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Skagit County Auditor

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After Recording Return to:

Chester T. Lackey
900 Dupont Street
Bellingham, WA 98225

LAND TITLE OF SKAGIT COUNTY

116692-PA

Document Title: Declaration of Covenants, Conditions and Easements
Grantor: Bradley R. Paulson and Marjorie A. Paulson
Legal: a ptn of Blk 201, Anac.; Lots 1 & 2 of AN SP 93-004 in Blk 239 Anac;
a ptn of Trs. 12 & 13, Plate 8, Anac. Tidelands
Parcel #: 3772-201-017-0005; 350113-0-051-0209; 3772-239-014-0008; 3722-239-014-0100; 350113-0-046-0009; 350113-0-050-002

DECLARATION OF COVENANTS, CONDITIONS AND EASEMENTS

THIS DECLARATION is made this 24th day of June, 2005, by Bradley R. Paulson and Margery A. Paulson, husband and wife, hereinafter referred to as "Declarant".

Declarant hereby states that all of the real property described in **Exhibit "A"** attached hereto is subject to the limitations, restrictions, easements, covenants and conditions set forth in this Declaration, hereinafter the "Real Property". Each of these limitations, restrictions, easements, covenants and conditions shall run with the land and shall apply to and bind any and all of the heirs, assigns, successors in interest and lessees of the Declarant.

RECITALS:

A. The Declarant intends to retain ownership of that portion of the Real Property legally described as Lots 1 and 2 of the Holton Short Plat, recorded under Skagit County Auditor's File No. 9402180053 hereinafter "Parcel 1".

B. The Declarant intends to retain the exclusive right to use that portion of the Real Property legally described in **Exhibit "B"**, hereinafter referred to as "Parcel 2".

C. A portion of Parcel 2 consists of lands that are below the ordinary high water mark and are hereinafter referred to as the "Parcel 2 Tidelands".

D. All of the Real Property, except Parcel 1 and Parcel 2 shall hereinafter be referred to as the "Dominant Estate" in this Declaration.

E. The Declarant intends to sell all of the Real Property, except Parcel 1, and wishes to reserve certain rights and grant certain easements over Parcel 1 to ensure access to the Dominant Estate while reserving exclusive use of Parcel 2 and preserving the residential quality of Parcel 1.

1. EASEMENTS

1.1 **Access Easement.** The Declarant hereby grants, conveys and establishes an easement over, under and across that portion of the Real Property described as follows:

A twenty-foot (20') wide easement, the centerline being the centerline of the "Access road" as shown on the face of the Holton Short Plat Map, recorded under Skagit County Auditor's File No. 9402180053, hereinafter the "Access Easement".

For reference purposes, a copy of a portion of the Holton Short Plat Map is attached to this Declaration as **Exhibit "C"**.

The Access Easement shall be solely for the benefit of the Dominant Estate; provided the owner of Parcel 1 shall have the right to use the Access Easement.

The Access Easement may be used for vehicular, pedestrian and bicycle access and for underground utilities, and for no other purposes.

1.2 **Exclusive Use Easement.** The Declarant reserves an easement for the exclusive benefit of Parcel 1 over, under and across Parcel 2, hereinafter the "Exclusive Use Easement".

The owner of Parcel 1 shall have the right within the Exclusive Use Easement to:

- (a) clear and grade, and in particular to remove any plants or trees that obstruct views from Parcel 1;
- (b) build and maintain structures such as decks, patios, fences, stairs, paths, walkways, retaining walls, shoreline erosion control, cabanas, gazebos, landscaping and landscaping structures, docks, piers, boat lifts, mooring buoys and floats, including the right to use or lease adjacent Department of Natural Resources Subsurface Lands for the purpose of docks, piers, boat lifts, mooring buoys and floats;
- (c) landscape and maintain the property and any improvement thereon; and
- (d) use for any recreational purposes and other uses typical to residential properties adjacent to waterfront.

The rights reserved above by Declarant include the right to make applications for all governmental permits and approvals that may be required for construction of the improvements on or use of the Exclusive Use Easement.

None of the restrictions described above shall prevent the owner of the Dominant Estate from relocating the Access Easement into the Exclusive Use Easement as provided in Section 2 of this Agreement.



