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Skagit County Auditor

8/22/2007 Page 1 of 13 2:46PM

Return Address:

Law Office of Skinner & Saar, P.S.
740 SE Pioneer Way
Oak Harbor, WA 98277

**WATER SYSTEM OPERATING MAINTENANCE AND
MANAGEMENT AGREEMENT**

Reference No.:

Grantor(s):

Grantee(s):

Legal Description (abbrev.):

Assessor's Tax Parcel ID#:

*Darrell Gibson, a single person
Peter J. Franssen and Kimberly M.
Franssen, husband and wife
Lot 1) Lot 81, Block 1, Lake Cavanaugh
Subdivision No. 2
Lot 2) Lot 82, Block 1, Lake Cavanaugh
Subdivision No. 2
(full legal on pages 1 and 2)
Lot 1) 3938-001-081-0001 P66559
Lot 2) 3938-001-082-0000 P66560*

THIS AGREEMENT executed this 20 day of August 2007, by Peter J. Franssen and Kimberly M. Franssen, husband and wife, and Darrell Gibson, a single person, for the purpose of establishing a water system operating maintenance and management agreement, said agreement provides as follows:

RECITALS

A. Whereas, Peter J. Franssen and Kimberly M. Franssen, husband and wife, own a parcel of real estate in Skagit County, Washington legally described as follows:

Lot 81, Block 1, LAKE CAVANAUGH SUBDIVISION DIVISION NO. 2, according to the plat thereof recorded in Volume 5 of Plats, pages 49 through 54, records of Skagit County, Washington;

TOGETHER WITH that portion of Lot 80, Block 1, LAKE CAVANAUGH SUBDIVISION DIVISION NO. 2, according to the plat thereof recorded in Volume 5 of Plats, pages 49 through 54, records of Skagit County, Washington, lying Northerly and Westerly of the following described line:

Commencing at the Southwest corner of said Lot 80, said point being on a curve whose radius point bears South 21°42'30" West, a distance of 484.91 feet;

Thence in a Southeasterly direction along the arc of said curve through a central angle of 2°52'48", a distance of 24.37 feet to the true point of beginning;

Thence North 24°26'25" East, to the ordinary high water line of Lake Cavanaugh and the terminus of herein described line.

Situated in Skagit County, Washington.

(Hereafter Lot 1); and,

- B. Whereas, Darrell Gibson, a single person, also owns certain real property in Skagit County, Washington legally described as follows:

Lot 82, Block 1, LAKE CAVANAUGH SUBDIVISION DIVISION NO. 2, according to the plat thereof recorded in Volume 5 of Plats, pages 49 through 54, records of Skagit County, Washington.

Situated in Skagit County, Washington.

(Hereafter Lot 2)

on which is situated a water well; and,

- C. Whereas, it is the desire and intent of the parties to this Agreement to operate and maintain the water well so that Lot 1 and Lot 2 shall be served by the water available from this well; and,
- D. Whereas, the parties to this Agreement desire that the water well be available to serve Lot 1 and Lot 2, and the well and its accompanying equipment will be referred to as the Franssen/Gibson Water System; and,



- E. Whereas, the parties intend for the owner of Lot 1 to be responsible for upgrading and making any and all necessary capital improvements and obtaining all permits and approval necessary, if any, for the water system to be approved for servicing two water connections; and,
- F. Whereas, the parties desire to execute and record this agreement concerning the operation and maintenance of the water system which will be known as Franssen/Gibson Water System.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained herein, and subject to the conditions herein set forth, the water system operating and maintenance and management agreement, including restrictive covenants is made as follows:

1.) **LEGAL DESCRIPTION OF THE PROPERTY TO BE SERVED BY THE SYSTEM.** The property which will be served by the system and which is therefore affected by this Agreement is described as follows:

Lot 1:

Lot 81, Block 1, LAKE CAVANAUGH SUBDIVISION DIVISION NO. 2, according to the plat thereof recorded in Volume 5 of Plats, pages 49 through 54, records of Skagit County, Washington;

TOGETHER WITH that portion of Lot 80, Block 1, LAKE CAVANAUGH SUBDIVISION DIVISION NO. 2, according to the plat thereof recorded in Volume 5 of Plats, pages 49 through 54, records of Skagit County, Washington, lying Northerly and Westerly of the following described line:

Commencing at the Southwest corner of said Lot 80, said point being on a curve whose radius point bears South 21°42'30" West, a distance of 484.91 feet;

Thence in a Southeasterly direction along the arc of said curve through a central angle of 2°52'48", a distance of 24.37 feet to the true point of beginning;



Thence North 24°26'25" East, to the ordinary high water line of Lake Cavanaugh and the terminus of herein described line.

Situated in Skagit County, Washington.

