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Skagit County Auditor

WHEN RECORDED RETURN TO:

10/10/2007 Page

1 of

11 11:53AM

Kantor Taylor McCarthy P.C.
Attn: Susan Boyd
1501 Fourth Ave, Suite 1610
Seattle, WA 98101-1662

LAND TITLE OF SKAGIT COUNTY

127474.52

DOCUMENT TITLE(S):

Use and Maintenance Agreement for Existing Easement

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

GRANTOR:

Housing Authority of Skagit County, a public body corporate and politic, organized and existing under the constitution and laws of the State of Washington

GRANTEE:

Raspberry Ridge II LLC, a Washington Limited Liability Co.

ABBREVIATED LEGAL DESCRIPTION:

Ptn Tracts 25 & 36, Burlington Acreage; & Ptn S ½ 33-35-4 EWM

TAX PARCEL NUMBER(S):

P126057; P126054; P62437

AFTER RECORDING PLEASE RETURN TO:

Kantor Taylor McCarthy P.C.
1501 Fourth Ave., Suite 1610
Seattle, WA 98101-1662
Attn.: Susan Boyd

127474-SE

USE AND MAINTENANCE AGREEMENT FOR EXISTING EASEMENT

GRANTOR: Housing Authority of Skagit County

GRANTEES: Raspberry Ridge II LLC

ABBR. LEGAL:

Benefited Parcel: Ptn. NW $\frac{1}{4}$, SE $\frac{1}{4}$, NE $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 33, TSP 35 N., Range 4 E.,
W.M., Tracts 25 & 36, Plat of the Burlington Acreage Property

Together with easement for Ptn. of W. 65.00 ft., E. 247.68 ft. of N.
201.00 ft. of NE $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 33, TSP 35 N., Range 4 E., W.M.

Burdened Parcel: Ptn. NW $\frac{1}{4}$, SE $\frac{1}{4}$, NE $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 33, TSP 35N. Range 4 E.,
W.M., Tracts 25 & 36, Plat of the Burlington Acreage Property

Subject to easement for Ptn. W. 65.00 ft., E. 247.68 ft. of N. 201.00 ft.
of NE $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 33, TSP 35 N., Range 4 E., W.M.

TAX PARCEL NUMBERS:

Benefited Parcel: P126057; P126054

Burdened Parcel: P62437

THIS USE AND MAINTENANCE AGREEMENT FOR EXISTING EASEMENT, ("Agreement"), dated this 28th of September, 2007, is executed by and between the **Housing Authority of Skagit County**, a Washington public body corporate and politic ("SCHA") and **Raspberry Ridge II LLC**, a Washington limited liability company ("RRII"), with respect to the following facts, understandings, and intentions:

RECITALS

A. Each of the parties owns, respectively, the following adjacent parcels:

SCHA owns:



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That portion of the Northwest Quarter of the Southeast Quarter and the Northeast Quarter of the Southwest Quarter of Section 33, Township 35 North, Range 4, East, W.M. and of Tracts 25 and 36, "PLAT OF THE BURLINGTON ACREAGE PROPERTY," as per plat recorded in Volume 1 of Plats, page 49, records of Skagit County, Washington, being more particularly described as follows:

