

No delinquent taxes

Transfer Entered

Apr 19, 2024 2:27 PM

Hennepin County, Minnesota
Daniel Rogan
County Auditor and Treasurer



LAND TYPE Abstract (A)

DOC NUM 11278224

Certified, filed and/or recorded on
Apr 19, 2024 2:27 PM

Office of the County Recorder
Hennepin County, Minnesota
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Deputy 180

Pkg ID 2664788E

Document Recording Fee

\$46.00

Document Total

\$46.00

PID(s)

05-117-23-12-0028, 05-117-23-13-0055

EASEMENT AND DRIVEWAY MAINTENANCE AGREEMENT

This Easement and Driveway Maintenance Agreement ("Agreement") is made this 13th day of April, 2024, by and among, Patricia Kinney and Christopher Loria ("Grantor"), and Colleen N.F. Manchester and Jonathan L. Manchester as Trustees of the Colleen N.F. Manchester Trust Agreement dated December 2, 2016 ("Grantee") (collectively the "Parties").

RECITALS

A. Grantor is the fee owner of that certain real property located in Hennepin County, Minnesota, with an address of 200 Bederwood Drive, Orono, Minnesota, and legally described as follows:

The North 2.00 feet of Lot 35, Auditor's Subdivision No. 203, Hennepin County, Minnesota.

AND that part of Lot 37, Auditor's Subdivision No. 203, Hennepin County, Minnesota, lying southwesterly of a line drawn parallel with and distant 100 feet at right angles southwesterly from the center line of the main track of the Minnesota Western Railway right of way, as monumented, and also lying easterly, southeasterly, and easterly of a line described as follows: Commencing at the Northwest corner of the Northeast Quarter of Section 5, Township 117, Range 23, Hennepin County, Minnesota; thence on an assumed bearing of South along the West line of said Northeast Quarter, a distance of 1465.86 feet; thence South 89 degrees 06 minutes 38 seconds East to the East line of the West 305.54 feet of said Northeast Quarter; thence North along said East line a distance of 66.00 feet to a point hereinafter referred to as "Point A"; thence continuing North along said East line a distance of 307.03 feet; thence South 66 degrees 06 minutes 50 seconds East a distance of 130.68 feet to the East line of the West 425.04 feet of said Northeast Quarter, said point also being the point of beginning of the line to be described; thence South along said East line of the West 425.04 feet of said Northeast Quarter a distance of 155.97 feet to a line which bears North 50 degrees 36 minutes 00 seconds East from said "Point A"; thence South 50 degrees 36 minutes 00 seconds West, along said line, a distance of 154.63 feet to said "Point A"; thence on a bearing of South a distance of 4.28 feet to the Northwest corner of Lot 35, said Auditor's Subdivision No. 203, Hennepin County, Minnesota, and said line there terminating.

EXCEPT that part of said Lot 37 lying easterly and southerly of a line described as follows: Commencing at southeasterly corner of the North 2.00 feet of said Lot 35; thence northerly along the northerly extension of the East line of said Lot 35

to a line drawn parallel with and distant 166.00 feet at right angles northerly of the North line of Lot 34, Auditor's Subdivision No. 203, Hennepin County, Minnesota; thence easterly along said line to a line drawn parallel with and distant 100 feet at right angles southwesterly from the center line of the main track of Minnesota Western Railway, as monumented, and said line there terminating.

(for purposes herein, the "Grantor Property").

B. Grantee is the fee owner of that certain real property located in Hennepin County, Minnesota, with an address of 210 Bederwood Drive, Orono, Minnesota legally described as follows:

Lot 34, Auditor s Subdivision No. 203, Hennepin County, Minnesota.

ALSO all that part of Lot 37, Auditor s Subdivision No. 203, Hennepin County, Minnesota, lying southwesterly of a line drawn parallel with and distant 100 feet at right angles southwesterly from the center line of the main track of the Minnesota Western Railway right of way, as monumented, and also lying easterly and southerly of a line described as follows: Commencing at southeasterly corner of the North 2.00 feet of said Lot 35; thence northerly along the northerly extension of the East line of said Lot 35 to a line drawn parallel with and distant 166.00 feet at right angles northerly of the North line of Lot 34, Auditor's Subdivision No. 203, Hennepin County, Minnesota; thence easterly along said line to a line drawn parallel with and distant 100 feet at right angles southwesterly from the center line of the main track of Minnesota Western Railway, as monumented, and said line there terminating.