Lot 2:

Lot 82, Block 1, LAKE CAVANAUGH SUBDIVISION DIVISION NO. 2, according to the plat thereof recorded in Volume 5 of Plats, pages 49 through 54, records of Skagit County, Washington.

Situated in Skagit County, Washington.

The two individual parcels of real property described above are hereinafter referred to as the benefited properties.

2.) **DESCRIPTION OF THE WELL SITE.** The well site is located on Lot 2.

All references to the "well site" shall include but not limited to all wells, pipes, pumps, storage tanks, transmission pipelines and all other necessary parts and accessories to supply a source of domestic water for household use, yards, lawns and gardens to the real property and improvements owned by the property owners.

3.) **THE OWNERSHIP OF THE WELL SITE.** The well site described above is owned by the parties to this Agreement.

4.) **SPECIFIC TRACTS WHICH WILL BE SERVED BY THE WATER SYSTEM.** Lot 1 and Lot 2 of the benefited properties, which are specifically described above, shall each have one water hook-up right (share) to the water system.

5.) **EASEMENT.** By this document, there is granted an easement over and across a strip of land twenty (20) feet in width from the border of Lot 1 and Lot 2 to the well site located on Lot 2. This easement is for the purpose of installing, constructing and maintaining a water line for the transportation, service and maintenance of water and water lines from the well site for the use of the property and owners described herein, their heirs, successors and assigns. This grant of easement is on the behalf of



and shall bind the heirs, legal representatives, successors and assigns of the parties to this Agreement, and shall be a perpetual easement for the purpose of providing water to the property described herein as Lot 1 and Lot 2, and any termination of this easement agreement shall only be by the approval of all of the then existing owners of the property described herein as Lot 1 and Lot 2. This easement is intended to affect all present and future owners of the property described as Lot 1 and Lot 2.

The parties agree that the easement may be modified at any time, by making the modification directly to this agreement and having all parties express their consent to the modification by initialing the modification.

6.) **INITIAL CAPITAL IMPROVEMENTS.** The owner of Lot 1 shall pay all and be responsible for all expenses, costs and fees incurred and obtaining all permits and testing as may be required for the water system to be an approved and functioning two-party water system.

7.) **COST OF MAINTAINING THE WATER SYSTEM.** Except as provided for in paragraph 6, the owners of Lots 1 and 2 shall equally bear all of the cost of operating and maintaining the water system and shall equally bear the burden and cost of making such repairs and/or capital improvements as may be required by the water system. The cost of capital improvements to the system shall be borne equally by the parties. Any amount incurred for operating the water system shall be paid in equal parts by each of the owners of the benefited properties and that bill shall be paid within 10 days of the mailing of that bill by the entity performing service on the water system. Each owner of a benefited property shall supply to the other benefited party a proper mailing address to which said bill is to be sent.

8.) **CAPITAL IMPROVEMENTS AND EXPENSE OF WATER QUALITY SAMPLING.** Included in the dues and assessments imposed by Franssen/Gibson Water System will be such sums as are necessary for needed capital improvements to the water system and the expense of water quality sampling as required by WAC 248.54.165 and applicable county, state and federal rules and regulations. Except as provided for in paragraph 6, the cost of needed capital improvements to the water



system shall be borne equally by each of the benefited property owners. The benefited property owners shall agree upon the amount of quarterly, semi-annual or annual dues which will be of such amount as to provide for the normal maintenance and operation of the water system and the water quality sampling. Included in the billing shall be such amount as shall be determined by the benefited parties as being a sum sufficient to create a proper reserve account for future capital improvements which are required for the water system.

In the event that the benefited properties cannot agree on the amount of the dues, or on the need for or the amount of the assessment for capital improvements, the issue shall be submitted to binding arbitration to an arbitrator who shall be appointed by the then presiding judge of the Island County Superior Court and the decision of that arbitrator shall be binding on the owners of Lot 1 and Lot 2. The cost of the arbitration shall be shared equally by the owners of Lot 1 and Lot 2.

9.) **COLLECTION OF WATER SAMPLES.** The benefited parties or their successors, shall be responsible for the collection and submission of the required water samples to the health officer in accordance with WAC 248.54 and for the proper operation and maintenance of the system.

10.) **PROVISIONS FOR DESIGNATION OF RESPONSIBLE PARTY.** The owners of the individual benefited properties which are then being served by water from the water system shall have the right to designate a responsible party who shall then immediately undertake all responsibilities in connection with the proper operation and maintenance of the water system. At such time as the designation of a new responsible party has been made, notification shall be given to the Skagit County Health Department. In the event that the owners of Lot 1 and Lot 2 are unable to agree upon the selection of a responsible party, that person shall be selected by arbitration in the manner provided for in Paragraph 8, above.

