

FILED FOR RECORD AT THE
REQUEST OF/RETURN TO:

Paul & DiAnn Sager

302 South Gardner Road

Burlington, WA 98233

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

NOV 15 2016



201611150092

Skagit County Auditor

\$83.00

11/15/2016 Page

1 of

11

2:49PM

EASEMENT AGREEMENT

Amount Paid \$
Skagit Co. Treasurer

By *Tran* Deputy

Grantor (s):

PAUL G. SAGER and DIANN SAGER,
husband and wife

Grantee (s):

PAUL G. SAGER and DIANN SAGER,
husband and wife

Additional Grantor(s) on page(s):

Additional Grantee(s) on page(s):

Abbreviated Legals:

Tract 2, SP PL06-0614, AF #200912290021,
being a ptn NW ¼ of SE ¼ of SW ¼, 33-35N-R4E.,
W.M.;

Lots 1, 2, 3, 4, and Tract X, SP SS4-08, AF
#201106020045, being a ptn SE ¼ of SW ¼,
S33-T35N-R4E, W.M.

Additional Legals on page(s):

1, 2

Assessor's Tax Parcel Nos.:

P130022 / 3867-000-037-1900
P130642 / 3867-000-037-0304
P130640 / 3867-000-037-0302
P130641 / 3867-000-037-0303
P62521 / 3867-000-037-0300
P130639 / 3867-000-037-0301

**WHEREAS, PAUL G. SAGER and DIANN SAGER, husband and wife, are the
owners of the following described real property located in Skagit County, Washington:**

Lots 1, 2, 3, and 4, and Tract X, Burlington Short Plat No. SS4-08, approved May 25, 2011 and recorded June 2, 2011 under Auditor's File No. 201106020045, records of Skagit County, Washington, being a portion of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 33, Township 35 North, Range 4 East, W.M.

Situate in the County of Skagit, State of Washington,

Each of the lots and the tract that are described in the above description may, separately, be referred to herein as "Lot 1" and/or "Lot 2" and/or "Lot 3" and/or "Lot 4" and/or "Tract X."

And also:

Tract 2, Short Plat No. PL06-0614, approved December 28, 2009 and recorded December 29, 2009 under Auditor's File No. 200912290021, records of Skagit County, State of Washington, being a portion of the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of Section 33, Township 35 North, Range 4 East, W.M.,

which may be hereinafter referred to herein as "Tract 2."

Situate in the County of Skagit, State of Washington.

AND WHEREAS, PAUL G. SAGER and DIANN SAGER, husband and wife, wish to provide for easements and other agreements relating to said real property, including, but not limited to, temporary construction easements, easements for ingress, egress, utilities, storm water, sanitary sewer improvements, and road maintenance.

NOW THEREFORE, THE UNDERSIGNED, PAUL G. SAGER and DIANN SAGER, husband and wife, ("Grantors") in consideration of the covenants and conditions hereinafter set forth, establish, give, grant and convey to PAUL G. SAGER and DIANN SAGER, husband and wife, ("Grantees"), including any after acquired title in the interests conveyed herein, the following:

1. Temporary License for Use of Drain Field.

The Grantors, as the owners of Lot 2, hereby grant to the Grantees, as the owners of Lot 1, a temporary license to use a portion of Lot 2 for purposes of a septic drain field as it presently exists and is located on Lot 2, which drain field is depicted on a Survey recorded under Auditor's File No. 201106020045, records of Skagit County, Washington, (the "Drain Field"). The owner of Lot 1 shall bear all costs related to maintenance, repair and replacement of the Drain Field and shall keep the Drain Field in proper, working order.

This temporary license for use of the Drain Field, as provided for in this paragraph 1, shall terminate one hundred twenty (120) days after such time that the owner of Lot 2 gives the owner of Lot 1 written notice of termination of any and all rights of the owner of Lot 1 to use of the Drain Field. The owner of Lot 2 shall be responsible for the cost of the connection fee and the cost of installing pipes, pumps and related improvements necessary to connect Lot 1 to the City of Burlington sewer system. The owner of Lot 2 shall not provide notice of termination of the temporary license until such time as the owner of Lot 2 has connected Lot 1 to the sanitary sewer for the City of Burlington.