Commencing at the center of said Section 33; thence South 0 Degrees 01'36" West along the East line of said Northeast Quarter of the Southwest Quarter a distance of 30.00 feet to the South right of way margin of Lafayette Road being the **TRUE POINT OF BEGINNING**; thence South 0 Degrees 01'36" West along the East line of said Southwest Quarter a distance of 171.00 feet; thence North 89 Degrees 40'42" West parallel to the North line of said Southeast Quarter, a distance 247.68 feet; thence South 0 Degrees 01'36" West parallel to said East line of the Southwest Quarter, a distance of 610.55 feet; thence South 89 Degrees 40'42" East a distance of 280.68 feet to the East line of that parcel described as Parcel "P" conveyed to The Housing Authority of Skagit County under Auditor's File No. 200207260012, records of Skagit County, Washington; thence South 0 Degrees 01'36" West parallel to the said East line of the Southwest Quarter of said Section 33 a distance of 504.91 feet to the South line of said Northwest Quarter of the Southeast Quarter; thence North 89 Degrees 50'56" West along said South line of the Northwest Quarter of the Southeast Quarter a distance of 33.00 feet to the Southeast corner of said Northeast Quarter of the Southwest Quarter, also being on the South line of said Tract 36 of said Burlington Acreage; thence North 89 Degrees 51'24" West along said South line of Tract 36 a distance of 418.84 feet to a point lying 241.00 feet East of the Southwest corner of the East Half of said Tract 36; thence North 0 Degrees 10'27" East along the East line of that parcel conveyed to Housing Authority of Skagit County under Auditor's File No. 200210280188, a distance of 658.88 feet to a point on the North line of said Tract 36 lying 241.00 feet East of the Northwest corner of the East Half of said Tract 36, said point being the Northeast corner of that parcel conveyed to Housing Authority of Skagit County, under Auditor's File No. 200210280188; thence North 89 Degrees 46'29" West along the North line of said Tract 36 a distance of 269.60 feet to the Southwest corner of a tract described as Parcel "S" conveyed to Housing Authority of Skagit County under Auditor's File No. 200207260012, records of Skagit County; thence North 0 Degrees 00'41" East along the West line of said Parcel "S", a distance of 418.27 feet to the Northwest corner of said Parcel "S", being also a point on the South line of the North 211.00 feet of said Tract 25 of said Burlington Acreage; thence South 89 Degrees 41'31" East along the South line of said North 211.00 feet of Tract 25, a distance of 210.79 feet to the Southwest corner of that parcel described as parcel "R" conveyed to Housing Authority of Skagit County under Auditor's File No. 200207260012; thence North 0 Degrees 10'28" East, along the West line of said Parcel "R", a distance of 206.55 feet to the South right of way line of the Lafayette Road; thence North 89 Degrees 46'20" East along the South right of way line of Lafayette Road a distance of 475.53 feet to the **TRUE POINT OF BEGINNING**.

SUBJECT TO a non-exclusive easement for ingress, egress and utilities, over, under and across the West 65.00 feet of the East 247.68 feet of the North 201.00 feet of the Northeast Quarter of the Southwest Quarter of Section 33, Township 35 North, Range 4 East, W.M., EXCEPT that portion within the right-of-way of Lafayette Road.

(the "SCHA Parcel").



RRII owns:

That portion of the Northwest Quarter of the Southeast Quarter and the Northeast Quarter of the Southwest Quarter of Section 33, Township 35 North, Range 4, East, W.M. and of Tracts 25 and 36, "PLAT OF THE BURLINGTON ACREAGE PROPERTY," as per plat recorded in Volume 1 of Plats, page 49, records of Skagit County, Washington, being more particularly described as follows:

Beginning on the West line of said Northwest Quarter of the Southeast Quarter at a point South 0 Degrees 01'36" West, a distance of 201.00 feet from the center of said Section 33; thence South 89 Degrees 40'42" East parallel with the North line of said Southeast Quarter a distance of 290.00 feet; thence South 0 Degrees 01'36" West, parallel to the West line of said Southeast Quarter, a distance of 404.00 feet; thence North 89 Degrees 40'42" West, parallel to the North line of said Southeast Quarter, a distance of 257.00 feet; thence South 0 Degrees 01'36" West, parallel to the West line of said Southeast Quarter, a distance of 206.55 feet; thence North 89 Degrees 40'42" West, parallel to the North line of said Southeast Quarter a distance of 33.00 feet to the West line of said Southeast Quarter; thence continuing North 89 Degrees 40'42" West, parallel to the North line of said Southeast Quarter a distance of 247.68 feet; thence North 0 Degrees 01'36" East, parallel to the East line of said Southwest Quarter, a distance of 610.55 feet; thence South 89 Degrees 40'42" East, parallel to the North line of said Southeast Quarter, a distance of 247.68 feet to the **Point of Beginning**.

