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John C. Cannon
325 Washington Ave S #83
Kent, WA 98032



2006 1177022 Clallam County

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Document Title(s)

Agreement for The Installation and Implementation
of Propane Gas Equipment Solana Cluster Lots

Reference Numbers(s) of related documents

Additional Reference #'s on page _____

Grantor(s) (Last, First and Middle initial)

Ferrell gas

Additional Grantors on page _____

Grantee(s) (Last, First and Middle initial)

Sequim Highlands LLC

Additional Grantees on page _____

Legal Description (abbreviated form: lot, block, plat or section, township, range, quarter/quarter)

Additional legal is on page _____

Assessor's Property Tax Parcel/Account Number

Additional parcel #'s on page _____

The Auditor/Record will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

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**AGREEMENT FOR THE INSTALLATION AND IMPLEMENTATION
OF PROPANE GAS EQUIPMENT
SOLANA CLUSTER LOTS**

This Agreement for the Installation and Implementation of Propane Gas Equipment (“Agreement”) is between FERRELLGAS, L.P., a Delaware limited partnership (“Ferrellgas”), and SEQUIM HIGHLANDS LLC, a Washington limited liability company (the “Developer”) on behalf of SOLANA CLUSTER LOTS HOMEOWNERS ASSOCIATION, a Washington corporation to be formed by the Developer (the “Association”).

RECITALS:

WHEREAS, the Developer is the owner and developer of the portion of the Solana project located in the City of Sequim, Clallam County, Washington, known as Solana Cluster Lots, being platted in phases on land described more particularly in Exhibit A attached hereto (“Solana Cluster Lots”), into individual lots (the “Lots”) containing single family residences (the “Units”); and

WHEREAS, the parties desire to enter into an agreement regarding the installation, operation, maintenance and repair of propane gas equipment and connecting lines serving Solana Cluster Lots per plans approved by the Developer (the “Equipment”) and the provision of propane gas and approved propane gas appliance service to the persons owning, leasing, renting, or otherwise residing in the Units (the “Residents”), subject to certain conditions and restrictions; and

WHEREAS, in order to facilitate the provision of propane gas to the Residents Ferrellgas is willing to install the Equipment for the Units subject to the conditions and requirements set out in this Agreement (the “Project”); and

WHEREAS, the Developer is willing to grant Ferrellgas an exclusive easement to provide propane gas to the Units within Solana Cluster Lots and is willing to convey to Ferrellgas all necessary easements and rights-of-way for the installation of the Equipment so long as such easements do not unreasonably interfere with any home site location on the Lots; and

WHEREAS, the Developer intends to make the availability of the propane gas service part of Solana’s promotion of the sale of the Lots;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that in consideration of the mutual promises, covenants, obligations and benefits set forth in this Agreement, Ferrellgas and the Developer agree as follows:

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ARTICLE I
Definitions

“Equipment” shall mean all portions of the system for delivery of LPG to the Units located outside the Unit, including but not limited to propane tanks, trunk lines, yard lines, individual service up to the point of connection to the Unit, and meters for each Unit.

“LPG” means liquid propane gas supplied by Ferrellgas.

“Service Area” means and refers to Solana Cluster Lots.

“Unit” means and refers to each single family residence constructed within the Service Area.

ARTICLE II
Installation and Ownership of Project

Section 1. The Project. The Project consists of the installation of the LPG distribution system and equipment to each of the Units in the Service Area.

Section 2. Ferrellgas Obligations. Ferrellgas shall be responsible for certain aspects of the installation, operation and maintenance of the Equipment as follows:

- (a) install community service LPG tanks under ground with anode bags;
- (b) install trunk lines, yard lines and individual service lines to the Units in accordance with plans approved by the Developer;
- (c) install an individual gas meter for each Unit;
- (d) hook up regulators and perform Ferrellgas System Check (inspection of inside appliances and lines);
- (e) complete a Ferrellgas Installation Review of Equipment (inspection of outside system)
- (f) conduct customer familiarization and safety training;
- (g) put the Equipment into service;
- (h) offer 365-day, 24-hour, 7-day a week emergency service;
- (i) offer budget bill service for credit-approved customers;
- (j) establish individual accounts for the Residents in accordance with Ferrellgas credit policies;
- (k) perform any and all necessary maintenance, repair and replacement of any part of the Equipment up to the meters (which means excluding piping and appliances inside Units) for an annual fee equal to \$30 per Unit for years one through five after the Equipment has been placed into service, \$35 for years six through ten and \$40 for years eleven through fifteen, which will be billed to the HOA annually and adjusted as Equipment to Units are placed into service;
- (l) provide Residents with a 10% discount over standard service rates for repair and service within their Unit;

- (m) upon request of the Association, send a representative to meeting of the board or members of the Association, provided the Association notifies Ferrellgas of the meeting dates, time, location;
- (n) conduct a formal, documented safety inspection on the Equipment at least every five years; and
- (o) offer the Equipment for purchase by the Association at its fair market value at the expiration the term of this Agreement.

Section 3. Developer Obligations. The Developer shall be responsible for doing the following or causing the following be done:

- (a) excavate holes for LPG tanks and line trenching in accordance to the Ferrellgas gas line distribution plan and backfill;
- (b) reviewing and approving the proposed tank site location;
- (c) showing the location of the individual underground tanks on a site plan, copies of which will be furnished to Ferrellgas and the Association;
- (d) installing at least two LPG appliances in each unit, consisting of two or more of the following: furnace, fireplace, hot water heater, dryer, cook top/oven.

Section 4. Ownership of Project. PARTIES ACKNOWLEDGE THAT OWNERSHIP OF THE EQUIPMENT INSTALLED BY FERRELLGAS WILL NOT BE VESTED IN THE DEVELOPER OR THE ASSOCIATION BUT WILL REMAIN THE PROPERTY OF FERRELLGAS; PROVIDED THAT THE EQUIPMENT SHALL BE MADE AVAILABLE FOR PURCHASE BY THE ASSOCIATION AT THE EXPIRATION OF THE TERM OF THIS AGREEMENT FOR ITS FAIR MARKET VALUE AT THE TIME OF SALE.

Section 5. Construction Standards. The Equipment shall be constructed in accordance with all applicable requirements imposed by federal, state or local government authorities, and shall be constructed in a good and workmanlike manner; and all equipment used in the construction will be new, free from material defects and fit for their intended purpose.

ARTICLE III Operation, Maintenance, and Participation

Section 1. Operation and Maintenance. Neither the Developer nor the Association shall have any right or obligation to install, operate or maintain the Equipment, including, but not limited to, the making of repairs or alterations, the installation of any propane gas service, or the turning of any propane gas equipment on or off at any Unit within the Service Area. Ferrellgas shall have the sole responsibility to install the Equipment and to operate, repair, replace and maintain the Equipment external to the Units necessary to provide propane gas service to Residents. The Developer, builder or owner of the Unit shall provide the lines within the Units for propane service; Ferrellgas shall have no obligation to provide lines within Units. Upon request of the Resident of a Unit, Ferrellgas shall perform repair services for the portion of the LPG system located within the Units, to be paid for by the Resident for the Unit at reasonable rates (not greater than a 10% discount over standard Ferrellgas rates).

Section 2. Participation. Each purchaser of a Lot agrees that the Unit on the Lot to be served exclusively by the Ferrellgas LPG system provided for in this Agreement. No third party retailer may install external tanks or supply propane in any other manner to any part of the Service Area. Each Unit shall be built with a minimum of two operating propane appliances (furnace, hot water heater, cook top, etc.). Each Resident is required to establish an individual account with Ferrellgas and shall be bound to its standard credit, collection and service policies.

