

AGREEMENT FOR IMPROVEMENT TO PUBLIC TRAIL AND PROCESSING OF VACATION OF DISPUTED STREET

THIS AGREEMENT FOR IMPROVEMENT TO PUBLIC TRAIL AND PROCESSING OF VACATION OF DISPUTED STREET (“**Agreement**”) is made and entered into by and between the City of Bainbridge Island, a Washington municipal corporation (“**City**”), and Gary and Susan Ohrt, a married couple (“**Ohrt**”), CCHD LLC, a Washington limited liability company (“**CCHD**”), and Mattis Consulting Group LLC, a Washington limited liability company (“**Mattis**”) (each a “**Party**” and together the “**Parties**”). The effective date (“**Effective Date**”) of this Agreement shall be the date of complete execution hereof.

RECITALS

- A. Mattis is the consulting company working with DeNova Northwest LLC, a Washington limited liability company (“**DeNova**”) regarding its approved 12-lot preliminary plat subdivision (Project No. PLN 50622 SUB) located at 7340 Finch Road NE (“**The Reserve at Winslow**”). Mattis also worked with DeNova on its 19-lot recorded final subdivision (Kitsap County Recording No. 201704260172) at 7629 Weaver Road (“**Winslow Grove**”).
- B. The Reserve at Winslow has received preliminary plat approval, but it has not yet received final plat approval and it has not been recorded. The preliminary plat approval requires DeNova to dedicate a 20-foot public trail easement along the north boundary of The Reserve at Winslow, and to build a trail between the western boundary of the easement and the western boundary of Tract A (open space tract), as described in the preliminary plat approval.
- C. The Winslow Grove subdivision has received final plat approval and has been recorded. At the time the Winslow Grove subdivision was recorded, DeNova dedicated a 15-foot public trail easement to the City, which is located along the south boundary of Winslow Grove. DeNova has constructed a trail in that easement between Weaver Road NW and the western edge of the cul-de-sac within the Winslow Grove subdivision.
- D. The locations of the anticipated trail easement and trail previously required to be constructed at The Reserve at Winslow and the existing trail easement and built trail at Winslow Grove are shown on the attached **Exhibit A**, titled “Trail Connection.” Because the trail easement for The Reserve at Winslow runs along the northern edge of the development, and the trail easement for Winslow Grove runs along the southern edge of that development, such that the two easements meet only at the point at which the two developments meet (i.e., the property corners), a contiguous trail is not possible without the acquisition of additional property or an easement to join the two trail easements.
- E. Thomas and Vivienne Alpaugh (“**Alpaugh**”) own that certain property located at 8411 NE Lightmoor Court (Tax Parcel No. 27250220422000) (“**Alpaugh Property**”). The Alpaugh Property abuts the northern boundary of Tract A of The Reserve at Winslow, which is an open space tract. *See* attached **Exhibit A**. Alpaugh has agreed to grant the City an easement over a small portion of the southeast corner of the Alpaugh Property in

order to provide sufficient land to physically connect the public trails at The Reserve at Winslow and Winslow Grove. Alpaugh is agreeing to provide the easement only if the trail located south of the Alpaugh Property is moved further to the south, as shown in **Exhibit A**. Alpaugh's consent to provide the easement is attached hereto as **Exhibit D**.

- F. CCHD is the consulting company working with Ohrt, the applicant for the proposed 8-lot Madison Grove subdivision (Project No. PLN50667 SUB) ("**Madison Grove Project**") and forthcoming Townhouse project ("**Townhouse Project**"). Both the Madison Grove Project and the Townhouse Project will occur on property located between Madison Avenue N. and Nakata Avenue NW in the City of Bainbridge Island. The Madison Grove subdivision is planned to include tax parcels 27250211262001, 27250211402003, 27250211412002, and 27250212142004 ("**Madison Grove Property**"). The Townhouse project is planned to include tax parcels 27250210662003, 27250210212007, and 27250210222006 ("**Townhouse Property**").
- G. A dispute has arisen between the Parties regarding whether an unopened public street exists over the Madison Grove Property ("**Dispute**"). Ohrt maintains that no public street was ever effectively dedicated and that the City previously has communicated the same in writing and issued permits and approvals that are in conflict with the existence of a public street. The City maintains that some previous communications from City staff were in error regarding the subject street, that the street exists based on the chain of title related to the properties at issue including, but not limited to, a short subdivision recorded in 1983, and that because the street was never vacated, it exists today.
- H. The Parties have identified a resolution of the Dispute which involves, among other things, the City initiating and processing, as described below, a vacation of the subject/alleged public street on the Madison Grove Property in exchange for Ohrt obtaining permits and then engineering, designing, and constructing a public trail between Sportsman Club Road and Weaver Road. The proposed trail would require the permitting and construction of a bridge over Hirawaka Creek. Once completed, the public trail would provide an approximately 1,241-foot uninterrupted extension of the Bainbridge Island Parks Foundation's planned Winslow to Gazzam Trail.
- I. The Parties are entering into this Agreement to set forth the terms and conditions under which the Dispute is resolved to their mutual satisfaction.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and considerations set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. City Initiation and Processing of Street Vacation. At the first City Council meeting following execution of this Agreement, the Council, pursuant to BIMC 12.34.020, will initiate a street vacation to vacate the area depicted as "29.41' Dedicated to City of Winslow for Street Purposes," in that certain Fryer Short Plat, recorded under Kitsap County Recording No. 8312080074, a copy of which is attached as **Exhibit B-1** hereto, and variously described as a

