

Skagit County Auditor
4/25/2017 Page 1 of 13 \$85.00
1:02PM

UNOFFICIAL DOCUMENT

FILED FOR AND RECORDED AT REQUEST OF AND RETURN ORIGINAL TO:

STARKENBURG - KROONTJE
Attorney At Law, P.S.
PO Box 231
Lynden, WA 98264
(360) 354-7822

DOCUMENTS ASSIGNED OR RELEASED: 200705090059

GRANTOR(S):

- 1. Brian and Julie Deaton
- 2. Goodyear Nelson Hardwood Lumber Co.

GRANTEE(S):

- 1. Goodyear Nelson Hardwood Lumber Co.

LEGAL DESCRIPTION: Full legal descriptions found on Exhibits A and B, pages 9-13.

Abbreviated:

- 1.

ASSESSOR TAX PARCEL NOS.:

- 1. P73178
- 2. P73179
- 3. P73183
- 4. P126150
- 5. P73182
- 6. P73181

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

APR 25 2017

Amount Paid \$
Skagit Co. Treasurer
By *MJM* Deputy

SUBSTITUTE
AND
REPLACEMENT
ACCESS AND UTILITY EASEMENT

This ACCESS AND UTILITY EASEMENT ("Agreement") is made as of this 23rd day of April, 2017, by and between, BRIAN DEATON & JULIE DEATON, husband and wife ("Deaton") and GOODYEAR NELSON HARDWOOD LUMBER CO., a Washington corporation ("Goodyear").

RECITALS

WHEREAS, the previous property owners for the Deaton Property and the Goodyear Property entered into an Easement Agreement dated May 8, 2007 and recorded May 9, 2007 under Auditor's File No. 200705090059 (the "Agreement").

WHEREAS, the parties desire to terminate the Agreement and replace it with this new Access and Utility Easement.

WHEREAS, Deaton is the owner of certain real property located in Skagit County, Washington, legally described on Exhibit A attached hereto and incorporated herein by this reference.

WHEREAS, Goodyear is the owner of certain real property located in Skagit County, Washington, legally described on Exhibit B attached hereto and incorporated herein by this reference.

WHEREAS, There are five (5) parcels as shown on Exhibit 1 attached hereto and made a part hereof each of which shall be deemed a Parcel, and collectively, the Parcels.

WHEREAS, Goodyear recognizes that for the most favorable development of the Parcels it is desirable that the Parcels share (i) a common driveway to be known as "Common Driveway" constructed within a twenty (20) foot easement area, described on attached Exhibit C, the dimensions and location of which are as substantially shown on Exhibit 1 (the "Easement Area"), to provide pedestrian and vehicular ingress and egress (the "Access Easement") which shall inure to the benefit of and bind the property, including the owner(s) therefore from time to time, and their respective successors and assigns (collectively the "Owners"), and (ii) a nonexclusive utility easement within the Easement Area for the purpose of installing, maintaining, repairing or replacing gas, water, electric, phone and cable lines, sewers, pipes and other services (collectively the "Utilities") to benefit the Subject Property or any portion thereof. For purposes of this agreement, the term "Owners" refers to parties who acquire an ownership interest such as fee title or contract purchaser's interest.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and conditions herein contained and no monetary consideration, the parties hereby covenant and agree as follows:

1. The Agreement is hereby replaced in its entirety with this Access and Utility Easement.

2. Grant of Easement.

Deaton and Goodyear hereby establish and grant the following non-exclusive perpetual driveway Access Easement to provide unobstructed vehicular and pedestrian ingress and egress upon and as to each of the Parcels which shall benefit and burden each Parcel respectively, and all such easements, covenants, rights, benefits, obligations and liabilities created in this Declaration shall be deemed covenants and easements running with and binding upon the land as appurtenances to the dominant estates. The estate of the fee and easement created herein shall not be merged by reason of the same person or entity acquiring, owning or holding title to both.

