

NO. 35301-6-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

GOLD CREEK UMBRELLA ASSOCIATION,
a Washington nonprofit corporation,

Appellant,

v.

GOLD CREEK NORTH LIMITED PARTNERSHIP, a Washington
limited partnership; PAUL E. MILLER, an individual; and DEIDRA J.
MILLER, an individual,

Respondents.

APPELLANT'S REPLY BRIEF

EISENHOWER & CARLSON, PLLC
By: Robert G. Casey, WSBA # 14183
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FILED
COURT OF APPEALS
DIVISION II
07 JUL 17 PM 1:25
STATE OF WASHINGTON
BY *[Signature]*
REPLY

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I. REPLY

The issues raised on this appeal are fairly well framed in the Brief of Appellant filed by the Umbrella Association and the Brief of Respondents filed by the Millers. Accordingly, this reply by the Umbrella Association will be quite short.

A. Reply to “Introduction”

The first five pages of the Miller’s Brief consist of a “factual” recitation, which is in essence an argument. This section of their Brief contains no references to the record, has many inaccuracies, and should not be considered by the court.

B. No Argument Supporting Trial Court Decision

It is interesting to note that the Millers apparently agree that there was no basis for the Trial Court’s decision that the Millers had an easement pursuant to an “equitable covenant.” This was a theory that was not argued, for or against, by either the Millers or the Umbrella Association at trial, and was inapplicable to the issues involved in the case.

C. The Real Estate Contract Did Not Create An Easement

The Millers acknowledge that the 1979 Gold Creek Parcel A Purchase and Sale Agreement (“Purchase Agreement”) (Plaintiff’s Ex. 3) did not meet the requirements of the Statue of Frauds, RCW 64.04.020. Instead, they argue that the Real Estate Contract between Millers and Don

Huber (Plaintiff's Ex. 6), which was executed in compliance with RCW 64.04.020 (in deed form, acknowledged, and with a legal description) created the easement.

The Umbrella Association requests that the Court look closely at this Real Estate Contract, a copy of which is provided in the Appendix, and recognize how this argument by the Millers, if accepted, would eviscerate Washington's "race-notice" statutes and the Statute of Frauds, and would stand the title insurance industry in this state on its head. There are no reported cases, in this state or elsewhere, which would go so far to circumvent the race-notice recording statutes as argued by the Millers in this case.

The language in the Real Estate Contract, which the Millers claim "bootstraps" the easement into compliance with the Statute of Frauds, is a cryptic reference on the first page, which provides:

Sellers' Easement. Purchasers shall provide all access and utility easements to Sellers in accordance with Section 8 of the Gold Creek Parcel A Real Estate Purchase and Sale Agreement by and between the parties dated December 27, 1979.

(Plaintiff's Ex. 6). There is nothing in this statement, or anywhere else in the Real Estate Contract that describes properties benefited and burdened by this "Sellers' Easement". The Millers appear to argue that by making

this reference to a "Sellers' Easement" in this Real Estate Contract, the easement language in Section 8 of the unacknowledged and unrecorded Purchase Agreement was, in essence, incorporated by reference, and cured of the defect of failing to comply with the Statute of Frauds.

The Umbrella Association asks the Court to look further at this Real Estate Contract. On the top of the second page, paragraph (7) provides:

(7) The seller agrees, upon receiving full payment of the purchase price and interest in the manner above specified, to execute and deliver to purchaser a statutory warranty fulfillment deed to said real estate, excepting any part thereof hereafter taken for public use, free of encumbrances except any that may attach after date of closing through any person other than the seller, and subject to the following:
[Nothing Listed]

(Emphasis Added).

This is the section of the Real Estate Contract where one is to include any encumbrances or reservations that will remain on title. If the Millers intended to reserve an easement over the property sold through this Real Estate Contract, this is where they would provide record notice. No such notice was provided, and the Fulfillment Deed, which was recorded on

November 11, 1985, made no reference to any reserved easements.
(Plaintiff's Ex. 14).