2. Temporary Construction Easements

a. Sanitary Sewer Improvements.

Grantors, as the owners of Lot 1, hereby grant to Grantee, as the owners of Lot 2, a nonexclusive, temporary construction easement over, under, on and across Lot 1 for the specific purpose of: 1) installing sanitary sewer improvements to Lot 1, including but in no way limited to pipes, tanks, pumps, electrical connections to existing electrical and sewer/septic service on Lot 1, and 2) decommissioning the Drain Field.

The owner of Lot 1 agrees that, when a sanitary sewer connection becomes available from the City of Burlington for Lot 1, the owner of Lot 1 will: 1) allow the owner of Lot 2 to connect Lot 1 to the city's sewer and thereafter, the owner of Lot 1 will permanently discontinue any use of the Drain Field located on Lot 2; 2) be responsible for all reoccurring sewer charges; 3) assume ownership and responsibility for all sewer connections, pumps, pipes, tanks and other improvements related to the connection of Lot 1 to the City of Burlington sewer system.

This temporary construction easement, as provided for in this paragraph 2, shall automatically terminate one year after such time as Lot 1 is permanently connected to the sanitary sewer system for the City of Burlington.

b. Construction of Road and Utilities.

As to Lots 1, 3, and 4.

The Grantors, as the owners of Lots 1, 3, and 4, hereby grant to the Grantees a non-exclusive, temporary construction easement over, under, on and across the South thirty-five feet (35') of Grantors' Lots 1, 3, and 4 for ingress and egress for the purpose of: 1) constructing a roadway, ditching and drainage, and 2) installing and connecting to any and all utilities for water, power, sanitary sewer, storm water, drainage, cable, phone, gas, and all other utilities of any nature whatsoever.

As to Lot 2.

The Grantors, as the owners of Lot 2, hereby grant to the Grantees a non-exclusive, temporary construction easement over, under, on and across the South seventy feet (70') of Grantors' Lot 2 for ingress and egress for the purpose of: 1) constructing a roadway, ditching and drainage, and 2) installing, maintaining, repairing, and connecting to any and all utilities for water, power, sanitary sewer, storm water, drainage, cable, phone, gas, and all utilities of any nature whatsoever.

These temporary construction easements, as provided in this Section 2 above shall terminate one year after the later of: (i) the completion of a paved road across the area of this temporary construction easement; or (ii) installation of all utilities in the area of this temporary construction easement.

3. Permanent Easement for Utilities – Tract X.

The Grantors hereby grant to the Grantees a non-exclusive, permanent, and perpetual easement over, under, on and across: 1) the North ten feet (10') of Grantors' Lot 1 lying West of Tract X; 2) all of Tract X; 3) the North four feet (4') of that portion of Lot 1, lying immediately South of Tract X; and 4) the North four feet (4') of Lots 2, 3, and 4, for the purpose of installing, maintaining, repairing, and connecting to any and all utilities for water, power, sanitary sewer, storm water, drainage, cable, phone, gas, and all other utilities of any nature whatsoever.

To protect Grantees' rights hereunder, the Grantors, their heirs, successors, assigns, licensees, invitees, tenants, employees, personal representatives and legal representatives, are hereby prohibited from constructing any improvement or structure within the easement area, as is defined in the first paragraph of this Section 3, that would unreasonably interfere with Grantees' use of the easement area, as is defined in the first paragraph of this Section 3. A fence shall not be considered unreasonable interference with Grantees' use of the easement area. Grantees shall restore any fence to as good a condition as it was prior to the Grantees engaging in any activity in the easement area.

4. Permanent Easement for Ingress and Egress and Utilities – Lots 1-4.

The Grantors hereby grant to the Grantees a non-exclusive, permanent, and perpetual easement for ingress, egress and utilities over, on, under and across: 1) the South thirty feet (30') of Lots 1, 3 and 4; 2) that portion of Lot 2 described as follows:

A 30 foot strip over Lot 2 described as follows: Commencing at the southeast corner of Lot 1, thence northerly along the common line between Lot 1 and Lot 2 to a point 30 feet perpendicular to the south line of Lot 1, thence South 88° 16' 24" East a distance of 17.59'; thence South 45° 12' 00" East a distance of 46.24 feet,

thence North 89° 29' 33" East a distance of 25.18' more or less to the east line of Lot 2 and a point that is 30 feet perpendicular to the south line of Lot 2, thence South 1° 00' 58" East a distance 30.01' along the common line between Lot 2 and Lot 3 to the southeast corner of Lot 2; thence South 89° 29' 33" West a distance 37.97' along the southerly line of Lot 2, thence North 45° 12' 00" West a distance 46.62' to a corner point on the boundary of Lot 2, thence North 89° 16' 24" West a distance of 4.54' along the boundary line of Lot 2 to the common corner point with Lot 1, the terminus, and said southeast corner of Lot 1.

5. Temporary and Permanent Easements – Tract 2.

A. Temporary Easement. The Grantors, as the owners of Tract 2, hereby grant to the Grantees a non-exclusive, temporary construction easement over, under, on and across the North 130 feet of the West 115 feet of Tract 2 for ingress and egress for the purpose of: 1) constructing a roadway, ditching and drainage, and 2) installing, maintaining, repairing, and connecting to any and all utilities for water, power, sanitary sewer, storm water, drainage, cable, phone, gas, and all other utilities of any nature whatsoever.

The temporary construction easements, as provided in this Section 5A above shall terminate one year after construction of the later of: (i) the completion of a paved road across the area of this temporary construction easement; or (ii) the completion of installation of utilities in the area of this temporary construction easement.

B. Permanent Easement – Road and Utilities. The Grantors, as the owners of Tract 2, hereby grant to the Grantees a non-exclusive, permanent, and perpetual easement over, under, on and across that portion of Tract 2 described as follows:

That portion of Tract 2, Short Plat No. PL06-0614, approved December 28, 2009, and recorded December 29, 2009, under Auditor's File No. 200912290021, records of Skagit County, Washington, more particularly described as follows.

Beginning at the Southeast corner of Tract 1 of said Short Plat No. PL-0614; thence North 89°29'33" East on the South line of said Tract 1 extended Easterly a distance of 100.00 feet; thence North 1°01'00" West parallel with the line common to said Tract 1 and Tract 2 a distance of 100.00 feet; thence South 89°29'33" West parallel with said South line extended a distance of 100.00 feet to said common line; thence South 1°01'00" East along said common line a distance of 100.00 feet to the point of beginning.

C. **Storm Water Easement.** The Grantors hereby grant to the Grantees a non-exclusive, permanent, and perpetual easement for installation, maintenance, and repair of pipe, and other improvements necessary for the discharge, detention, treatment and other management of storm water, which easement shall be over, under and across that portion of Tract 2 described as follows:

That portion of the West 60.00 feet of Tract 2, Short Plat No. PL06-0614, approved December 28, 2009, and recorded December 29, 2009, under Auditor's File No. 200912290021, records of Skagit County, Washington, more particularly described as follows:

Beginning at the Southeast corner of Tract 1 of said Short Plat No. PL-0614; thence North 89°29'33" East on the South line of said Tract 1 extended Easterly a distance of 60.00 feet; thence South 1°01'00" East parallel with the West line of said Tract 2 a distance of 203.92 feet to the South line of said Tract 2; thence South 89°29'33" West along said South line a distance of 60.00 feet to the Southwest corner of said Tract 2; thence North 1°01'00" West along said West line of said Tract 2 a distance of 203.92 feet to the point of beginning.

WORK IN AN EASEMENT AREA: Any use of the Easement by the Grantees shall be at the sole cost and expense of the Grantees. In the event that Grantees perform work in the easement area, Grantee shall restore the work area upon completion of work to a condition substantially similar to the condition of the work area prior to commencement of work, including replacement of all landscaping and fences.

DAMAGE IN AN EASEMENT AREA: In the event that Grantee of an easement causes identifiable damage to the road, utilities or other improvements in an easement area, then the Grantee, at Grantee's expense, shall, as soon as is reasonably possible, immediately repair the damage leaving the easement area in as good or better condition as it was in prior to the damage by Grantee.

