



201009070255
Skagit County Auditor

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RETURN TO:

Michael Petker
302 Longtime Lane
Sedro-Woolley, WA 98284

DOCUMENT TITLE(S) (or transactions contained herein):

DECLARATION OF ACCESS AND UTILITY EASEMENT AND MAINTENANCE AGREEMENT

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:

GRANTOR(S) (Last name, first name and initials):

1. Petker, Michael James and Petker, Katharina M., husband and wife
- 2.

GRANTEE(S) (Last name, first name and initials):

1. Petker, Michael James and Petker, Katharina M., husband and wife
- 2.

LEGAL DESCRIPTION (Abbreviated: i.e., lot, block, plat or quarter, quarter, section, township and range).

Lot 14, "PLAT OF ANKNEY HEIGHTS", as per plat recorded on August 23, 2001 under Auditor's File No. 200108230090, Situated in Skagit County, Washington;

Also known as Lots 1 and 2, including Tract X, Sedro-Woolley Short Plat No. SP-1-08, recorded in AF No. 201009070254

ASSESSOR'S PARCEL/TAX I.D. NUMBER:

4779-000-014-0000 / P118259

DECLARATION OF ACCESS AND UTILITY EASEMENT AND MAINTENANCE AGREEMENT

THIS DECLARATION OF ACCESS AND UTILITY EASEMENT AND MAINTENANCE AGREEMENT (this "Declaration") made this 19th day of August 2010, by **Michael James Petker and Katharina M. Petker, husband and wife**, ("Declarant"), as their interests appear, is imposed upon the following property for purposes of providing for access, utilities and storm water facilities.

A. Declarant owns certain real property in Skagit County, Washington, legally described as:

Lot 14, "PLAT OF ANKNEY HEIGHTS", as per plat recorded on August 23, 2001 under Auditor's File No. 200108230090;

Also known as Lots 1 and 2, including Tract X, Sedro-Woolley Short Plat No. SP-1-08, approved _____, 2010 and recorded _____, 2010 in Skagit County Auditor's File No. _____.

Situated in Skagit County, Washington.

And Illustrated on the attached Exhibit A.

B. Declarant subdivided the Property into two (2) parcels known as Lot 1 and Lot 2 as shown on the face of SP-1-08 recorded herewith and made a part hereof, each of which shall be deemed a Parcel, and collectively, the Parcels.

C. Declarant recognizes that for the most favorable development of the Parcels it is desirable that the Parcels share (i) a common driveway to be known as "Common Driveway" to be constructed within Tract X, the dimensions and location of which are as shown on the face of SP-1-08 (the "Easement Area"), to provide pedestrian and vehicular ingress and egress (the "Access Easement") which shall inure to the benefit of and bind the Subject Property, including the owner(s) therefore from time to time, and their respective successors and assigns (collectively the "Owners"); (ii) a nonexclusive utility easement within the Easement Area for the purpose of installing, maintaining, repairing or replacing gas, water, electric, phone and cable lines, sewers, pipes and other services (collectively the "Utilities") to benefit the Subject Property or any portion thereof; and (iii) and a storm water collection and conveyance system constructed within Tract X to convey storm and surface water from Tract X and Lots 1 and 2 to an off-site system.. For purposes of this agreement, the term "Owners" refers to Declarant and parties who acquire an ownership interest such as fee title or contract purchaser's interest following the initial sale by Declarant.

NOW, THEREFORE, for and in consideration of the Introductory Statement, which is deemed a material and substantive part of this Declaration, and other good and valuable consideration, Declarant hereby declares, grants, covenants and agrees as follows:



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1. **Driveway Easement.** Declarant hereby establishes and grants the following non-exclusive perpetual driveway Access Easement over and across Tract X to provide unobstructed vehicular and pedestrian ingress and egress upon and as to each of the Parcels:

- (i) The common curb cut and driveway as constructed within the Easement Area are for purposes of ingress, egress, passage and delivery, by vehicles and pedestrians (the "Access Easement").
- (ii) The Access Easement shall be kept open and unobstructed at all times, and nothing shall allow any Owner or invitee thereof any right to obstruct access within the Easement Area.
- (iii) The Access Easement shall be for the benefit of the Owners, but same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public nor shall it affect any real property outside of the Parcels.

2. **Utility Easement.** The Declarant does further grant a perpetual nonexclusive utility easement on, over and through the Easement Area for the purpose of installing, maintaining and/or repairing utilities and all necessary appurtenances thereto (the "Utility Easement" and collectively with the Access Easement, the "Easements"), subject to the covenants and conditions contained herein. Any utilities shall be place underground.

