



200212020311

Skagit County Auditor

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After Recording Return to:

John Peth & Sons, Inc.
13397 D'Arcy Rd.
Bow, WA 98232

re Booster Pump Station on PARCEL 7

**DECLARATION OF EASEMENT FOR BOOSTER PUMPS,
WATER LINES AND UTILITIES**

Document Summary

Grantor (Burdened Properties) (Portion of Parcel 7, Parcel 8): John Peth & Sons, Inc.

Grantee(s) (Benefitted Property): (as to **Portion of PARCEL 7**): John Peth & Sons, Inc.
(as to **PARCEL 8**): John Peth & Sons, Inc.
(as to **PARCEL 9**): Jacob N. Searle
(as to **PARCEL 10**): Jacob N. Searle

Legal Description (abbr.)(Burdened Property): Portion of PARCEL 7: Prtn of SW 1/4, S18,
T36N, R4E, W.M., P115716
Skagit Co., WA

(Benefitted Property): Portion of PARCEL 7: Prtn of SW 1/4, S18,
T36N, R4E, W.M.,
Skagit Co., WA

PARCEL 8: Prtns of Govt Lots 3 and 4,
S18, T36N, R4E, W.M.,
Skagit Co., WA

PARCEL 9: NE 1/4 of SE 1/4, and Prtn of
SE 1/4 of NE 1/4, all of S13,
T36N, R3E, W.M.,
Skagit Co., WA

PARCEL 10: SE 1/4 of NE 1/4, and Prtn of
NE 1/4 of NE 1/4, all of S13,
T36N, R3E, W.M., Skagit Co.,
WA

SKAGIT COUNTY WASHINGTON
Real Estate Excise Tax
PAID

DEC 02 2002

Amount Paid \$0
Skagit County Treasurer
By: Deputy

Assessor's Tax Parcel Number: (Burdened Properties): **Portion of PARCEL 7** - P-115716,
P-49372
PARCEL 8 - P-49370

(Benefitted Property): **Portion of PARCEL 7** - P-115716,
P-49372
PARCEL 8 - P-49370
PARCEL 9 - P-47859, P-119150
PARCEL 10: P-47842

Reference Numbers of Document Affected: None

THIS EASEMENT AGREEMENT (the "**Easement**") is made as of this ____ day of November, 2002, by John Peth & Sons, Inc. ("**Grantor**"); and John Peth & Sons, Inc., a Washington corporation; and Jacob N. Searle, a single person as his separate estate (together "**Grantees**"). The parties shall sometimes be referred to herein as "**owner**"/"**owners**" or "**party**"/"**parties**".

RECITALS

A. Grantor is the sole owner of certain real property located in Skagit County, Washington, legally described in **Exhibit "A"**, attached hereto (the "**Burdened Property**").

B. Grantees are the sole owners of real properties located adjacent to and/or near the Burdened Property, legally described in **Exhibit "B"**, attached hereto (the "**Benefitted Property**").

C. Grantor wishes to create an easement over, under, across, through and upon a portion of the Burdened Property for the benefit of the Benefitted Property, for the location, installation, repair, maintenance and operation of two (2) well-water booster pumps (the "**Booster Pumps**"), and all related electrical and water lines, fixtures, machinery, improvements and equipment (the "**Equipment**"), and water lines and other utilities. The Booster Pumps and Equipment shall be together referred to herein as the "**Improvements**".

D. The parties also acknowledge that, eventually, the Grantees may desire to form an association for the ownership and/or operational control of the Improvements.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

DECLARATION OF BOOSTER/UTILITY EASEMENT - 2



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1. **Grant; Easement Area.** Grantor hereby grants and conveys a permanent, non-exclusive easement over, under, across, through and upon that portion of the Burdened Property which is legally described in **Exhibit "C"**, attached hereto (the "**Easement Area**") for the benefit of the Benefitted Property and for any future association of the owners of the Benefitted Property.

