

AFTER RECORDING RETURN TO:
BRIAN GENTRY
FRAZIER HEIGHTS LLC
504 E. Fairhaven Ave.
Burlington, WA 98233
July 14, 2017



201708210212

Skagit County Auditor \$78.00
8/21/2017 Page 1 of 5 3:20PM

TITLE OF DOCUMENT: JOINT USE, MAINTENANCE & COST SHARING COVENANT
AF# OF AFFECTED DOCUMENT: 201708210208
GRANTOR: FRAZIER HEIGHTS LLC
GRANTEE: FRAZIER HEIGHTS LLC, and
THE GENERAL PUBLIC
ABBREV. LEGAL DESCRIPTION: LOTS 28, 29 & 30 & TRACT T, FRAZIER HEIGHTS.,
AF# 201708210208
TAX PARCEL NOS.: P21047

JOINT USE, MAINTENANCE & COST SHARING COVENANT

THIS COVENANT is made this 17 day of July, 2017, by FRAZIER HEIGHTS LLC, ("Frazier ") for the purpose of securing perpetual rights of use, maintenance, repair and replacement of a private driveway area that provides rights of ingress and egress to several parcels of real property owned by Frazier.

WITNESSETH THAT:

WHEREAS, Frazier owns certain parcels of real property situate in Skagit County, Washington, known herein as "Lots 28, 29 & 30" and legally described as:

Lots 28, 29 & 30, Plat of Frazier Heights, as per the Map thereof recorded at Auditor's File No. 201708210208, Records of Skagit County, Washington.

WHEREAS, Frazier also owns a certain parcel of real property situate in Skagit County, Washington, which will be referred to hereinafter as "Tract T" or the "Common Driveway" which is legally described as:

Common Tract T, Plat of Frazier Heights, as per the Map thereof recorded at Auditor's File No. 201708210208, Records of Skagit County, Washington.

WHEREAS, in Section 4.6 of a certain "Declaration of Covenants, Conditions, Restrictions and Reservations for Frazier Heights" [the "Declaration"] recorded at Auditor's File No.

261708210211, Records of Skagit County, Washington, Tract T is intended to function as a private Common Driveway serving only Lots 28, 29 & 30 in the Community. Sections 4.7, 10.1.7 of the Declaration contain provisions requiring that maintenance, repair and replacement of Tract T shall occur at the sole cost of the Owners of such Lots 28, 29 & 30 under the terms of a certain "Joint Maintenance Covenant" generally described in Section 16.2.3 of the Declaration. This Covenant is prepared and recorded by Frazier to serve as such "Joint Maintenance Covenant" for the benefit of the future Owners of Lots 28, 29 & 30, in satisfaction of the requirements of Sections 4.7, 10.1.7 and 16.2.3 of the Declaration.

NOW, THEREFORE, for and in consideration of the several matters described above, for the mutual benefit of Frazier and the future Owners of Lots 28, 29 & 30, ["Lot Owners" or "Parties"], Frazier grants and dedicates the following Covenant and associated easement rights:

1. Grant of Reciprocal Easements for Use of Common Driveway. Frazier hereby grants to and for the benefit of the Lot Owners, perpetual non-exclusive easements on, over under and across the Common Driveway, for the purpose of providing rights of ingress, egress and utilities to each of the Lots 28, 29 & 30. Nothing shall be stored, parked or contained in Tract T without the unanimous consent of all the Lot Owners. No person shall make or attempt to make any exclusive or proprietary use of the Common Driveway. The Common Driveway shall remain open, in good condition and repair, for the individual and mutual benefit of all lawful Occupants of all said Lots.
2. Grant of Reciprocal Easements for Maintenance. Frazier hereby grants to and for the benefit of the Lot Owners and Frazier Heights Association [the "Association"], and to their respective contractors and licensees, perpetual non-exclusive easements on, over under and across Tract T, for the purpose of joint maintenance, repair and replacement of the Common Driveway, as hereinafter provided.
3. Provisions for Joint Maintenance. The Lot Owners shall perpetually maintain, repair and replace the Common Driveway as necessary to keep it in good condition for their mutual use and benefit, so that it may properly serve normal residential use of the Lot Owners, including use by public or private emergency vehicles and the tenants, invitees and licensees of the Lot Owners, all of whom and which are specifically permitted to use the Common Driveway.
4. Annual Inspection in Spring-time – Repair Work to Follow. Representatives of the Lot Owners shall inspect the Common Driveway in the second quarter of each year to determine the nature and scope of any maintenance or repairs that are necessary to keep the Common Driveway functional, in good repair and appearance, for the benefit of all Lot Owners. Any necessary maintenance or repair work shall be performed by a licensed, bonded contractor doing business in Skagit County, Washington selected by the Lot Owners. The Lot Owners shall determine which of the Lot Owners shall enter into a contract for such repairs; the Non-contracting Parties shall be liable to the Contracting Party as hereinafter provided.

2. Apportionment of Costs - Maintenance Share. Each Lot Owner shall bear an equal percentage [33 1/3 %] of the total cost of maintenance and repair of the Common Driveway, which percentage shall be known as that Party's "Maintenance Share". If any Party, or the invitee, licensee or agent of a Party should damage any portion of the Common Driveway to a degree beyond ordinary wear and tear, such Party ["Responsible Party"] shall promptly take action to repair said damage in a competent manner. In the event that the Responsible Party does not complete repairs within thirty days of the occurrence of such damage, any other Party may cause the damage to be repaired. The costs of repairing such damage shall constitute a portion of the Maintenance Share of the Responsible Party and shall be due and payable within thirty days following the presentation of an invoice or bill therefore, presented either by the contractor doing the work or by the Party who has paid the contractor for such work.