(for purposes herein, the "Grantee Property").

C. There is an existing driveway located near the southern boundary of the Grantor Property running east and west as depicted on the attached as Exhibit A (the, "Driveway").

D. The Grantor desires to grant an easement for ingress and egress to Grantee and to provide for the maintenance, repair, and improvement of the Driveway, on the terms provided for herein.

E. The Grantor desires to grant an utility easement to Grantee and to provide for the maintenance, repair, and improvement of any utilities installed therein, on the terms provided for herein.

In consideration of the foregoing and the terms and conditions hereof, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree:

AGREEMENT

1. Integration of Recitals. The recitals above constitute and form an integral part of this Agreement and are incorporated by reference.

2. Grant of Easement. Grantor hereby grants and conveys unto Grantee, and its heirs, successors and assigns, a non-exclusive perpetual easement (the "Easement") for vehicular and pedestrian ingress and egress and utilities over, under and across the portion of the Grantor Property depicted on the attached Exhibit A and legally described as:

An Easement for Ingress/Egress purposes over the North 2.00 feet of Lot 35, Auditor's Subdivision Number 203, Hennepin County, Minnesota, and the South 22.00 feet of that part of Lot 37, Auditor's Subdivision Number 203, Hennepin County, Minnesota, lying westerly of the Northerly extension of the east line of said Lot 35 and lying southeasterly and easterly of a line described as follows:

Commencing at the Northwest corner of the Northeast Quarter of Section 5, Township 117, Range 23, Hennepin County, Minnesota; thence on an assumed bearing of South along the West line of said Northeast Quarter, a distance of 1465.86 feet; thence South 89 degrees 06 minutes 38 seconds East to the East line of the West 305.54 feet of said Northeast Quarter; thence North along said East line a distance of 66.00 feet to a point hereinafter referred to as "Point A"; thence continuing North along said East line a distance of 307.03 feet; thence South 66 degrees 06 minutes 50 seconds East a distance of 130.68 feet to the East line of the West 425.04 feet of said Northeast Quarter, said point also being the point of beginning of the line to be described; thence South along said East line of the West 425.04 feet of the Northeast Quarter a distance of 155.97 feet to a line which bears North 50 degrees 36 minutes 00 seconds East from said "Point A"; thence South 50 degrees 36 minutes 00 seconds West, along said line, a distance of 154.63 feet to said "Point A"; thence on a bearing of South a distance of 4.28 feet to the northwest corner of Lot 35, said Auditor's Subdivision Number 203, Hennepin County, Minnesota, and said line there terminating.

(the "Easement Area").

3. Use.

(a) The Easement and Easement Area granted herein may be used by the Grantee hereto and its guests and invitees. The Easement and Easement Area granted herein may also be used by the Grantor hereto and its guests and invitees. The Parties' use of the Easement Area shall be solely for vehicular and pedestrian ingress and egress to the Grantor Property and the Grantee Property, utility service to the improvements upon the Grantor Property and Grantee Property and for the installation, maintenance, repair and replacement of improvements to the Easement Area, as set forth herein.

(b) No fence or other barrier shall be erected or permitted within or across the Easement Area that would prevent or obstruct the passage of pedestrian or vehicular traffic to either Party's parcel, except that Grantee is entitled to have vehicles parked in the Easement Area. The Grantee shall move any parked vehicle if requested by Grantor to allow Grantor passage through the Easement Area. The foregoing notwithstanding, a Party may obstruct the Easement Area in connection with the maintenance, repair or replacement of the Driveway thereupon or any utility service thereupon or thereunder; provided, however, that all such work shall be conducted in the most expeditious manner reasonably possible to minimize the interference with the use of the Easement Area by each Party, and such work shall be diligently prosecuted to completion. The Easement Area shall not be used for regular, daily parking of vehicles.

