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Skagit County Auditor \$80.00
3/11/2015 Page 1 of 9 11:37AM

FILED FOR AND RECORDED AT REQUEST OF AND RETURN ORIGINAL TO:

Aeron & Marcie O'Brien
PO Box 855
Bellingham, WA 98227

POOR ORIGINAL

GRANTOR(S): Michael Daleske & Adelaida Daleske

GRANTEE(S): Larry A. Shaner
Aeron O'Brien & Marcie O'Brien

ABBREVIATED LEGALS: Tract 1, Skagit County Short Plat No. 91-26
Full legal description on Pages 1 & 2 Tract 2, Skagit County Short Plat No. 91-26
Lot 2, Skagit County Short Plat No. 92-0014

**SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX**

ASSESSOR'S PARCEL NUMBER(S): P50513/360432-4-002-0006
CHICAGO TITLE
620023330
P99762/360432-4-002-0200
P50514/360432-4-002-0105

MAR 11 2015

Amount Paid \$
Skagit Co. Treasurer
By *MAA* Deputy

ACCESS AND UTILITY EASEMENT AGREEMENT

THIS ACCESS AND UTILITY EASEMENT AGREEMENT ("Agreement") is made as of this 3rd day of March, 2015, by **MICHAEL DALESKE & ADELIDA DALESKE**, husband and wife (hereinafter "Daleske"), **LARRY A. SHANER**, an individual (hereinafter "Shaner"), and **AERON O'BRIEN & MARCIE O'BRIEN**, husband and wife (hereinafter "O'Brien").

RECITALS

WHEREAS, Daleske is the owner of certain real property located in Skagit County, Washington, legally described as follows (hereinafter referred to as the "Burdened Property"):

Tract 2, Skagit County Short Plat No. 91-26, approved August 5, 1991, recorded August 21, 1991, in Book 10 of Short Plats, Page 2, under Auditor's File No. 9108210057 and being a portion of the North 1/2 of the Northwest 1/4 of the Southeast 1/4 of Section 32, Township 36 North, Range 4 East of W.M. Situate in the County of Skagit, State of Washington.

WHEREAS, Shaner is the owner of certain real property located in Skagit County, Washington, legally described as follows (hereinafter referred to as the "Shaner Property"):

Tract 1, Skagit County Short Plat No. 91-26, approved August 5, 1991, recorded August 21, 1991, in Book 10 of Short Plats, Page 2, under Auditor's File No. 9108210051 and being a portion of the North ½ of the Northwest ¼ of the Southeast ¼ of Section 32, Township 36 North, Range 4 East of W.M. Situate in the County of Skagit, State of Washington.

WHEREAS, O'Brien is the owner of certain real property located in Skagit County, Washington, legally described as follows (hereinafter referred to as the "O'Brien Property"):

Lot 2, Skagit County Short Plat No. 92-0014, approved October 21, 2003, and recorded October 21, 2003, under Auditor's File No. 200310210121, records of Skagit County, Washington. Situated in Skagit County, Washington.

WHEREAS, the Shaner Property and the O'Brien Property are collectively referred to herein as the "Benefited Property"; and

WHEREAS, Daleske desires to grant a non-exclusive easement for access and utility purposes over a twenty (20) foot portion of the Burdened Property for the benefit of the Benefited Property in accordance with the terms hereof.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and conditions herein contained, the sufficiency of which is hereby agreed to by the parties, and no monetary consideration, the parties hereby covenant and agree as follows:

1. **Recitals Incorporated.**

The recitals set forth above are hereby fully incorporated by this reference as if fully restated herein.

2. **Grant of Easement.**

Daleske does hereby grant, bargain, convey and transfer, a non-exclusive easement, being twenty (20) feet in width (the "Easement") over, under, in, along, across and upon the South twenty (20) feet of the Burdened Property, in that area approximately depicted on Exhibit A attached hereto and incorporated herein by this reference (the "Easement Area") for the purposes of ingress and egress and for the installation, maintenance, repair and replacement of Utilities (as that term is defined herein) for the benefit of the Benefited Property. The term "Utilities" shall include both public and private utilities and may include, but shall not be limited to, any or all of the following utilities and all appurtenances thereto: sanitary sewer, storm sewer, water, electricity, fiber optic communication, and natural gas.

3. **Duration.**

The Easement granted herein shall be perpetual in nature and shall run with both the Burdened Property and the Benefited Property.

4. **Use of Easement Area.**

The owners of the Benefited Property shall have the right to construct, operate, maintain, repair, replace, improve, remove, and use the Utilities, together with all necessary or convenient appurtenances thereto, within the Easement Area. The owner of the Benefited Property shall also have the right to use the Easement Area for ingress and egress purposes.