11.) **DUTIES OF THE RESPONSIBLE PARTY.** The responsible party shall be the purveyor to manage the water system. The purveyor's responsibility shall include the taking and submitting of all necessary samples for water quality, handling



of emergencies such as system shut down, and shall serve as a contact person for the Skagit County Health Department when problems with the water system arise. The purveyor shall be responsible for notifying the Skagit County Health Department and all parties whose properties are being served with water from the water system of the results of the water quality test. The purveyor shall also be responsible for obtaining a certification from either the state or local authority stating that the well is in compliance with the requirements for a Group "B" Water System or a statement from either the state or local authority stating that compliance is not required.

12.) **RESTRICTIONS ON FURNISHING WATER TO ADDITIONAL PARTIES.** The water system will not be used to furnish water to additional parties (parties to whom rights have not been added by the terms of this Agreement) without the approval of the Skagit County Health Department, and the unanimous approval of the owners of both Lot 1 and Lot 2 or their successors, heirs, or assigns.

13.) **PROVISION FOR SOURCE OVERUSE PROTECTION.** In the event that, for any reason, the water system fails to produce a quantity of water sufficient to meet the needs of the two benefited parties which are entitled to draw water from the system, emergency conservation measures shall be adopted in the form of temporary regulations to be promulgated to the owner of each of the benefited properties and the owner of each tract being served by the water system shall abide by those temporary regulations. The temporary regulations may include, but need not be limited to, a limitation on the use of water for personal consumption and cooking only and may include, but need not be limited to, restrictions on the use of water for irrigation purposes (the watering of lawns and plants). In the event that the owners of Lot 1 and Lot 2 do not agree to the temporary regulations, the issue shall be submitted to binding arbitration in the manner provided for in Paragraph 8, above.

14.) **PROVISIONS FOR INSURING WATER SYSTEM.** The parties to this Agreement and their successors and assigns may, but shall not be obligated to, place in effect such hazard insurance as it deems appropriate and such liability insurance as

it deems appropriate. It is understood that the availability of such insurance, and the cost of the premiums therefore, may be limited or prohibitive.

15.) **PROTECTION AGAINST CONTAMINATION**. None of the parties whose property is served by the water system shall construct, maintain, or suffer to be constructed or maintained upon their property, within 100 feet of the well which is part of the water system, and so long as the same is operated to furnish water for public consumption, any of the following: cess pools, sewers, privies, septic tanks, drain fields, manure piles, garbage of any kind or description, barns, chicken houses, pig pens, or other enclosures or structures for the keeping or maintaining of fowls or animals or storage of liquid or dry chemicals, herbicides, insecticides, or any other practice deemed unacceptable by the Skagit County Health Department.

16.) **SAMPLING OF WATER SYSTEM FOR CHLORIDES**. In addition to any other water quality sampling as required by WAC 248.54, the parties shall, in April and August of each calendar year, sample the water from the system for chlorides.

17.) **LEAK PROTECTION PROCEDURES**. The benefited property owners shall, not less than every 60 days, inspect all of the component parts of the water system for leaks and shall promptly repair any leaks which have been detected. Within 10 days of receiving notice of a leak, the responsible party shall repair any leaks which have been detected.

18.) **DURATION**. This Agreement shall be deemed to be a covenant running with the land, that is, running with each parcel of property which is being served by a source of domestic water from the water system, and all of the terms and provisions of this Agreement shall be binding on all parties having or acquiring any right, title or interest in or to any of the lands described herein or any properties which are served by the water system and the terms and provisions hereof shall enure to the benefit of each owner thereof.

19.) **AGREEMENT TO SUPERCEDE AND REPLACE**. The parties acknowledge that this agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of



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this agreement shall not be binding upon either party except to the extent incorporated in this agreement. Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party. It is further agreed that this agreement shall supercede and replace any and all prior water or well agreements and any and all addendum or addenda thereto.

20.) **FURTHER COVENANTS AND RESTRICTIONS FOR THE FRANSSSEN/GIBSON WATER SYSTEM.** Each of the owners of the benefited properties described in Paragraph 1 of this Agreement agree that, by hooking on to the water system which is the subject of this Agreement, they do subject their individual parcel of benefited property to the following covenants, all of which shall be covenants running with the land and which shall be binding upon the present owners of the benefited properties and shall be binding upon and enure to the benefit of the subsequent or future owners of said parcels of benefited property:

- a.) Each of the benefited properties which are entitled to draw water from the water system shall use the water for domestic purposes only in connection with a single family residence dwelling.
- b.) Neither of the benefited properties shall use the water from the water system for the purposes of filling or maintaining a swimming pool. (This provision shall not preclude use of a hot tub or spa containing 500 gallons or less).
- c.) All parties agree that no activity or construction contrary to the Skagit County Code, or any rule, regulation of any federal, state, county, local, municipal, city or administrative rule or regulation shall take place according to the rules and regulations affecting the well site.
- d.) The owner of each of the benefited properties shall be the person responsible for paying such dues, assessments and charges as are payable by the benefited properties to the Franssen/Gibson Water System, or its assign or successor. In the event that a tenant is occupying any of the benefited properties, the owner shall not designate the payment responsibility to the tenant. In the event that a corporation, limited liability company, or other limited liability entity is the owner of the property, the



members or shareholders of that entity shall be deemed personally liable for paying such dues, assessments and charges as are payable by the benefited properties to the Franssen/Gibson Water System, or its assign or successor.

