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Skagit County Auditor

Filed for Record at Request of:
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2200 Rimland Drive, Suite 115
Bellingham, WA 98226

Title of Document: Joint Use Easement
AF# of Affected Document: 202101260044
Grantor: LG Anacortes, LLC
Grantee: LG Anacortes, LLC and the General Public
Abbreviated legal: Lots 2, 3 & 4, City of Anacortes SP No. SPL-2020-0003. Sec 25T 35N R1E
AF# 202101260044
Tax Parcel Nos: P32077

REVIEWED BY
SKAGIT COUNTY TREASURER
DEPUTY [Signature]
DATE 1-26-21

JOINT USE EASEMENT

THIS JOINT USE EASEMENT is made this 19th day of January, 2021, by LG Anacortes, LLC ("LG") for the purpose of securing perpetual rights of the use, maintenance, repair and replacement of a private driveway area that provides rights of ingress, egress and utilities to two parcels of real property owned by LG.

RECITALS

- A. LG is the owner of the following parcels of real property:
 1. Real property located in the City of Anacortes, Skagit County, Washington, legally described as follows:

Lot 2, City of Anacortes Short Plat No. SPL-2020-0003, according to the plat thereof recorded 1-26-21, 2021, under Auditor's File No. ~~202101260044~~ *202101260044, records of Skagit County, Washington. *202101260044

Situate in Skagit County, Washington.

Hereinafter referred to as "Lot 2".
 2. Real property located in the City of Anacortes, Skagit County, Washington, legally described as follows:

Lot 4, City of Anacortes Short Plat No. SPL-2020-0003, according to the plat thereof recorded 1-26-21, 2021, under Auditor's File No. *202101260044, records of Skagit County, Washington.

Situate in Skagit County, Washington.

Hereinafter referred to as "Lot 4".

3. Real property located in the City of Anacortes, Skagit County, Washington, legally described as follows:

Lot 3, City of Anacortes Short Plat No. SPL-2020-0003, according to the plat thereof recorded 1-26-21, 2021, under Auditor's File No. *202101260044, records of Skagit County, Washington.

Situate in Skagit County, Washington.

Hereinafter referred to as "Benefitted Property".

B. Reference to Lot 2 and Lot 4 collectively shall hereinafter be referred to as the "Burdened Property".

C. The Benefitted Property is located adjacent to and South and West of the Burdened Property.

D. In order to develop the Benefitted Property, an easement for utilities over a portion of the Lot 2 is required for the benefit of the Benefitted Property ("Lot 2 Easement") and an easement for utilities and access over a portion of Lot 4 is required for the Benefitted Property ("Common Driveway").

E. LG wishes to make provisions formalizing an easement which provides access and utilities to the Benefitted Property as well as sets forth maintenance provisions relating to the Common Driveway.

NOW, THEREFORE, for and in consideration of the several matters described above, for the benefit of LG and the future Owners of Lot 2, Lot 4 and the Benefitted Property ["Lot Owners" or "Parties"], LG grants and dedicates the following Covenant and associated easement rights:

1. **Grant of Easement.**

a. **Lot 2 Easement.** In consideration of the mutual covenants and conditions herein, LG, as owner of Lot 2, does hereby grant an easement over, under and across a portion of Lot 2, the description and location of which is described in Paragraph 2(a) herein, for the purpose of utilities, for the benefit of the Benefitted Property.

b. **Common Driveway.** In consideration of the mutual covenants and conditions herein, LG, as owner of Lot 4, does hereby grant an easement over, under and across a portion of Lot 4, the description and location of which is described in Paragraph 2(b) herein, for the purpose of ingress, egress and utilities, for the benefit of the Benefitted Property.

2. **Description and Location of Easement.**

a. **Lot 2 Easement.** The Lot 2 Easement granted herein is over the East 5' of the South 34.14' of Lot 2, as is more specifically described and depicted in the City of Anacortes Short Plat No. SPL-2020-0003, recorded 1-26-21, 2021, under Auditor's File No. 202101260044 (hereinafter "Lot 2 Easement Area").

b. **Common Driveway.** The Common Driveway easement granted herein is over the northerly "pipe stem" of Lot 4, as is more specifically described and depicted in the City of Anacortes Short Plat No. SPL-2020-0003, recorded 1-26-21, 2021, under Auditor's File No. 202101260044 (hereinafter "Common Driveway").