3. **Storm Water Facilities.** The Declarant hereby establishes and grants a non-exclusive easement, right and obligation of the Owners of the Parcels for the storm water collection and conveyance system constructed on or adjacent to Tract X for benefit of the driveway and access improvements on Tract X, and for benefit of the Parcels. The storm water improvements consist of a catch basin and pipe which feed into a downstream system for the Plat of Ankney Heights, the O&M plan for which is recorded on page 32 of the CCRs recorded under Skagit County Auditor's File No. 200108100314.

(i) The storm water collection and conveyance system shall collect and convey storm water from the roadway within the easement area.

(ii) The storm water system shall be maintained and operated in accordance with the requirements and standard of the Washington State Department of Ecology Storm Water Management Manual for Western Washington (2005), the ordinances and regulations of the City of Sedro-Woolley, and the relevant portion of the O & M plan for the Plat of Ankney Heights referenced above and incorporated herein by reference.

(iii) The storm water system shall be maintained and operated within the operational limitations of the downstream storm water system for the Plat of Ankney Heights into which it feeds.

4. **Non-Merger.** All such easements, covenants, rights, benefits, obligations and liabilities created in this Declaration shall be deemed covenants and easements running with and binding upon the land as appurtenances to the dominant estates. The estate of the fee and easement created herein shall not be merged by reason of the same person or entity acquiring, owning or holding title to both.



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5. Construction, Maintenance and Repair.

(i) Unless otherwise agreed between the Owners, the owners of the Parcels are designated to have the responsibility to arrange for the common improvements within and serving the Easement Area to be maintained, repaired and replaced, all so as to keep such areas at all times in a safe, sightly, good and functional condition.

(ii) The owner of the Parcels shall be equally responsible for all costs and expenses incurred in connection with the repair, replacement, and maintenance of common improvements within and serving the Easement Area.

(iii) All work done in connection with the installation, maintenance or repair of any common improvements, shall be performed in a good and workmanlike manner, and such work shall be done expeditiously so as not to unreasonably interfere with or hinder the use and enjoyment of the Easement Area by any person or entity having a right to use the easements.

(iv) Declarant hereby grants and establishes temporary easements for the installation of improvements and for incidental encroachments upon the Parcels which may occur as a result of any construction work performed in the development, repair or maintenance of the Parcels, so long as such encroachments are kept within the reasonable requirements of construction work which is expeditiously pursued, and so long as customary insurance is maintained protecting the Owner of the Parcel on which work is being performed from the risks involved.

6. Default.

(i) In the event that any Owner fails to perform any provision in accordance with the requirements set forth herein, or provide insurance as required herein, or fail to pay or to perform any other obligation set forth within ten (10) days following written notice thereof, the remaining Owner(s) shall have the right, but not the obligation, to perform said construction, maintenance, repair or replacement and acquire said insurance, make payment or perform such obligation for the account of the non performing party (the "Defaulting Party"). The foregoing right to cure shall not be exercised if within ten (10) day notice (i) the Defaulting Party cures the default, or (ii) if the default is curable, but cannot reasonably be cured within that time period, the Defaulting Party begins to cure such default within such time period and thereafter diligently pursues such cure to completion. The ten (10) day notice period shall not be required if, using reasonable judgment, the Non-Defaulting Party deems that an emergency exists. In the event of such an emergency, the Non-Defaulting Party shall give notice reasonable under the circumstances to the Defaulting Party.

(ii) Within ten (10) days following written demand, including copies of paid invoice, the Defaulting Party shall reimburse the Non-Defaulting Party any sum reasonably expended by the Non-Defaulting Party to cure the default. If such amounts are not paid within thirty



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(30) days of billing, then such amounts shall accrue interest at the annual rate of 12% per annum or the highest legal rate of interest allowed, whichever is less, until paid, and the Defaulting Party shall be responsible for reasonable attorneys' fees and costs in the enforcement and collection thereof.

(iii) The parties hereto shall also have the right to restrain by injunction any violation or threatened violation by the other party hereto of any of the terms, covenants, or conditions hereof, or to obtain a decree to compel performance if any such term, covenant, or condition is not adequate. All remedies are cumulative and shall be deemed additional to any and all other remedies to which any Owner may have at law or in equity.

(iv) In the event a lien is filed against all or any portion of the Property in connection with any Maintenance, the lien must be bonded, satisfied or removed by the Owner responsible for said Maintenance within thirty (30) days following the filing thereof, or it may be foreclosed by the president acting on behalf of the Owners in the same manner as a mechanic's lien.