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2. EASEMENT RELOCATION

The owner of the Dominant Estate shall have the right to relocate the Access Easement if they are unable to establish a legal right to go across that portion of the existing access road that is located on the Property adjacent and east of Parcel 1. Relocation of the Access Easement shall be limited to the Southeast corner of Parcel 2 and shall encroach onto Parcel 2 only to the minimum extent necessary to avoid crossing property not owned by Declarant as of the date of this Easement; provided the relocation may encroach, to the extent necessary to assure a twenty foot (20') access road for the benefit of the Dominant Estate.

3. ACCESS USE RESTRICTIONS

No obnoxious or offensive activity shall be permitted within the Access Easement. Vehicles using the Access Easement shall be muffled so as to not be objectionable to the owners of Parcel 1. Nuisances include, but are not limited to, the escape or discharge of fumes, odors, gases, vapors, or such other substances into the atmosphere that could be detrimental to the health, safety and welfare of the people residing on Parcel 1.

Vehicles shall not stop or stand within the Access Easement.

All rubbish, garbage and other waste shall be regularly removed from the Access Easement.

The owner of the Dominant Estate shall not place any illumination on the Access Easement without first receiving the prior written consent of the owner of Parcel 1.

The Access Easement and all improvements shall be constructed, maintained and repaired consistent with and in compliance with all City of Anacortes Development Standards. Prior to any construction or major repair being done within the Access Easement, the Dominant Estate shall acquire all necessary permits and approvals from the City of Anacortes, and/or other governmental authority with jurisdiction.

In the event retaining walls are required for construction of the road within the Access Easement, retaining walls shall be constructed of split-face block, exposed aggregate, concrete or natural rock or other material approved by the owner of Parcel 1.

The Access Easement shall have a hard surface of concrete, asphalt or concrete pavers.

The owner of the Dominant Estate shall be exclusively responsible for all maintenance and repair to the Access Easement at its sole cost and expense, and shall keep the Access Easement maintained and repaired at all times.

The owner of the Dominant Estate shall at all times have commercial general liability insurance or comparable liability insurance that covers the Access Easement and makes the owner of Parcel 1 a named insured under the policy of liability insurance. Limits of liability shall not be less than Two Million Dollars (\$2,000,000.00). The owner of the Dominant Estate shall, upon written request from the owner of Parcel 1, provide copies of binders showing the existence of liability insurance.



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4. MOORAGE. If the owner of the Dominant Estate elects to build a marina, or place moorage upon the tidelands or Department of Natural Resources' property lying North and East of Parcel 2, then and in that event, the owner of the Dominant Estate shall provide Declarant with an easily accessible and usable moorage slip capable of handling a sixty-five foot (65') vessel at no charge to Declarant. In this event, Declarant will at the request of the owner of the Dominant Estate, relinquish Declarant's right to lease the adjacent Department of Natural Resources' subsurface lands. This right shall run with the land and may be enforced by Declarant's successor in title.

5. INDEMNIFICATION

The owner of the Dominant Estate covenants and agrees to indemnify, hold harmless and defend the owner of Parcel 1 from and against any and all claims, losses and damages for personal injury or death or damage to property occurring within the Access Easement arising out of use of the Access Easement, except for any damage or loss caused by the negligence of the owner of Parcel 1; provided that such indemnification shall not extend to loss or damage covered by insurance.

6. EXTINGUISHMENT OF EASEMENTS

Those Easements recorded under Skagit County Auditor's Nos. 8711250036 and 8811160026 are hereby extinguished and shall have no further force or effect.

7. NOTICES

All notices or demands to be given by any party to the other under this Declaration and all sums to be paid by any party shall be deposited in the United States mails, postage prepaid, by certified or registered mail, return receipt requested, and addressed to the address shown on the tax records of Skagit County and to the owners last known address.

Notices and demands sent by mail shall be deemed to have been given and delivered when properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing.