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private road, “road right-of-way,” “street,” and “perpetual easement,” in the chain of title for the properties at issue, as shown in Exhibits B-2 through B-5 (the “**Disputed Street**”). Attached as **Exhibit E** is a map showing the location of the Disputed Street and the owners of the abutting properties. The City agrees to make a good faith effort to prioritize the processing of the vacation. At its discretion, the City may approve or reject the proposed vacation. If the City approves the vacation, it reserves the right, as provided in BIMC 12.34.110, to retain an easement for construction, repair, and maintenance of existing and future utilities and services. However, if the City fails to initiate the vacation within 30 days of the Effective Date, fails to vote on the vacation within 90 days of the Effective Date, or rejects the vacation, then this Agreement shall terminate and Ohrt shall have no obligation to complete the Trail Improvements described in paragraph 4. If the City approves the vacation, then Ohrt agrees to pay the costs of recording the certified copy of the ordinance vacating the Disputed Street. Pursuant to BIMC 12.34.130(B), in that the vacation as described would be initiated by the City, the owners of property abutting the Disputed Street, including Ohrt, shall not be required to pay compensation for the area vacated.

2. Consent to Vacation of Disputed Street by Abutting Property Owners. Ohrt owns the property abutting the Disputed Street with the exception of the west approximately 125.02 feet, where the abutting owners are the City to the north and Ricardo and Jean Ann V.H. Fleischfresser (“**Fleischfresser**”) to the south. Ohrt, as an abutting property owner, hereby consents to the vacation of the Disputed Street. Fleischfresser’s consent to the vacation of the Disputed Street is attached as **Exhibit C**.

3. ~~City and Ohrt to Process~~ Minor Amendment or Alteration to Preliminary Plat for The Reserve at Winslow and Confirm Compliance with Certain Conditions of Approval.

a. Minor Amendment or Alteration. Immediately following the execution of this Agreement, Mattis will seek to amend or alter, as applicable, the approved preliminary plat for The Reserve at Winslow including, as applicable, related to amending existing State Environmental Policy Act (“SEPA”) conditions, to reduce the trail easement width along the north boundary from 20 feet to 15 feet, which is the trail width existing along the southern boundary of the Winslow Grove subdivision. **Exhibit A** shows the existing and proposed trail easement widths.

b. Compliance with Certain Existing Plat Conditions. The City confirms that the following conditions of approval for The Reserve at Winslow shall be met as provided below and no amendment to the SEPA conditions or preliminary plat approval for The Reserve at Winslow is necessary related to these conditions:

- i. The location of the public trail substantially as shown on **Exhibit A** meets the requirement stated in SEPA Condition 1(A) for providing a “non-motorized trail for the length of the north property boundary.”

- ii. The location of the private trail between Lots 4 and 5, as depicted on Exhibit A, meets the requirement stated in SEPA Condition 1(B) for providing a “southern non-motorized trail connection to Tract A...between the south cul-de-sac and the open space tract.” The trail shall be 5 feet in width as provided in SEPA Condition 1(B)(3).
- iii. The 10-foot “Building to Trail” setback described in condition 12 shall be met by setting back the homes constructed on Lots 4 and 5 10 feet from the edge of the required 5-foot trail.