- (i) The common curb cut and driveway as hereafter constructed within the Easement Area are for purposes of ingress, egress, passage and delivery, by vehicles and pedestrians (the "Access Easement").
- (ii) The Access Easement shall be kept open and unobstructed at all times, and nothing shall allow any Owner, or invitee thereof any right to work on or otherwise obstruct access within the Easement Area.
- (iii) The Access Easement shall be for the benefit of the Owners, but same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public not shall it affect any real property outside of the Parcels.

3. Utility Easement.

Deaton and Goodyear do further grant a perpetual nonexclusive utility easement on, over and through the Easement Area for the purpose of installing, maintaining and/or repairing utilities and all necessary appurtenances thereto (the "Utility Easement" and collectively with the Access Easement, the "Easements"), subject to the covenants and conditions contained herein.

4. Construction, Maintenance and Repair.

- (i) Unless otherwise agreed between the Owners, the owners of Parcels A1, B1, C1, D1, E1 and F1 as shown on Exhibit 1 are designated to have the responsibility to arrange for the improvements within the Easement Area to be maintained, repaired and replaced, all so as to keep such areas at all times in a safe, sightly, good and functional condition.
- (ii) The Owner of the Parcels shall be responsible for all costs and expenses incurred in connection with the repair, replacement, and maintenance of common improvements within the Easement Area in proportion to their pro-rata use of that section of the Easement being repaired, replaced or maintained. The construction or installation costs of any new or expanded improvements shall be paid for by the Owner of the Parcel requesting or requiring said improvements.
- (iii) All work done in connection with the installation, maintenance or repair of any common improvements, shall be performed in a good and workmanlike manner, and such work shall be done expeditiously so as not

- UNOFFICIAL
- (iv) to unreasonably interfere with or hinder the use and enjoyment of the Easement Area by any person or entity having a right to use the easements. Goodyear and Deaton grant and establish temporary easements for the installation of improvements and for incidental encroachments upon the Parcels which may occur as a result of any construction work performed in the development, repair or maintenance of the Parcels, so long as such encroachments are kept within the reasonable requirements of construction work which is expeditiously pursued, and so long as customary insurance is maintained protecting the Owner of the Parcel on which work is being performed from the risks involved.

5. Default.

(i) In the event that any Owner fails to perform any provision in accordance with the requirements set forth herein, or provide insurance as required herein, or fail to pay or to perform any other obligation set forth within ten (10) days following written notice thereof, the remaining Owner(s) shall have the right, but not the obligation, to perform said construction, maintenance, repair or replacement and acquire said insurance, make payment or perform such obligation for the account of the non performing party (the "Defaulting Party"). The foregoing right to cure shall not be exercised if within ten (10) days notice (i) the Defaulting Party cures the default, or (ii) if the default is curable, but cannot reasonably be cured within that time period, the Defaulting Party begins to cure such default within such time period and thereafter diligently pursues such cure to completion. The ten (10) day notice period shall not be required if, using reasonable judgment, the Non-Defaulting Party deems that an emergency exists. In the event of such an emergency, the Non-Defaulting Party shall give notice reasonable under the circumstances to the Defaulting Party.

(ii) Within ten (10) days following written demand, including copies of paid invoice, the Defaulting Party shall reimburse the Non-Defaulting Party any sum reasonably expended by the Non-Defaulting Party to cure the default. If such amounts are not paid within thirty (30) days of billing, then such amounts shall accrue interest at the annual rate of 12% per annum or the highest legal rate of interest allowed, whichever is less, until paid, and the Defaulting Party shall be responsible for reasonable attorneys' fees and costs in the enforcement and collection thereof.

(iii) The parties hereto shall also have the right to restrain by injunction any violation or threatened violation by the other party hereto of any of the terms, covenants, or conditions hereof, or to obtain a decree to compel performance if any such term, covenant, or condition is not adequate. All remedies are cumulative and shall be deemed additional to any and all other remedies to which any Owner may have at law or in equity.

