

After Recording Return To:  
K&L Gates LLP  
Attn: Denise L. Stiffarm  
925 Fourth Avenue, Suite 2900  
Seattle, Washington 98104

**SKAGIT COUNTY WASHINGTON  
REAL ESTATE EXCISE TAX**

OCT 14 2013

Amount Paid \$  
Skagit Co. Treasurer  
By *Man* Deputy



Skagit County Auditor  
10/14/2013 Page

\$87.00  
1 of 16 11:05AM

**DRAINAGE EASEMENT AGREEMENT**

**GRANTOR:** 1. PBWA Properties, LLC, a Washington limited liability company  
2. Mount Vernon School District No. 320, a Washington municipal corporation

**GRANTEE:** 1. Mount Vernon School District No. 320, a Washington municipal corporation  
2. PBWA Properties, LLC, a Washington limited liability company

**LEGAL DESCRIPTION OF BURDENED PROPERTY:**

1. North Division Property:  
Abbreviated form: Tract "Y", Mount Vernon Short Plat LU-13-047  
Additional legal on Exhibit A-1
2. First Division Property  
Abbreviated form: Ptn. E ½ SW ¼ NE ¼, S 22, T 34 N, R 5 E, WM  
Additional legal on Exhibit A-2

**LEGAL DESCRIPTION OF BENEFITED PROPERTY:**

1. First Division Property:  
Abbreviated form: Ptn. E ½ SW ¼ NE ¼, S 22, T 34 N, R 5 E, WM  
Additional legal on Exhibit A-2
2. South Division Property  
Abbreviated form: Lot 1, Mount Vernon Short Plat LU-13-047  
Additional legal on Exhibit A-3

**ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NUMBER(S):**

1. North Division Property: Ptn P27509
2. First Division Property: P125967
3. South Division Property: Ptn P27512

## **DRAINAGE EASEMENT AGREEMENT**

This Drainage Easement Agreement (the "Agreement") dated as of 10/4, 2013 (the "Effective Date"), is made by and between PBWA Properties, LLC, a Washington limited liability company ("PBWA"), and the Mount Vernon School District No. 320, a Washington municipal corporation ("District"), with reference to the following facts:

### **RECITALS**

A. PBWA is the owner of certain parcels of real property which are legally described on Exhibit A-1 attached hereto and incorporated by this reference ("North Division Property") and Exhibit A-3 attached hereto and incorporated by this reference ("South Division Property").

B. District is the owner of certain real property which is legally described on Exhibit A-2 attached hereto and incorporated by this reference ("First Division Property"). The First Division Property is adjacent to the southerly boundary of the North Division Property and adjacent to the northerly boundary of the South Division Property.

C. The purpose of this Agreement is to provide for the construction and maintenance of a storm water detention pond on the North Division Property (the "Drainage Pond"); to provide easement rights to the First Division Property over the North Division Property for storm water drainage access to the Drainage Pond; and to provide easement rights to the South Division Property over the First Division Property and North Division Property for storm water drainage access to the Drainage Pond.

D. For purposes of this Agreement, "North Division Owner" shall refer to PBWA or its successors in interest to the North Division Property; "South Division Owner" shall refer herein to PBWA or its successors in interest to the South Division Property; and "First Division Owner" shall refer herein to District or its successors in interest to the First Division Property.

NOW THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **AGREEMENT**

#### **1. Construction of Drainage System.**

1.1 The South Division Owner shall have the right to construct, at its own expense, the Drainage Pond on the North Division Property when any new improvements, including without limitation plat improvements, are first developed by the South Division Owner on the South Division Property, or at any earlier time at the election of the South Division Owner. The Drainage Pond shall be constructed in accordance with the code requirements of the City of Mount Vernon and shall be designed, and have sufficient capacity, for the storm drainage requirements of both the South Division Property and First Division Property under the highest and best uses of those properties allowed by applicable zoning.