If, in the future, membership in any well association should change to include owners of properties that are not included herein as "benefitted properties" for that particular well, then Grantors hereby agree to further modify the Easement Grant to add said new properties and owners as benefitted properties and grantees.

Further, in the future, membership in any well association should change to not include properties or their owners that are identified herein as "benefitted properties" or grantees for that particular well, then said no-longer-included grantees agree to terminate their rights, herein both as to themselves and as to their property.

2. **Use of Easement Area.** The Easement Area shall be used for the location, installation, repair, maintenance and operation of the Booster Pumps, the Equipment, and water lines and other utilities and for ingress and egress for all uses incidental thereto, whether by the Grantees or an association formed by them for such purpose.

3. **Construction and Installation of Improvements.** Grantor shall be solely responsible for the costs of constructing and installing all Improvements, including the Booster Pumps and the Equipment. Ownership of the Improvements has been or shall be transferred and conveyed by the Grantor when Grantor conveys the respective properties benefitted by the Improvements. For and in consideration already received, as well as in consideration of the signing of this Easement, the Grantor confirms its transfer, and does hereby transfer, convey and quit claim all Improvements to the current and future owners of the Benefitted Properties, to run with the land as to the Burdened Property, and for the Grantees to own and to run with the land as to the Benefitted Properties until such time as the Grantees form an association for the purpose of owning and/or operating said Improvements.

4. **Repair and Maintenance of Improvements.** Effective upon the signing by all parties of this Easement, the Grantees, or an association formed by them for such purpose, shall be solely responsible, each for its/their proportionate share, of the costs of repairing, maintaining and operating the Booster Pumps and the Equipment.

The Booster Pumps and the Equipment shall be repaired, maintained and operated by or under the supervising direction of the following individuals ("**Supervisor**"):

- a. Supervisor for the Booster Pump and related Equipment
benefitting Parcels 7 and 8: Daniel Peth
- b. Supervisor for the Booster Pump related Equipment

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benefitting Parcels 9 and 10: Jacob N. Searle

or by such other Supervisor as the respective Benefitted Property owners may from time to time elect by "Majority" vote. ("**Majority**" to be determined by a more than 50% written vote by the owners of the Benefitted Properties for that respective Well and its Improvements only, with one (1) vote allotted for each complete 1,000 square feet owned).

Any benefitted owner believing it is necessary for repair or maintenance or operational work ("**Work**") to be performed on its respective Booster Pump and/or respective Equipment shall notify the other benefitted Grantees in writing, as to the nature and estimated cost of such proposed Work, and setting a time and place for a meeting to discuss the proposed work, which meeting shall be not less than one week nor more than two weeks following the date of delivery of the notice. If a Majority are in favor of the proposed Work to be done, then the Supervisor shall cause for the Work to be completed. The Supervisor shall then cause all of the Grantees to be billed their proportionate share. Said amounts owing shall be paid within (30) days of receipt or shall automatically become a lien on that Benefitted Property and shall begin to accrue interest.

5. Costs; Liens. Each Grantee shall promptly pay its share of the costs of maintaining, repairing and operating its respective Booster Pump and Equipment, as excepted, within thirty (30) days after receipt of an invoice setting forth the total amount paid and the party's share. Any payment not paid when due shall bear interest until paid at the rate of twelve percent (12%) per annum (the "**Default Interest**") and shall continue to accrue such Default Interest until paid. If a party fails to pay its proportionate share when due, the unpaid amount plus the Default Interest, shall automatically and immediately become a lien against the defaulting party's property, and the Supervisor may proceed to foreclose said lien in the same manner as provided for foreclosure of deeds of trust under RCW 61.24. The parties hereby incorporate all rights and remedies in the master form Deed of Trust, recorded under Skagit County Auditor's File No. 716277, Vol. 19, pp. 80-83 or as it may be amended or replaced, as the means of enforcement of the lien rights provided by this paragraph. The lien for such unpaid sums shall be subordinate to tax liens on the property in favor of any assessing unit and/or special district, but to the extent permitted by applicable law shall have priority over all other liens against the property.

