

AFTER RECORDING, RETURN TO:

Mr. Frank J. Brown
108 2nd Avenue South, #403
Kirkland, WA 98033



200411100101

Skagit County Auditor

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(Space above this line for Recorder's use only)

FIRST AMERICAN TITLE CO.

82893E

DOCUMENT TITLE	FLOATING EASEMENT AND COVENANTS
REFERENCE NUMBERS OF DOCUMENTS ASSIGNED OR RELEASED	N/A
GRANTOR(S)/BORROWER(S)	Midgie Enterprises, LLC
GRANTEE(S)/ASSIGNEE(S)/BENEFICIARIES	Midgie Enterprises, LLC
LEGAL DESCRIPTION (Abbreviated)	Lot 2 of Skagit County Short Plat PL04-0070 (Burdened Property) Lot 1 of Skagit County Short Plat PL04-0070 (Benefited Property) Complete legal descriptions are on Exhibit A and Exhibit B of this document
ASSESSOR'S PARCEL NUMBERS	340209-1-004-0100 (P106855) Lot 2 340204-4-019-02000 (P122093) Lot 2 340204-4-019-0100 (P106852) Lot 1

DECLARATION OF FLOATING EASEMENT AND COVENANTS

The undersigned owner of the property herein described, MIDGIE ENTERPRISES, LLC, a limited liability company organized and operating under the laws of the State of Washington ("Declarant"), does impose as an easement and covenant

Declaration of Floating Easement and Covenants – 11/04/04

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running with the land the obligation upon the owners and future owners of the property herein described, the permanent, nonexclusive and mutual right to jointly use the Easement Area and, if the Pipeline is constructed, the obligation of the Owners of Lot 1 to pay for the cost of construction and maintenance of the Pipeline as provided in this instrument (the "Agreement").

1. **Property Benefited by Easement.** The property benefited by the provisions of this Agreement is legally described on the attached Exhibit A and is sometimes referred to herein as "Lot 1".

2. **Property Burdened by Easement.** The property burdened by the provisions of this Agreement is legally described on the attached Exhibit B and is sometimes referred to herein as "Lot 2".

3. **Definitions.** The term "Easement Area" means a strip of land between a point on an existing pipeline (the "CNG Pipeline") easement dated April 25, 1957, and recorded May 3, 1957 under Auditor's No. 550862 in favor of Cascade Natural Gas Corporation and the Lot 1 property line, the exact location of which is to be determined by the Owners of Lot 1, and as wide as reasonably necessary and convenient to effectuate the purpose for granting the Easement. The Owners of Lot 1 may change the width of the Easement Area based upon future natural gas demands, provided, that after any tap in, as described in Section 5, there will be no changes to said location unless the same are required by Cascade Natural Gas or its successors. After each location, relocation or enlargement of the Pipeline, the Owners of Lot 1 and Lot 2 shall, at the sole cost of the Owners of Lot 1, execute an amendment to the Agreement that shall legally describe the exact location and type of Pipeline then installed across Lot 2. The term "Pipeline" means and includes gas lines; and services, machinery, equipment, and facilities related to the construction, installation, operation and maintenance of said gas lines, provided, unless otherwise required by Cascade Natural Gas, only the Regulator and the gas line shall be permanently affixed to the Easement Area. The term "Easement" means the rights of use herein created for the benefit of Owners of Lot 1. The term "Owner" means the then owner of Lot 1 or Lot 2, or any subdivision thereof in which the Pipeline is or may be constructed pursuant to this Agreement.

4. **Easement Created.** Declarant, subject to the terms of this Agreement, hereby declares and establishes for the benefit of the Owners of Lot 1, and their heirs, successors and assigns, the permanent, nonexclusive and mutual right to use the Easement Area, at their sole cost and expense, solely to construct, install, operate, maintain, protect, improve, modify, enlarge, repair, and abandon in place a natural gas pipeline or pipelines, for residential use, under, over, through and across the Easement Area and for the nonexclusive right of access to and from said property for the purposes of utilizing the rights herein granted and as necessary to comply with any legal requirement. Provided, the Owners of Lot 1 shall not disturb any trees existing on Lot 2 on the date of recording this Agreement. The Easement and the terms and conditions of this Agreement shall run with the land and benefit future Owners of Lot 1 and burden future Owners of Lot 2.

5. **Regulator and Tap In Payment.** The Owners of Lot 2 intend to connect a natural gas line to the CNG Pipeline and in connection therewith intend to install and pay for a residential regulator (the "Regulator") capable of providing natural gas service to Lot 2 and to a maximum of two (2) additional lots. If the Owners of Lot 2 complete said connection and install the Regulator, then at any time thereafter the Owners of Lot 1 shall be entitled to use the Regulator to provide natural gas to Lot 1 so long as the Owners of Lot 1 first pay the sum of one half of the installation of the Regulator (currently quoted at \$300.00) to the Owners of Lot 2 as a tap in fee for the right of the Owners of Lot 1 to tap into and make use of the Regulator.

6. **Use of Easement.** The Owners of Lot 1 are entitled to use the Easement Area solely for the purposes specified in Section 4 above. The Owners of Lot 2 reserve the right (for itself, its successors, assigns, tenants, invitees and licensees) to use the Easement Area for any purpose, including without limitation for access, ingress, egress, parking and improvements, so long as such purpose does not materially and unreasonably interfere with the Owners of Lot 1 use of the Easement Area for the purposes described herein. Without limiting the generality of the foregoing, the Owners of Lot 2 shall not erect any structure within the Easement Area, or conduct or permit any activities which may impair or interfere with the rights herein granted and the Owners of Lot 2 agree to cooperate with the Owners of Lot 1 to obtain all necessary permits, licenses and governmental action so that the Owners of Lot 1 may enjoy the full use and benefit of the Easement.