1.2 In the event that the First Division Owner wishes to develop the First Division Property before the South Division Owner develops the South Division Property or constructs the Drainage Pond, the First Division Owner shall have the right to construct, at its own expense, a detention pond or similar drainage facility on the North Division Property that meets only the storm drainage needs of the First Division Property ("First Division-Only Drainage Facility"). In such case, the First Division Owner shall not be liable for any future costs incurred by the South Division Owner to convert the First Division-Only Drainage Facility to a Drainage Pond that would serve the storm drainage needs of both the South Division Property and First Division Property.

1.3 The location of the drainage facilities easement area on the North Division Property, where the Drainage Pond or if applicable the First Division-Only Drainage Facility may be constructed, is generally depicted on the drawing attached hereto as Exhibit B. The specific location of such drainage facilities on the North Division Property shall be subject to reasonable approval or adjustment by the North Division Owner during the plan review process described in Section 3 below; provided, however that the specific location, as so adjusted during the plan review process, must satisfy the code requirements of the City of Mount Vernon.

2. Easements. The following easements are hereby granted:

2.1 The North Division Owner, for itself and its successors in interest, hereby grants to the South Division Owner and its successors in interest, a temporary construction easement and right of access upon the North Division Property, for purposes of constructing the Drainage Pond on the North Division Property and installing underground drainage pipes to transport storm water to the Drainage Pond. This temporary construction easement and right of access shall expire upon final completion of such work.

2.2 The North Division Owner, for itself and its successors in interest, hereby further grants to the South Division Owner and its successors in interest, a permanent and perpetual easement upon the North Division Property for purposes of using the Drainage Pond, and any associated underground pipes on the North Division Property, for the benefit of the South Division Property and the drainage of storm water therefrom.

2.3 The North Division Owner, for itself and its successors in interest, hereby further grants to the South Division Owner and its successors in interest, a permanent and perpetual easement and right of access upon the North Division Property for purposes of regular maintenance, and repairs as and when necessary, of any drainage facilities constructed by the North Division Owner or its successors in interest under this Agreement.

2.4 The North Division Owner, for itself and its successors in interest, hereby grants to the First Division Owner and its successors in interest, a temporary construction easement and right of access upon the North Division Property, for purposes of installing the First Division Owner's own underground pipes directing storm water from the First Division Property to the Drainage Pond and, if applicable under the circumstances described in Section 1.2 above, for purposes of constructing the First Division-Only Drainage Facility and any associated underground pipes on the North Division Property. This temporary construction easement and right of access shall expire upon final completion of such work.



2.5 The North Division Owner for itself and its successors in interest also hereby grants, to the First Division Owner and its successors in interest, a permanent and perpetual easement upon the North Division Property for purposes of using the Drainage Pond or, if applicable under Section 1.2 above, the First Division-Only Drainage Facility, and any associated pipes on the North Division Property, for the benefit of the First Division Property and the drainage of storm water therefrom.

2.6 The North Division Owner, for itself and its successors in interest, hereby further grants to the First Division Owner and its successors in interest, a permanent and perpetual easement and right of access upon the North Division Property for purposes of regular maintenance, and repairs as and when necessary, of any drainage facilities constructed by the First Division Owner or its successors in interest under this Agreement.

2.7 The First Division Owner, for itself and its successors in interest, hereby grants to the South Division Owner and its successors in interest, a temporary construction easement and right of access upon the First Division Property, for purposes of installing underground drainage pipes within the thirty (30) foot wide strip of the First Division Property (measured from its western boundary) depicted on the drawing of the First Division Property attached hereto as Exhibit B. This temporary construction easement and right of access shall expire upon final completion of such work. The specific location of the South Division Owner's underground pipes in such thirty (30) foot strip of the First Division Property shall be subject to reasonable approval or adjustment by the First Division Owner during the plan review process described in Section 3 below; provided, however that the specific location, as so adjusted during the plan review process, must satisfy the code requirements of the City of Mount Vernon.