3. **Maintenance.**

a. **Common Driveway.** The costs to maintain, repair and improve the Common Driveway shall be shared equally by the owners of Lot 4 and the Benefitted Property, subject to the provisions of Paragraph 3.c herein and of Paragraphs 4 and 5 hereinbelow.

b. **Utilities.** The cost to install, maintain, repair and improve the utilities solely serving either Lot 4 or the Benefitted Property shall be borne solely by the owners of the Lot so benefitted, subject to the terms of Paragraphs 4 and 6 herein.

c. **Extraordinary Use.** The owner or owners of the Benefitted Property and Lot 4 shall be separately responsible to repair, and for the costs thereof, any damage caused to the Common Driveway as a result of extraordinary use. "Extraordinary use" shall include, but not be limited to, movement of construction equipment, moving vans, commercial trucks, or other heavy loads, movement of recreational vehicles or increased usage not ordinarily consistent with normal residential traffic. In the event that any owner or owners or their agents, employees or invitees cause the type of damage described herein shall fail to make the necessary repairs, the remaining property owner may do so after 10 days' notice to such owner or owners, and any costs so expended shall be a burden upon the land of such owner or owners with a lien enforceable as set forth in paragraph 6 herein.

4. **Notice.**

a. **Repairs and Maintenance – Common Driveway:** Representatives of the owners of the Benefitted Property and Lot 4 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 Lot 4 and the Benefitted Property. Any necessary maintenance or repair work shall be

performed by a licensed, bonded contractor doing business in Skagit County, Washington selected by the owners of Lot 4 and the Benefitted Property. The owners of Lot 4 and the Benefitted Property shall determine when the work shall occur and which of the owners shall enter into a contract for such repairs; the Non-contracting Parties shall be liable to the Contracting Party as hereinafter provided and subject to paragraphs 5 and 6 herein.

b. **Improvements**: Prior to the owner of Lot 4 or the Benefitted Property commencing any improvements to the Common Driveway, notice shall be provided to the other owner. The notice shall contain an estimated cost of the improvement and a timeline for the improvement to occur. Before the improvement is installed and the cost shared equally, there shall be unanimous consent between the owners of Lot 4 and the Benefitted Property. The parties shall act in good faith in discussing and agreeing upon proposed improvements. If the parties cannot agree, any one owner may perform the proposed improvement at their own cost, including any ongoing cost associated with such improvement (i.e. electric bill for lights along driveway).

c. **Utilities**. Prior to the owners of the Benefitted Property performing any installation, maintenance or repairs to the utilities serving solely the Benefitted Property, notice shall be provided to the owners of Lot 2 in relation to the Lot 2 Easement, or the owners of Lot 4 as affects the Common Driveway. The notice shall contain a description of the work to occur and the proposed date(s).

5. **Adjustment of Accounts for Maintenance Share – Reserve Account Authorized**. Upon completion of spring maintenance to the Common Driveway, the owners of Lot 4 and the Benefitted Property's 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 owners of Lot 4 and the Benefitted Property may agree to establish and maintain, at a reputable financial institution, 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 owners' respective payments made into such account shall be deemed to constitute portions of the Maintenance Shares of the Parties.

6. **Enforcement**. It is hereby agreed that should either the owner of Lot 4 or the Benefitted Property fail to pay their respective share of any costs to improve, repair or maintain the Easement Area, the remaining owner may pay for the non-paying owner's share. In such event, the paying owner of Lot 4 or the Benefitted Property, as applicable, shall have a lien against the non-paying owner's real property and improvements. The lien arising under this section may be enforced judicially by the paying owner or their authorized representative in the manner set forth in chapter 61.12 RCW. The paying owner or their authorized representative shall have the power to purchase the non-paying owner's real property and improvements at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of

any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. The paying owner may elect to take a deed in lieu of foreclosure in any such proceeding.

7. **Alternative Forms of Dispute Resolution Authorized.** In the event that the owners of Lot 4 and the Benefitted Property, or Lot 2 and the Benefitted Property, as applicable, 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 owners of Lot 2, Lot 4 or the Benefitted Property, as applicable, cannot agree upon the identity of an arbitrator within thirty (30) days of notice by such Party to the other 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 owners involved in the dispute, 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 owners of Lot 2, Lot 4 and the Benefitted Property, as applicable, and may be enforced in the manner provided in RCW 7.04A.

8. **Binding Effect.** This Easement and the terms contained herein shall be perpetual and shall be a covenant running with the land for the benefit of the Benefitted Property. This Easement shall be binding on the parties hereto, and the respective successors, assignees, transferees, grantees and heirs.

9. **Integration.** This Easement contains all of the agreements, representations, warranties, and understandings of the parties and all prior dealings of the parties are merged herein. This Easement may not be amended, changed or revised in any respect except in writing and signed by the party to be charged.

10. **Applicable Law.** This Easement shall be deemed to be made and shall be construed and enforced in accordance with the laws of the State of Washington.

11. **Consideration.** There is no monetary consideration to be paid by any party hereto to any other party.

