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01/05/2022 11:18 AM Pages: 1 of 10 Fees: \$212.50
Skagit County Auditor

After recording return document to:

Port of Skagit County
15400 Airport Drive
Burlington, WA 98233

REVIEWED BY SKAGIT COUNTY TREASURER DEPUTY <u>Josie Bear</u> DATE <u>1/5/2022</u>
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Document Title: Avigation Easement

Grantor(s): David E. Berentson and Judy L. Berentson, husband and wife

Grantee(s): Port of Skagit County

Abbreviated legal description: Ptn Tract 4, BAY VIEW, MCKENNA AND
ELLIOTT's 2ND ADD. (aka Tract 4A SP 153-79),
Skagit County

Additional legal description(s) on page(s) 6 of document.

Assessor's tax/parcel numbers: 4071-004-000-0008/P71164

AVIGATION EASEMENT

This easement made this 14th day of December, 2021 between David E. Berentson and Judy L. Berentson, husband and wife, (hereafter "Grantor"), and the Port of Skagit County, a municipal corporation within the County of Skagit of the State of Washington (hereafter "Grantee"), provides that:

RECITALS

The parties hereto acknowledge the following:

- A. Grantor owns certain real property in Skagit County, Washington, described on Exhibit A and depicted on Exhibit B (the "Property"). All exhibits mentioned herein and attached hereto are incorporated herein as if set forth in full.
- B. Grantee is the owner and operator of the Skagit Regional Airport ("Airport"), an identified essential public facility pursuant to the Washington Growth Management Act, Chapter 36.70A RCW. The Airport is operated pursuant to federal law and Title 53 RCW and RCW 36.70A.510 and RCW 36.70.547 and legally described in Exhibit C and depicted in Exhibit D hereto.
- C. The Airport is the principal airport in Skagit County, serving both recreational and commercial aircraft, including freight and passenger carriers. The Airport represents a public asset currently valued at over \$132,230,000.00. The Airport provides an essential transportation service and facilitates economic growth in Skagit County.
- D. Skagit County has identified undeveloped property in the vicinity of the Airport as part of an Urban Growth Area in which urban development is planned to occur. Unless carefully managed, urban development in the vicinity of airports leads to incompatible uses. Persons owning or occupying property within the vicinity of airports experience noise, exhaust fumes, illumination, smoke, vibration and loss of quiet enjoyment due to aircraft overflights associated with landing and taking off ("Overflight Effects"). In response to Overflight Effects, some persons are prone to assert legal claims or to exert other pressures to limit or terminate airport operations. The occurrence of urban development in the vicinity of the Airport therefore could, unless mitigated, have a harmful effect on Airport operations, limit the usefulness of an essential public facility and be contrary to the public interest and the requirements of the Growth Management Act.
- E. Portions of the Property lie within the Skagit Regional Airport Safety Overlay Zones established by the Washington State Department of Transportation's Aviation Division as set forth in Airport Land Use Compatibility Study, prepared by Reid Middleton and published in 2000 and on file with Skagit County. Portions of the Property also lie within certain aircraft noise contours established in the Airport Maser Plan, 1995, prepared by W & H Pacific and on file at the Port of Skagit County. These zones and contours are depicted on maps comprising a portion of the Skagit County UDC Airport Environs Overlay Map Portfolio.

- F. The Property has been continuously subject to aircraft overflights, either directly above the Property or over adjacent properties for an uninterrupted period in excess of ten years. These overflights, known to Grantor and/or Grantor's predecessors, by aircraft either landing at or taking off from the Skagit Regional Airport have subjected the Property to Overflight Effects. Grantee has not sought, nor has either Grantor nor Grantor's predecessors granted, permission to operate the Airport or to cause Overflight Effects upon the Property.
- G. The term "Average sound level" as used herein shall mean the level, in decibels, of the mean-square, A-weighted sound pressure during a specified period, with reference to the square of the standard reference sound pressure of 20 micropascals.
- H. The term "Day-night average sound level" or "DNL" as used herein shall mean the 24-hour Average Sound Level, in decibels, for the period from midnight to midnight, obtained after the addition of ten decibels to sound levels for the periods between midnight and 7 a.m., and between 10 p.m., and midnight, local time.
- I. The Federal Aviation Administration has determined that noise from Overflight Effects is incompatible with ground uses when in excess of sixty-five (65) DNL.
- J. Urban Development in the vicinity of the Airport upon which noise from Overflight Effects is sixty-five 65 DNL or less poses minimal risk of harmful effects on the Airport.
- K. Pursuant to Section 14.16.210 of the Skagit County Code, Grantor must grant to Grantee an aviation easement for the portions of Grantor's real property within the Skagit Regional Airport Safety Overlay Zones,
- L. Grantor is willing to grant Grantee an easement with respect to Grantor's real property in accordance with the terms and conditions of this Agreement as a condition of development approval by Skagit County.