Each Grantee hereby agrees to indemnify, defend and hold harmless the other owners, and the other owners' rights and interests in the Easement Area, from and against any liens created, caused or allowed by the indemnifying owner on the Easement Area.

6. Insurance and Liability. Each Grantee shall carry property and liability insurance for the Easement Area and Improvements in amounts that are commercially reasonable for similar projects within the area, and shall name the other Grantees as an additional insureds; PROVIDED, that if an association carries property and liability insurance, in commercially reasonable amounts, for its Easement Area, Well and Improvements, and names the other project

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owners as additional insureds, then said insurance shall be deemed to meet the owners' insurance requirements set forth herein. Each Grantee and association shall indemnify, defend and hold the other Grantees harmless from and against any claims arising from or in connection with the indemnifying owner's use of the Easement Area and the Improvements located thereon. The indemnification obligations under this paragraph shall extend to all liability, loss, expense, claims, causes of action, damages, costs and fees, including attorney fees, arising from or in connection with use of the Easement Area and the respective Booster Pump and Equipment by said indemnifying party, their successors, assigns, heirs, tenants, agents, employees, guests or invitees. Each Grantee's obligation to provide insurance shall commence as of the date that Grantee signs this Easement.

7. **Resolution of Disputes.** Any dispute, claim or controversy between any two or more owners arising out of or relating to this Easement (a "**Matter-at-Issue**") shall be resolved, if either such party seeks resolution, through binding arbitration. Within five (5) days of one of the parties' request for such, the Matter-at-Issue shall be submitted to binding arbitration. Unless the parties agree by unanimous consent on one arbitrator, each party shall appoint one arbitrator. The two arbitrators shall in turn select a third arbitrator. The Matter-at-Issue shall then be arbitrated and the arbitrator(s) decision shall be binding on all parties. Said arbitration shall be conducted pursuant to the provisions of Chapter 7.04 R.C.W.

8. **Use of Easement Area by Grantor.** The Grantor may use the Easement Area for any and all purposes not inconsistent with the provisions of this Easement.

9. **Division of Benefitted Property.** If any of the Benefitted Properties are hereafter divided by lawful separation or sub-division, all parts shall enjoy the benefit of the easement hereby created unless otherwise set forth in the documents and agreements of an association.

10. **Running with the Land.** This Easement, along with any and all benefits and burdens arising therefrom, and all covenants, conditions, restrictions and reservations included herein, shall run with the land of the herein described properties and shall be binding upon the owners of the Burdened Property and the Benefitted Property and the Improvements and each of their heirs, successors, and assigns, through all successive transfers of the Properties and/or Improvements and/or the granting of any security interests therein, without requirement of further specific reference or inclusion in deeds, contracts or security instruments, and regardless of any subsequent forfeiture, foreclosures, or sales under security instruments, or of any forfeiture, foreclosures, or sales instituted for non-payment of governmental tax, levy or assessment of any kind, as if each of the properties' future owners or lienholders were the parties to this Easement.

11. **Attorney Fees.** The prevailing party in any action brought to enforce or interpret the terms of this Easement shall be entitled to recover its costs and reasonable attorney fees

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incurred in said action, including on appeal, whether or not suit is commenced.

12. **Breach.** In the event of any breach or threatened breach of this Easement by any owner(s) of the Burdened Property or the Benefitted Property or the Improvements, the non-defaulting owner(s) shall have the right to sue for damages and/or for specific performance and/or to enjoin such breach or threatened breach.

13. **No Termination Upon Breach.** No breach of this Easement shall entitle either owner to cancel, rescind or otherwise terminate this Easement; provided, however, that this provision shall not limit or otherwise affect any other right or remedy which an owner may have hereunder by reason of any breach of this Easement.