8. ENFORCEMENT

The Declarant and any owner shall have the right to enforce by any proceeding in law or in equity of all covenants, conditions, restrictions, reservations, liens and charges now or hereinafter imposed by this Declaration. The failure of the Declarant or any owner to enforce any rights hereunder, shall not be deemed to constitute a waiver of the right to do so thereafter. The prevailing party in any litigation involving the enforcement of any provision of this Declaration, shall be entitled to a judgment for reasonable attorney's fees and costs incurred in such litigation by the prevailing party.

9. GRANTEE'S ACCEPTANCE

The grantee of any Parcel subject to this Declaration shall by acceptance of the deed or real estate contract conveying title thereto, accept all terms and conditions of this Declaration and agrees to keep, observe, comply with and perform all obligations of the owners set forth herein.



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10. SEVERABILITY

If any provision of this Declaration or the application thereof to any person or circumstance is held to be invalid, the invalidity shall not affect other provisions or applications of this agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

11. ATTORNEY'S FEES

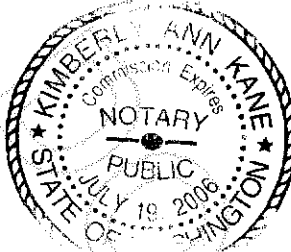
In the event either of the parties institutes suit to enforce this agreement hereunder, the successful party shall be entitled to court costs and reasonable attorney's fees against the losing party.

IN WITNESS WHEREOF, the parties have signed this Agreement the date above-first written.


BRADLEY R. PAULSON


MARJORIE A. PAULSON

STATE OF WASHINGTON)
)ss.
COUNTY OF WHATCOM)



On this 24th day of June, 2005, before me personally appeared BRADLEY R. PAULSON and MARJORIE A. PAULSON, to me known to be the individuals described in and who executed the within and foregoing instrument and acknowledged to me that they signed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN UNDER my hand and official seal the day and year first above written.

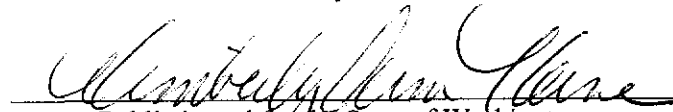

Notary Public in and for the State of Washington,
residing at Bellingham.
My Commission Expires: July 19, 2006.



EXHIBIT "A"

PARCEL "A":

Lots 1 to 8, inclusive, the East 24 feet of Lot 11 and Lots 12 to 17, inclusive, Block 201, "MAP OF THE CITY OF ANACORTES, SKAGIT COUNTY, WASHINGTON", as per plat recorded in Volume 2 of Plats, page 4, records of Skagit County, Washington,

EXCEPTING THEREFROM that portion of Lots 2 to 8, inclusive, in said Block 201, that lies North and West of a line drawn from the Northeast corner of said Lot 2 to a point on the South line of said Lot 8 opposite the Northeast corner of Lot 9 of said Block 201, as conveyed to the Great Northern Railway Company by deed dated October 27, 1913 and recorded October 30, 1913 in Volume 95 of Deeds, page 274, under Auditor's File No. 99079.

TOGETHER WITH that portion of the vacated alley adjoining said Lots, which upon vacation attached to said premises by operation of law.

Situate in the City of Anacortes, County of Skagit, State of Washington.

PARCEL "B":

That portion of the Burlington Northern Railroad designated as reserve right-of-way for the Seattle and Northern Railroad and a portion of Block 201 as shown on the Plat of "MAP OF THE CITY OF ANACORTES, SKAGIT COUNTY, WASHINGTON", as per plat recorded in Volume 2 of Plats, page 4, records of Skagit County, Washington.

TOGETHER WITH portions of Tracts 12 and 13 of Plate No. 8 of the Tide and Shorelands of Section 13, Township 35 North, Range 1 East, W.M., Anacortes Harbor, all being more particularly described as follows:

Beginning at the Southeast corner of Block 201, of said Plat of Anacortes;
thence North 0°33'14" East along the West right-of-way of "D" Avenue, a distance of 243.56 feet to the true point of beginning;
thence South 61°29'00" West, a distance of 56.71 feet to a point on the South right-of-way of 9th Street;
thence South 89°26'34" East along the South right-of-way of 9th Street, a distance of 20.73 feet;
thence South 65°11'52" West, a distance of 233.48 feet to a point on the North line of the alley through Block 201 of said plat;
thence North 89°26'31" West along the North line of said alley, a distance of 26.39 feet;
thence South 0°33'24" West, a distance of 16.00 feet to a point on the South line of said alley;
thence South 60°33'08" West, a distance of 100.23 feet;
thence South 65°36'05" West, a distance of 341.17 feet to an intersection with a curve having a radius point bearing North 24°23'55" West, a radial distance of 985.37 feet;
thence Southwesterly along the arc of said curve to the right through a central angle of 3°37'06", an arc distance of 62.23 feet to the intersection with the centerline of "B" Avenue;
thence North 0°33'35" East along the Northerly projection of the centerline of "B" Avenue, a distance of 64.01 feet;
thence North 65°36'05" East, a distance of 418.88 feet to the intersection with the Northerly projection of the centerline of "C" Avenue;
thence North 0°33'24" East along the projection of centerline "C" Avenue, a distance of 23.86 feet;



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DESCRIPTION CONTINUED:

PARCEL "B" Continued:

thence South 89°26'36" East, a distance of 40.00 feet to a point on the Northerly projection of the East right-of-way of "C" Avenue;
 thence North 65°36'05" East, a distance of 165.32 feet to an intersection with the West line of Lot 5, Tract 12, Plate 8 tide and shorelands;
 thence South 0°33'19" West along the West line of said Lot 5, Tract 12, a distance of 27.57 feet;
 thence North 65°36'05" East, a distance of 165.32 feet to a point on the West right-of-way of "D" Avenue;
 thence South 0°33'14" West along the West right-of-way of "D" Avenue, a distance of 14.45 feet to the true point of beginning.

Situate in the City of Anacortes, County of Skagit, State of Washington.

PARCEL "C":

Lots 1 and 2, of Holton Short Plat, Short Plat No. ANA 93-004, approved February 7, 1994, and recorded on February 18, 1994, in Volume 11 of Short Plats, at page 62, under Auditor's File No. 9402180053, records of Skagit County, Washington; and being a portion of Block 239, "MAP OF THE CITY OF ANACORTES, SKAGIT COUNTY, WASHINGTON," as per plat recorded in Volume 2 of Plats, page 4, records of Skagit County, Washington.

Situate in the City of Anacortes, County of Skagit, State of Washington.

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PARCEL "D":

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, Tract 12, Plate No. 8, Tide and Shore Lands of Section 13, Township 35 North, Range 1 East, W.M., Anacortes Harbor, as shown on official plat on file in the office of the Commissioner of public lands at Olympia, Washington;

EXCEPT that portion thereof heretofore deeded to Great Northern Railway Company, described as follows:

Beginning at the Southeast corner of Lot 1, said Tract 12;
 thence North along the East line of said Lot 1, 43 feet;
 thence Westerly in a straight line to a point on the West line of Lot 10 of said Tract 12, 34 feet North of the Southwest corner of said Lot 10;
 thence South to Southwest corner of said Lot 10;
 thence Easterly along the high tide meander line to place of beginning.

Situate in the City of Anacortes, County of Skagit, State of Washington.



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EXHIBIT "A" CONTINUED

DESCRIPTION CONTINUED:

PARCEL "E":

A strip of piece of land 25 feet wide in Lots 1, 2, 3, 4, and 5 of Tract 12, Plate 8, Anacortes Tidelands in Section 13, Township 35 North, Range 1 East, W.M., according to the official plat thereof on file in the office of the Commissioner of public lands at Olympia, Washington, being all that part of said lots lying South of a line described as follows:

Beginning at a point in the East line of said Lot 1, 43 feet North of the Southeast corner of said Lot 1; thence Southwesterly in a straight line to a point in the West line of Lot 10 in said Tract 12, 34 feet North of the Southwest corner of said Lot 10 and lying North of a line which is parallel to the above described line and 25 feet distant Southeasterly, measured at right angles therefrom.

Situate in the City of Anacortes, County of Skagit, State of Washington.