TOGETHER with a non-exclusive easement for ingress, egress and utilities, over, under and across the West 65.00 feet of the East 247.68 feet of the North 201.00 feet of the Northeast Quarter of the Southwest Quarter of Section 33, Township 35 North, Range 4 East, W.M., also being a portion of said Tract 25 of "PLAT OF BURLINGTON ACREAGE PROPERTY",

EXCEPT that portion within the right-of-way of Lafayette Road.

Situate in the County of Skagit, State of Washington.

(the "RRII Parcel").

B. Pursuant to that boundary line adjustment recorded under Skagit County recording number 200703140071 (the "BLA"), the SCHA Parcel is subject to an easement benefiting the RRII Parcel (the "Easement"). The parties desire to affirm the easement established in the BLA and to further define their agreement with respect to the use and maintenance of the Easement. For convenience, a depiction of the area over which the Easement runs is depicted on the attached Exhibit A. This depiction is not intended to amend or in any other way affect the easement are defined in the BLA (the "Easement Area"), and the agreements herein are intended to encumber the Easement Area.

As used herein, the invitees, licensees, agents, employees and tenants of the RRII Parcel are referred to as RRII's "Authorized Users."



AGREEMENTS

1. Easement Use.

a. **Affirmation.** SCHA and RRII each affirm the Easement and agree that this Agreement is intended to clarify the intended use and maintenance responsibilities with respect to the Easement.

b. **Scope.** The purposes of the Easement are (i) to provide to RRII and its Authorized Users 24-hour pedestrian and vehicular ingress and egress to and from the public right-of-way commonly known as Lafayette Road located at the northern edge of the SCHA Parcel; and (ii) to allow RRII to install, maintain and repair water, sewer, electric, gas and other utility lines to serve the future development of the RRII Parcel. Without limiting the rights of the parties granted above, the parties acknowledge that RRII intends to construct a ___-unit apartment building (the "Project") on the RRII Parcel and that the Easement is intended to serve the ingress, egress and utility needs of the staff, tenants, licensees and invitees of RRII in connection with the Project. RRII will not use or permit its respective Authorized Users to use the Easement for any unlawful purpose, nor will RRII or its respective Authorized Users commit any nuisance or waste in connection with use of the Easement.

c. **Maintenance.** For as long as the Project is the only development on either of the RRII Parcel or the SCHA Parcel, RRII and its successors and assigns shall be responsible for maintaining and repairing all improvements within the Easement Area. If and when the SCHA Parcel is developed and SCHA (or its successors) is using the Easement Area, the cost of maintaining and repairing such improvements shall be shared between SCHA and RRII (or among their respective successors and assigns), on a pro rata basis, based on the total square footage of each developed lot. Notwithstanding the foregoing, in the event of any damage to improvements in the Easement Area caused by one party or its Authorized Users, including damage caused by construction activities in or around the Easement Area, that party will promptly restore such improvements to the condition in which they existed prior to such damage.

d. **Duration.** The Easement will be perpetual, will run with the land and will benefit and burden the parties' respective successors and assigns.

2. Dispute Resolution.

a. **Mediation.** Any dispute arising out of this Agreement will be submitted to mediation before a neutral third party. If the parties cannot mutually agree upon a mediator, they will ask the presiding judge of Skagit County Superior Court to appoint one. The parties will attempt in good faith to resolve their dispute through mediation. The parties will participate in mediation no more than fifteen (15) days later than one party provides written notice to the other of the nature of the dispute and the desire for mediation. All costs of mediation, if any, will be split equally between the parties and each party will bear its own attorney fees.



b. **Injunctive and Equitable Relief.** Notwithstanding anything to the contrary in the foregoing, in the event a good faith attempt at mediation is not successful, any party may apply to Skagit County Superior Court for equitable or injunctive relief. *Provided*, the parties agree that in any such action neither party will submit nor will the Court have authority to consider any claims for money damages, it being the intent of the parties that all such claims be resolved through mediation. The substantially prevailing party in any Court action for equitable or injunctive relief will be entitled to recover its reasonable costs and attorney's fees from the other party.