2.8 The First Division Owner for itself and its successors in interest also hereby grants, to the South Division Owner and its successors in interest, a permanent and perpetual easement for the underground pipes to be so installed and used by the South Division Owner within the aforementioned thirty (30) foot strip of the First Division Property, for purposes of directing storm water from the South Division Property across the First Division Property, via such underground pipes, to the Drainage Pond on the North Division Property.

2.9 The First Division Owner, for itself and its successors in interest, hereby further grants to the South Division Owner and its successors in interest, a permanent and perpetual easement and right of access upon the First Division Property for purposes of regular maintenance, and repairs as and when necessary, of the underground pipes to be so installed and used by the South Division Owner within the aforementioned thirty (30) foot strip of the First Division Property. Such access shall be limited to the aforementioned thirty (30) foot strip of the First Division Property.

3. Construction Provisions. The construction of any drainage facilities by any party to this Agreement or its successors in interest ("Constructing Party") on the property of another party to this Agreement or its successors in interest ("Property Owner"), and the use of any construction easement rights granted to the Constructing Party under this Agreement, shall be performed subject to the following conditions:

3.1 Constructing Party shall provide Property Owner with not less than sixty (60) days prior written notice of Constructing Party's intention to commence construction of construction of the Drainage Pond, the First Division-Only Drainage Facilities or drainage pipe installation (as the



case may be, the "Work") within the applicable easement area ("Notice of Exercise of Construction Easement").

3.2 Within ten (10) days of Property Owner's receipt of the Notice of Exercise of Construction Easement, Property Owner shall furnish to Constructing Party all then-existing surveys, as-built drawings, soils reports, wetlands studies and/or engineering studies in the possession or control of the Property Owner depicting the existing conditions and the existing improvements, if any, of the easement areas within which the Constructing Party's proposed Work will take place.

3.3 Within twenty (20) days of Property Owner's receipt of the Notice of Exercise of Construction Easement, Constructing Party shall submit to Property Owner for its review and comment, copies of plans and specifications for the proposed Work within the applicable easement area, including, without limitation, any soils and engineering studies in Constructing Party's possession, construction plans for the Work, pre-construction surveys, and copies of Constructing Party's permits setting forth the particulars and scope of the Work.

3.4 Constructing Party shall not commence construction of its Work except with Property Owner's prior written approval of the plans and specifications therefor, which approval shall not be unreasonably withheld, conditioned or delayed. Property Owner will have thirty (30) days to respond in writing to any requested approval of Constructing Party's plans and specifications for the Work or the same will be deemed approved. Constructing Party shall not materially deviate from such approved plans and specifications during construction of the Work unless such deviation is first approved by Property Owner in writing, which approval shall not be unreasonably withheld, conditioned or delayed. Property Owner will have ten (10) days to respond in writing to any requested material deviation from Constructing Party's plans and specifications for the Work or the same will be deemed approved. The foregoing shall not limit the ability of the Constructing Party to make emergency deviations from the Constructing Party's plans and specifications should it become apparent, in the reasonable discretion of Constructing Party, that deviations are needed to ensure the safety or stability of the Work.

3.5 Upon completion of the Work within the applicable easement area, Constructing Party shall provide to Property Owner a post-construction survey of the as-built location of the Work, which shall be in a commercially reasonable form and detail.

3.6 Constructing Party shall (i) construct the Work in a good and workmanlike manner and in compliance with applicable City of Mount Vernon codes, zoning requirements and all other applicable laws, ordinances, rules and regulations, including without limitation those restricting construction dust, noise and hours; (ii) obtain all required permits for its Work; and (iii) keep the Property Owner's property free and clear of all liens, charges, and other monetary encumbrances arising out of the Work.