6. **Maintenance Provisions.**

A. **Agreement is Appurtenant.** The Grantors and the Grantees, (collectively the "Lot Owners") hereby agree that Lots 1, 2, 3, and 4, Tract X and Tract 2 (collectively the "Lots") are, and will be, held, sold and conveyed subject to and burdened by this Agreement, which is for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots, and that this Agreement shall be binding upon all parties having or acquiring any right, title or interest in the Lots or

any part thereof, and shall inure to the benefit of the owner(s) thereof and shall otherwise in all respects be regarded as appurtenant to and running with the Lots. The use of the term "Lot" in this Agreement shall refer to any one of the Lots or any portion thereof. The use of the term "Lot Owner" in this Agreement shall refer to all Grantors, Grantees and their successors in interest.

B. Decisions Concerning Maintenance. Any decision to take action to construct, maintain, repair and/or replace ("Maintain" or "Maintenance") the road, utilities and/or any other associated improvements (the "Improvements") must be approved by the Lot Owners. Approval of a decision to Maintain the Improvements shall consist of the written consent of the Lot Owners who hold majority of the Eligible Votes, as defined herein. The total Eligible Votes shall be equal to the total number of buildable lots located within the Lots. A buildable lot is any portion of a Lot which has a unique Skagit County Assessor's Tax Parcel Number and on which a permanent residential, commercial, industrial or other similar structure could be constructed under applicable Skagit County Code and Burlington Municipal Code and all other applicable laws and regulations. A Lot Owner shall have one vote for each buildable lot owned by the Lot Owner and the total of all such votes shall be the total Eligible Votes. If a Lot is owned by more than one person, the vote for that Lot shall be cast by them in such manner as is determined by the owners of the Lot.

C. Allocation of Costs. Any costs incurred in Maintenance of the Improvements shall be divided into equal shares, with each Lot Owner receiving one share for each buildable lot owned by the Lot Owner.

No share of Maintenance cost shall be allocated to a lot that is not a buildable lot.

Notwithstanding anything to the contrary, a Lot Owner may make any Improvement permitted by the easements granted in this Agreement without seeking reimbursement from the other Lot Owners for such Improvement.

7. Enforcement

A. Authorization of Lien; Personal Obligation. Each Lot Owner and each subsequent owner of any Lot or portion thereof, by virtue of this Agreement, or a subsequent acceptance of a deed therefor, whether or not it shall be expressed in such deed, agrees to participate in the payment for Maintenance of the Improvements as provided herein by means of assessments as may be established by the majority vote of the Eligible Votes and further agrees to comply with all conditions of this Agreement as set forth herein. Each assessment, together with interest, costs and reasonable attorney's fees required for any enforcement, shall also be a personal obligation of the person(s) who was/were the owner(s) of such Lot(s) at the time the assessment fell due. In addition, any Lot Owner who is the prevailing party in any litigation against a defaulting Lot Owner, shall have the right to assess a lien against

the Lot(s) owned by a defaulting Lot Owner for any and all sums, including attorney's fees, incurred by a Lot Owner in enforcing this Agreement, if the defaulting Lot Owner has not cured any default under this Agreement within thirty (30) days of written notice of such default.

B. Priority of Lien for Assessments. All sums expressed as against any Lot pursuant to this Agreement, together with interest, costs and reasonable attorney's fees, as provided herein, shall be a charge upon the Lots and shall be a continuing lien upon the subject Lots. The lien shall be for the benefit of all Lot Owners who contributed their share of the costs of the Maintenance giving rise to the lien. Such lien shall be superior to all other liens and encumbrances on such lot, except for (a) liens of ad valorem taxes or (b) liens for all sums on an unpaid first mortgage.

All other persons acquiring liens or encumbrances on any Lot after the date this Agreement shall have been recorded shall take subject to this Agreement and such liens or encumbrances shall be inferior to all future liens for assessments, as provided herein, whether or not consent is specifically set forth in the instruments creating such liens or encumbrances.

C. Effect of Non-Payment, Remedies. Any amounts assessed under this Agreement which are not paid when due shall become delinquent. If the assessment(s) are not paid within sixty (60) days, a lien as herein provided shall attach and, in addition, the lien shall include interest from the due date of the assessment at the lesser of: (i) twelve percent (12%); or (ii) the maximum legal rate on the principal amount due, all costs of collection, reasonable attorney's fees, and all other amounts permitted by law. In the event the assessment remains unpaid after sixty (60) days, any Lot Owner who is current on all of his/her/its assessments may institute suit to collect such amounts or to foreclose the lien. All payments shall be applied first to costs and attorney's fees, then to interest, then to delinquent assessments. Foreclosure shall be by the same process provided for the foreclosure of liens under R.C.W. 60.04 et seq. and as hereafter amended.