3. **Indemnity and Insurance.**

a. RRII will indemnify, defend and hold SCHA harmless from any liability, damages or costs incurred by SCHA as a result of any breach of this Agreement or the gross negligence or intentional misconduct of RRII in the exercise of any rights granted to or reserved by RRII under this Agreement. Without in any way limiting the foregoing, RRII will carry its own liability and property damage insurance to protect itself adequately against any claims which may arise in connection with the use by RRII of the Easement and will name SCHA as an additional insured under such policies.

b. SCHA will indemnify, defend and hold RRII harmless from any liability, damages or costs incurred by RRII as a result of any breach of this Agreement or the gross negligence or intentional misconduct of SCHA in the exercise of any rights granted to or reserved by SCHA under this Agreement. Without in any way limiting the foregoing, SCHA will carry its own liability and property damage insurance to protect itself adequately against any claims which may arise in connection with the use by SCHA of the Easement and will name RRII as an additional insured under such policies.

4. **Miscellaneous.**

a. **Entire Agreement.** This Agreement contains the entire agreement and understanding between the parties and supersedes and replaces all other prior negotiation and proposed agreements, written or oral. Each party hereto acknowledges that no other party, nor the agent or attorney of any other party, has made any promise, representation, or warranty, express or implied, not contained in this Agreement concerning the subject matter of this Agreement to induce this Agreement, and the parties acknowledge that they have not executed this Agreement in reliance upon any such promise, representation, or warranty not contained in this Agreement.

b. **Modifications/Termination.** No provision of this Agreement may be modified or terminated except by a written agreement of the record owners of the RRII Parcel and the SCHA Parcel duly recorded in the real property records of Skagit County, Washington.

c. **Third Party Rights.** None of the provisions of this Agreement, including without limitation the easements, covenants, conditions and restrictions, confers any rights or benefits upon the public generally, any person, entity or governmental agency or body not a



party hereto.

d. **Waiver.** No provision of this Agreement will be deemed to have been waived unless such waiver is in writing signed by the waiving party. Failure at any time to require performance of any provision of this Agreement will not be a waiver of any succeeding breach or a waiver of any other provision of this Agreement.

e. **Rights Run With Land.** The easements granted herein, unless modified or terminated by a written agreement of the owners of the SCHA Parcel and the RRII Parcel, duly recorded in the real property records of Skagit County, Washington, will run with the land for the term set forth in this Agreement.

f. **Successors and Assigns.** The Agreement will bind and inure to the benefit of the present and future owners of the SCHA Parcel and the RRII Parcel, their respective heirs, representatives, tenants, successors and assigns. All persons acquiring an interest in the SCHA Parcel and the RRII Parcel after the recording of this Agreement will acquire their interests subject to the easements, covenants, conditions, restrictions, benefits and obligations contained herein.

g. **Notices.** Any notice required or permitted by this Agreement must be in writing and delivered in person, or by reputable nationwide overnight courier (e.g., Federal Express), or by facsimile, or forwarded by certified or registered mail, postage prepaid, return receipt requested, at the address indicated below, unless the party giving such notice has been notified, in writing, of a change of address.

SCHA: Skagit County Housing Authority
1650 Port Drive
Burlington, WA 98233
Attn: Executive Director

RRII: Raspberry Ridge II LLC
c/o Skagit County Housing Authority
1650 Port Drive
Burlington, WA 98233
Attn: Executive Director

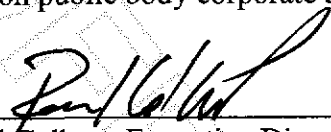
Notices are effective on the date of delivery (or refusal to accept delivery), if notice is given by personal delivery or facsimile, on the next succeeding business day after deposit with an overnight courier for next day delivery, or if notice is sent through the United States mail, on the earlier of the date of actual delivery as shown by the addressee's receipt or the expiration of three (3) days following the date of mailing. Upon the transfer of any of the SCHA Parcel or the RRII Parcel, the address for notices will be the address stated in the real estate excise tax affidavit for the receipt of billings for property taxes until such time as the successor owner of such parcel provides notice of an alternate address.