It must also be noted by the Court that the Purchase Agreement, did not see the light of day until it was recorded by Paul Miller in 1991, twelve years after its execution, and at least nine years after Donald Huber began closing on the sale of condominiums at Gold Creek. Even that recorded document was not complete. The Purchase Agreement references numerous exhibits which were not attached, and the legal description was not attached when it was first recorded by Paul Miller in 1991. The Millers were never able to produce an original of this Purchase Agreement, which was the basis for a motion to exclude the document at trial, which motion was denied. (RP I, pp. 9 – 19). If that Purchase Agreement had been recorded contemporaneously with the Real Estate Contract, this would be a different case. Instead, it was kept in Mr. Miller's back pocket and recorded twelve years later, after numerous purchases and sales of condominiums at Gold Creek which occurred without any record notice of the easement.

The Millers argue, citing *Sunnyside Vly. Irrig. Dist. v. Dickie*, 149 Wn.2d 873, 880 (2003), that extrinsic evidence should be allowed to incorporate by reference the terms of the 1979 Purchase Agreement into

the Real Estate Contract. In *Sunnyside*, the court was trying to determine the scope of an express easement. Unlike the present case, the recorded easement in *Sunnyside* met the requirements of the Statute of Frauds, but the width of the easement was not addressed in the document. Here, where the Real Estate Contract did not even reference the properties benefited and burdened by the Seller's Easement, the court need not even reach the question whether extrinsic evidence can be used to incorporate by reference the terms of the unacknowledged and unrecorded 1979 Purchase Agreement.

D. The Umbrella Association did not Invite Error by the Trial Court

The Millers argue that the Umbrella Association invited the trial court's error of making a decision on the merits without allowing the Umbrella Association to present its case. In support of this fantastical argument, the Millers contend that the Umbrella Association should have raised an objection when the trial court was making inferences that it was ready to make a ruling in the case. The Umbrella Association made the CR 41(b)(3) motion requesting that the trial court dismiss the Plaintiff's case. It certainly was not going to object to the inferences that the court was ready to rule. There was nothing said or done by the Umbrella

Association to indicate that it intended to waive the right to put on its case. Prior to the motion, the court requested that the Umbrella Association have its witnesses prepared in case he denied the motion. The Umbrella Association was prepared to proceed in the event the motion was denied.

Equally fantastic is the Millers argument that there was no harm in allowing the Trial Court to base its decision on un-admitted exhibits. If such would become the standard in this State, there would be no purpose for the Rules of Evidence.

II. CONCLUSION

The Umbrella Association respectfully requests that this court reverse the trial court's Decision of August 28, 2006, and dismiss the Plaintiffs' case pursuant to CR 41(b)(3). In the alternative, the Umbrella Association requests that a mistrial be ordered, and the matter be remanded with an order for trial assignment before a different judge. The Umbrella Association further requests an award of its attorney fees on appeal.

RESPECTFULLY SUBMITTED this 17 day of July, 2007.

EISENHOWER & CARLSON, PLLC

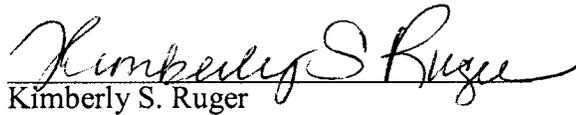
By: Robert G. Casey
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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of July, 2007, I served Respondents with a copy of the foregoing document via email at bmarksdias@riddellwilliams.com, and by also depositing a true and correct copy of the foregoing Appellant's Reply Brief, with ABC Legal Messengers to be delivered on July 18, 2007 to the below-listed counsel:

Blake E. Marks-Dias
Riddell Williams P.S.
1001 4th Avenue, Suite 4500
Seattle, WA 98154-1065

DATED this 17th day of July, 2007.