3.7 The Notice of Exercise of Construction Easement shall include the estimated date that installation of the Work in the applicable easement area will begin ("Estimated Start Date") and the estimated date for completion of the Work within such easement area. Subject to delay caused by obtaining permits, financing, weather delays and/or other *force majeure* events, Constructing Party shall commence construction of its Work within sixty (60) days of its Estimated Start Date, and diligently pursue such Work within such easement area in a manner reasonably intended to assure substantial completion thereof within one hundred and eighty (180) days thereafter.



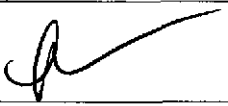
3.8 In the event that Constructing Party shall delay or stop the construction of such Work for a period of more than sixty (60) days, Constructing Party shall give Property Owner written notice of such event, and shall thereafter give Property Owner prior written notice of not less than ten (10) days before re-commencing the Work.

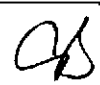
3.9 Before the Constructing Party commences any Work on the Property Owner's Property, the Constructing Party shall provide, or cause its contractors to provide, certificates of insurance evidencing the minimum insurance coverages and limits set forth in subparagraphs (a) and (b) below. The Property Owner, and any lender of the Property Owner with a security interest in the Property Owner's property, shall be named as additional insureds on such policies (except for the workers' compensation coverage). The minimum insurance coverages and limits required to be maintained at all times while constructing the Work are as follows:

(a) Workers' Compensation and Employer's Liability. Limits shall not be less than: (i) Workers' Compensation: statutory, (ii) Employer's Liability: \$1,000,000 each accident - bodily injury by accident, \$1,000,000 each employee - bodily injury by disease, \$1,000,000 policy limit - bodily injury by disease. Such insurance shall evidence that coverage applies in the State of Washington.

(b) Commercial General Liability. Limits shall not be less than \$2,000,000 each occurrence and in the aggregate. Coverage is to be written on an "occurrence" basis, ISO Form CG 00 01, or its equivalent.

3.10 The Constructing Party shall indemnify, defend and hold the Property Owner harmless from and against any and all damages, claims, liabilities or expenses (including reasonable attorneys' fees incurred with or without litigation or on appeal) for property damage or personal injury arising out of the negligence or intentional misconduct of the Constructing Party, its employees, agents, contractors or subcontractors in connection with the construction of the Work or any subsequent entry by such persons upon Property Owner's property for purposes of maintaining and/or repairing the Work. The foregoing indemnification shall not apply to any damages, claims, liabilities or expenses so arising to the extent caused by the negligence or willful misconduct of the Property Owner, its employees, agents, contractors or subcontractors. This paragraph is specifically intended to constitute a waiver of the indemnifying party's immunity under Title 51 RCW, to the extent necessary to provide the indemnified party with a complete indemnity for negligence of the indemnifying party's employees, to the extent of their negligence, and has been specifically negotiated by the parties.

  
PBWA Initials Here

  
District Initials Here

4. Construction Costs; Maintenance and Repair. The costs of design, engineering, permitting and construction of any Work undertaken by a Constructing Party under any construction easement granted by this Agreement, together with the costs of insurance required above, shall be borne solely by the Constructing Party undertaking such Work and its successors in interest. All such Work constructed by a Constructing Party under any construction easement granted by this Agreement, shall be regularly maintained and repaired, as and when necessary, by the Constructing Party and its successors in interest at their sole expense. No claim shall be brought by any



Constructing Party or their successors in interest against any other party to this Agreement or their successors in interest for any reimbursement of or contribution to such costs of construction, maintenance or repair. The obligation of the Constructing Party and its successors and assigns to regularly maintain and repair, as and when necessary, the Work constructed by the Constructing Party on the Property Owner's property, shall be specifically enforceable by the Property Owner and its successors in interest.

5. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the properties to the general public or for any public purposes whatsoever, it being the intention of the parties hereto that this Agreement shall be strictly limited to and for the purposes herein expressed. The right of the public or any person to make any use whatsoever of the easements hereby created, or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission, and subject to the control of the owner of the respective properties encumbered by the easements hereby created and their successors in interest.

6. Covenants Run With the Land. The covenants given and the easements granted pursuant to this Agreement shall be deemed to be covenants running with the land and shall be binding upon and benefit the heirs, successors in interest, assigns and devisees of the parties hereto.

7. Notices. All notices, demands, requests, consents and approvals which may, or are required to, be given by either party to the other hereunder shall be in writing and shall be deemed to have been duly given if personally delivered, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

PBWA at: c/o Peoples Bank  
Attn: Russ Lee  
3100 Woburn Street  
Bellingham, Washington 98226

District at: Mount Vernon School District  
124 E. Lawrence Street  
Mount Vernon, WA 98273  
Attention: Superintendent

or to such other addresses as either party or its successors in interest hereto may from time to time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery.

8. Miscellaneous.

8.1 Captions. The captions and paragraph headings contained in this Agreement are for convenience of reference only and in no way define, describe, extend or define the scope or intent of this Agreement, nor the intent of any of the provisions hereof.



8.2 Governing Law; Venue; Attorneys' Fees. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington. The parties agree that venue of any legal action brought to enforce this Agreement shall be in Skagit County, Washington. In the event of any litigation to enforce or interpret the rights, duties and obligations of the parties set forth herein, the prevailing party shall be entitled to an award of reasonable costs, expenses and attorneys' fees in connection therewith, at trial and on appeal.

8.3 Exhibits. All Exhibits attached hereto are hereby incorporated by reference.

8.4 Amendment. This Agreement may be amended or modified only by written instrument executed and acknowledged by the parties hereto or their successors or assigns and recorded in the real property records of Skagit County, Washington.

8.5 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed the original, but which together shall constitute one and the same agreement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE.]

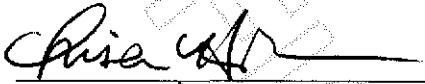




This Agreement has been executed on the day and year first above written.

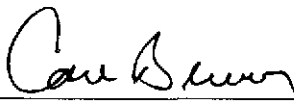
**GRANTOR/GRANTEE:**

**PBWA PROPERTIES, LLC,**  
a Washington limited liability company,  
by PEOPLES BANK, a Washington corporation,  
its Sole Member

By:   
Name: Lisa Holleman  
Its: Member, CEO

**GRANTEE/GRANTOR:**

**MOUNT VERNON SCHOOL DISTRICT NO. 320,**  
a Washington municipal corporation

By   
Carl Bruner, Ed.D.  
Superintendent



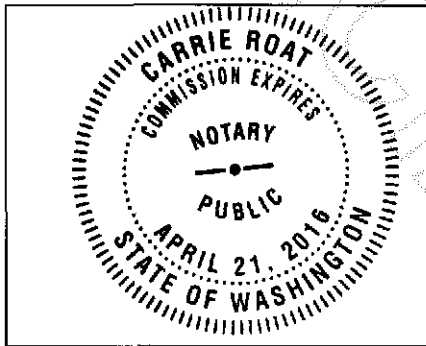
201310140059

STATE OF WASHINGTON )

COUNTY OF Whatcom ) ss.

I certify that I know or have satisfactory evidence that Lisa Holleman is the person who appeared before me, and said person acknowledged that ~~he~~ she signed this instrument, on oath stated that ~~he~~ she was authorized to execute the instrument and acknowledged it as the CFO/EMP of PEOPLES BANK, a Washington corporation, in its capacity as the sole member of PBWA PROPERTIES, LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: October 4 2013



(Use this space for notarial stamp/seal)

Carrie Roat  
Notary Public

Print Name Carrie Roat

My commission expires 4/21/16



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Skagit County Auditor

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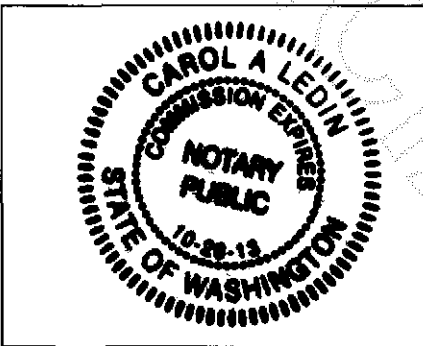
STATE OF WASHINGTON )

COUNTY OF Skagit )

) ss.