The owner of the Burdened Property reserves the right to use the Easement Area for any purposes not inconsistent with the rights herein granted; provided, however, that the owner of the Burdened Property shall not construct or maintain any buildings, structures, or other objects in the Easement Area, without the prior written approval of all the owners of the Benefited Property.

5. **Allocation of Construction and Maintenance Costs.**

The owners of the O'Brien Property shall be responsible for the costs and expenses associated with the Easterly Two Hundred and Twenty-Five (225) feet of the Easement Area and the owners of the Shaner Property shall be responsible for the costs and expenses associated with the remaining Easement Area. The phrase "costs and expenses associated with" shall include, but not be limited to, any agreed improvements to the Easement Area and any maintenance, repair, or replacement completed to the Easement Area. All improvements, maintenance, repair or work involving the Easement Area by Shaner or O'Brien shall also be approved of, in advance, by Daleske (even though Daleske does not need to contribute to any costs and expenses associated with the Easement Area; unless the cost or expense is related to an improvement, maintenance, repair or work that Daleske is requesting in the Easement Area for Daleske's benefit then Daleske shall contribute as determined by mutual agreement of all the parties hereto).

The Easement Area shall promptly be restored to its previously existing condition after any construction, repair, maintenance or improvements within the Easement Area and said restoration costs shall be paid by the parties in the same percentages as the work for which the restoration costs are being incurred was paid.

Prior to undertaking any improvements, maintenance, repairs or replacements to the Easement Area, the parties shall mutually agree as to the cost and scope of such work. The party requesting any work to the Easement Area shall give the other party (or parties) to this Agreement no less than ten (10) days advance notice of the proposed work scope and proposed cost in the manner and at the addresses set forth in Section 12 hereof. Within said ten (10) day period the other party (or parties) shall consent thereto or provide reasonable objection to the proposed work. If no mutual agreement can be reached regarding the scope of work and/or cost thereof, then the dispute shall be submitted to the dispute resolution process set forth in Section 13 hereof. If the other party does not respond to the requesting party within said ten (10) day

period despite receiving proper notice then it will be deemed that the other party has consented to the work in the Easement Area. In the event of a bona fide emergency, this ten (10) day notice requirement shall be deemed waived.

Notwithstanding anything herein contained to the contrary, the owners of either the Benefited Property or the Burdened Property shall have no liability for any costs or expenses associated with any improvements made to the Easement Area for the sole benefit of, and at the sole request of, only one party to this Agreement. All parties consent shall still be required to said improvements, but if only one party is benefited by the improvement then only that benefited party shall be liable for the costs of the improvement and any restoration, maintenance or repair associated with that improvement.

Said construction and maintenance costs may become an enforceable lien against the Benefited Property or the Burdened Property, as the case may be, if the owner thereof fails to pay his or her share of said costs as set forth in this Agreement. Said lien may be foreclosed on pursuant to Washington State law.

6. **Indemnity.**

The owner of the Benefited Property and the owner of the Burdened Property, and their successors and assigns, shall indemnify and hold harmless each other, and their successors and assigns, from and against all losses, claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees and expenses, whether or not a lawsuit is instituted), arising out of or resulting from any actual or alleged injury to or death of any person, or from any actual or alleged loss of or damage to property, caused by any occurrence in or on the Easement Area or in connection with the use of the Easement Area by either party, their employees, agents, licensees, contractors, guests, and invitees, unless such loss, damage, liability or expense is caused by the gross negligence or intentional misconduct of either party, his or her employees, agents, licensees, contractors, guests or invitees.

7. **Attorneys' Fees.**

If it shall be necessary for any party to this Agreement to employ an attorney to enforce its rights pursuant to this Agreement because of the default of the other party, the defaulting party shall reimburse the non-defaulting party for reasonable attorneys' fees and expenses.

8. **Successors and Assigns.**

The rights and obligations of this Agreement shall run with the land and shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

9. **Purchase Price/Recording.**

The Easement granted herein shall be for no consideration other than the promises and agreements set forth herein. This Agreement shall be recorded in the records of Skagit County, Washington.

10. **Severability.**

Should any separable part of this Agreement be found void or unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect.

11. **Controlling Law**

This Agreement has been made under the laws of the State of Washington, and such laws will control its interpretation.

12. **Notices**

Any notice required or permitted to be given by any party upon the other is given in accordance with this Agreement if it is personally delivered to a party; or if mailed by United States registered or certified mail, return receipt requested, postage prepaid; or if transmitted by facsimile copy followed by mailed notice as above required, or if deposited cost paid with a nationally recognized, reputable overnight courier, properly addressed as follows:

If to Daleske: Michael & Adelaida Daleske
 5514 Park Ridge Place
 Sedro-Woolley, WA 98284

If to Shaner: Larry A. Shaner
 5590 Park Ridge Place
 Sedro-Woolley, WA 98284

If to O'Brien: Aeron & Marcie O'Brien

 Sedro-Woolley, WA 98284

Notices shall be deemed effective on the earlier of the date of receipt or the date of deposit as aforesaid; provided, however, that if notice is given by deposit, that the time for response to any notice by the other party shall commence to run two (2) business days after any such deposit. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified.