8. General Provisions

1) This Agreement and the easements granted herein shall be non-exclusive and shall remain in effect in perpetuity, until terminated by the mutual written and recorded agreement of the Lot Owners, or by the operation of law.

2) The Grantee of each Easement hereby agrees to indemnify and hold harmless the Grantor of each Easement, and its successors and assigns, from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation any and all sums paid for settlement, claims, attorneys' fees, consulting and expert fees) which in any way relate to or arise out of the use of the Easement Area by Grantee and/or Grantee's guests,

invitees, licensees, contractors, agents and/or all other persons whose use of the Easement Area arises out of or is in any way related to Grantee.

3) The benefits, burdens, and covenants of this Agreement and the easements granted herein shall be deemed to be appurtenant to and shall constitute a covenant and encumbrance running with the land and bind the Grantors' property, the Grantees' property, the Grantor and the Grantee, and their respective heirs, successors and assigns, and all persons possessing any of said property by, through, or under the parties hereto, or their respective heirs, successors or assigns.

4) The failure of any party to insist upon strict performance of any of the provisions of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver but the same shall be and remain in full force and effect.

5) The easements granted herein shall not effect a merger of the fee ownership and the easements. The fee and easements shall hereafter remain separate and distinct.

6) The subject headings of the paragraphs of this document are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

7) This Agreement shall be construed and governed by the laws of the State of Washington.

8) The invalidity or unenforceability of any provision hereof shall not affect or impair any other provisions hereof.

9) This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements or understandings between the parties with respect to the subject matter hereof.

10) This Agreement may not be modified or amended except by written agreement signed and acknowledged by all parties. Each party to this Agreement has had the opportunity to review this Agreement with legal counsel. No interpretation of this Agreement shall be made based upon which party drafted all or any portion of this Agreement.

11) If by reason of any breach or default on the part of either party hereto it becomes necessary for the other party hereto to employ an attorney, then the non-breaching party shall have and recover against the other party in addition to costs allowed by law, reasonable attorneys' fees and litigation-related expenses. The non-breaching party shall be entitled to recover reasonable attorneys' fees and costs and expenses, as provided above, regardless of whether litigation is actually commenced, including fees and costs and expenses relating to bankruptcy, appeal or post judgment matters.

12) The parties hereto do hereby consent to jurisdiction and venue of the Superior Court of Skagit County, State of Washington for any matter arising out of or relating to this Agreement.

DATED this 19 day of October, 2016.

GRANTORS:

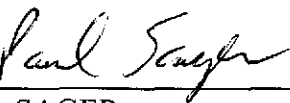


PAUL G. SAGER




DIANN SAGER

GRANTEES:



PAUL G. SAGER



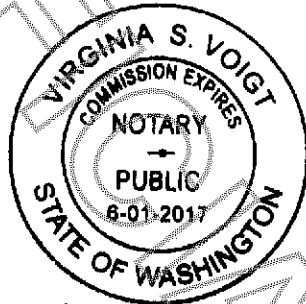
DIANN SAGER

(acknowledgments follow)

State of Washington)
) ss
County of Skagit)

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

Dated: October 19, 2016.

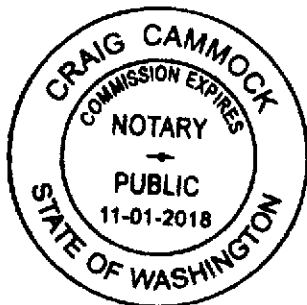


Virginia S. Voigt
NOTARY PUBLIC
Printed Name: VIRGINIA S. VOIGT
My appointment expires: 6/1/17

State of Washington)
) ss
County of Skagit)

I certify that I know or have satisfactory evidence that DIANN SAGER is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: October 19, 2016.



Craig Cammock
NOTARY PUBLIC
Printed Name: Craig Cammock
My appointment expires: 11-1-2018