Kimberly S. Ruger

07 JUL 17 11:25
STATE OF WASHINGTON
COURT OF APPEALS
BY _____ DEPUTY

APPENDIX “A”



REAL ESTATE CONTRACT
(FORM A-1964)

2978048

ORIGINAL
1 (3) Originals

THIS CONTRACT, made and entered into this _____ day of _____

between Mr. Edward P. Miller & Mrs. Juanita J. Miller, husband & wife, Ms. Diedra J. Miller, a single person, and Mr. Paul E. Miller, a single person hereinafter called the "seller," and Gold Creek Limited Partnership, a Washington limited partnership with Mr. Donald G. Huber as its sole general partner hereinafter called the "purchaser,"

WITNESSETH: That the seller agrees to sell to the purchaser and the purchaser agrees to purchase from the seller the following described real estate, with the appurtenances, in Pierce County, State of Washington: Parcels A, B, C and E as described upon Exhibit A attached hereto less that portion known as Phase 1 as described on Exhibit B attached hereto.

EXCISE TAX PAID \$ 3827.94
REC. NO. 516769 DATE 2-26-80
MAURICE RAYMOND Pierce Co. Treas
By Bleed W. Law DEPUTY

The terms and conditions of this Contract are as follows:

Purchase Price. The purchase price is Three Hundred and Seventy Nine Thousand three dollars and eighty-four cents (\$379,003.84), of which Sixty Nine Thousand Five Hundred Seventy-Six dollars and Ninety-four cents (\$69,576.94) have been paid, the receipt of which is hereby acknowledged. The unpaid principal balance shall bear interest at the rate of 11 1/2 percent (11 1/2%) per annum. Subject to the deed release provisions herein, Purchaser shall pay accrued interest only semi-annually upon the unpaid principal balance with the first such payment due and payable on July 1st, 1980. The entire principal balance, including accrued interest, shall be paid in full five years from the date of execution of this Contract. There shall be no penalty for prepayment by Purchaser.

Partial Deed Release. If at any time during the term of this Contract, Purchaser shall direct Sellers to deed release certain portions of the real property, then, upon payment by Purchaser to Sellers of the principal sum of \$0.84 per square foot for such portion of the real property that is to be deed released, (the "Released Parcel"), Sellers shall immediately prepare, execute and deliver to Purchaser a partial statutory warranty fulfillment deed to such Release Parcel.

Access and Utilities Easements. Sellers shall provide all access and utilities easements to Purchaser in accordance with Section 4 of the Gold Creek Phase A Real Estate Purchase and Sale Agreement by and between the parties dated December 22nd, 1979.

Sellers' Easement. Purchasers shall provide all access and utility easements to Sellers in accordance with Section 8 of the Gold Creek Parcel A Real Estate Purchase and Sale Agreement by and between the parties dated December 22nd, 1979.

As referred to in this contract, "date of closing" shall be Dec 28th, 1979

(1) The purchaser assumes and agrees to pay before delinquency all taxes and assessments that may as between grantor and grantee hereafter become a lien on said real estate; and if by the terms of this contract the purchaser has assumed payment of any mortgage, contract or other encumbrance, or has assumed payment of or agreed to purchase subject to, any taxes or assessments now a lien on said real estate, the purchaser agrees to pay the same before delinquency.

(2) The purchaser agrees, until the purchase price is fully paid, to keep the buildings now and hereafter placed on said real estate insured to the actual cash value thereof against loss or damage by both fire and windstorm in a company acceptable to the seller and for the seller's benefit, as his interest may appear, and to pay all premiums therefor and to deliver all policies and renewals thereof to the seller.

(3) The purchaser agrees that full inspection of said real estate has been made and that neither the seller nor his assigns shall be held to any covenant respecting the condition of any improvements thereon nor shall the purchaser or seller or the assigns of either be held to any covenant or agreement for alterations, improvements or repairs unless the covenant or agreement relied on is contained herein or is in writing and attached to and made a part of this contract.

