defaulting Party"). The foregoing right to cure shall not be exercised if within ten (10) day notice (i) the Defaulting Party cures the default, or (ii) if the default is curable, but cannot reasonably be cured within that time period, the Defaulting Party begins to cure such default within such time period and thereafter diligently pursues such cure to completion. The ten (10) day notice period shall not be required if, using reasonable judgment, the Non-Defaulting Party deems that an emergency exists. In the event of such an emergency, the Non-Defaulting Party shall give notice reasonable under the circumstances to the Defaulting Party.

(ii) Within ten (10) days following written demand, including copies of paid invoice, the Defaulting Party shall reimburse the Non-Defaulting Party any sum reasonably expended by the Non-Defaulting Party to cure the default. If such amounts are not paid within thirty (30) days of billing, then such amounts shall accrue interest at the annual rate of 12% per annum or the highest legal rate of interest allowed, whichever is less, until paid, and the Defaulting Party shall be responsible for reasonable attorneys' fees and costs in the enforcement and collection thereof.

(iii) The parties hereto shall also have the right to restrain by injunction any violation or threatened violation by the other party hereto of any of the terms, covenants, or conditions hereof, or to obtain a decree to compel performance if any such term, covenant, or condition is not adequate. All remedies are cumulative and shall be deemed additional to any and all other remedies to which any Owner may have at law or in equity.

(iv) In the event a lien is filed against all or any portion of the Property in connection with any Maintenance, the lien must be bonded, satisfied or removed by the Owner responsible for said Maintenance within thirty (30) days following the filing thereof, or it



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may be foreclosed by the president acting on behalf of the Owners in the same manner as a mechanic's lien.

(v) This Declaration may be enforced by the Owners or the successors and assigns thereof against any person or entity having obligations hereunder. The non-defaulting Owner(s) of a Parcel shall be entitled forthwith to full and adequate relief by injunction and/or all such other legal and equitable remedies for the consequences of such breach.

(vi) If any party or person benefited hereby, institutes any litigation to enforce any of the terms, covenants, conditions, easements and set out in the Declaration, the prevailing party in such litigation shall be entitled to collect court costs and reasonably attorneys' fees from the non-prevailing party.

(vii) The owners of the Parcels shall form a governing committee, each parcel having one vote. They shall elect a president, secretary, and treasurer to manage their obligations under this agreement. The owners shall adopt bylaws to govern their meetings and actions; provided that a unanimous vote of all owners is necessary to amend this declaration.

5. Insurance. Each Owner shall obtain and maintain during the term of this Agreement general liability insurance including public liability and property damage in commercially reasonable amounts covering the Easement Area, as part of their property or homeowner's insurance.

6. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be personally served or mailed (registered or certified mail, postage prepaid, return receipt requested) at their addresses as set forth in the records of the Skagit County Assessor, or such other address or such additional recipient as any party may have furnished to the others in writing in accordance herewith. All notices shall be effective upon receipt.

7. Modifications: Cancellation. This Declaration may be amended, modified or terminated (in whole or in part) from time to time by written documents executed and acknowledged by all Owners and duly recorded with the Skagit County Auditor's Office.

8. Binding. This Declaration shall be binding upon and inure to the benefit of Declarant, the Owners of the Parcels, and their respective personal or legal representatives, successors and assigns.

9. Governing Law and Venue. This Declaration shall be governed by the laws of the State of Washington. Venue for any action in law or equity arising out of this Declaration shall be in Skagit County Superior Court.

10. Severability. If any term or provision of this Declaration or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Declaration shall not be affected thereby, and each term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.



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11. Mortgages. Until sale of all the Parcels by Declarant, the Declarant may make any Amendment required by any of the federal mortgage agencies, such as the Federal Home Loan Mortgage Corporation, as a condition of the approval of the documents by the execution and recordation of such amendment, following notice to all Owners.

Sale or transfer of any parcel shall not affect the assessment lien provided for herein; provided, the lien of the assessments shall be subordinate to the lien of any first position deed of trust or first position mortgage if the assessments were current at the time of recording thereof, and the sale or transfer of a parcel pursuant to a foreclosure of such a first position deed of trust or first position mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such parcel from liability for any assessments which thereafter become due or from the lien thereof. A lender may rely on a written statement signed by the treasurer for purposes of this section.

