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Filed for Record at Request of:
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SKAGIT COUNTY AUDITOR

94 FEB -8 P3:31

SKAGIT COUNTY WASHINGTON
Real Estate Excise Tax
PAID

FEB 8 1994

Amount Paid \$
By: Skagit County Treasurer Deputy

9402080081

ROAD EASEMENT AND MAINTENANCE AGREEMENT

This Agreement is made this 23 day of November, 1993, by and among WILLIAM D. FRANS, JR. and JANICE J. FRANS, husband and wife ("Frans"), DAN PECK and BECKY PECK, husband and wife ("Peck") and LYLE LESLIE ZAHN, III, a single man ("Zahn").

R E C I T A L S

A. Frans is the owner of Lots 1, 2, 3 and 4 of Short Plat No. 93-053 recorded _____, in Volume _____ of Short Plats at page _____, records of Skagit County, Washington (the "Short Plat"). The real estate covered by the Short Plat is legally described on Exhibit "A," attached hereto and incorporated herein by this reference.

B. Peck is the owner of a parcel of land adjacent to Lot 1 of the Short Plat and legally described on Exhibit "B," attached hereto and incorporated herein by this reference (hereinafter referred to as "Parcel A").

C. Zahn is the owner of a parcel of real estate that abuts Lots 1, 2, and 3 of the Short Plat. Zahn's parcel is legally described on Exhibit "C," attached hereto and incorporated herein by this reference (hereinafter referred to as "Parcel B").

D. Frans and Zahn's predecessor had previously agreed to an access and easement agreement for the benefit of their respective parcels. Frans and Zahn have agreed that the terms of this agreement shall control to the extent there are any conflicts between the terms of this agreement and the prior easement agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Conveyance of Easement.** Zahn and Frans hereby convey and quit claim to each other a 60-foot wide non-exclusive, perpetual easement for ingress, egress, and utilities over, under, and across the easement path described on Exhibit "D," attached hereto and incorporated herein by this reference, and as shown on the face of the Short Plat, subject to the covenants, terms, and conditions of this agreement.

2. Option for Parcel A. Peck, the owner of Parcel A, is not included as a Grantor or Grantee of the easement created in paragraph (1) nor treated as an owner benefitted by the easement for purposes of the maintenance agreement. The parties hereto agree that Peck shall have the option, at no cost or expense, to become a Grantor and Grantee of the easement described herein and a party to the maintenance agreement at any time should he so desire, by recording a copy of the notice, attached as Exhibit "E," with the Auditor of Skagit County. In the event Parcel A has been subdivided prior to the time the option is exercised, all or any of the lot owners may exercise separately, provided that they will each be required to pay a share of the maintenance costs as provided herein. Peck (or his successors) shall not be entitled to use the easement, nor shall Peck (or his successors) be responsible for paying any portion of the costs associated with the easement, unless and until he exercises the option described herein.

3. Division of Maintenance and Construction Costs. Frans shall be responsible for constructing a gravel road right-of-way over the easement path. Once constructed, the annual maintenance, repair, replacement and improvement costs for the roadway shall be paid by owners of improved lots (lots containing a structure) based upon the following formula:

Owner's share = annual cost x

The distance in feet from Bay View Road to the centerline of owner's private driveway where it intersects easement path.

The sum of all distances from Bay View Road to the private driveways of all owners of improved lots.

For purposes of the formula described above, the distance applicable to Lot 1 shall be deemed to be 553 feet whether or not improved. The distance applicable to Lot 2 shall be 263 feet until such time as Lot 2 of the Short Plat is improved. Thereafter, the distance applicable to Lot 2 shall be 816 feet.

4. Installation and Maintenance of Utilities. Each owner of a lot or parcel benefitted by this easement shall pay for their own utility installation and utility maintenance costs. To the extent utilities are installed that benefit more than one lot or parcel, then the owners shall share in the cost (with respect to that portion of said utility in the easement path), based upon the formula described herein. The parties hereto agree that utility installation shall be underground to the extent economically feasible, considering the terrain and soil conditions.

5. Decisions Concerning Maintenance. Any decision to take action to maintain or improve the road must be approved by a majority of the owners of improved lots. Without such approval, the cost of said improvement shall be borne by the individual owner

making the improvement. The parties hereto covenant and agree to pay (or reimburse) their proportionate share of road and utility maintenance and installation costs pursuant to this agreement. If any maintenance expense is not paid (or reimbursed) by a property owner as required herein, then said amount (together with interest computed at One Percent (1%) per month, or the highest rate allowed by law, whichever is less), shall constitute a lien against that property owner's property in favor of those who paid said obligation. Said lien may be foreclosed as a mechanic's lien and the owners shall be entitled to an award of reasonable attorneys' fees and costs.