The City will process the preliminary plat amendments and SEPA amendment(s) described herein following the execution of this Agreement and upon submittal of a complete application by the applicant. The processing and approval of such amendments is not contingent upon any other action by the Parties and, if this Agreement is terminated after the amendments have been approved, such termination will have no effect on the effectiveness of the amendments. The City agrees to make a good faith effort to prioritize the processing and approval of the amendments described in this paragraph 3 and to prioritize the processing and decision on the final plat for The Reserve at Winslow. If the City denies any or all of the amendments described in this paragraph 3, then Ohrt may in Ohrt’s sole discretion elect to terminate this Agreement by providing written notice of the same to the City Manager within 14 days following such denial or the conclusion of any administrative appeal of such denial, whichever comes later in time.

4. CCHD to Seek Permits for Trail Connection Work. Immediately following the City’s approval of the amendments described in paragraph 3 above and expiration of all applicable appeal periods, Ohrt will diligently pursue the permits necessary to construct a gravel trail not less than 6-feet wide between Sportsman Club Road and Weaver Road in the location shown in Exhibit A and described as “449’ Proposed Trail (Gap Area),” which includes a bridge over Hirawaka Creek (“**Trail Improvements**”). Ohrt shall be responsible for the permitting costs and costs of constructing the Trail Improvements, but the City shall be responsible for any mitigation required in conjunction with said permits. Ohrt understands that the City may choose not to approve the vacation of the Disputed Street and Ohrt is incurring costs pursuing the Trail Improvement permits at his own risk.

5. Ohrt to Complete Trail Connection Work. Upon recordation of a certified copy of the ordinance vacating the Disputed Street and upon receipt of the necessary permits and approvals, including approval of the bridge pursuant to the City’s Special Use Review process which applies to critical areas, Ohrt shall diligently pursue to completion the construction of the Trail Improvements, and Ohrt shall be solely responsible for the costs of such construction. Ohrt shall complete the gravel portion of the Trail Improvements no later than 60 days after receiving final permits from the City. Ohrt shall complete the bridge portion of the Trail Improvements no later than 60 days after receiving final permits for the bridge work from the City and the Washington State Department of Fish and Wildlife. The City shall grant Ohrt permission to do such work within the City’s easement areas pursuant to a written instrument detailing such permission. A performance security device, in the form of a surety or cash bond, shall be required for the completion of such work and the City shall not unreasonably withhold its acceptance of the Trail Improvements after they have been constructed. Upon completion, the

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City, or its designee, shall be solely responsible for the maintenance and upkeep of the trail.

6. Cooperation. The Parties agree to cooperate and work together in good faith and without delay to take the actions and issue the approvals described in this Agreement.

7. Attorneys' Fees. In any court proceeding brought to enforce or interpret this Agreement, the substantially prevailing party (as determined by the court) shall recover from the other party its costs and reasonable attorneys' fees, including costs and fees on appeal.

8. Governing Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of Washington. In any action brought to enforce or interpret the provisions of this Agreement, venue shall be exclusively in Kitsap County Superior Court.

9. Time. Time is of the essence for all provisions of this Agreement.

10. Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

11. Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

12. Entire Agreement; Amendment. This Agreement represents the entire agreement of the Parties and supersedes any prior communications, written or oral. This Agreement is the product of negotiation and shall not be construed against either party as the drafter hereof. No amendment, modification, or waiver of any rights hereunder shall be binding unless in writing and signed by the party or parties potentially adversely affected hereby.

13. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one instrument.

14. Authority. Each party signing this Agreement, whether signing individually or on behalf of an entity, represents that he/she has full authority to sign this Agreement on behalf of himself/herself or such entity.

15. Required Permits and other Land Use Approvals. This Agreement in no way waives or limits the permits and other land use approvals that must be obtained by the Parties to this Agreement pursuant to the Bainbridge Island Municipal Code, state law, and other applicable regulations and laws related to the activities described in this Agreement.

16. Waiver of Claims and Potential Claims. The Parties desire to avoid the expense, inconvenience, uncertainty, and potential litigation associated with resolving the Dispute. The Parties therefore have entered into this Agreement in an effort to resolve their dispute, and resolve all potential claims, causes of action, and any lawsuit which could be asserted by Ohrt, CCHD, and Mattis against the City related to the Dispute. Upon recordation of a certified copy of the ordinance vacating the Disputed Street upon the terms provided in this Agreement, the City, Ohrt, CCHD, and Mattis shall be deemed to have waived all potential claims, causes of action, and any lawsuit which could be asserted against the City, Ohrt, CCHD, and/or Mattis related to the Dispute, as "Dispute" is defined in Recital G above. Notwithstanding such waiver,

the terms of this Agreement shall remain in full force and effect until the completion of the Parties' obligations described herein, and the Parties shall retain their rights to enforce all provisions of this Agreement, including related to breach of contract.