Section 3. Low Use/Opt-Out Fee. The Developer shall, by contract or covenant, require each Resident who purchases a Lot from the Developer who elects not to have the Unit on the Lot served by the Ferrellgas LPG System pay an Opt-out fee of three hundred ninety-nine dollars (\$399) per Unit serviced or if service to the Unit is disconnected. This fee will be due and payable to Ferrellgas at the time of occupancy or subsequent disconnection of service and shall be guaranteed by the Association. Additionally, should any Unit's consumption during any 12 month period fall below one hundred (100) gallons, the Resident of the Unit shall be assessed a Low-Use fee of two hundred fifty dollars (\$250) billed once per annum. There shall be no connection, reconnection or service establishment fees to subsequent Unit owners where service has been discontinued.

ARTICLE IV Easements

Section 1. Conveyance of Easements and Rights-of-Way. The Developer agrees to transfer and convey to Ferrellgas, at no additional cost to or consideration from Ferrellgas other than any fees or charges imposed by federal, state or local government authorities, all gas easements and/or access to the public utility easements in the Service Area (except that Ferrellgas shall be responsible for acquiring and paying for any easements, rights or permits that must be acquired from the City of Sequim, Washington, or any other governmental entity) necessary for: (a) the installation, construction, maintenance, repair, replacement and operation of the Equipment, and (b) access by Ferrellgas into the Service Area in order to install, maintain, replace, repair, service and operate the Equipment (the "Gas Easement(s)"). The Developer shall grant the Gas Easement(s) by separate easement agreement. The Gas Easement(s) shall be conveyed to Ferrellgas on or before the tenth (10th) business day after request by Ferrellgas.

Section 2. Recording of Easement Agreement(s). The Developer shall record the Gas Easement(s) in the Official Records of Clallam County, Washington, promptly after execution by the parties. Ferrellgas' obligations under this Agreement are contingent upon the Developer's appropriately granting the Gas Easement(s) to Ferrellgas and the Developer's recording the Gas Easement (s) and providing notice of such recording with copies of recorded instruments (or recording information therefore) to Ferrellgas.

Section 3. Covenants. The Developer shall record a restrictive covenant or amend a previously recorded restrictive covenant applicable to and enforceable against all Units in the Service Area, in a form mutually acceptable to Ferrellgas and the Developer (the "Restrictive Covenants"), in order to impose the following requirements:

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(a) each Unit shall be adequately plumbed for use of propane gas when constructed and yard line connections must be installed between the Equipment and the Unit to provide delivery of propane service;

(b) propane gas plumbing in each Unit will include, but not be limited to, plumbing for water heaters, clothes dryers, central heating and/or furnaces, stoves, ranges, and fireplaces (if any in the Unit) (collectively, the "Gas Appliances"), and any heated pools to be constructed within an individual Unit must be constructed with and use gas plumbing for the heating of the pool;

(c) gas plumbing shall be installed to the specifications required by Clallam County, Washington, or its successor and all other applicable laws and regulations;

(d) all water heaters, central heating and/or furnaces, installed in the Unit (collectively, the "Required Gas Appliances") and to the extent commercially reasonable, all clothes dryers, stoves, ovens and ranges, shall be propane gas appliances, and approval by the architectural control committee or other construction plan authority established in restrictive covenants recorded for Solana Cluster Lots of the plans and specifications for and construction of any Unit require gas plumbing for all Gas Appliances and installation of the Required Gas Appliances shall be required as a condition precedent to approval of plans and specifications and construction of Units;

(e) no above ground bulk storage LPG tanks may be stored, maintained or used within the Service Area;

(f) the restrictive covenant shall expressly provide Ferrellgas and its assign(s) with the authority to prosecute proceedings at law or in equity against any person or entity violating or attempting to violate any of the provisions described in this Section, including seeking damages (including lost profits) and/or injunctive relief.

At or before the closing of the purchase of each Lot, the Developer shall cause the purchaser(s) of the Lot to receive and to acknowledge receipt in writing of (a) the Restrictive Covenants and (b) a copy of this Agreement. The Developer will provide Ferrellgas with a copy of a signed acknowledgement for each Lot purchased.