(4) The purchaser assumes all hazards of damage to or destruction of any improvements now on said real estate or hereafter placed thereon, and of the taking of said real estate or any part thereof for public use; and agrees that no such damage, destruction or taking shall constitute a failure of consideration. In case any part of said real estate is taken for public use, the portion of the condemnation award remaining after payment of reasonable expenses of procuring the same shall be paid to the seller and applied as payment on the purchase price herein unless the seller elects to allow the purchaser to apply all or a portion of such condemnation award to the rebuilding or restoration of any improvements damaged by such taking. In case of damage or destruction from a peril insured against, the proceeds of such insurance remaining after payment of the reasonable expense of procuring the same shall be devoted to the restoration or rebuilding of such improvements within a reasonable time, unless purchaser elects that said proceeds shall be paid to the seller for application on the purchase price herein.

(5) The seller has delivered, or agrees to deliver within 15 days of the date of closing, a purchaser's policy of title insurance in standard form, or a commitment therefor, issued by SAFECO Title Insurance Company, insuring the purchaser to the full amount of said purchase price against loss or damage by reason of defect in seller's title to said real estate as of the date of closing and containing no exceptions other than the following:

- a. Printed general exceptions appearing in said policy form.
- b. Liens or encumbrance, which by the terms of this contract the purchaser is to assume, or as to which the conveyance hereunder is to be made subject, and
- c. Any existing contract or contracts under which seller is purchasing said real estate, and any mortgage or other obligation, which seller by this contract agrees to pay, none of which for the purpose of this paragraph (5) shall be deemed defect in seller's title.

(6) If seller's title to said real estate is subject to an existing contract or contracts under which seller is purchasing said real estate, or any mortgage or other obligation which seller is to pay, seller agrees to make such payments in accordance with the terms thereof, and upon default, the purchaser shall have the right to make any payments necessary to remove the default; and any payments so made shall be applied to the payments next falling due the seller under this contract.

(7) The seller agrees, upon receiving full payment of the purchase price and interest in the manner above specified, to execute and deliver to

purchase a statutory warranty fulfillment deed to said real estate, excepting any part thereof hereafter taken for public use, free of encumbrances except any that may attach after date of closing through any person other than the seller, and subject to the following:

(8) Unless a different date is provided for herein, the purchaser shall be entitled to possession of said real estate on date of closing and to retain possession so long as purchaser is not in default hereunder. The purchaser covenants to keep the buildings and other improvements on said real estate in good repair and not to permit waste and not to use, or permit the use of, the real estate for any illegal purpose. The purchaser covenants to pay all service, installation or construction charges for water, sewer, electricity, garbage or other utility services furnished to said real estate after the date purchaser is entitled to possession.

(9) In case the purchaser fails to make any payment herein provided or to maintain insurance, as herein required, the seller may make such payment or effect such insurance, and any amounts so paid by the seller, together with interest at the rate of 10% per annum thereon from date of payment until repaid, shall be repayable by purchaser on seller's demand, all without prejudice to any other right the seller might have by reason of such default.

(10) Time is of the essence of this contract, and it is agreed that in case the purchaser shall fail to comply with or perform any condition or agreement hereof or to make any payment required hereunder promptly at the time and in the manner herein required, the seller may elect to declare all the purchaser's rights hereunder terminated, and upon his doing so, all payments made by the purchaser hereunder and all improvements placed upon the real estate shall be forfeited to the seller as liquidated damages, and the seller shall have right to re-enter and take possession of the real estate; and no waiver by the seller of any default on the part of the purchaser shall be construed as a waiver of any subsequent default.

Service upon purchaser of all demands, notices or other papers with respect to forfeiture and termination of purchaser's rights may be made by United States Mail, postage pre-paid, return receipt requested, directed to the purchaser to his address last known to the seller.