EXECUTED by the Parties on the dates set forth below.

CITY:

The City of Bainbridge Island, a
Washington municipal corporation

By: _____
Print name:
Its:

| Date signed: _____

|

|

|

CCHD:

CCHD, a Washington limited liability
company

By: _____
Print name: Lanya McKittrick
Its: Manager

Date signed: _____

OHRT:

Gary and Susan Ohrt, a married couple

Gary Ohrt

Date signed: _____

Susan Ohrt

Date signed: _____

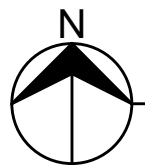
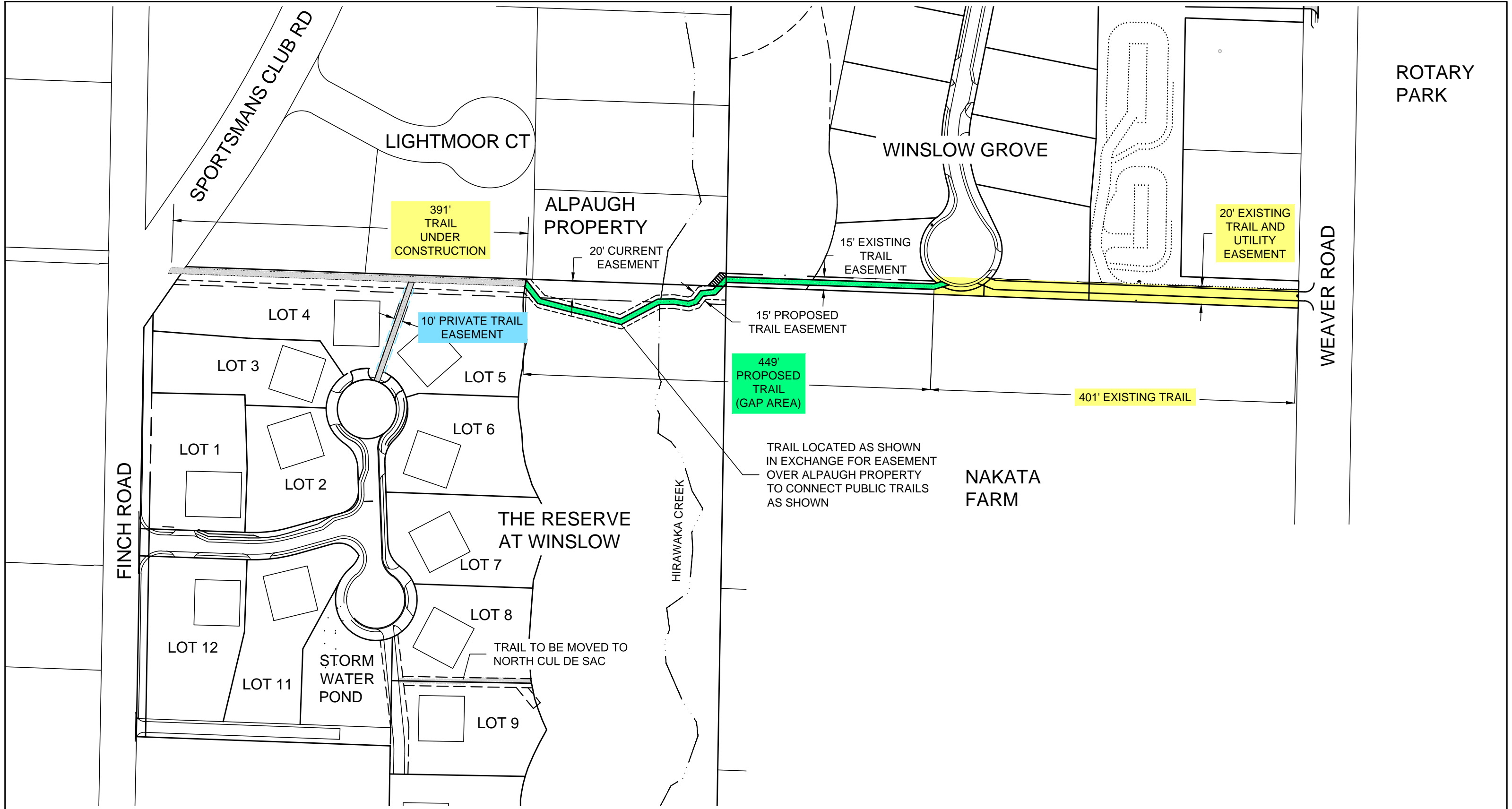
MATTIS:

Mattis, a Washington limited liability
company

By: _____
Print name: Todd McKittrick
Its: Manager

Date signed: _____

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SITE PLAN

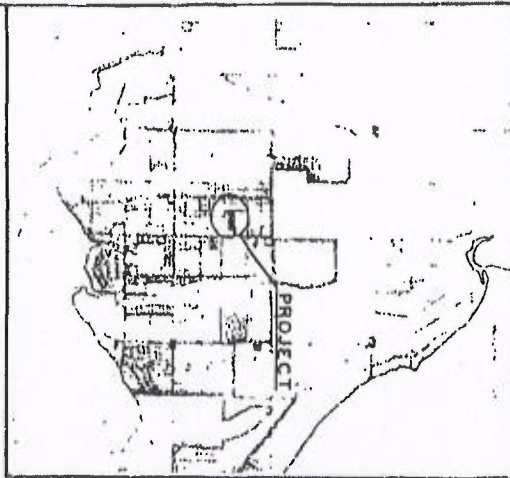
SCALE: 1" = 100'

Exhibit A

BROWNE • WHEELER
ENGINEERS, INC
241 ERICKSEN AVENUE NE
BAINBRIDGE ISLAND, WA 98110
P 206.842.0605 INFO@BrowneWheeler.COM

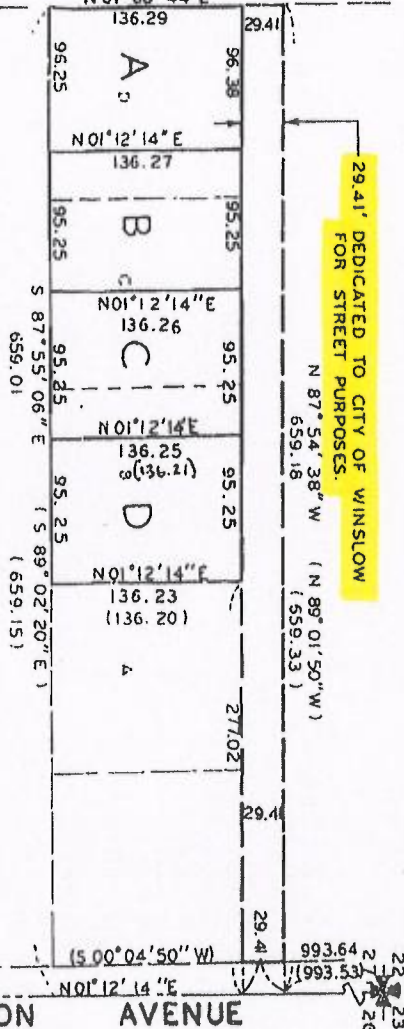
TRAIL CONNECTION
THE RESERVE AT WINSLOW

VICINITY MAP
WALLACE WAY



NAKATA AVENUE

15 00° 01' 08" W
N 01° 08' 44" E



29.41' DEDICATED TO CITY OF WINSLOW
FOR STREET PURPOSES.

NOTE: BEARINGS ON MAP ROTATED TO SECTION BREAKDOWN
(BEARINGS IN PARENTHESES ARE FROM DESCRIPTIONS
WHICH CONFORM WITH WADE SHORT PLAT BEARINGS.)

MADISON AVENUE



'83 12080074

2951289



PROJECT

MACLEARNBERRY INC.
CIVIL ENGINEERS
LAND SURVEYORS
PLANNERS
159 W
BAINBRIDGE F
4206

159 WYATT WAY N.E.
BAINBRIDGE ISLAND. WASH 98110
(206) 842-5514

FRYER SHORT PLAT
(AMENDED WADE SHORT PLAT)

DRAWN BY C.A.H.

SCALE 1"=100'

APPROVED M.C.M.	DATE 11-22-83	F. BOOK
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JOB 83062

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1

Exhibit B1

CONT Nov 29 55

629714

COP

Jul 15 55

A. J. Chenoweth and Eleanor D. Chenoweth, hwf,
to Gilbert J. Mueller and Mary Mueller, hwf

EWM, daf: That ptn of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec 27-~~45~~ 25- 2 -

Beg 10 rods N of the SE cor of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec 27; th N 10 rods; th W 40 rods; th S 10 rods; th E 40 rods to the pob; EXC the E 150 ft of the S 135.59 ft; AND EXC the E 20 ft of the N 29.41 ft.