Except as provided in this section, any deeds of trust or mortgages encumbering all or any portion of the Subject Property shall at all times be subordinate to the terms of this Declaration and any party foreclosing any such mortgage, or acquiring title by deed in lieu of foreclosure or trustee's sale, shall acquire title subject to all of the terms and provisions of this Declaration.

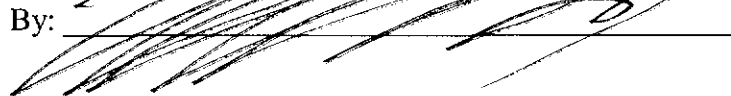
12. Liability Limitations of 1031 Facilitator. XSI Properties, Inc. is a 1031 exchange facilitator, and executes this agreement to facilitate the issuance of policies of title insurance on the affected real property, but shall have no liability for an obligations arising under this agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand as of the date first above written.

GOODYEAR NELSON HARDWOOD LUMBER CO.
A Washington Corporation,

By: _____

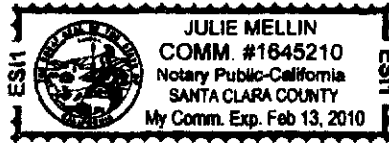
XSI PROPERTIES, INC,
A California Corporation

By:  _____



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STATE OF CALIFORNIA)
) SS.
COUNTY OF SANTA CLARA)



On this day personally appeared before me KEVIN HEREFORD, to me known to be the PRESIDENT of XSI PROPERTIES, INC., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

GIVEN under my hand and official seal this 8th day of MAY, 2007.

Julie Mellin
Notary Public in and for the State of CALIFORNIA
~~Washington~~, residing at 1233 MCKENNEY ST, SJ, CA
My Commission Expires: 02/13/2010

STATE OF _____)
) SS.
COUNTY OF _____)

On this day personally appeared before me _____, to me known to be the _____ of Goodyear Nelson Hardwood Lumber Co., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

GIVEN under my hand and official seal this _____ day of _____, 2007.

Notary Public in and for the State of
Washington, residing at _____
My Commission Expires: _____



UNOFFICIAL DOCUMENT

EXHIBIT 1: Map of Parcels A through E



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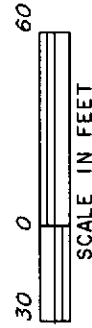
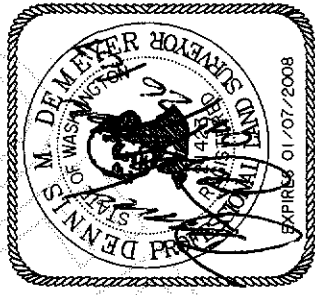
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EXHIBIT "1"