14. **Captions.** The captions and section headings contained in this Easement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Easement, nor the intent of any provision thereof.

15. **Amendment.** This Easement may not be modified, amended or terminated without the prior written approval of the then owner of the property who is Benefitted or burdened by the provisions of any amendment to the Easement; PROVIDED, that the owners of properties serviced by one or more Wells, and the Improvements thereto may form an association for the ownership and/or operation of the Well(s) and Improvements. If such an association is formed its written provisions may serve as an amendment hereto, only as to that particular Well(s) and Improvements, and shall supersede and conflicting provisions herein only if the superseding provisions do not detrimentally affect the Burdened Property or owner(s) of the Burdened Property.

16. **Governing Law.** This Easement shall be governed by and construed in accordance with the laws of the State of Washington.

17. **No Counterparts.** This Easement shall be executed in only one original. Said original document shall be recorded.

18. **Entire Agreement.** There are no verbal or other agreements which modify or affect this Easement, and the parties agree that this Easement and its attached Exhibits constitute the full and complete understanding between them.

Attached: **Exhibit "A"** Legal Description of Burdened Properties
Exhibit "B" Legal Description of Benefitted Properties
Exhibit "C" Legal Description of Easement Area

INDIVIDUAL SIGNATURE AND NOTARIZATION PAGES ARE ATTACHED HERETO AND MADE A PART HEREOF.

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GRANTOR and one of the GRANTEES:

JOHN PETH & SONS, INC.

By: *Dan Peth*
Daniel Peth, its *Secretary*

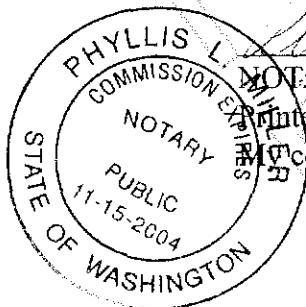
STATE OF WASHINGTON)

: ss

County of Skagit)

I certify that I know or have satisfactory evidence that Daniel Peth 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 *Secretary* of John Peth & Sons, Inc., a Washington corporation, to be the free and voluntary act and deed of the said corporation for the uses and purposes mentioned in the instrument.

DATED this *22nd* day of November, 2002.



Phyllis L. Miller
NOTARY PUBLIC for the State of Washington

Printed Name: *Phyllis L. Miller*

My commission expires *11-15-04*



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GRANTEE:

Jacob N. Searle
Jacob N. Searle

STATE OF WASHINGTON)

County of Skagit :SS)

I certify that I know or have satisfactory evidence that Jacob N. Searle is the person who appeared before me, and said person each acknowledged that he signed the foregoing instrument and acknowledged it to be his free and voluntary act and deed for the uses and purposes mentioned in this instrument.

DATED this 22ND day of November, 2002.

Tamara L. Schorner
NOTARY PUBLIC for the State of Washington
Printed Name: Tamara L. Schorner
My commission expires Aug 3, 2004



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EXHIBIT "A"

LEGAL DESCRIPTION OF BURDENED PROPERTY

PARCEL 7 (Peth Portion of) (P-115716, P-49372)

That portion of Government Lot 4 of Section 18, Township 36 North, Range 4 East, W.M., described as follows:

BEGINNING at the Southwest corner of said Government Lot 4;
thence South 86°50' 58" East along the South line thereof, a distance of 436.54 feet;
thence North 06°29'49" West, a distance of 327.78 feet;
thence North 81°01' 50" East, a distance of 432.32 feet;
thence North 60°30'10" East, a distance of 203.23 feet;
thence North 11°34'42" East, a distance of 276.30 feet;
thence North 01°05'51" East, a distance of 504.01 feet to a point on the North line of said Government Lot 4 which is 143.55 feet West of the Southwest corner of the East 245.84 feet of said Government Lot 4;
thence North 87°25'56" West along the North line of said Government Lot 4, a distance of 592.73 feet;
thence South 23°32'39" West, a distance of 608.04 feet;
thence North 89°07'08" West, a distance of 221.81 feet to a point on the West line of said Government Lot 4 which is 716.38 feet North of the Southwest corner thereof;
thence South 00°52'52" West along said West line, a distance of 716.38 feet to the point of beginning of this description;