Section 4. Joinder by Other Owners. In the event that the Developer has conveyed title to any property or Lots within the Service Area to any other party prior to execution and recordation of the Gas Easement(s) and the Restrictive Covenant on Lots owned by Residents served by the System, then the Developer shall deliver to Ferrellgas a joinder and conveyance by the then current title holder of such conveyed property and Lots joining in and conveying to Ferrellgas the Gas Easement(s) and Restrictive Covenants on Lots owned by Residents who elect to be served by Ferrellgas with respect to the Lots owned.

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ARTICLE V
Representations and Warranties

Section 1. Representations and Warranties by Solana. The Developer represents, warrants and covenants to Ferrellgas that:

(a) The Developer has sufficient authority and power to impose and enforce the restrictive covenants referenced in Article IV, Section 3 of this Agreement;

(b) The Developer is the sole owner of the property within the Service Area, being the Lots and common areas of Solana Cluster Lots, and owns all future phases of Solana Cluster Lots and all necessary company approvals have been obtained for the Developer to enter into this Agreement;

(c) The execution and delivery of this Agreement and the transactions contemplated hereby have been duly authorized by the Developer;

(d) This Agreement, the representations and covenants contained herein, and the consummation of the transactions contemplated hereby do not violate or constitute a breach of any contract or other agreement to which the Developer is a party.

(e) To the Developer's current knowledge, no liens, leases, options, purchase rights, restrictions, easements and other encumbrances, other than those set out in the Developer's title insurance policy or otherwise disclosed by the Developer to Ferrellgas, applicable to the Developer or Solana Cluster Lots which prohibit or would or could unreasonably restrict or interfere with Ferrellgas' rights under this Agreement and the Developer shall not sell, transfer, convey, or grant any other lien, lease, restriction, easement or encumbrance applicable to the Gas Easement(s) without Ferrellgas' prior written consent; provided, however, that no such consent shall be required if such lien, lease, restriction, easement or encumbrance expressly excepts all of the applicable Gas Easement(s) under this Agreement such that the Gas Easement(s) under this Agreement would survive any foreclosure of such lien or encumbrance and Ferrellgas' rights under the Gas Easement(s) would not be unreasonably detrimentally affected. Further, the Developer shall exert commercially reasonable efforts to obtain all approvals and consents required under any of the permitted encumbrances for the transactions contemplated by this Agreement and to obtain an agreement from each lien and security interest holder, in form and content reasonably acceptable to Ferrellgas, subordinating any such lien, security interest and purchase right to Ferrellgas' rights under this Agreement. And, to the extent that any lien, security interest or other encumbrance with the right of foreclosure or conveyance (excepting governmental tax and assessment liens for current and future taxes and assessments not yet due and payable) is equal or higher in priority to the Gas Easement(s) or the Restrictive Covenants, the Developer shall exert commercially reasonable efforts to deliver to Ferrellgas a subordination agreement from the holder of each such lien, security interest and encumbrance subordinating all such interests to the Gas Easement(s) and Restrictive Covenants, each in form and content reasonably acceptable to Ferrellgas.

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(f) The Developer will perform and observe all of its obligations under the liens, leases, restrictions and encumbrances applicable to the Developer or the property within the Service Area ("Existing Encumbrances") and shall defend, indemnify and hold Ferrellgas harmless from any claims, damages, costs and expenses arising from the Existing Encumbrances as the result of the acts or omissions of the Developer or its affiliates.

Section 2. Representations and Warranties by Ferrellgas. Ferrellgas represents, warrants, and covenants that Ferrellgas will perform and observe all of its obligations under this Agreement and shall defend, indemnify and hold the Developer, the Association, the owners of the Lots and the Residents of the Units harmless from any claims, damages, costs and expenses arising as the result of the negligent acts or omissions of Ferrellgas or its affiliates.

Section 3. Product Pricing. Ferrellgas makes no representation, warranty or guarantee as to the price of propane, the gross system sales or future value of the distribution system; provided that Ferrellgas agrees that the price of LPG to the Residents shall not exceed its standard rates for similarly situated customers in the same geographic area as Solana Cluster Lots.

Section 4. Survival. The representations, warranties and covenants contained in this Article V shall survive the execution and delivery of this Agreement and shall not be merged therein.