I certify that I know or have satisfactory evidence that CARL BRUNER is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the SUPERINTENDENT of the MOUNT VERNON SCHOOL DISTRICT NO. 320, a Washington municipal corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 10/07/2013



(Use this space for notarial stamp/seal)

Carol A Ledin  
Notary Public

Print Name CAROL A. LEDIN

My commission expires 10/28/2013



201310140059

Skagit County Auditor

\$87.00

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**EXHIBIT A-1**

**Legal Description of North Division Property**

A portion of parcel P27509 identified as follows:

THE WEST 622.39 FEET (AS MEASURED PERPENDICULAR TO AND PARALLEL WITH THE WEST LINE) OF THE EAST ½ OF THE SOUTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 22, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M.

EXCEPT THE SOUTH 1,180.00 FEET (AS MEASURED PERPENDICULAR TO AND PARALLEL WITH THE SOUTH LINE) THEREOF.

SUBJECT TO AND TOGETHER WITH EASEMENTS, RESERVATIONS, RESTRICTIONS, COVENANTS, LIENS, LEASES, COURT CAUSES AND OTHER INSTRUMENTS OF RECORD.

SITUATE IN THE CITY OF MOUNT VERNON, COUNTY OF SKAGIT, STATE OF WASHINGTON.

THE ABOVE-DESCRIBED PARCEL IS TRACT "Y" OF MOUNT VERNON SHORT PLAT NO. LU-13-047, AS APPROVED ON OCTOBER 10, 2013, AND RECORDED ON OCTOBER 14, 2013, UNDER AUDITOR'S FILE NO. 201310140058, COUNTY OF SKAGIT, WASHINGTON.

A-1



201310140059

**EXHIBIT A-2**

**Legal Description of First Division Property**

THE NORTH 700.00 FEET OF THE SOUTH 1180.00 FEET OF THE WEST 622.39 FEET (AS MEASURED PERPENDICULAR TO THE SOUTH AND WEST LINES THEREOF) OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 22 TOWNSHIP 34 NORTH RANGE 4 EAST W.M. THE NORTH 700.00 FEET OF THE SOUTH 1180.00 FEET OF THE WEST 622.39 FEET (AS MEASURED PERPENDICULAR TO THE SOUTH AND WEST LINES THEREOF) OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 22 TOWNSHIP 34 NORTH RANGE 4 EAST W.M.

Tax Parcel Identification Number P125967

A-2



201310140059

**EXHIBIT A-3**

**Legal Description of South Division Property**

A portion of Parcel P27512 identified as follows:

LOT 1 OF MOUNT VERNON SHORT PLAT NO. LU-13-047, AS APPROVED ON OCTOBER 10, 2013, AND RECORDED ON OCTOBER 14, 2013, UNDER AUDITOR'S FILE NO. 201310140058, COUNTY OF SKAGIT, WASHINGTON, BEING A PORTION OF THE SOUTH ½ OF THE NORTHEAST ¼ OF SECTION 22, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M.