FFI, EXC: The seller hrin reserves a r/w for road purps alg and over the N 29.41 ft of sd tt, wh sd r/w shall be accessible to the lands hrin cvyd for sd roadway purps.

On the folg trms and conds: The pp is \$2,455.00, of wh \$600.00 has been pd, rec ack, and the purchr agrees to pay the bal of sd pp as fols:

\$50.00 or more per mo, beg on Aug 1 55, and a like sum on the 1st day of each and every mo thrafter until the full amt of the pp plus int at the rate of 6 has been pd.

It is understood and agreed bet the parties hrto that the sd land is subj to a rl est cont bet J. E. Book and Ada Book,
(next pg)

1

629714-2

hwf, as sellers and A. J. Chenoweth and Eleanor D. Chenoweth,
hwf, as buyers. The pp hrin assume x the cont bal due on the
sd purchase as a part of the totoal consideration hrin to be pd
and the parties hrto agree that of the \$50.00 moly payt hrin stip-
ulated, \$30.00 shall be pd moly on sd cont to J. E. Book and
Ada Book, hwf, and the bal shall be payable to A. J. Chenoweth
and Eleanor D. Chenoweth, hwf.

The purch agrees-----as per form #285214-----

~~###~~

#19941 \$25.80

xcn ok EXC 2nd party signed G. J. Mueller

1

Exhibit B2.b

July 7, 1986

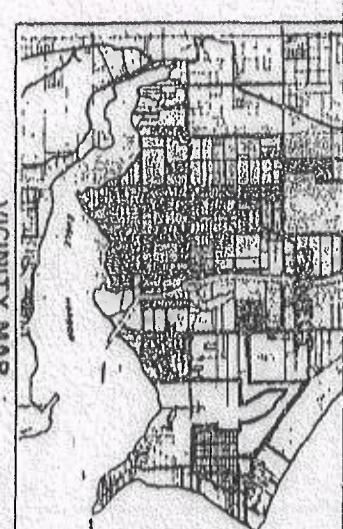


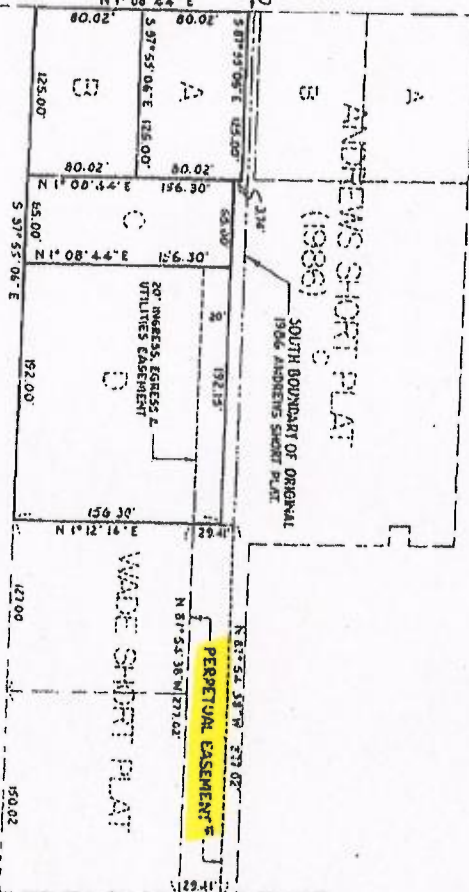
Exhibit B4



MACLEANSBERRY INC.
CIVIL ENGINEERS
LAND SURVEYORS
PLANNERS
10 PRATT WAY, N.E.
BAINBRIDGE ISLAND, WASH. 98110
(206) 844-5101

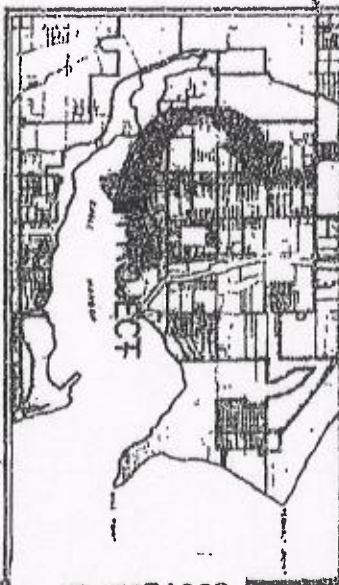
WALLACE WAY

NAKATA AVE.