CONVEYANCE OF EASEMENT

1. The GRANTOR for and in consideration of fulfillment of a condition of a Skagit County project approval, does hereby grant to Grantee, its successors and assigns, a perpetual and assignable easement in, near, upon and over the Property (legally described in Exhibits "A" and "B") for the free and unrestricted passage and flight of aircraft of the class size and category as is now or hereinafter may be operationally compatible with the Skagit Regional Airport ("Aircraft"), across and about the airspace above an imaginary plane, as such plane is defined by Part 77 of the Federal Aviation Regulations, over or in the vicinity of the Property (the "Airspace").

2. The aforesaid easement described in Paragraph Number 1 above includes but is not limited to:
- a. For the use and benefit of the public and Grantee, the continuing right to fly, or cause or permit the flight by any and all persons of Aircraft in, through, across or about any portion of the Airspace hereinabove described; and
 - b. The right to cause or create, or permit or allow to be caused or created upon the Property, Overflight Effects as may be inherent in the proper operation of Aircraft.
 - c. *Provided*, that the rights conveyed to Grantee pursuant to this Avigation Easement shall be limited to those operations of the Skagit Regional Airport that meet noise level classification sixty-five (65) DNL.
3. The easement herein granted shall be deemed both appurtenant to and for the direct benefit of that real property which now or hereinafter constitutes the Skagit Regional Airport, and shall further be deemed in gross, being conveyed to the GRANTEE for the benefit of the GRANTEE, and any and all members of the general public who may use said easement taking off from, landing upon, or operating such aircraft in or about the Airport, or in otherwise flying through said Airspace.
4. This grant of avigation easement shall not operate to deprive the GRANTOR, its successors or assigns, of any rights that it may otherwise have from time to time against any individual or private operator for negligent or unlawful operation of aircraft.
5. It is understood and agreed that these covenants and agreements run with the land and shall be binding upon the heirs, representatives, administrators, executives, successors, an assigns of the GRANTOR, and that for the purposes of this instrument, the Property shall be the servient tenement and the Airport shall be the dominant tenement.
6. The avigation easement, covenants and agreements described herein shall continue in effect until the Airport shall be abandoned or shall cease to be used for public airport purpose, at which time this easement shall terminate.

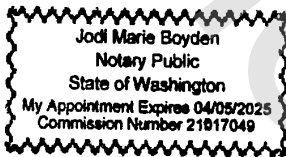
GRANTOR:

David E. Berentson 12-14-21 J. L. Berentson 12-14-21
David E. Berentson, Owner Date Judy L. Berentson, Owner Date

STATE OF WASHINGTON)
) ss
COUNTY OF SKAGIT)

On this 14 day of December, 2021, before me, personally appeared David E. Berentson, to me known to be the individual described in and who executed the within instrument and acknowledged he signed and sealed the same as his free and voluntary act and deed for the uses and purposes herein mentioned.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

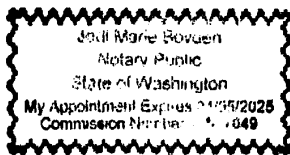


JMB
(signature)
Jodi Boyden
(print name)
NOTARY PUBLIC in and for the State of Washington,
residing at 8029 Pinelli Rd. Sedro Woolley
My appointment expires: 04/05/2025

STATE OF WASHINGTON)
) ss
COUNTY OF SKAGIT)

On this 14 day of December, 2021, before me, personally appeared Judy L. Berentson, to me known to be the individual described in and who executed the within instrument and acknowledged she signed and sealed the same as her free and voluntary act and deed for the uses and purposes herein mentioned.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.



JMB
(signature)
Jodi Boyden
(print name)
NOTARY PUBLIC in and for the State of Washington,
residing at 8029 Pinelli Rd. Sedro Woolley
My appointment expires: 04/05/2025

Exhibit A**LEGAL DESCRIPTION****P71164**

Tract 4A of Skagit County Short Plat No. 153-79, approved January 23, 1980 and recorded January 25, 1980, in Volume 4 of Short Plats, page 25, under Auditor's File No. 8001250006, records of Skagit County, Washington; being a portion of Tract 4 of "PLAT OF BAY VIEW (MCKENNA AND ELLIOTT'S 2ND ADDITION)", as per plat recorded in Volume 3 of Plats, page 19, records of Skagit County, Washington.