EXCEPT that portion of Parcel 7 of Quit Claim Deed recorded under Auditor's File No. 199907280171 lying in the Southwest 1/4 of the Southwest 1/4 of Section 18, Township 36 North, Range 4 East, W.M., described as follows:

Beginning at the most Northerly corner of Parcel 6 of Statutory Warranty Deed recorded under Auditor's File No. 199910060074 being a point on the East line of said Parcel 7;
thence North 11°34'42" East along said East line, a distance of 276.30 feet;
thence North 01°05'51" East along said East line, a distance of 100.76 feet;
thence South 89°46'27" West, a distance of 282.07 feet;
thence South 09°50'51" West, a distance of 498.73 feet to the South line of said Parcel 7;
thence North 81°01'50" East along said South line, a distance of 134.74 feet;
thence North 60°30'10" East along the Southeasterly line of said Parcel 7, a distance of 203.23 feet to the point of beginning.

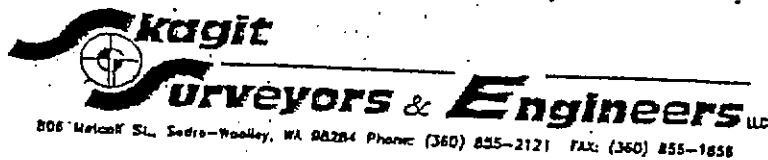
SITUATE in the County of Skagit, State of Washington.

PARCEL 8

see attached



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LEGAL DESCRIPTION
FOR
JOHN PETH & SONS, INC.
OF
PARCEL 8 - AFTER BOUNDARY LINE ADJUSTMENT

May 10, 1999

That portion of Government Lot 3 and Government Lot 4 of Section 18, Township 36 North, Range 4 East, W.M., described as follows:

Beginning at the southwest corner of said Government Lot 3; thence N00°52'52"E along the west line thereof, a distance of 1290.91 feet to the northwest corner of said Government Lot 3; thence SB8°00'24"E along the north line thereof, a distance of 1197.21 feet to the northwest corner of the east 245.84 feet of said Government Lot 3; thence S01°05'51"W along the west line of said east 245.84 feet, a distance of 1302.78 feet to the south line of said Government Lot 3; thence N87°25'56"W along the south line of said Government Lot 3, a distance of 736.29 feet; thence S23°32'39"W, a distance of 608.04; thence N89°07'08"W, a distance of 221.81 feet to a point on the west line of said Government Lot 4 which is 716.38 feet north of the southwest corner thereof; thence N00°52'52"E along the west line of said Government Lot 4, a distance of 574.53 feet to the point of beginning of this description.

Containing 40.00 acres.

situated in Skagit County, Washington.

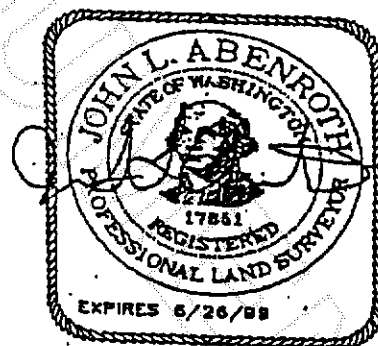


EXHIBIT A-1



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EXHIBIT "B"

LEGAL DESCRIPTION OF BENEFITTED PROPERTIES

PARCEL 7 (Peth Portion of) (P-115716, P-49372)

That portion of Government Lot 4 of Section 18, Township 36 North, Range 4 East, W.M., described as follows:

BEGINNING at the Southwest corner of said Government Lot 4;
thence South 86°50' 58" East along the South line thereof, a distance of 436.54 feet;
thence North 06°29'49" West, a distance of 327.78 feet;
thence North 81°01' 50" East, a distance of 432.32 feet;
thence North 60°30'10" East, a distance of 203.23 feet;
thence North 11°34'42" East, a distance of 276.30 feet;
thence North 01°05'51" East, a distance of 504.01 feet to a point on the North line of said Government Lot 4 which is 143.55 feet West of the Southwest corner of the East 245.84 feet of said Government Lot 4;
thence North 87°25'56" West along the North line of said Government Lot 4, a distance of 592.73 feet;
thence South 23°32'39" West, a distance of 608.04 feet;
thence North 89°07'08" West, a distance of 221.81 feet to a point on the West line of said Government Lot 4 which is 716.38 feet North of the Southwest corner thereof;
thence South 00°52'52" West along said West line, a distance of 716.38 feet to the point of beginning of this description;

EXCEPT that portion of Parcel 7 of Quit Claim Deed recorded under Auditor's File No. 199907280171 lying in the Southwest 1/4 of the Southwest 1/4 of Section 18, Township 36 North, Range 4 East, W.M., described as follows:

Beginning at the most Northerly corner of Parcel 6 of Statutory Warranty Deed recorded under Auditor's File No. 199910060074 being a point on the East line of said Parcel 7;
thence North 11°34'42" East along said East line, a distance of 276.30 feet;
thence North 01°05'51" East along said East line, a distance of 100.76 feet;
thence South 89°46'27" West, a distance of 282.07 feet;
thence South 09°50'51" West, a distance of 498.73 feet to the South line of said Parcel 7;
thence North 81°01'50" East along said South line, a distance of 134.74 feet;
thence North 60°30'10" East along the Southeasterly line of said Parcel 7, a distance of 203.23 feet to the point of beginning.

SITUATE in the County of Skagit, State of Washington.

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PARCEL 8

see attached

PARCEL 9

see attached

PARCEL 10

see attached



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LEGAL DESCRIPTION
FOR
JOHN PETH & SONS, INC.
OF

PARCEL 8 - AFTER BOUNDARY LINE ADJUSTMENT

May 10, 1999

That portion of Government Lot 3 and Government Lot 4 of Section 18, Township 36 North, Range 4 East, W.M., described as follows:

Beginning at the southwest corner of said Government Lot 3; thence N00°52'52"E along the west line thereof, a distance of 1290.91 feet to the northwest corner of said Government Lot 3; thence S88°00'24"E along the north line thereof, a distance of 1197.21 feet to the northwest corner of the east 245.84 feet of said Government Lot 3; thence S01°05'51"W along the west line of said east 245.84 feet, a distance of 1302.78 feet to the south line of said Government Lot 3; thence N87°25'56"W along the south line of said Government Lot 3, a distance of 736.29 feet; thence S23°32'39"W, a distance of 608.04; thence N89°07'08"W, a distance of 221.81 feet to a point on the west line of said Government Lot 4 which is 716.38 feet north of the southwest corner thereof; thence N00°52'52"E along the west line of said Government Lot 4, a distance of 574.53 feet to the point of beginning of this description.

Containing 40.00 acres.

Situated in Skagit County, Washington.



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EXHIBIT B-1

5/19/99



LEGAL DESCRIPTION
FOR
JOHN PETH & SONS, INC.
OF
PARCEL 9 - AFTER BOUNDARY LINE ADJUSTMENT

May 10, 1999

The northeast quarter of the southeast quarter, and the south 13.5 feet
of the southeast quarter of the northeast quarter of Section 13,
Township 36 North, Range 3 East, W.M.

Containing 40.00 acres.

Situated in Skagit County, Washington.