MADISON AVE.

VICINITY MAP



PN-473M1389

* PERPETUAL EASEMENT

Prior short plats statements of dedication were not accompanied by conveyance documents. Therefore, this 29.41 foot wide strip of land remains as a perpetual easement as per document recorded under Kitsap County Auditor's File No. 629714.

DISCLAIMER

THIS MAP DOES NOT REPRESENT A SURVEY NOR DOES IT PURPORT TO SHOW ALL EASEMENTS, EITHER APPEARING OR NOT APPEARING ON PUBLIC RECORD.

CLIENT

DUANE ANDREWS

PROJECT

SHORT PLAT

DATE BY EAM

SCALE

1"=100'

DATE 6/88

NO. 05033

8809010112

Exhibit B5

Exhibit C

Consent of Fleischfresser to Vacation of Disputed Street

1. We, Ricardo and Jean Ann V.H. Fleischfresser (“**Fleischfresser**”), are the owners of that certain property located at 932 Nakata Ave NW, Kitsap County Tax Parcel No. 27250211382007 (the “**Fleischfresser Property**”), which abuts the southern side of the west 125.02 feet of the area depicted as “29.41’ Dedicated to City of Winslow for Street Purposes” in that certain Fryer Short Plat, recorded under Kitsap County Recording No. 8312080074 (“**Disputed Street**”).
2. Approximately 28 years ago, the City of Bainbridge Island (“**City**”) issued building permits and our home was constructed over a portion of the Disputed Street.
3. By signing below, we are notifying the City that we consent to the vacation of the Disputed Street, provided that we are not made responsible for any costs or expenses related to the vacation.

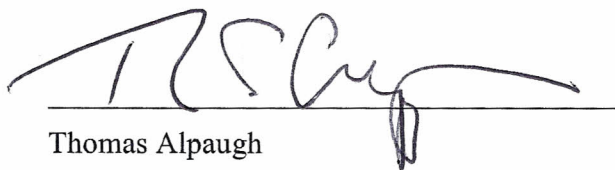
Ricardo Fleischfresser

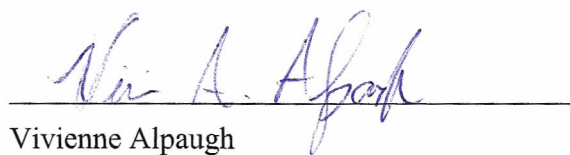
Jean Anne V.H. Fleischfresser

Exhibit D

**Alpaugh Consent to Grant Easement to City in Exchange for
Moving Trail away from South Boundary of Alpaugh Property**

1. We, Thomas and Vivienne Alpaugh ("**Alpaugh**") own that certain property located at 8411 NE Lightmoor Court, Bainbridge Island, Washington (Tax Parcel No. 27250220422000) ("**Alpaugh Property**"), which abuts the north boundary of that certain property located at 7340 Finch Road NE (Tax Parcel No. 272502-2-026-2000) ("**The Reserve at Winslow**").
2. Exhibit A to the Agreement for Improvement to Public Trail and Processing of Vacation of Disputed Street ("**Trail and Alpaugh Easement Exhibit**") depicts the location of the planned and existing public trails near the Alpaugh Property.
3. Alpaugh agrees to grant an easement to the City of Bainbridge Island ("**City**") at the southeast corner of the Alpaugh Property in order to allow the connection of the planned and existing public trails shown on the Trail and Alpaugh Easement Exhibit, provided that the following conditions are met:
 - a. The trail south of the Alpaugh Property is moved away from the south boundary of the Alpaugh Property as shown in the Trail and Alpaugh Easement Exhibit.
 - b. Alpaugh shall have no responsibility for the costs and expenses incurred to draft the paperwork and record the easement over the Alpaugh Property and any expenses incurred to changing the location of the trail south of the Alpaugh Property.
 - c. The easement agreement between Alpaugh and the City will include the City's indemnification of Alpaugh for liability related to the use of the trail by the City, its employees, contractors, assignees and the public.
 - d. The easement will have substantially the same location and dimensions as shown on the Trail and Alpaugh Easement Exhibit.