(11) Upon seller's election to bring suit to enforce any covenant of this contract, including suit to collect any payment required hereunder, the purchaser agrees to pay a reasonable sum as attorney's fees and all costs and expenses in connection with such suit, which sums shall be included in any judgment or decree entered in such suit.

If the seller shall bring suit to procure an adjudication of the termination of the purchaser's rights hereunder, and judgment is so entered, the purchaser agrees to pay a reasonable sum as attorney's fees and all costs and expenses in connection with such suit, and also the reasonable cost of searching records to determine the condition of title at the date such suit is commenced, which sums shall be included in any judgment or decree entered in such suit.

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the date first written above.

GOLD CREEK LIMITED PARTNERSHIP Edward P. Miller (SEAL)
Edward P. Miller

BY Donald G. Huber Mrs. Juanita J. Miller (SEAL)
DONALD G. HUBER Mrs. Juanita J. Miller
General Partner

Ms. Diedra J. Miller (SEAL)
Ms. Diedra J. Miller
Paul E. Miller (SEAL)
Paul E. Miller

STATE OF WASHINGTON,
County of }

On this day personally appeared before me Edward P. Miller, Mrs. Juanita J. Miller, Ms. Diedra J. Miller and Mr. Paul E. Miller, and Donald G. Huber to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that

they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 27th day of December, 1979

Wendy Leary
Notary Public in and for the State of Washington
residing at Olympia, WA

2978048-62



SAFECO TITLE INSURANCE COMPANY

Filed for Record at Request of

NAME Bijllett, Comfort, & Rosenc...
ADDRESS Suite 205
CITY AND STATE Tac Mall Office Bldg
Tac Mall

THIS SPACE RESERVED FOR RECORDER'S USE

80 DEC 26 PM 3:19
RECORDED

1151

2978048

**LEGAL DESCRIPTION
GOLD CREEK - PARCEL A**

That portion of the SE 1/4 of Section 27, T21N, R2E, W.M., City of Tacoma, Pierce County, Washington, more particularly described as follows:

COMMENCING at the SE corner of said Section 27;

THENCE N 01°55'47" E, 745.44 feet along the East line of said SE 1/4 to a point of intersection with the South line projected Easterly, of Tract 48 of the plat of "Narrows Subdivision" as recorded in Volume 1, Page 84, Records of Pierce County, Washington, and the TRUE POINT OF BEGINNING;

THENCE N 88°04'13" W, 30.00 feet along said South line projected to the SE corner of said Tract 48;

THENCE continuing N 88° 04'13" W, 330.00 feet along the South line of said Tract 48 to the SW corner thereof;

THENCE N 01°55'47" E, 132.00 feet along the West line of said Tract 48 to the NW corner thereof;

THENCE continuing N 01°55'47" E, 20.00 feet along the Northerly projection of said West line to the SE corner of Tract 46 of said plat;

THENCE N 88°04'13" W, 330.00 feet along the South line of said Tract 46 to the SW corner thereof;

THENCE N 01°55'47" E, 132.00 feet along the West line of said Tract 46 to the NW corner thereof;

THENCE continuing N 01°55'47" E, 20.00 feet along the Northerly projection of said West line to the SW corner of Tract 39 of said plat;

THENCE continuing N 01°55'47" E, 132.00 feet along the West line of said Tract 39 to the NW corner thereof;

THENCE continuing N 01°55'47" E, 20.00 feet along the Northerly projection of said West line to the SE corner of Tract 35 of said plat;

THENCE N 88°04'13" W, 330.00 feet along the South line of said Tract 35 to the SW corner thereof;

THENCE N 01°55'47" E, 132.00 feet along the West line of said Tract 35 to the NW corner thereof;

THENCE continuing N 01°55'47" E, 20.00 feet along the Northerly projection of said West line to the SE corner of Tract 32 of said plat;

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LEGAL DESCRIPTION
GOLD CREEK - PARCEL A
Page 2