SHOWING ACCESS & UTILITY EASEMENT

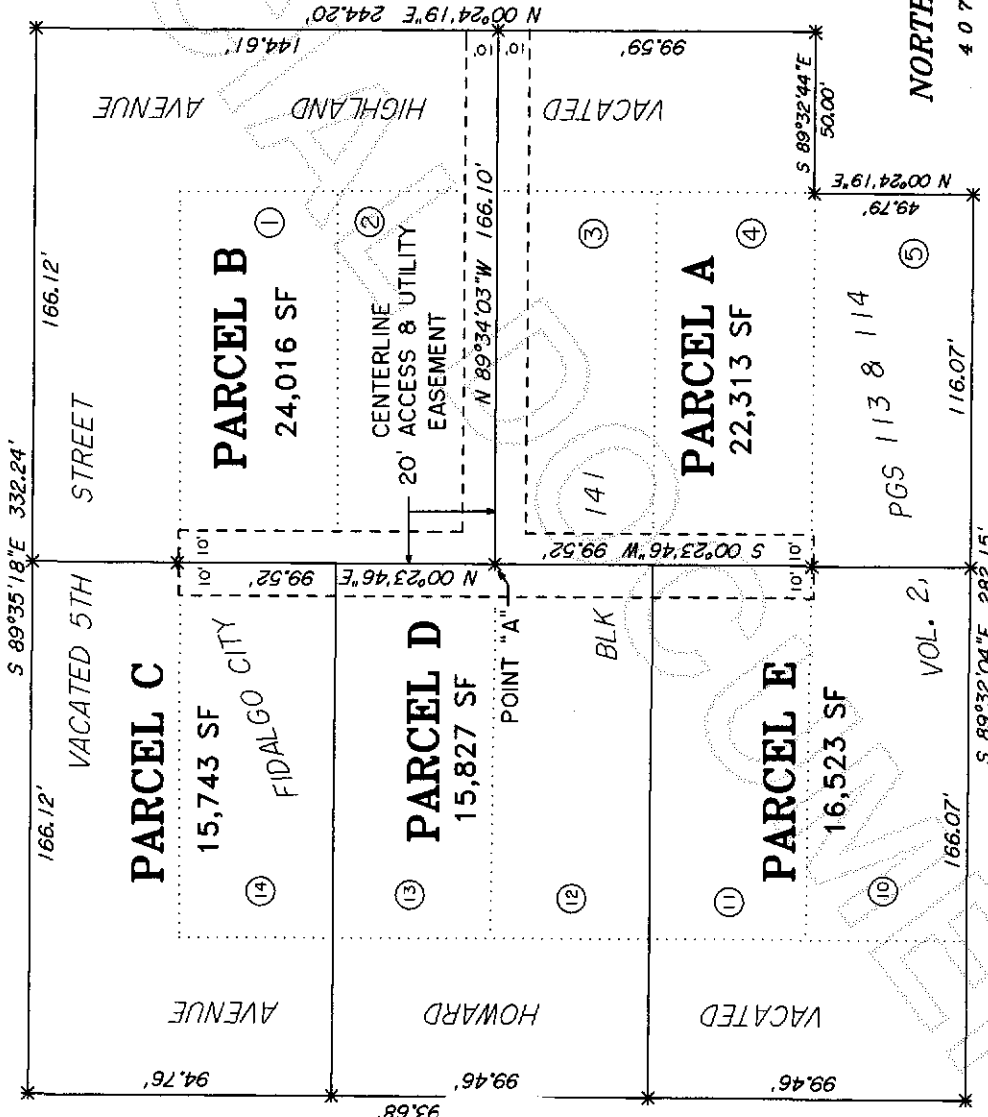
PORTION OF THE SE 1/4, SECTION 18, TOWNSHIP 34 NORTH, RANGE 2 EAST, W.M.



SCALE: 1 INCH = 60 FEET

NORTHWEST SURVEYING & GPS, INC.

DENNY DEMEYER, L.S. 21423
 407 5TH STREET, LYNDEN, WA
 PH. (360) 354-1950 FAX. (360) 354-7644



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EXHIBIT 2: Description of Access and Utility Easements



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EXHIBIT " 2 "

DESCRIPTION OF ACCESS & UTILITY EASEMENTS GOODYEAR NELSON HARDWOOD LUMBER CO. INC.

EASEMENT NO. 1:

A 20 foot wide easement for ingress, egress and utilities, over, under and across a portion of Block 141 as per the map of "Fidalgo City, Skagit County, Washington", recorded in Volume 2 of Plats, Pages 113 and 114, records of Skagit County, Washington, the centerline of said easement being more particularly described as follows:

Beginning at the Northeast corner of the following described parcel:

Lots 3, 4 and 5, inclusive as per the map of Fidalgo City, Skagit County, Washington, recorded in Volume 2 of Plats, Pages 113 and 114, records of Skagit County, Washington, together with a portion of that Correction Quit Claim Deed, filed under A.F. No. 9505020076, said portion being vacated streets and alleys as would be attached to the above described parcel by operation of law.

thence North 89° 34' 03" West along the North line of the above described parcel a distance of 166.10 feet to a point hereinafter referred to as Point "A"; thence North 00° 23' 46" East a distance of 99.52 feet to the **terminus** of the 20' wide easement centerline description.

EASEMENT NO. 2:

A 20 foot wide easement for ingress, egress and utilities, over, under and across a portion of Block 141 as per the map of "Fidalgo City, Skagit County, Washington", recorded in Volume 2 of Plats, Pages 113 and 114, records of Skagit County, Washington, the centerline of said easement being more particularly described as follows:

Beginning at the above described Point "A"; thence South 00° 23' 46" West a distance of 99.52 feet to the **terminus** of this 20' wide easement centerline description.

All as depicted on Exhibit "1" attached hereto and incorporated herein by reference.

All subject to and together with all easements, covenants, restrictions and/or agreements of record.

Situate in Skagit County, Washington.



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