13. **Dispute Resolution**

Any dispute, controversy or claim arising out of or in connection with this Agreement or any breach or alleged breach of this Agreement, shall, upon the request of any party involved, be submitted to, and settled by, arbitration in Skagit County, State of Washington (or at any other place

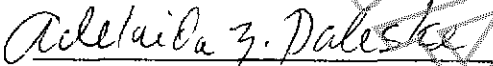
mutually acceptable to the parties involved). The arbitration shall be governed by the mandatory Arbitration Rules of the Skagit County Superior Court then in effect (or under any other form of arbitration mutually acceptable to the parties involved). Any award rendered shall be final and conclusive upon the parties and a judgment may be entered in the highest court of the forum, state or federal, having jurisdiction. The expenses of the arbitration shall be borne equally by the parties to the arbitration. However, each party shall pay for and bear the cost of its own experts, evidence and attorneys' fees. In the discretion of the arbitrator, an award may include the cost of a party's counsel if the arbitrator expressly determines that the party against whom such award is entered has caused the dispute, controversy or claim to be submitted to arbitration.

WHEREAS, the parties have hereunto set their hands and seals on the day and year first above written.

DALESKE:



Michael Daleske



Adelaida Daleske

SHANER:

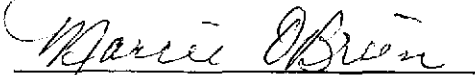


Larry A. Shaner

O'BRIEN:



Aeron O'Brien



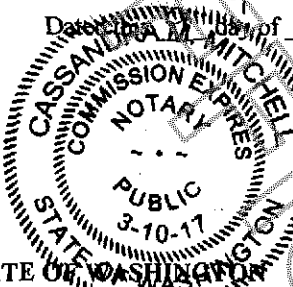
Marcie O'Brien

STATE OF WASHINGTON)

COUNTY OF Skagit)

On this day personally appeared before me MICHAEL DALESKE & ADELAIDA DALESKE, to me known to be the individuals described herein 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 stated herein.

Dated this 17 day of March, 2015.



Cassandra M Mitchell
Notary Public in and for the State of WA
Washington, residing in MT Vernon
My commission expires: 3-10-17

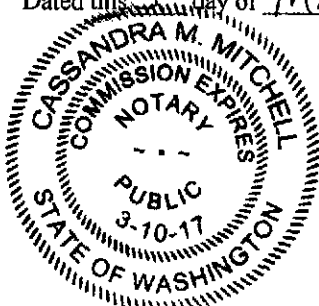
STATE OF WASHINGTON)

COUNTY OF Skagit)

ss.

On this day personally appeared before me LARRY A. SHANER, to me known to be the individual described herein and who executed the within and foregoing instrument and acknowledged to me that he signed the same as his free and voluntary act and deed for the purposes stated herein.

Dated this 5 day of March, 2015.



Cassandra M Mitchell
Notary Public in and for the State of WA
Washington, residing in MT Vernon
My commission expires: 3-10-17

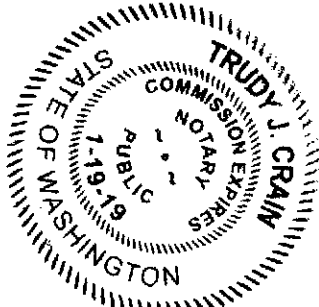
STATE OF WASHINGTON)

COUNTY OF Skagit)

ss.

On this day personally appeared before me AERON O'BRIEN & ~~MARCIE O'BRIEN~~, to me known to be the individual described herein 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 stated herein.

Dated this 2 day of March, 2015.



Trudy J Craik
Notary Public in and for the State of
Washington, residing in auvick
My commission expires: 1-19-19

ACKNOWLEDGMENT PAGE TO BE ATTACHED TO THE FOLLOWING DOCUMENT:
Access And Utility Easement Agreement

State of WA
County of SKagit

I certify that I know or have satisfactory evidence that

Marcie O'Brien
is/are the person(s) who appeared before me, and said person(s) acknowledged that (he/she/they) signed this of instrument and acknowledged it to be (his/her/their) free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: 3-10-15

Cassandra M Mitchell
Name: Cassandra M Mitchell
Notary Public in and for the State of WA
Residing at: MT Vernon, WA
My appointment expires: 3-10-17