(c) All utility lines shall be buried. Any above-ground utility facilities servicing the Grantee Property shall be located upon the Grantee Property.

4. Easement to Run with the Land. All of the terms and conditions in this Agreement, including the benefits and the burdens, shall run with Grantor Property and Grantee Property, shall be binding upon, inure to the benefit of, and be enforceable by Grantor and Grantee, and their respective heirs, successors, and assigns. The Easement granted herein is an easement appurtenant

to the Grantor Property and Grantee Property and may not be transferred separately from, or severed from, title to the Grantor Property or Grantee Property.

5. Maintenance; Installation.

(a) Grantee shall have the responsibility of general upkeep, maintenance, and repair of the improvements within the Easement Area and shall keep the improvements upon the Easement Area in a condition commensurate with the other driveways in the area; provided that Grantor shall be responsible for 100% of the reasonable and documented cost to repair any damage to the improvements upon the Easement Area caused by its own negligence or willful misconduct or that of its contractors, guests, invitees or tenants.

(b) Grantee agrees to responsible for the costs associated with installing underground utilities and any improvements to the Driveway located within the Easement Area serving the Grantee Property.

(c) In connection with: (i) the completion of construction of the home upon the Grantee Property; (ii) installation of desired utilities within the Easement Area; or (iii) damage to the Easement Area or the Grantor Property arising from vehicles parked in the Easement Area by Grantee or its agents, contractors, guests or invitees, Grantee agrees to make repairs to any damaged grass in or adjacent to the Easement Area and replace or restore any damaged vegetation or landscaping adjacent to the Easement Area resulting from Grantee's use of the Easement Area. Upon completion of any maintenance, repair, restoration or further installation, the Party performing such work shall similarly restore any damage caused to the Easement Area or adjacent property.

6. Hold Harmless and Insurance.

a. Grantee shall obtain and maintain property and liability insurance policies from reputable insurance providers to insure the use of the Easement Area by Grantee and its family members, agents, contractors, guests and invitees. Grantor shall obtain and

maintain property and liability insurance policies from reputable insurance providers to insure its obligations under this Agreement. Either party shall provide evidence of such coverage to the other party within thirty (30) days after receipt of a written request.

b. Except as set forth in Subsection C below, each Party shall indemnify, defend, and hold the other harmless from and against all loss, damages, costs, expenses or liabilities (including reasonable attorney's fees) to the extent arising from or as a result of: (i) the indemnifying party's use or enjoyment of the Easement herein granted; and (ii) damage to the Grantor Property, the Grantee Property or the Easement Area and the improvements thereon or adjacent thereto caused by the indemnifying party's negligence or misconduct while making use Easement Area, except to the extent arising from the negligence or willful misconduct of indemnified party. The acts or negligence referred to in (i) or (ii) shall include the acts, omissions or negligence of each Party's family members, agents, tenants, contractors, guests or invitees, as applicable.

c. Except to the extent arising from the negligence or willful misconduct of Grantor, Grantee shall indemnify, defend, and hold Grantor harmless from and against all loss, damages, costs, expenses or liabilities (including reasonable attorney's fees) arising from or as a result of damage to or interruption of the utility lines serving 222 Bederwood Drive, Orono, Minnesota to the extent such damage or interruption is the result of Grantee's use or activities within the Easement Area, which utility lines run underneath and perpendicular to the Easement Area.

7. Breach and Enforcement. Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Agreement, either to restrain, limit, or prevent the violation or to obtain any other relief.

8. Notices. All notices to either party to this Agreement shall be delivered in person, sent by certified mail, postage prepaid, return receipt requested, or via nationally recognized overnight courier to the other Party at that Party's last known address. If the other Party's address is not known to the Party desiring to send a notice, the Party sending the notice may use the address to which the other Party's real estate tax bills are sent.

9. No Public Dedication. Nothing herein contained shall be deemed to be a grant or dedication of any portion of the Easement Area to the general public, for the general public, or for any public purposes whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

10. Waiver. No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms and conditions of this Agreement. No waiver of any provision hereof shall be implied from the conduct of the Parties. Any such waiver must be in writing and signed by the Party against which such waiver is sought to be enforced.