USE AND MAINTENANCE AGREEMENT FOR EXISTING EASEMENT
SIGNATURE PAGE

HOUSING AUTHORITY OF SKAGIT COUNTY,
a Washington public body corporate and politic

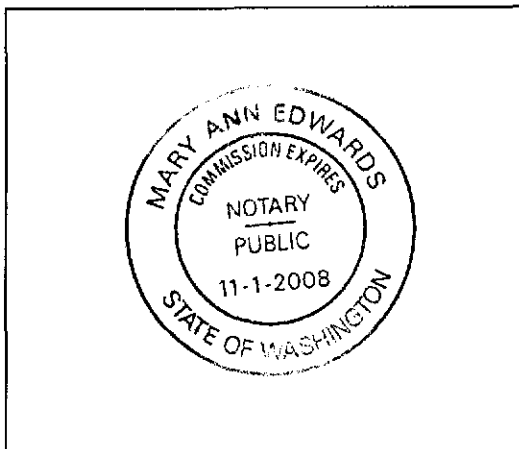
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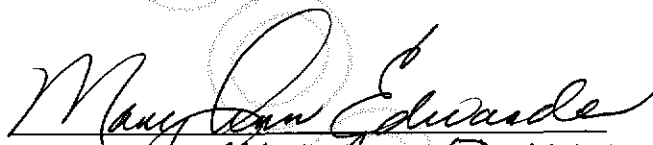

Paul Colbert, Executive Director

STATE OF WASHINGTON)
) ss:
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that Paul Colbert is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he, as the Executive Director of the Housing Authority of Skagit County, was authorized to execute the instrument and acknowledged to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 28 September, 2007.




(Print Name) MARY ANN EDWARDS
Residing at Skagit County
My appointment expires: 11-01-2008



USE AND MAINTENANCE AGREEMENT FOR EXISTING EASEMENT
SIGNATURE PAGE

RASPBERRY RIDGE II LLC,
a Washington limited liability company

By: Housing Authority of Skagit County
Its: Managing Member

By:


Paul Colbert, Executive Director

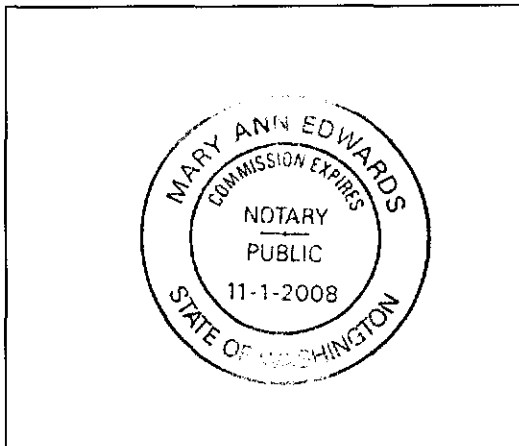
STATE OF WASHINGTON)

) ss:

COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that Paul Colbert is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he, as the Executive Director of the Housing Authority of Skagit County, the managing member of Raspberry Ridge II LLC, was authorized to execute the instrument and acknowledged to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 28 September, 2007.