6. **Good Faith.** The parties agree to exercise their best efforts in good faith to resolve any disputes arising out of the easement or this agreement. Should the parties be unable to unwillingly to amicably resolve any dispute concerning the easement, including the interpretation of this document, or their proportionate share of expenses relating to installation and/or maintenance of the roadway or utilities, then they agree to submit to binding arbitration under the Rules of Mandatory Arbitration for Skagit County, Washington, regardless of the nature of the dispute or the amount in controversy, and the parties agree that the result reached in such arbitration shall be binding and not appealable. The prevailing party or parties shall be entitled to an award of reasonable attorneys' fees and costs of suit.

7. **Successor/Assigns.** The benefits, burdens, and covenants created by this document and the easement herein shall be deemed to run with the land and bind the respective parcels covered by said easement and benefit Parcel A, Parcel B, and Lots 1, 2, 3, and 4 of the Short Plat, the parties hereto and their respective heirs, successors, and assigns, and all persons possessing the property by, through, or under, the parties hereto or their respective heirs, successors, and assigns.

8. **Subdivision.** Should any of the lots created in the Short Plat, or Parcels A or B, be subdivided, then the owners of the newly created parcels or lots shall be obligated to contribute for maintenance and other costs provided herein based upon the formula described above, but only if said owners have a private drive or access from the easement created herein.

9. **Entire Agreement.** The terms of this agreement shall supersede any and all other easement agreements between the parties hereto or their predecessors, to the extent there are any conflicting provisions. There are no verbal or other agreements which modify or affect this agreement. This agreement is an integrated, complete document and constitutes the entire agreement among the parties. This agreement shall be construed according to the laws of the State of Washington.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

William D. Frans Jr.
William D. Frans, Jr.

Janice J. Frans
Janice J. Frans

Dan Peck
Dan Peck

Becky Peck
Becky Peck

Lyle Leslie Zahn III
Lyle Leslie Zahn III

STATE OF WASHINGTON)
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that WILLIAM D. FRANS, JR. and JANICE J. FRANS, husband and wife, signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: December 28, 1993.

Marlene G. Schmitt
NOTARY PUBLIC
My Appointment Expires 2/19/96

STATE OF WASHINGTON)
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that DAN PECK and BECKY PECK, husband and wife, signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: November 22, 1993.

Marlene G. Schmitt
NOTARY PUBLIC
My Appointment Expires 2/19/96

STATE OF WASHINGTON)
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that Lyle Leslie Zahn, III, signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: 2-5, 1993 ⁴ BQ.

Beverly I Johnston
NOTARY PUBLIC
My Appointment Expires 6-15-96

EXHIBIT "E"

NOTICE OF EXERCISE OF OPTION

_____, the undersigned owners of the real property legally described on Exhibit "A," attached hereto and by this reference incorporated herein, being a portion of Parcel A as described in that certain Road Easement and Maintenance Agreement dated _____, 1993, and recorded _____, 1993, under Skagit County Auditor's File No. _____, hereby exercises his option to use the easement described in the above-referenced Road Easement and Maintenance Agreement, and agrees to be bound by all of the terms and conditions provided therein, including the obligation to pay a portion of repair, replacement and/or maintenance charges as described therein.

Upon mailing to all record owners of property served by the easement described in the Road Easement and Maintenance Agreement, and upon recording with the Skagit County Auditor, exercise of this option shall be automatically effective.

Schedule "A-1"

T-71509

DESCRIPTION:

That portion of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 32, Township 35 North, Range 3 East, W.M., described as follows:

Beginning at the Southeast corner of said Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$;
thence West 297 feet;
thence North 412.5 feet;
thence West 379.5 feet;
thence North 648 feet;
thence East 330 feet;
thence North to the North line of said Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$;
thence East to the Northeast corner thereof;
thence South to the point of beginning, EXCEPT the as built and existing County road running along the South line thereof commonly known as Bayview Road; EXCEPT that portion thereof lying South and West of a fence line existing on February 15, 1983 and described in that certain "Agreement Establishing Fence Line As Boundary", dated November 22, 1988 and recorded December 29, 1988, under Auditor's File No. 8812290011, AND EXCEPT that portion lying within the boundaries of the following described tract:

That portion of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 32, Township 35 North, Range 3 East, W.M., being more particularly described as follows:

Beginning at the South $\frac{1}{4}$ corner of said Section 32;
thence North $0^{\circ}03'51''$ East along the North to South centerline of said Section 32, a distance of 30.00 feet to the North line of that County road known as the Bayview Road and to the true point of beginning;
thence North $89^{\circ}48'56''$ West parallel with the South line of the Southwest $\frac{1}{4}$ of said Section 32 and along the North line of said Bayview Road, a distance of 267.00 feet;
thence North $0^{\circ}03'51''$ East parallel with the North to South centerline of said Section 32, a distance of 815.73 feet;
thence South $89^{\circ}48'56''$ East parallel with the South line of the Southwest $\frac{1}{4}$ of said Section 32, a distance of 267.00 feet, more or less, to the East line of the North to South centerline of said Section 32 and to a point bearing North $0^{\circ}03'51''$ East from the true point of beginning;
thence South $0^{\circ}03'51''$ West along the said North to South centerline, a distance of 815.73 feet, more or less, to the true point of beginning.