(v) This Declaration may be enforced by the Owners or the successors and assigns thereof against any person or entity having obligations hereunder. The non-defaulting Owner(s) of a Parcel shall be entitled forthwith to full and adequate relief by injunction and/or all such other legal and equitable remedies for the consequences of such breach.

(vi) If any party or person benefited hereby, institutes any litigation to enforce any of the terms, covenants, conditions, easements and set out in the Declaration, the prevailing party in such litigation shall be entitled to collect court costs and reasonably attorneys' fees from the non-prevailing party.

(vii) The owners of the Parcels shall form a governing committee, each parcel having one vote. They shall elect a president, secretary, and treasurer to manage their obligations under this agreement. The owners shall adopt bylaws to govern their meetings and actions; provided that a unanimous vote of all owners is necessary to amend this declaration.

7. Insurance. Each Owner shall obtain and maintain during the term of this Agreement general liability insurance including public liability and property damage in commercially reasonable amounts covering the Easement Area, as part of their property or homeowner's insurance.

8. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be personally served or mailed (registered or certified mail, postage prepaid, return receipt requested) at their addresses as set forth in the records of the Skagit County Assessor, or such other address or such additional recipient as any party may have furnished to the others in writing in accordance herewith. All notices shall be effective upon receipt.

9. Modifications. This Declaration may be amended or modified (in whole or in part) from time to time by written documents executed and acknowledged by all Owners and duly recorded with



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the Skagit County Auditor's Office; provided that the consent of the City of Sedro-Woolley or successor municipal authority, shall be required for any amendment affecting the maintenance standards and maintenance obligations with respect to the improvements.

10. **Binding.** This Declaration shall be binding upon and inure to the benefit of Declarant, the Owners of the Parcels, and their respective personal or legal representatives, successors and assigns, and shall be deemed covenants and easements running with and binding upon the land as appurtenances to the dominant estates.

11. **Governing Law and Venue.** This Declaration shall be governed by the laws of the State of Washington. Venue for any action in law or equity arising out of this Declaration shall be in Skagit County Superior Court.

12. **Severability.** If any term or provision of this Declaration or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Declaration shall not be affected thereby, and each term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

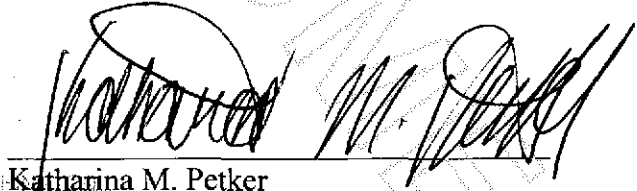
13. **Mortgages.** Sale or transfer of any parcel shall not affect the assessment lien provided for herein; provided, the lien of the assessments shall be subordinate to the lien of any first position deed of trust or first position mortgage if the assessments were current at the time of recording thereof, and the sale or transfer of a parcel pursuant to a foreclosure of such a first position deed of trust or first position mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such parcel from liability for any assessments which thereafter become due or from the lien thereof. A lender may rely on a written statement signed by the treasurer for purposes of this section.

Except as provided in this section, any deeds of trust or mortgages encumbering all or any portion of the Subject Property shall at all times be subordinate to the terms of this Declaration and any party foreclosing any such mortgage, or acquiring title by deed in lieu of foreclosure or trustee's sale, shall acquire title subject to all of the terms and provisions of this Declaration.


IN WITNESS WHEREOF, the undersigned has hereunto set its hand as of the date first above written.


Michael James Petker

SKAGIT COUNTY WASHINGTON
Real Estate Excise Tax


Katharina M. Petker

AUG 31 2010

Amount Paid To
Skagit County Treasurer
By: 

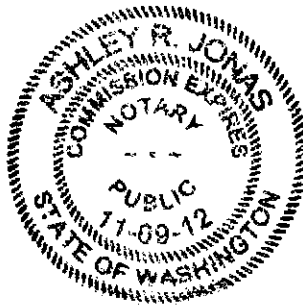


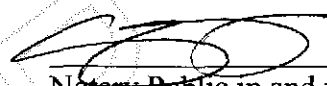
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STATE OF WASHINGTON)
) SS.
COUNTY OF SKAGIT)

On this day personally appeared before me Michael James Petker and Katharina M. Petker, 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 purposes therein mentioned.

GIVEN under my hand and official seal this 19TH day of AUGUST, 2010.



 ASHLEY R. JONAS
Notary Public in and for the State of
Washington, residing at BURLINGTON
My Commission Expires: 11-09-2012



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**EXHIBIT A: Map of Lots 1 and 2, and Tract X,
Sedro-Woolley Short Plat No. SP-1-08**



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