(iv) In the event a lien is filed against all or any portion of the Property in connection with any Maintenance, the lien must be bonded, satisfied or removed by the Owner responsible for said Maintenance within thirty (30) days following the filing thereof, or it may be foreclosed by the president acting on behalf of the Owners in the same manner as a mechanic's lien.

(v) This Declaration may be enforced by the Owners or the successor and assigns thereof against any person or entity having obligations hereunder. The non-defaulting Owner(s) of a Parcel shall be entitled forthwith to full and adequate relief by injunction and/or all such other legal and equitable remedies for the consequences of such breach.

(vi) If any party or person benefited hereby, institutes any litigation to enforce any of the terms, covenants, conditions, easements as set out in the Declaration, the prevailing party in such litigation shall be entitled to collect court costs and reasonable attorneys' fees from the non-prevailing party.

(vii) The owners of the Parcels shall form a governing committee, each parcel having one vote. They shall elect a president, secretary and treasurer to manage their obligations under this agreement. The owners shall adopt bylaws to govern their meetings and actions; provided that a unanimous vote of all owners is necessary to amend this declaration.

6. Insurance.

Each Owner shall obtain and maintain during the term of this Agreement general liability insurance including public liability and property damage in commercially reasonable amount covering the Easement Area, as part of their property or homeowner's insurance.

7. Notices.

All notices, request, claims, demands, and other communications hereunder shall be in writing and shall be personally served or mailed (registered or certified mail, postage prepaid, return receipt requested) at their addresses as set forth in the records of the Skagit County Assessor, or such other address or such additional recipient as any party may have furnished to the others in writing in accordance herewith. All notices shall be effective upon receipt.

8. Modifications; Cancellation.

This Declaration may be amended, modified or terminated (in whole or in part) from time to time by written documents executed and acknowledged by all Owners and duly recorded with the Skagit County Auditor's Office.

9. Binding.

This Declaration shall be binding upon and inure to the benefit of Goodyear, Deaton, the Owners of the Parcels, and their respective personal or legal representatives, successors and assigns.

10. Governing Law and Venue.

This Declaration shall be governed by the laws of the State of Washington. Venue for any action in law or equity arising out of this Declaration shall be in the Skagit County Superior Court.

11. Severability.

If any term or provision of this Declaration or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Declaration shall not be affected thereby, and each term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

12. Mortgages.

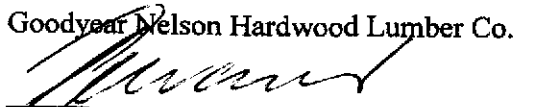
Until sale of all the Parcels by Goodyear, Goodyear may make any Amendment required by any of the federal mortgage agencies, such as the Federal Home Loan Mortgage Corporation, as a condition of the approval of the document by the execution and recordation of such amendment, following notice to all Owners.

Sale or transfer of any parcel shall not affect the assessment lien provided for herein; provided, the lien of the assessments shall be subordinate to the lien of any first position deed of trust or first position mortgage if the assessments were current at the time of recording thereof, and the sale or transfer of a parcel pursuant to a foreclosure of such a first position deed of trust or first position mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such parcel from liability for any assessments which thereafter become due or from the lien thereof. A lender may rely on a written statement signed by the treasurer for purposes of this section. Except as provided in this section, any deeds of trust or mortgages encumbering all or any portion of the Subject Property shall at all times be subordinate to the terms of this Declaration and any party foreclosing any such mortgage, or acquiring title by deed in lieu of foreclosure or trustee's sale, shall acquire title subject to all of the terms and provisions of this Declaration.

The parties have hereunto set their hands and seals on the day and year first above written.

GOODYEAR:

Goodyear Nelson Hardwood Lumber Co.


By: Gary K. Sumner
Its: President

DEATON:

Brian Deaton
Brian Deaton

Julie Deaton
Julie Deaton



STATE OF WASHINGTON }
COUNTY OF WHATCOM } ss.