THENCE N 88°04'13" W, 436.17 feet along the South line of Tracts 32 and I of said plat to a point on the Southeasterly margin of the Burlington Northern Railroad (AKA Northern Pacific Railway) right-of-way;

THENCE N 24°54'53" E, 1155.76 feet along said right-of-way margin to a point on the South line of Tract 4 of said plat;

THENCE N 88°04'13" W, 4.91 feet along said right-of-way margin and South line of said Tract 4;

THENCE N 1°55'47" E, 132.00 feet along said right-of-way margin to the North line of said Tract 4;

THENCE S 88°04'13" E, 60.90 feet along said right-of-way margin and North line of said Tract 4;

THENCE N 24°54'53" E, 34.39 feet along said right of way margin to a point of intersection with the centerline of Gold Creek, as monumented;

THENCE along said centerline of creek as monumented the following described courses;

THENCE S 60°56'55" E, 10.60 feet;

THENCE S 44°58'53" E, 79.52 feet;

THENCE S 41°48'36" E, 87.91 feet;

THENCE S 22°43'52" E, 94.30 feet;

THENCE S 28°06'27" E, 145.79 feet;

THENCE S 44°55'02" E, 104.01 feet;

THENCE S 22°23'31" E, 116.28 feet;

THENCE S 62°24'44" E, 109.41 feet;

THENCE S 45°23'07" E, 140.81 feet;

THENCE S 34°03'32" E, 140.18 feet;

THENCE S 53°31'13" E, 149.30 feet;

THENCE S 29°38'32" E, 95.69 feet;

THENCE S 47°00'57" E, 127.60 feet;

THENCE S 24°45'58" E, 38.42 feet to a point on the East line of said SE 1/4 of Section 27;

2978048

**LEGAL DESCRIPTION
GOLD CREEK - PARCEL A
Page 3**

THENCE leaving said centerline of creek as monumented S 01°55'47" W, 337.40 feet along said East line to a point on the Easterly projection of the North line of the South 10 feet of the 20 foot strip lying between Tracts 37 and 38 of said plat;

THENCE N 88°04'13" W, 360.00 feet along said North line and the Easterly projection thereof to a point of intersection with the West line of said Tract 38 projected Northerly;

THENCE S 01°55'47" W, 10.00 feet along said West line projected Northerly to the NW corner of said Tract 38;

THENCE continuing S 01°55'47" W, 132.00 feet along the West line of said Tract 38 to the SW corner thereof;

THENCE continuing S 01°55'47" W, 10.00 feet along said West line projected Southerly to a point on the North line of the South 10 feet of the 20 foot strip lying between Tracts 38 and 47;

THENCE S 88°04'13" E, 360.00 feet along said North line and the Easterly projection thereof to a point on said East line of the SE 1/4;

THENCE S 01°55'47" W, 294.00 feet along said East line to the TRUE POINT OF BEGINNING.

Containing 30.37 Acres (1323036 square feet), more or less.

Excepting therefrom any portion owned by Burlington Northern, Inc.

LEGAL DESCRIPTION
GOLD CREEK - PARCEL B

2978048

That portion of the SW 1/4 of Section 26, T21N, R2E, W.M., City of Tacoma, Pierce County, Washington, more particularly described as follows:

COMMENCING at the SW corner of said Section 26;

THENCE N 01°55'47" E, 665.86 feet along the West line of said SW 1/4 to the SW corner of the NW 1/4 of the SW 1/4 of said Section 26 and the TRUE POINT OF BEGINNING;

THENCE continuing N 01°55'47" E, 862.98 feet along said West line to an intersection with the centerline of Gold Creek as monumented;

THENCE along said centerline of creek as monumented the following described courses:

THENCE S 24°45'58" E, 203.20 feet;

THENCE S 21°33'22" E, 173.79 feet;

THENCE S 26°05'03" E, 166.96 feet;

THENCE S 18°19'22" E, 158.81 feet;

THENCE S 28°30'50" E, 123.75 feet;

THENCE S 20°52'22" E, 130.99 feet to a point on the South line of said NW 1/4 of the SW 1/4 of the SW 1/4;

THENCE leaving said centerline of creek N 87°49'09" W, 407.41 feet along said South line to the TRUE POINT OF BEGINNING.