3. Adjustment of Accounts for Maintenance Share – Reserve Account Authorized. Upon completion of spring maintenance to the Common Driveway, the Lot Owners' respective liabilities for Maintenance Share shall be determined. The non-contracting Parties shall pay their Maintenance Share for such costs to the Contracting Party within 30 days of presentation of an invoice or bill therefor presented either by the contractor doing the work or by the Party who has paid the contractor for such work. Any portion of a Party's Maintenance Share remaining unpaid longer than 30 days following its due date shall bear interest at the rate of 12% per annum, or the rate charged by the contractor on the unpaid balance, whichever is greater. Alternatively, or in addition, the Lot Owners may agree to establish and maintain, at a reputable financial institution, or with the Association, a reserve fund designed to provide funding for long-term maintenance and repair to the Common Driveway. In the event that such a reserve fund is established, the Lot Owners' respective payments made into such account shall be deemed to constitute portions of the Maintenance Shares of the Parties.

4. Lien against Lots to Secure Maintenance Share. Properly allocated costs of maintenance and repair constituting a Party's Maintenance Share shall be the personal obligation of each Party, and shall in addition constitute an equitable lien against such Party's Lot. If unpaid when due, this obligation may be judicially enforced by the Contracting Party, or by any person or entity who or which has paid or has become obligated to pay all or any portion of the Maintenance Share of a defaulting Party, through an action for damages or in the manner prescribed by law for foreclosure of a mortgage of real property, at the option of the aggrieved Party. The prevailing party in any such proceeding shall be entitled to an award of attorney's fees and costs incurred, whether or not such suit is filed or a judgment or decree awarded.

7. Enforcement by Homeowners Association. In the event that the Lot Owners fail to adhere to the maintenance requirements established above in this Covenant, the Frazier Heights Association ["Association"], the Association may provide any necessary maintenance, repair and replacement to the Common Driveway at the sole expense of the all the Lot Owners pursuant to Sections 4.5 and 10.1.7 of the Declaration.

8. Benefits and Burdens – Binding Equitable Servitudes. The provisions of this Covenant shall benefit, burden, and run with the land of Lots 28, 29 & 30 and Tract T; the terms and

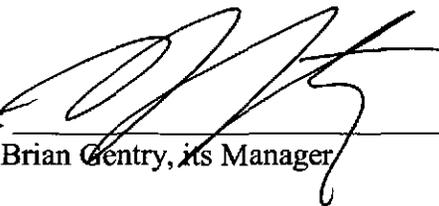
provisions of this Covenant shall be binding upon and shall inure to benefit of each of the Lot Owners, and their respective family members, tenants, other lawful occupants, successors, assigns, beneficiaries, grantees, devisees, heirs at law, next of kin, personal and legal representatives, without limitation.

11. Alternative Forms of Dispute Resolution Authorized.

In the event that the Lot Owners become deadlocked for any reason, or shall be unable or unwilling to act with respect to any matter within their powers and authority, in addition to any other remedies which may be available under applicable law, such matter may be resolved by private arbitration conducted under the procedures hereinafter described. Any Party may initiate such arbitration proceedings, which arbitration shall be conducted substantially in accordance with the procedures established for Mandatory Arbitration under the Local Rules of the Skagit County Superior Court, irrespective of whether the dispute is one which is subject to Mandatory Arbitration under law, and without the necessity of actually filing formal proceedings in said Superior Court. If the Lot Owners cannot agree upon the identity of an arbitrator within thirty (30) days of notice by such Party to the other Lot Owners that a dispute requiring arbitration hereunder is to be arbitrated, any such Party may apply to any Judge of the Superior Court, sitting in Chambers, and the Judge is hereby authorized to select an arbitrator from the Court's master list of potential arbitrators. Unless the Arbitrator determines otherwise, all costs, fees and expenses of the Arbitrator, including an advance retainer if requested by the Arbitrator shall become the personal obligation of all Lot Owners, jointly and severally, and shall be payable as the Arbitrator may determine; provided, however, that the decision of the Arbitrator may include an award to a prevailing Party of those sums previously paid and/or incurred by such prevailing Party for such costs. The decision of the arbitrator shall be binding upon all Lot Owners, and may be enforced in the manner provided in RCW 7.04A.

IN WITNESS WHEREOF, Frazier has caused this Covenant to be executed effective as of the date first written above.

FRAZIER HEIGHTS LLC

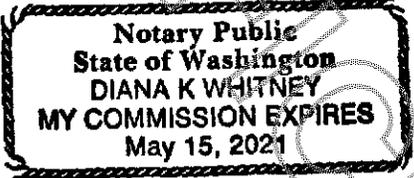
BY: 

Brian Gentry, its Manager

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that Brian Gentry is the person who appeared before me, and said person acknowledged that (s)he signed this instrument, on oath stated that (s)he was authorized to execute the instrument and that (s)he acknowledged it as the Manager of FRAZIER HEIGHTS LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

DATED: July 17th, 2017.



Diana K. Whitney
NOTARY PUBLIC in and for the State of Washington,
Residing at: Bow
My commission expires: 15 MAY 2021.