Situate in the County of Skagit, State of Washington.

Exhibit C
BAYVIEW AIRPORT—PERIMETER DESCRIPTION

Those portions of Sections 33 and 34, Township 35 North, Range 3 East, W.M., and of Sections 3, 4 and 10, Township 34 North, Range 3 East, W.M., described as follows:

Beginning at the intersection of the South line of the County Road along the North line of section 34, Township 35 North, Range 3 East, W. M., and the West line of said Section 34;

thence East, along said South line of the County Road, a distance of 208 feet;

thence South to a point 300 feet North of the South line of the North $\frac{1}{2}$ of the North $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of said Section 34;

thence East, along a line which is 300 feet North of said South line, a distance of 291 feet to the East line of the West 499 feet of the North $\frac{1}{2}$ of the North $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of said Section 34;

thence South, along the East line of said West 499 feet, a distance of 300 feet to the South line of said North $\frac{1}{2}$ of the North $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of said Section 34;

thence East, along said South line, to the East line of the Northwest $\frac{1}{4}$ of said Section 34;

thence South, along said East line, to the center of said Section 34;

thence East, along the East/West center line of said Section 34, to the East line of the West $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of said Section 34;

thence South, along said East line, and along the East line of the West $\frac{1}{2}$ of the East $\frac{1}{2}$ of Section 3, Township 34 North, Range 3 East, W.M., 4,240 feet, more or less, to the Northeast line of the Southeast Runway Protection Zone for Skagit Regional Airport Runway 10/28, as referenced as the "RPZ" and "Potential RPZ" on the survey map recorded under Skagit County Auditor's File No. 200408180088; thence Southeasterly along said Northeasterly Runway Protection Zone line 1,180 feet, more or less, to the Southeasterly line of said Runway Protection Zone; thence Southwesterly along said Southeasterly Runway Protection Zone line 1,693 feet, more or less, to the West line of the East half of the Southeast quarter of said Section 3; thence along said West line 775 feet, more or less, to the North line of Ovenell Road.

thence West, along the North line of Ovenell Road, a distance of 100 feet;

thence Northwesterly to a point on the North line of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of said Section 3 that is 150 feet West of the Northeast corner thereof;

thence West, along the North line of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ to the Northwest corner thereof;

thence South, along the North/South center line of said Section 3 and the North/South center line of Section 10, Township 34 North, Range 3 East, W.M., to the Southeast corner of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of said Section 10;

thence South $0^{\circ}21'30''$ West, along the East line of the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of said Section 10, a distance of 379.7 feet to the center of Higgins Slough;

thence South $83^{\circ}45'00''$ East, along the center of said slough, a distance of 56.1 feet;

thence South 77°49'00" East a distance of 171.0 feet;

thence South 54°30'00" East a distance of 67.0 feet;

thence South 46°17'30" East a distance of 479.0 feet to the Northerly line of the Burlington Northern Railway right-of-way;

thence South 73°20'30" West, along said Northerly line, to the North/South center line of said Section 10;

thence Southwesterly, along said Northerly right-of-way line, to the East line of the West 687.7 feet, as measured along the North line, of the Southeast ¼ of the Northwest ¼ of said Section 10;

thence North, along said East line of the West 687.7 feet, to the North line of said Southeast ¼ of the Northwest ¼;

thence West, along the North line thereof, a distance of 687.7 feet to the Northwest corner thereof;

thence North, along the West line of the Northeast ¼ of the Northwest ¼ of said Section 10, to the North line thereof, which point is also the South line of Section 3, Township 34 North, Range 3 East, W.M.;

thence West, along the South line of Sections 3 and 4 of said Township 34 North, Range 3 East, W.M., to the Southeast corner of Skagit Regional Airport Binding Site Plan Alteration, Phase 2, Division 5, according to the map thereof, recorded under Skagit County Auditor's File No. 201802150081; Thence in a generally northerly direction, along the east line of said Phase 2, Division 5, Binding Site Plan Alteration, also being the adjusted boundary line described in deed recorded under Skagit County Auditor's File No. 201712130006, to the south line of a tract conveyed to PACCAR Inc., a Delaware corporation, by deed recorded December 21, 1979, under Auditor's File No. 7912210064;

thence East, along the South line of said PACCAR, Inc. tract, a distance of 61 feet, more or less, to the Southeast corner thereof;

thence North 0°37'03" East, along the East line of said PACCAR, Inc. tract, a distance of 3,159.99 feet;

thence North 88°39'12" West a distance of 120.01 feet;

thence North 0°37'13" East a distance of 320.36 feet to the North line of said Section 4;

thence North 88°37'12" West, along the North line of said Section 4, a distance of 2,601.20 feet to the Northwest corner of said Section 4;

thence North, along the West line of Section 33, Township 35 North, Range 3 East, W.M., to the North line of the South ½ of the North ½ of the North ½ of said Section 33;

thence East, along said North line, to the East line of said Section 33;

thence North, along said East line, to the point of beginning.