A-3



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Skagit County Auditor  
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**EXHIBIT B**

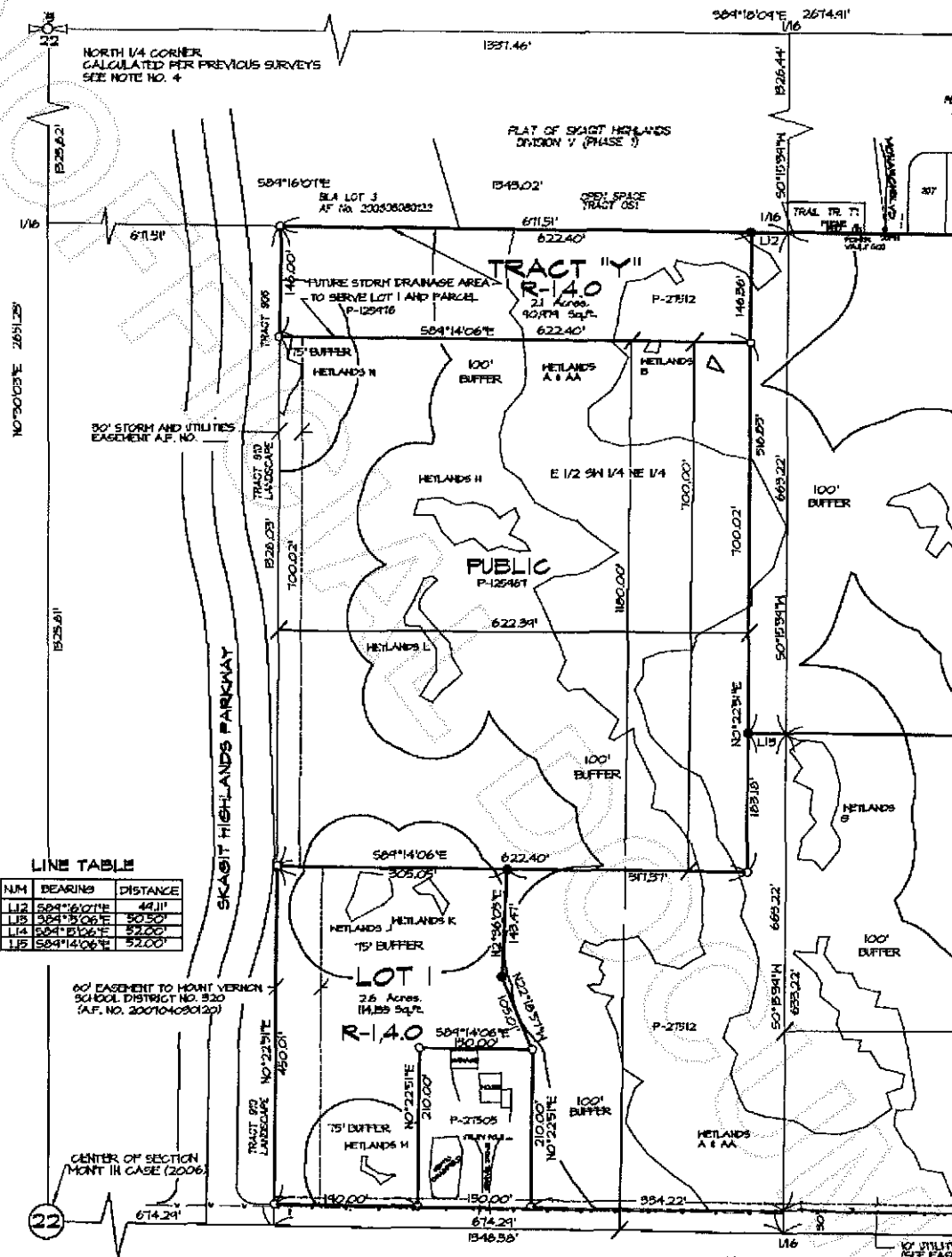
**Drawing Depicting Drainage Facility Easement Area  
On North Division Property for Benefit of First Division  
Property and South Division Property and Depicting Drainage Pipes Easement Area on First  
Division Property for Benefit of South Division Property**

**[See Attached]**

B-1



201310140059



D-2



201310140059