PARCEL "F":

That portion of Tract 13, Plate No. 8, Tide and Shore Lands of Section 13, Township 35 North, Range 1 East, W.M., Anacortes Harbor and the East ½ of vacated "B" Avenue adjoining, and the West ½ of vacated "C" Avenue adjoining, which lies Northerly of a line running Southwesterly along a tangent from a point 632.7 feet North of the intersection of the centerline of 11th Street with the centerline of "D" Avenue, to a point 278.5 feet North of the intersection of the centerline of "B" Avenue with 11th Street;

EXCEPT all that portion thereof, if any, conveyed to Bradley R. Paulson and Marjorie A. Paulson, husband and wife, by deed recorded under Auditor's File No. 8803300066, records of Skagit County, Washington.

Situate in the City of Anacortes, County of Skagit, State of Washington.

END OF EXHIBIT "A"



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EXHIBIT "B"

All that portion of Tracts "X" and "Y" described below that lies Northerly of the North line of the hereinafter described Parcel "A" and lies between the Northerly extension of the Westerly and Easterly lines thereof:

PARCEL "A":

Lot 1, Holton Short Plat, Short Plat No. ANA 93-004, approved February 7, 1994, and recorded on February 18, 1994, in Volume 11 of Short Plats, at page 62, under Auditor's File No. 9402180053, records of Skagit County, Washington; and being a portion of Block 239, "MAP OF THE CITY OF ANACORTES, SKAGIT COUNTY, WASHINGTON," as per plat recorded in Volume 2 of Plats, page 4, records of Skagit County, Washington.

Situate in the City of Anacortes, County of Skagit, State of Washington.

TRACT "X":

That portion of the Burlington Northern Railroad designated as reserve right-of-way for the Seattle and Northern Railroad and a portion of Block 201 as shown on the Plat of "MAP OF THE CITY OF ANACORTES, SKAGIT COUNTY, WASHINGTON", as per plat recorded in Volume 2 of Plats, page 4, records of Skagit County, Washington.

TOGETHER WITH portions of Tracts 12 and 13 of Plate No. 8 of the Tide and Shorelands of Section 13, Township 35 North, Range 1 East, W.M., Anacortes Harbor, all being more particularly described as follows:

Beginning at the Southeast corner of Block 201, of said Plat of Anacortes;
thence North 0°33'14" East along the West right-of-way of "D" Avenue, a distance of 243.56 feet to the true point of beginning;
thence South 61°29'00" West, a distance of 56.71 feet to a point on the South right-of-way of 9th Street;
thence South 89°26'34" East along the South right-of-way of 9th Street, a distance of 20.73 feet;
thence South 65°11'52" West, a distance of 233.48 feet to a point on the North line of the alley through Block 201 of said plat;
thence North 89°26'31" West along the North line of said alley, a distance of 26.39 feet;
thence South 0°33'24" West, a distance of 16.00 feet to a point on the South line of said alley;
thence South 60°33'08" West, a distance of 100.23 feet;
thence South 65°36'05" West, a distance of 341.17 feet to an intersection with a curve having a radius point bearing North 24°23'55" West, a radial distance of 985.37 feet;
thence Southwesterly along the arc of said curve to the right through a central angle of 3°37'06", an arc distance of 62.23 feet to the intersection with the centerline of "B" Avenue;
thence North 0°33'35" East along the Northerly projection of the centerline of "B" Avenue, a distance of 64.01 feet;
thence North 65°36'05" East, a distance of 418.88 feet to the intersection with the Northerly projection of the centerline of "C" Avenue;
thence North 0°33'24" East along the projection of centerline "C" Avenue, a distance of 23.86 feet;

TRACT "Y":

That portion of Tract 13, Plate No. 8, Tide and Shore Lands of Section 13, Township 35 North, Range 1 East, W.M., Anacortes Harbor and the East ½ of vacated "B" Avenue adjoining, and the West ½ of vacated "C" Avenue adjoining, which lies Northerly of a line running Southwesterly along a tangent from a point 632.7 feet North of the intersection of the centerline of 11th Street with the centerline of "D" Avenue, to a point 278.5 feet North of the intersection of the centerline of "B" Avenue with 11th Street;

EXCEPT all that portion thereof, if any, conveyed to Bradley R. Paulson and Marjorie A. Paulson, husband and wife, by deed recorded under Auditor's File No. 8803300066, records of Skagit County, Washington.

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