ARTICLE VI Default and Remedies

Section 1. Events of Default by the Developer or the Association. Events of default include, but are not limited to:

(a) The Developer or the Association or its employees, agents or residents performs maintenance, repairs or alterations to the Equipment or authorizes someone other than Ferrellgas or Ferrellgas' designated contractor to take such action;

(b) The Developer or the Association or its employees, agents or residents delivers LPG to the Equipment or authorizes someone other than Ferrellgas or Ferrellgas' designated supplier to take such action;

(c) The Developer or the Association or its employees, agents or residents restricts or prevents access by Ferrellgas or its designated supplier to the Equipment;

(d) The Developer or the Association or its employees, agents or residents authorizes the Units to be serviced by natural gas, propane gas or other liquid petroleum gas by anyone other than by, through or under Ferrellgas; or

(e) The Developer or the Association is in material breach of or fails to timely perform its obligations under any other provision in this Agreement.

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Section 2. Ferrellgas Remedies. In the event of default by the Developer or the Association, Ferrellgas shall deliver written notice to the Developer or the Association, as the case may be, informing of such default and demanding that such default be cured within thirty (30) days from the date of receipt of the default notice. If the Developer or the Association is unable to cure the default within thirty (30) days because of circumstances beyond its control, the said thirty 30-day period shall be extended for a reasonable time to allow the Developer or the Association the opportunity to cure the default, as long as the Developer or the Association is acting diligently in order to cure the default. Upon the failure of the Developer or the Association to cure the default, Ferrellgas shall have all available remedies at law and in equity.

Section 3. Events of Default by Ferrellgas. Events of default by Ferrellgas include, but are not limited to, Ferrellgas' being in material breach of any provision of this Agreement or failing to timely perform any of its obligations under this Agreement.

Section 4. Developer or Association Remedies. In the event of default by Ferrellgas, the Developer or the Association shall deliver written notice to Ferrellgas informing Ferrellgas of such default and demanding that such default be cured within thirty (30) days from the date the default notice is received by Ferrellgas (provided, however, that, if notice of a monetary default has been given under this provision on two or more earlier occasions in the preceding twelve-month period, no notice of monetary default will be required). In the event of monetary default, Ferrellgas shall be obligated to pay interest on any amount past due for over 30 days at an interest rate of 10% per annum. In the event of any other event of default, if Ferrellgas is unable to cure within thirty (30) days because of circumstances beyond its control, the said thirty 30-day period shall be extended for a reasonable time to allow Ferrellgas the opportunity to cure the default, as long as Ferrellgas is acting diligently in order to cure the default. Upon the failure of Ferrellgas to cure the default, the Developer or the Association shall have all available remedies at law and in equity.

ARTICLE VII
Regulation

If at any time during the term of this Agreement the price of propane delivered to the Residents becomes subject to the jurisdiction or control of any governmental regulatory authority or any other governmental authority with jurisdiction finds that any provision in this Agreement is void, illegal or unenforceable, the parties agree to renegotiate in good faith the fee and/or the void, illegal or unenforceable provision in issue in order to effect the general intent of the parties under the Agreement.

ARTICLE VIII
Miscellaneous

Section 1. Term. This Agreement shall become effective upon execution by the Parties and shall remain in force from the date of execution for a term fifteen (15) years after the Equipment has been first placed in service.

Section 2. Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, this invalidity, illegality or unenforceability will not affect any other provision, and this Agreement will be construed as if the invalid, illegal or unenforceable provision had never been contained herein.

Section 3. Sole Agreement; Modification. This Agreement represents the entire agreement between the parties and supersedes all prior oral or written agreements. This Agreement may be modified or varied only by a written instrument executed by both parties.

Section 4. Binding Effect. This Agreement may not be assigned in whole or in part by Ferrellgas without the prior written consent of the Developer or the Association, however, neither the Developer or the Association shall unreasonably withhold consent to any assignment, security interest or collateral assignment. The rights and obligations of the Declarant under this Agreement are intended to run with the land and shall be binding upon the Association and the owners and Residents of the Lots within the Service Area.