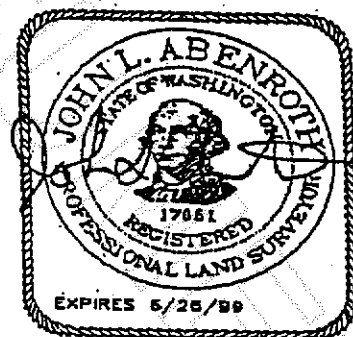


EXHIBIT B-2

5/19/99



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806 Melcoff St., Sedro-Wholey, WA 98284 Phone: (360) 855-2121 FAX: (360) 855-1656

LEGAL DESCRIPTION
FOR
JOHN PETH & SONS, INC.
OF
PARCEL 10 - AFTER BOUNDARY LINE ADJUSTMENT

May 10, 1999

The southeast quarter of the northeast quarter and the south 22.06 feet of the northeast quarter of the northeast quarter of Section 13, Township 36 North, Range 3 East, W.M.;
EXCEPT the south 13.5 feet of said southeast quarter of the northeast quarter.

Containing 40.00 acres.

Situated in Skagit County, Washington.

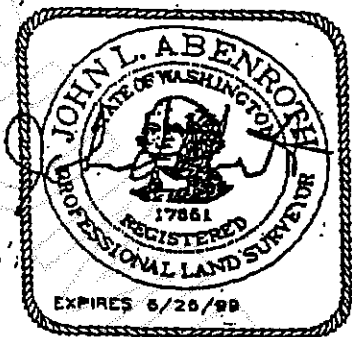


EXHIBIT B-3

5/19/99



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EXHIBIT "C"

LEGAL DESCRIPTION OF EASEMENT AREA

see attached



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806 Melcalf St., Sedro-Woolley, WA 99284 Phone: (360) 855-2121 FAX: (360) 855-1658

LEGAL DESCRIPTION
FOR
DAN PETH
OF
BOOSTER PUMP STATION, WATER LINE AND UTILITY EASEMENT

July 25, 2002

An easement for installation, maintenance and operation of a water line and other utilities over, under and through a strip of land 60 feet wide lying easterly of, adjacent to and contiguous with the following described line:

Commencing at the southwest corner of Section 18, Township 36 North, Range 4 East, W.M.; thence $N00^{\circ}52'52''E$ along the west line of said Section 18, a distance of 297.44 feet to the point of beginning of this line description; thence continuing $N00^{\circ}52'52''E$ along the west line of said Section 18, a distance of 1150 feet to the terminal point of this line description.

TOGETHER WITH an easement for installation, maintenance and operation of a booster pump station, water line and other utilities, over, under and through a strip of land 40 feet wide lying 20 feet on each side of the following described centerline;

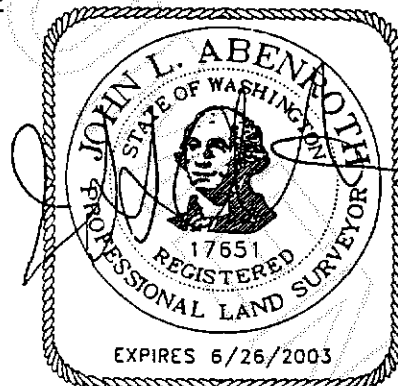
Commencing at the southwest corner of Section 18, Township 36 North, Range 4 East, W.M.; thence $N00^{\circ}52'52''E$ along the west line of said Section 18, a distance of 382.85 feet to the point of beginning of this centerline description; thence $S45^{\circ}15'06''E$, a distance of 486.44 feet to the terminus of this centerline description, which point is on the north line of FOX HOLLOW LANE shown on Short Plat Number PL00-0345 recorded under Auditor's File Number 200111130172 and bears $N83^{\circ}26'55''E$, a distance of 353.67 feet from the southwest corner of said Section 18.

Situate in Skagit County, Washington.



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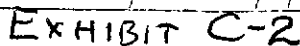
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7/31/02

EXHIBIT C-1

July 26, 2002



PUMP HOUSE, LIFT STATION
WATER LINE & UTILITY EASEMENT
EXHIBIT MAP
for
Don Peth
Sections 18 & 19, Township 36 North,
Range 4 East, W.M.