Thomas Alpaugh


Vivienne Alpaugh

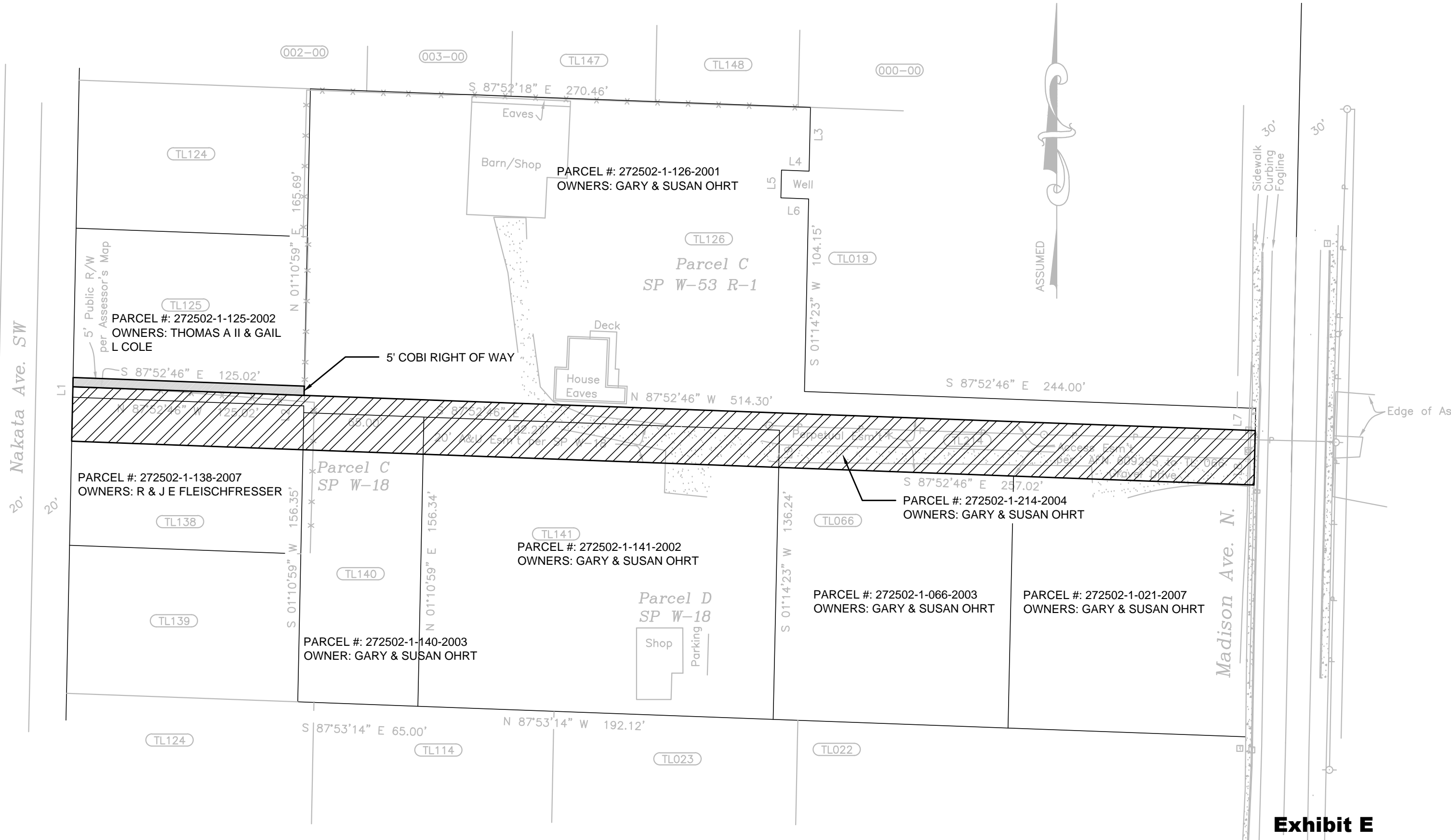
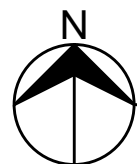
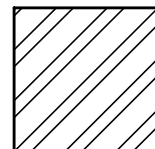
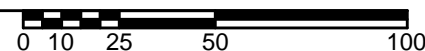


Exhibit E



SITE PLAN

SCALE: 1" = 50'



EXISTING PERPETUAL
EASEMENT / DISPUTED
STREET

BROWNE • WHEELER
ENGINEERS, INC
241 ERICKSEN AVENUE NE
BAINBRIDGE ISLAND, WA 98110
P 206.842.0605 INFO@BrowneWheeler.COM

**DISPUTED STREET AND
ABUTTING PROPERTY OWNERS
MADISON GROVE**