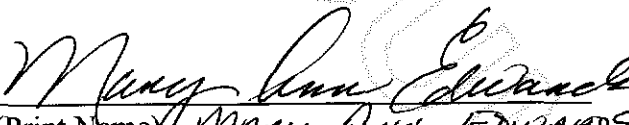

(Print Name) MARY ANN EDWARDS
Residing at 2100 1st Avenue
My appointment expires: 11-02-2008

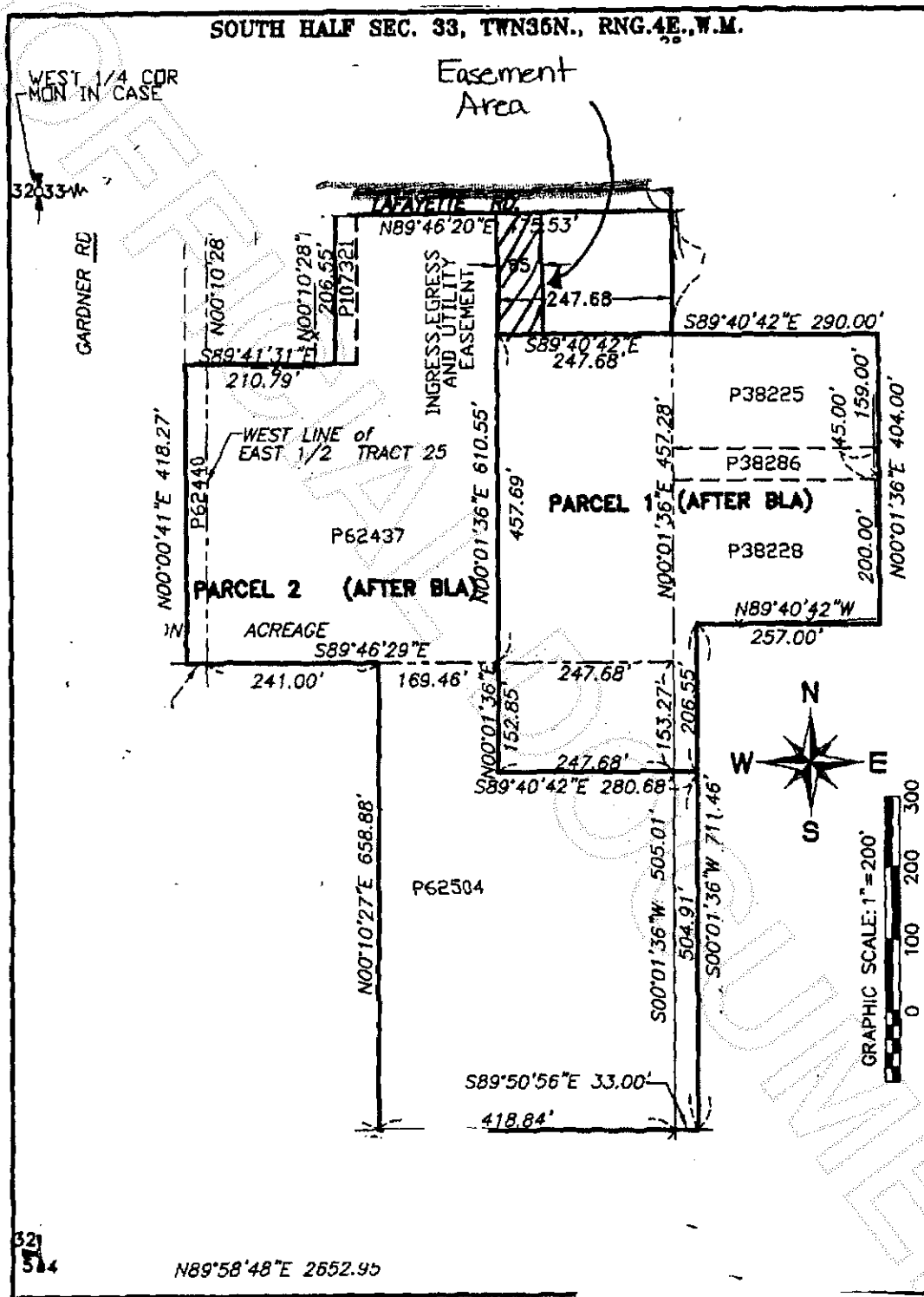


EXHIBIT A

DEPICTION OF EASEMENT AREA
(attached hereto)



SOUTH HALF SEC. 33, TWN36N., RNG.4E.,W.M.



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Skagit County Auditor