7. **Maintenance and Repair.** The Owners of Lot 1 may, at their sole cost and expense, elect to maintain, repair, replace and keep (or cause to be maintained, repaired, replaced and kept) the Pipeline in good condition. The Owners of Lot 1 shall promptly repair any damage to the Pipeline that causes any damage to Lot 2. The Owners of Lot 1 shall use their best efforts to minimize (a) any damage to Lot 2 and (b) any interference with the access to or use of Lot 2, and shall, at their sole cost and expense, promptly repair any damage to Lot 2 caused by or resulting from the Pipeline and restore Lot 2 to at least as good condition as immediately before such damage occurred. All of the foregoing work shall be completed with due diligence in a good, workmanlike, safe and lien-free manner and in compliance with all applicable federal, state and local laws.

8. **Hold Harmless.** The Owners of Lot 1 agree to hold the Owners of Lot 2 harmless from any loss, cost, or damage resulting from the negligence of the Owners of Lot 1 in connection with the construction, operation or maintenance of the Pipeline installed under or over the Easement Area and the Owners of Lot 2 agree to hold the Owners of Lot 1 harmless from any loss, cost, or damage caused by the Owners of Lot 2, its agents, invitees, or licensees or from any breach of the Agreement.

9. **Dispute Resolution; Attorney's Fees.** Any dispute under this Agreement shall be resolved through a two-step dispute resolution process. The first step shall be mediation at the offices of the Mediator. The Mediator shall be a person agreed by the Owners of Lot 1 and Lot 2, or if no such agreement is reached within ten (10) days of a mediation request by any Owner, then any party may petition the Superior Court of the State of Washington in Skagit County to identify a Mediator. If possible, the mediation

shall be completed within fourteen (14) days after an Owner requests mediation. If the dispute is unresolved after completion of mediation, the second step shall be to submit the dispute to arbitration. The decision of the arbitrator shall be binding and shall, if possible, be completed within thirty (30) days following the date mediation was completed. The decision of the arbitrator shall be final and binding upon the parties without appeal or further review. Each Owner shall pay its own fees and costs for mediation, except each shall pay a pro-rata share of the fees and costs of the mediator. In any arbitration or other suit involving this Declaration, if a prevailing party is specifically identified by the judge or arbitrator, the prevailing party shall be entitled to recover its attorney's fees, costs and expenses relating to the dispute, including reasonable fees, expenses and disbursements relating to any arbitration. If the parties cannot agree upon an arbitrator then any party may petition the Superior Court of the State of Washington in Skagit County to identify an arbitrator.

10. General.

10.1. Applicable Law. This Agreement shall be construed in accordance with and all disputes hereunder shall be governed by the law of the State of Washington.

10.2. Amendments. No change in or amendment to the Agreement shall be valid unless set forth in writing and signed by the Owners of Lot 1 and Lot 2.

10.3. Integration. This Agreement contains the entire understanding and agreement between the parties regarding the Easement.

10.4. Severability. If any provision of this Agreement is determined by a court to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect.

10.5. Successors. This Agreement binds the heirs, successors and assigns of the parties.

10.6. Notices. All notices, consents or waivers required or permitted in this Agreement shall be in writing and shall be deemed to have been duly given when delivered personally or three days after being mailed, registered or certified mail, return receipt requested, postage prepaid, to the addresses of the Owners as shown in the records of the Skagit County Assessor. An Owner may change the Owner's address for notice by giving such notice.

10.7. Exhibits. All exhibits referred to herein are incorporated herein by this reference.

DATED this 4 day of November, 2004.



MIDGIE ENTERPRISES, LLC

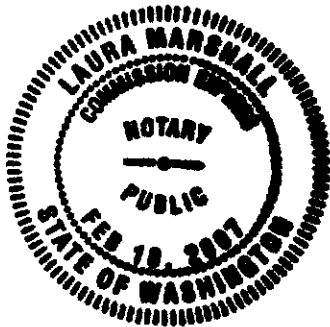
By Frank J. Brown
Frank J. Brown, its Manager

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Frank J. Brown is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the sole Manager of Midgie Enterprises, LLC, a limited liability company, to be the free and voluntary act of such limited liability company for the uses and purposes mentioned in the instrument..

DATED: this 4th day of November, 2004.

(Seal or stamp)



Laura Marshall
Notary Signature

LAURA MARSHALL
Print/Type Name
Notary Public in and for the State of
Washington,
residing at KING COUNTY, WA
My appointment expires 2.10.07

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

NOV 10 2004

Amount Paid \$ 0
By Sp Skagit Co. Treasurer Deputy



**EXHIBIT A TO DECLARATION OF FLOATING EASEMENT
AND COVENANTS**

Legal Description of Property Benefited by Easement

Land situated in the State of Washington, County of Skagit and described as follows:

Lot 1 of Skagit County Short Plat PL04-0070 approved September 20, 2004



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**EXHIBIT B TO DECLARATION OF FLOATING EASEMENT
AND COVENANTS**

Legal Description of Property Burdened by Easement

Land situated in the State of Washington, County of Skagit and described as follows:

Lot 2 of Skagit County Short Plat PL04-0070 approved September 20, 2004


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