On this 21st day of APRIL, 2017, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Brian and Julie Deaton**, who acknowledged that they executed said instrument as their free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first written above.

Jeromy M. Demeyer
{Notary Signature}

SEAL


Notary Public in and for the State of Washington
Residing at: FERNDALE
My commission expires: 11-14-2020

STATE OF California }
COUNTY OF Los Angeles }

ss.

On this 15 day of April, 2017, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared GARY KEVIN SUMNER as for Goodyear Nelson Hardwood Lumber Co., who acknowledged that they executed said instrument as their free and voluntary act and deed on behalf of the corporation for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first written above.



{Notary Signature}

SEAL

Notary Public in and for the State of CA
Residing at: Los Angeles CA
My commission expires: NOV. 18, 2020



UNRECORDED DOCUMENT

Exhibit A

Legal Description of Deaton Property

Lots 1 and 2 inclusive as per the map of Fidalgo City, Skagit County, Washington, recorded in Volume 2 of plats, pages 113 and 114, records of Skagit County, Washington. Together with a portion of that correction quit claim deed, filed under A.F. No. 9505020076, said portion being vacated streets and alleys as would be attached to the above described parcel by operation of law.

Together with the North 16.00 feet of the following described tract:

Lot 3 as per the map of Fidalgo City, Skagit County, Washington, recorded in Volume 2 of plats, pages 113 and 114, records of Skagit County, Washington, together with a portion of that correction quit claim deed, filed under A.F. No. 9505020076, said portion being vacated streets and alleys as would be attached to the above described Lot 3 by operation of law.

Situate in Skagit County, Washington.

Exhibit B

Legal Description of Goodyear Property

P73179

Lots 3, 4 and 5, inclusive as per the map of Fidalgo City, Skagit County, Washington, recorded in Volume 2 of Plats, pages 113 and 114, records of Skagit County, Washington. Together with a portion of that correction quit claim deed, filed under A.F. No. 9505020076, said portion being vacated streets and alleys as would be attached to the above described parcel by operation of law. Less the North 16.00 feet of the following described tract:

Lot 3 as per the map of Fidalgo City, Skagit County, Washington, recorded in Volume 2 of Plats, pages 113 and 114, records of Skagit County, Washington, together with a portion of that correction quit claim deed, filed under A.F. No. 9505020076, said portion being vacated streets and alleys as would be attached to the above described Lot 3 by operation of law.

P73183

The North 25.00 feet of Lot 13 and all of Lot 14 inclusive as per the map of Fidalgo City, Skagit County, Washington, recorded in Volume 2 of Plats, pages 113 and 114, records of Skagit County, Washington.

Together with a portion of that correction quit claim deed, filed under A.F. No. 9505020076, said portion being vacated streets and alleys as would be attached to the above described parcel by operation of law.

P126150:

The North 25.00 feet of Lot 11, all of Lot 12 and the South 25.00 feet of Lot 13, inclusive as per the map of Fidalgo City, Skagit County, Washington, recorded in Volume 2 of Plats, pages 113 and 114, records of Skagit County, Washington.

TOGETHER WITH a portion of that correction quit claim deed, filed under A.F. No. 9505020076, said portion being vacated streets and alleys as would be attached to the above described parcel by operation of law.

P73182:

The North 25.00 feet of Lot 9, all of Lot 10 and the South 25.00 feet of Lot 11, inclusive as per the map of Fidalgo City, Skagit County, Washington, recorded in Volume 2 of Plats, pages 113 and 114, records of Skagit County, Washington.

TOGETHER WITH a portion of that correction quit claim deed, filed under A.F. No. 9505020076, said portion being vacated streets and alleys as would be attached to the above described parcel by operation of law.