Containing 4.09 acres (177973 square feet) more or less.

LEGAL DESCRIPTION
GOLD CREEK - PARCEL C

That portion of the SW 1/4 of Section 26, T. 21 N., R. 2 E., W.M., City of Tacoma, Pierce County, Washington, more particularly described as follows:

Lot 1 of the plat of "Miller's Skyline Terrace 7th Addition" as recorded in Volume 42 of Plats, Pages 7-10, inclusive, Records of Pierce County, Washington.

Containing 0.20 acres (8597 Square Feet), more or less.

2978048

LEGAL DESCRIPTION
GOLD CREEK - PARCEL E

That portion of the SW 1/4 of Section 26, T21N, R2E, W.H., City of Tacoma, Pierce County, Washington, more particularly described as follows:

COMMENCING at the SW corner of said Section 26;

THENCE N 01°55'47" E, 665.86 feet along the West line of said SW 1/4 to the SW corner of the NW 1/4 of the SW 1/4 of the SW 1/4 of said Section 26;

THENCE S 87°49'09" E, 407.41 feet along the South line of said NW 1/4 of the SW 1/4 of the SW 1/4 to a point of intersection with the centerline of Gold Creek as monumented and the TRUE POINT OF BEGINNING;

THENCE continuing S 87°49'09" E, 128.27 feet along said South line to a point on the Westerly line of the plat of "Miller's Skyline Terrace 7th Addition" as recorded in Volume 42 of Plats, Pages 7-10, inclusive, Records of Pierce County, Washington;

THENCE N 17°21'00" W, 310.15 feet along the Westerly line of said plat;

THENCE N 16°40'49" E, 30.00 feet along said Westerly line to a point on the North line of the South 321.35 feet as measured at right angles to the South line of the NW 1/4 of the SW 1/4 of the SW 1/4;

THENCE N 87°49'09" W, 181.86 feet along said North line to a point on the centerline of Gold Creek as monumented;

THENCE S 18°19'22" E, 100.80 feet along said centerline as monumented;

THENCE S 28°30'50" E, 123.75 feet along said centerline, as monumented;

THENCE S 20°52'22" E, 130.99 feet along said centerline as monumented, to the TRUE POINT OF BEGINNING.

Containing 1.09 Acres (47546 square feet), more or less.

2978048

LEGAL DESCRIPTION
GOLD CREEK - PHASE I

That portion of the SE 1/4 of Section 27, T21N, R2E, W.M., City of Tacoma, County of Pierce, State of Washington, more particularly described as follows:

BEGINNING at the SE corner of Tract 35 of the plat of "Narrows Subdivision" as recorded in Volume 1, Page 84, Records of Pierce County, Washington;

THENCE N 88°04'13" W, 289.00 feet along the South line of said Tract 35;

THENCE N 36°10'00" E, 355.00 feet;

THENCE N 04°25'00" E, 114.00 feet;

THENCE N 35°50'00" E, 259.00 feet;

THENCE S 55°40'00" E, 249.00 feet;

THENCE S 36°25'00" W, 97.00 feet;

THENCE S 42°59'11" E, 54.75 feet;

THENCE N 66°45'00" E, 97.30 feet;

THENCE S 72°40'00" E, 136.00 feet;

THENCE S 34°45'00" E, 157.00 feet;

THENCE S 12°45'00" W, 67.00 feet;

THENCE S 10°35'00" E, 77.50 feet;

THENCE S 82°50'00" W, 267.77 feet;

THENCE S 53°10'00" W, 105.00 feet;

THENCE N 88°04'13" W, 225.00 feet to the POINT OF BEGINNING.