- e.) The failure of the owner of any of the benefited properties to pay the dues and/or assessments in a timely manner shall entitle the Franssen/Gibson Water System, to discontinue water service to that property. The water service shall be reinstated upon payment by that defaulting owner of all delinquent sums, plus interest thereon at 12% per annum, and plus all attorney fees and other costs incurred by the Franssen/Gibson Water System, in connection with the delinquency.
- f.) In the event that the owner of either of the benefited properties fails to pay the dues and/or assessments in a timely manner, the owner of said parcel shall be personally liable for those dues and assessments and in the event that a suit or action is instituted to collect those delinquent dues and assessments, the prevailing party in said action shall be entitled to recover all the costs and expenses of litigation, including a reasonable attorneys fee. In the event that the matter is placed in the hands of an attorney for collection, the delinquent owner shall pay a reasonable attorneys fee.
- g.) The benefited property owners and their assigns, successors, and heirs agree to indemnify and hold the Franssen/Gibson Water System, their agents and employees, harmless, from and against all claims, demands, causes of action, suits, attorneys fees in case it shall be necessary to file or defend any action or demand, arising out of or in connection with the use or supply of water distribution facilities described herein, or any agent, employee, invitee, or any and all other third party claims, or all claims arising after the date of this agreement. It is intended that no party shall impair the right of any other to the quiet, peaceful and undisturbed possession and use of his own parcel and the common facilities and well site referred above. It is the intent of this agreement that all parties and any person utilizing the well shall be subject to and shall agree to abide by the terms of this section and agreement.

21.) **WATER RIGHTS.** The right to draw water from the water system shall run in favor of the two benefited properties and that right is not transferable to a different parcel of property.

22.) **ALTERNATE SOURCE OF WATER.** In the event that, at some future date, the benefited properties served by the water system are served by an alternative



source of water, such that there is no further need for this community water system to function any longer, then and in that event, the covenants and restrictions herein may be terminated only if there is recorded with the Skagit County Auditor the express permission of the Skagit County Health Department for the termination of covenants contained herein.


23.) **WAIVER.** By executing this instrument, the parties to this Agreement are not making any warranties or representations that the water system will be adequate to furnish to both benefited properties a source of domestic water which is of a quantity and quality so as to meet the domestic needs of each of the benefited properties. It is understood by each of the owners of the benefited properties that the amount of water which can be taken from a well is subject to change because of factors which are beyond the control of individuals, such as changes in the water table or changes in underground water sources. It is also understood that the quality of water from a water well can change with the passage of time because of conditions that are beyond the control of the person or persons who are operating and maintaining the water system. Therefore each owner of a benefited parcel acknowledges that the parties hereto have not made any warranties or representations concerning the quantity or quality of the water now available from the said water system or the quantity or quality of water from the system which may be available in the future.

24.) **FILING WITH SKAGIT COUNTY HEALTH DEPARTMENT.** A duplicate original of this instrument is being filed with the Skagit County Health Department and a duplicate original of this instrument is being recorded with the Auditor of Skagit County.


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IN WITNESS WHEREOF the undersigned have signed this instrument this 22 day of August, 2007.



Peter J. Franssen



Darrell Gibson



Kimberly M. Franssen

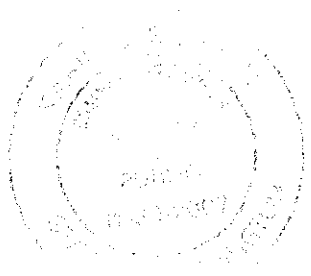
STATE OF WASHINGTON)

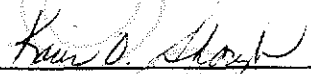
(ss.

COUNTY OF ISLAND)
SKAGIT

I certify that I know or have satisfactory evidence that Peter J. Franssen and Kimberly M. Franssen are the persons who appeared before me and acknowledged that they signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this 22 day of AUGUST 2007.





NOTARY PUBLIC

My Commission Expires: 11-30-2007

STATE OF WASHINGTON)
(ss.
COUNTY OF Skagit)

I certify that I know or have satisfactory evidence that Darrell Gibson is the person who appeared before me and 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 this 20 day of August 2007.

Jackie L. Christ
NOTARY PUBLIC
My Commission Expires: 9/2/09