July 26, 2002

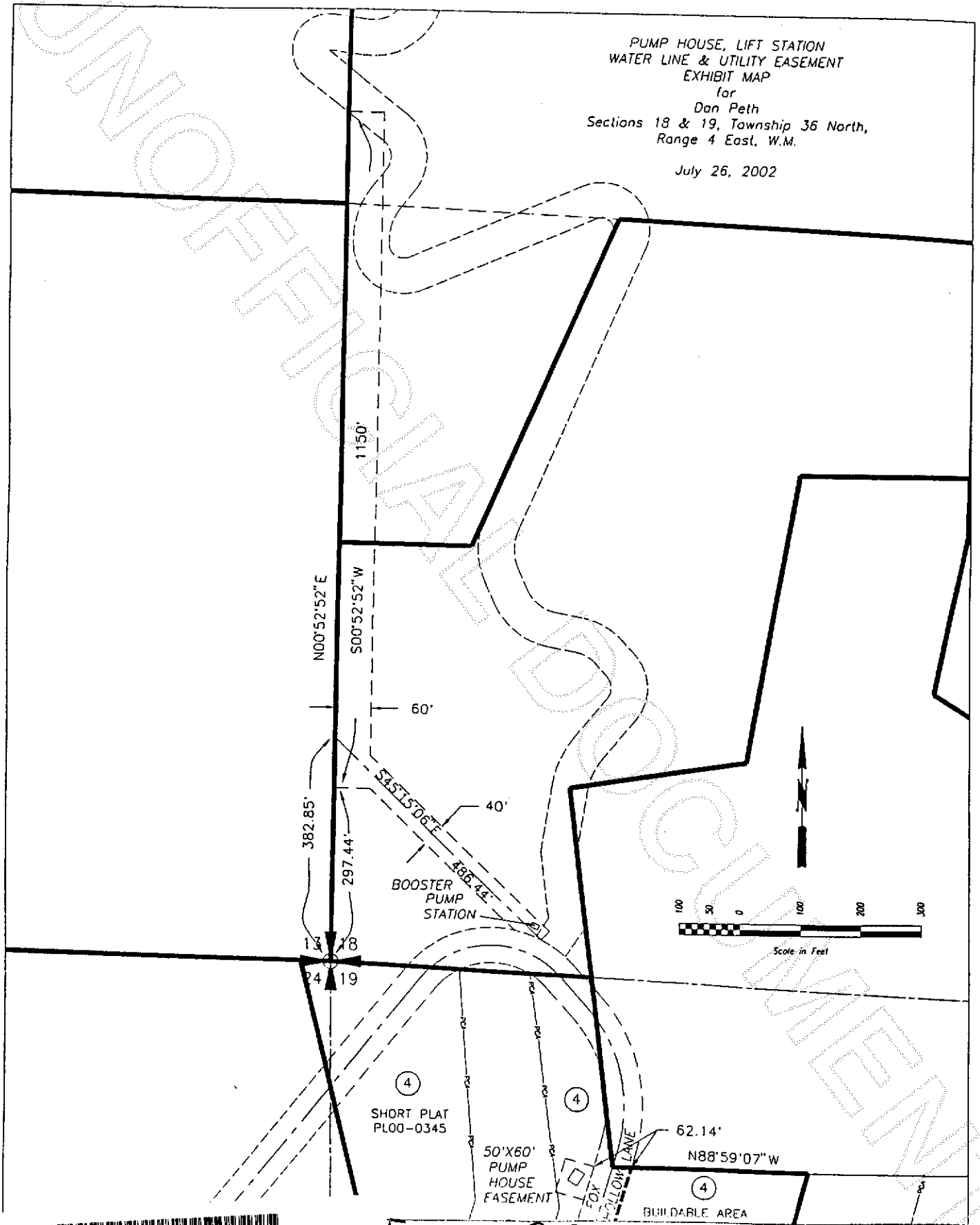


EXHIBIT C-2



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