Situate in the County of Skagit, State of Washington.

EXHIBIT "B"

Legal Description -- PECK

That portion of the South 1/2 of the Southwest 1/4 of Section 32, Township 35 North, Range 3 East W.M., described as follows:

Beginning at the Southeast corner of the Southwest 1/4 of the Southwest 1/4 of said Section; thence West 82.5 feet; thence North 30 degrees West 482.46 feet; thence East 1366.2 feet thence South 417.78 feet; thence West 1042.8 feet, more or less, to the point of beginning; EXCEPT that portion thereof lying Southerly of the Northerly right of way line of the Bayview County Road; ALSO EXCEPT that portion lying within the right of way of the as-built and existing Bayview-Edison Road.

EXHIBIT "C"

Legal Description -- ZAEN

That portion of the Southeast 1/4 of the Northeast 1/4 and of Government Lot 6, Section 36, Township 34 North, Range 4 East W.M. described as follows:

Commencing at the Southeast corner of the Northeast 1/4 of said Section 36; thence South $89^{\circ}25'43''$ West along the South line of said Northeast 1/4, a distance of 1208.46 feet to a point hereinafter designated Point "A"; thence continue South $89^{\circ}25'43''$ West, 514.21 feet, more or less, to the Easterly line of State Highway No. 1-A; thence Northerly along said Easterly line 84 feet to the true point of beginning; thence continue Northerly along said Easterly line 100 feet; thence North $74^{\circ}16'52''$ East to a point which lies North $17^{\circ}05'32''$ West from said Point "A"; thence South $17^{\circ}05'32''$ East to a point which lies North $74^{\circ}16'52''$ East from the true point of beginning; thence South $74^{\circ}16'52''$ West to the true point of beginning.



INC. 806 Melcall St., Sedro-Woolley, WA 98284, (206) 855-2121 • FAX (206) 855-1658

**LEGAL DESCRIPTION FOR WILLIAM FRANS
OF
ROAD AND CUL-DE-SAC EASEMENT**

October 5, 1993

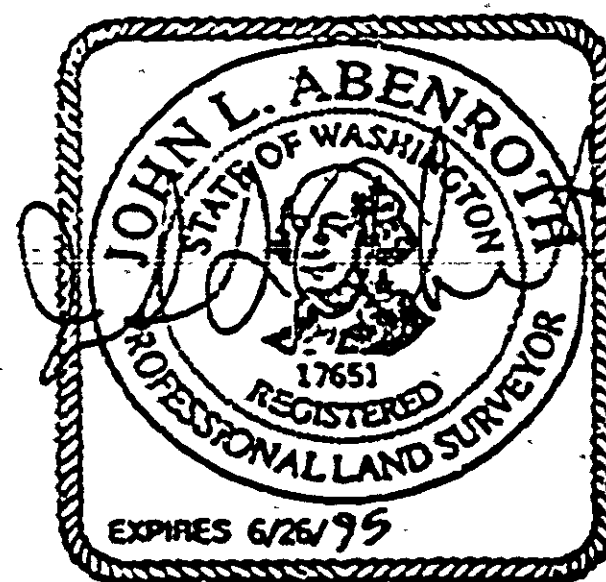
A sixty (60) foot wide easement for ingress, egress and utilities over, under, and across a portion of the southeast quarter of the southwest quarter of the Section 32, Township 35 N., Range 3 E., W.M., the centerline of which is described as follows:

Commencing at the southeast corner of the southwest quarter of said Section 32; thence N 00°03'51"E along the north-south centerline of said Section 32, a distance of 30.00 feet to the north line of the Bayview Road; thence N 89°48'56"W along the north right of way line of Bayview Road, a distance of 267.00 feet to the southwest corner of that certain tract of land described in deed from William and Janice Frans to Randall and Margaret Hawkinson dated February 16, 1982 and filed in AF# 8203030040 and the initial point of this centerline description; thence N 00°03'51"E, a distance of 815.73 feet to the northwest corner of said Hawkinson tract and the terminus of this centerline description;

TOGETHER WITH a 45' radius cul-de-sac easement for ingress, egress and utilities in the southeast quarter of the southwest quarter of Section 32, Township 35 N., Range 3 E., W.M., the center point of which is described as follows:

Commencing at the northwest corner of the hereinabove described Hawkinson Tract; thence S 00°03'51"W along the west line thereof, a distance of 44.96 feet; thence N 89°56'09"W, a distance of 15.00 feet to the center point of said cul-de-sac.

Situate in Skagit County, Washington.



10/6/93

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