11. Consideration Not Reflective of Value of Easement. Any consideration given for this Agreement is not reflective of the value of the Easement granted herein or the value of the Grantor Property or Grantee Property.

12. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota.

13. Good Faith among the Parties. Each Party to this Agreement shall act in good faith, and use their best efforts, to fulfill their respective obligations under this Agreement, and shall not interfere with any other Party's property rights or rights under the Agreement. The Parties agree to cooperate with one another to accomplish the purpose and intent of this Agreement.

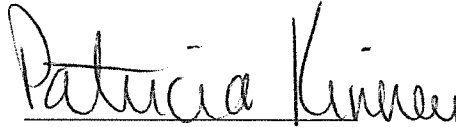
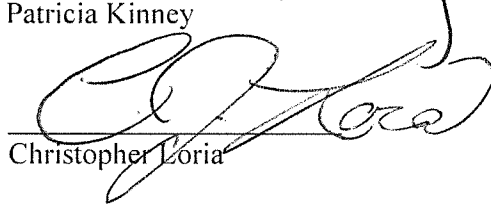
14. Entire Agreement. This Agreement sets forth the entire understanding of the Parties with respect to the Easement and may not be changed except by a written document executed and acknowledged by all Parties to this Agreement and recorded in the Hennepin County Recorder's Office and the Hennepin County Registrar of Titles.

15. Invalidity. If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

16. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

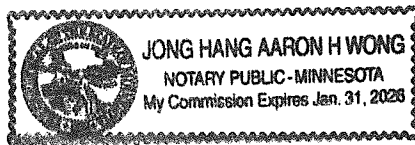
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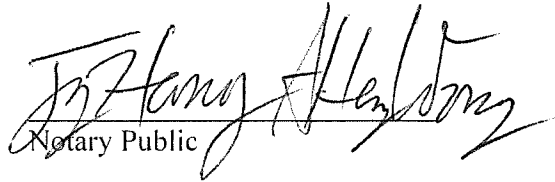
IN WITNESS WHEREOF, the undersigned agree to all of the terms and conditions contained herein and have made and entered into this Agreement as of the day and year stated below.


Patricia Kinney

Christopher Loria

State of Minnesota)
)ss
County of Hennepin)

The foregoing instrument was acknowledged before me this 13th day of April, 2024, by Patricia Kinney and Christopher Loria.




Notary Public

{Grantor Signature Page}

{Grantee Signature Page}

Colleen N.F. Manchester

Colleen N.F. Manchester as Trustee of the Colleen N.F. Manchester Trust Agreement dated December 2, 2016

Jonathan L. Manchester

Jonathan L. Manchester as Trustee of the Colleen N.F. Manchester Trust Agreement dated December 2, 2016

State of Minnesota)
)ss
County of Hennepin)

The foregoing instrument was acknowledged before me this 10th day of April, 2024, by Colleen N.F. Manchester and Jonathan L. Manchester as Trustees of the Colleen N.F. Manchester Trust Agreement dated December 2, 2016.

Jeffrey A. Scott
Notary Public

THIS INSTRUMENT WAS DRAFTED BY
(AND RETURN TO):
Jeffrey A. Scott, Esq.
Heley, Duncan & Melander, PLLP
8500 Normandale Lake Boulevard
Suite 2110
Minneapolis, MN 55437
(952) 841-0001