P73181:

All of Lot 8 and the South 25.00 feet of Lot 9, inclusive as per the map of Fidalgo City, Skagit County, Washington, recorded in Volume 2 of Plats, pages 113 and 114, records of Skagit County, Washington.

TOGETHER WITH a portion of that correction quit claim deed, filed under A.F. No. 9505020076, said portion being vacated streets and alleys as would be attached to the above described parcel by operation of law.

LESS the following described tract: Commencing at the southeast corner of above the described parcel, said point being the intersection of the centerline of partially vacated 4th Street with the centerline extended southerly of the vacated alley; thence North $00^{\circ} 23' 46''$ East along the east line of the above described parcel a distance of 46.30 feet to the True Point Of Beginning; thence South $85^{\circ} 49' 04''$ West a distance of 10.61 feet; thence North $03^{\circ} 56' 01''$ West a distance of 46.58 feet; thence North $85^{\circ} 49' 04''$ East a distance of 14.13 feet to the east line of the above described parcel; thence South $00^{\circ} 23' 46''$ West along said east line a distance of 46.73 feet to the True Point Of Beginning.

All situate in Skagit County, Washington

All subject to and together with all easements, covenants, restrictions and/or agreements of record.

Exhibit C

Description of Easement

EASEMENT NO. 1:

A 20 foot wide easement for ingress, egress and utilities, over, under and across a portion of Block 141 as per the map of "Fidalgo City, Skagit County, Washington", recorded in Volume 2 of Plats, Pages 113 and 114, records of Skagit County, Washington, the centerline of said easement being more particularly described as follows:

Beginning at the Northeast corner of the following described parcel:

The North 16.00 feet of Lot 3 as per the map of Fidalgo City, Skagit County, Washington, recorded in Volume 2 of Plats, pages 113 and 114, records of Skagit County, Washington. Together with a portion of that correction quit claim deed, filed under A.F. No. 9505020076, said portion being vacated streets and alleys as would be attached to the above described parcel by operation of law.

Thence North 89° 59' 57" West a distance of 177.93 feet to a point hereinafter referred to as Point "A"; thence North 00° 00' 03" East a distance of 66.00 feet to the **terminus** of the 20' wide easement centerline description.

EASEMENT NO. 2:

A 20 foot wide easement for ingress, egress and utilities, over, under and across a portion of Block 141 as per the map of "Fidalgo City, Skagit County, Washington", recorded in Volume 2 of Plats, Pages 113 and 114, records of Skagit County, Washington, the centerline of said of said easement being more particularly described as follows:

Beginning at the above described Point "A"; thence South 00° 00' 03" West a distance of 109.86 feet, thence South 24° 28' 19" West a distance of 24.14 feet, thence South 00° 00' 03" West a distance of 27.17 feet to the **terminus** of this 20' wide easement centerline description.

All as depicted on Exhibit "1" attached hereto and incorporated herein by reference.

All subject to and together with all easements, covenants, restrictions and/or agreements of record.