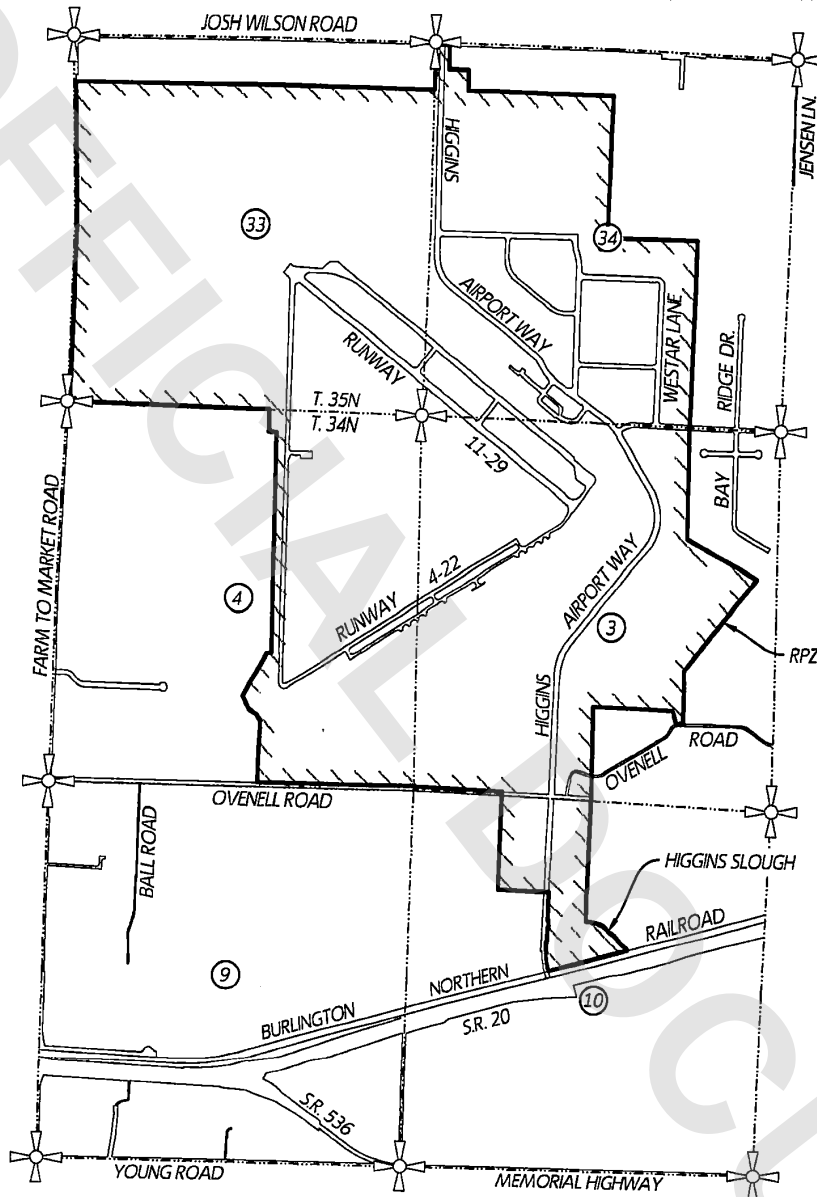
EXCEPTING THEREFROM those portions above described which lie within the rights-of-way of the County Roads known as Ovenell Road, Farm-to-Market Road, Josh Wilson Road, Peterson Road and Higgins Airport Way.

Situate in the County of Skagit, State of Washington

END OF EXHIBIT C

EXHIBIT 'D'

SITUATE IN A PORTION OF SECTIONS 33 & 34, TOWNSHIP 35 NORTH & A PORTION OF SECTIONS 3, 4 & 10 TOWNSHIP 34 NORTH, RANGE 3 EAST, W.M., SKAGIT COUNTY, WASHINGTON



PSE



PACIFIC SURVEYING & ENGINEERING, INC.

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--- = SKAGIT REGIONAL AIRPORT BOUNDARY