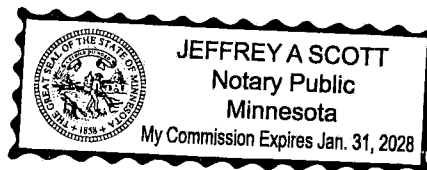


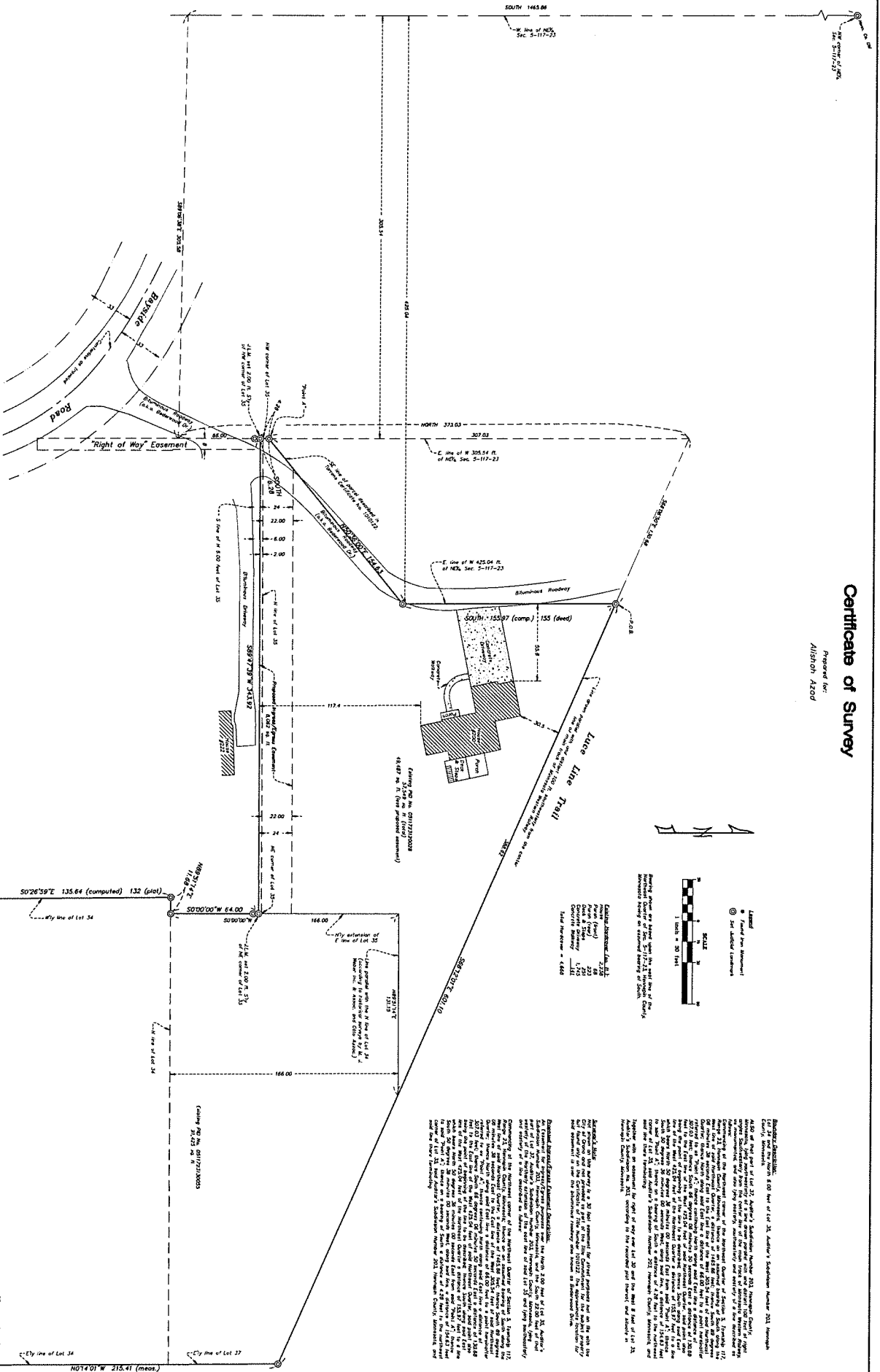
Exhibit A

Diagram of Easement Area

63400596v5

Certificate of Survey

Prepared for:
Alison Azo



SCHOBORG LAND SERVICES, INC.
743-272-2271
4841 S. 141st St.
Farmington, MI 48334

Surveyor
Name: [Blank]
License No.: [Blank]
Exp. Date: [Blank]

Client
Name: [Blank]
Address: [Blank]
City: [Blank]
State: [Blank]
Zip: [Blank]

Project
Name: [Blank]
Address: [Blank]
City: [Blank]
State: [Blank]
Zip: [Blank]

tabbies

EXHIBIT

A