TOGETHER WITH that portion of said SE 1/4 of Section 27 and the SW 1/4 of Section 26, T21N, R2E, W.M., City of Tacoma, County of Pierce, State of Washington, more particularly described as follows:

COMMENCING at the SW corner of said Section 26;

THENCE N 01°55'47" E, 665.86 feet along the West line of said SW 1/4 of Section 26 to the SW corner of the NW 1/4 of the SW 1/4 of the SW 1/4 of said Section 26;

THENCE S 87°49'09" E, 275.70 feet along the South line of said NW 1/4 of the SW 1/4 of the SW 1/4;

THENCE N 27°36'12" W, 256.52 feet to the TRUE POINT OF BEGINNING;

THENCE continuing N 27°36'12" W, 79.36 feet;

THENCE N 45°00'00" W, 21.50 feet;

THENCE S 61°00'00" W, 125.00 feet;

THENCE S 29°00'00" E, 100.00 feet;

THENCE N 61°00'00" E, 128.99 feet to the TRUE POINT OF BEGINNING.

Containing 7.23 acres (314,968 square feet), more or less.

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TOGETHER WITH an easement for ingress, egress and utilities purposes to service the proposed Gold Creek Planned Residential Development as given preliminary approval by the City of Tacoma, over and across a strip of land 54 feet in width over a portion of the SE 1/4 of Section 27, T21N, R2E, W.M., and the SW 1/4 of Section 26, T21N, R2E, W.M., City of Tacoma, County of Pierce, State of Washington the centerline of which is more particularly described as follows:

COMMENCING at the SE corner of Lot 1, Block "A", of "Miller's Skyline Terrace 7th Addition" as recorded in Volume 42, Pages 7-10 of Plats, Records of Pierce County, Washington;

THENCE Northerly along the East line of said Lot 1, 37.00 feet along the arc of a non-tangent curve to the right, having a radius of 2239.32 feet, the radius point of which bears S 89°24'28" E, through a central angle of 00°56'48" to a point of non-tangency and the TRUE POINT OF BEGINNING;

THENCE N 86°00'00" W, 86.00 feet to a point of curvature;

THENCE Northwesterly 120.43 feet along the arc of a tangent curve to the right, having a radius of 100.00 feet, through a central angle of 69°00'00" to a point of tangency;

THENCE N 17°00'00" W, 51.00 feet to a point of curvature;

THENCE Westerly 180.64 feet along the arc of a tangent curve to the left, having a radius of 100.00 feet, through a central angle of 103°30'00" to a point of reverse curvature;

THENCE Westerly 187.45 feet along the arc of a tangent curve to the right, having a radius of 120.00 feet, through a central angle of 89°30'00" to a point of tangency;

THENCE N 31°00'00" W, 245.00 feet to a point of curvature;

THENCE Northerly 77.19 feet along the arc of a tangent curve to the right, having a radius of 842.39 feet, through a central angle of 05°15'00" to a point of tangency;

THENCE N 25°45'00" W, 113.00 feet to a point of curvature;

THENCE Westerly 173.84 feet along the arc of a tangent curve to the left, having a radius of 120.00 feet through a central angle of 83°00'00" to the terminus of this centerline description.

INCLUDING the right to make all necessary slopes for cuts and fills upon the adjacent property in the reasonable grading of the street as shown on said Gold Creek Planned Residential Development as given preliminary approval by the City of Tacoma.

ALSO TOGETHER WITH utility easements for improvements as might be required by the City of Tacoma, over and across the Gold Creek drainage basin from the South line of the NW 1/4 of the SW 1/4 of the SW 1/4 of said Section 26 to Gold Creek's Northerly terminus in Puget Sound and including utility easements as might be required to service said proposed Gold Creek Planned Residential Development by the City of Tacoma.