Section 5. Notice. Any notice, communication, request, reply or advice (severally and collectively referred to as "Notice") given under this Agreement must be in writing. Notice may be given or served: (i) by depositing it in the United States Mail, postage paid, certified with return receipt requested, and addressed to the party to be notified; or (ii) by personally delivering it to the party to be notified. Notice deposited in the mail will be effective three (3) days after such deposit. Notice given in any other manner will be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the Parties will be, until changed as provided below, as follows:

FERRELLGAS: FERRELLGAS, L.P.
646 S 3rd Ave
Sequim, WA 98382

with a copy to: Ferrellgas, L.P.
Attn: Legal Department
One Liberty Plaza
Liberty, MO 64068

Solana : Solana Homes LLC
135 Solana Parkway
Sequim, WA 98382

The Parties may change their respective addresses for purposes of notice by giving at least five (5) days written notice of the new address to the other party. If any date or any period provided in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period will be extended to the next business day.

Section 6. Captions. The captions used in this Agreement are for convenience only

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and do not construe or limit the meaning of the language contained in this Agreement.

Section 7. Applicable Law. This Agreement will be construed and interpreted under the laws of the State of Washington.

Section 9. Force Majeure. If either Party is rendered unable, in whole or in part, by force majeure to carry out any of its obligations under this Agreement, then those obligations, to the extent affected by force majeure and to the extent that due diligence is being used to remedy the inability and to resume performance at the earliest practicable time, will be suspended during the continuance of the inability, but for no longer. The term "force majeure" includes, without limitation, acts of God; strikes, lockouts, or other industrial disturbances; acts of the public enemy; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; civil disturbances; explosions; partial or total failure of gas supply, which are not within the control of the affected Party, and which the affected Party could not have avoided by the exercise of due diligence and care. The settlement of strikes and lockouts will be entirely within the discretion of the affected Party, and the requirement that any force majeure be remedied with all reasonable dispatch does not require the settlement of strikes and lockouts by acceding to the demand of the opposing party or parties when the settlement is unfavorable, in the judgment of the affected Party.

Section 10. Waiver. Any failure by a party to insist, or any election by a party not to insist, upon strict performance by the other party of any of the terms, provisions, or conditions of this Agreement shall not be deemed to be a waiver thereof, or of any other term, provision, or condition, and such party shall have the right at any time or times to insist upon strict performance of any and all of the terms, provisions, and conditions of this Agreement.

Section 11. Attorneys' Fees. Any party to this Agreement who is the prevailing party in any legal proceeding against any other party brought under or in connection with this Agreement or the subject matter hereof, shall be additionally entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of equal dignity, on this 6th day of February, 2006.

FERRELLGAS L.P., a Delaware limited partnership

By: _____

Eric Ellis, General Manager

SEQUIM HIGHLANDS LLC,, Washington limited liability company

By: _____

Its Managing Member

STATE OF WASHINGTON)
) ss.
COUNTY OF Kitsap)

I certify that I know or have satisfactory evidence that Eric Ellis is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the General Manager of FERRELLGAS, LLC, a Delaware limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 6th day of February, 2006.



Charlotte J. Anderson
(Signature of Notary)
Charlotte J. Anderson
(Legibly Print or Stamp Name of Notary)
Notary public in and for the State of Washington,
residing at Port Orchard
My appointment expires May 7, 2008

STATE OF WASHINGTON)
) ss.
COUNTY OF Clallam)

I certify that I know or have satisfactory evidence that John C. Cannon is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the Managing Member of SEQUIM HIGHLANDS 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 this 6th day of February, 2006.



Paulette Waldron
(Signature of Notary)
Paulette Waldron
(Legibly Print or Stamp Name of Notary)
Notary public in and for the State of Washington,
residing at Port Angeles
My appointment expires 5-2-09

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EXHIBIT A

Property Description

Solana Cluster Lots Phases 1 and 2 per the plat of Solana Estate Lots Phase 1, recorded in Volume ____ of Plats, pages _____, under Recording No. _____, records of Clallam County, Washington.

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