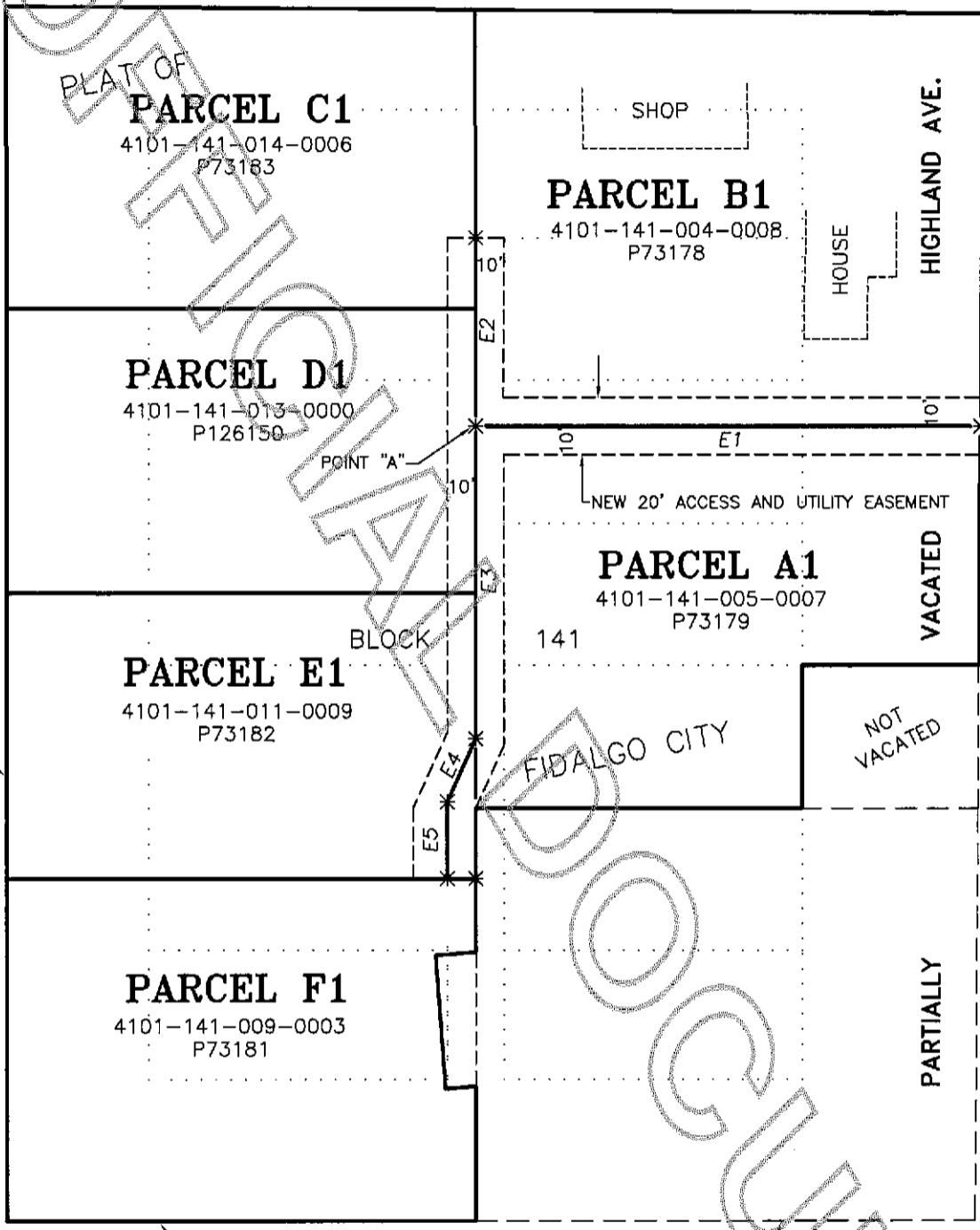
Situate in Skagit County, Washington.

EXHIBIT "1"

SHOWING NEW 20 FOOT ACCESS AND UTILITY EASEMENT

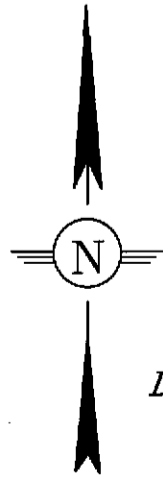
Course	Bearing	Distance
E1	N 89°59'57" W	177.93'
E2	N 00°00'03" E	66.00'
E3	S 00°00'03" W	109.86'
E4	S 24°28'19" W	24.14'
E5	S 00°00'03" W	27.17'

CL PARTIALLY VACATED HOWARD AVE.



EAST LINE: MAP OF FIDALGO CITY AS PER RECORD OF SURVEY A.F. No. 8309210006

CL PARTIALLY VACATED 4TH ST.



SCALE IN FEET
SCALE: 1 INCH = 60 FEET

DENNIS M. DEMEYER, L.S. 21423
8156 CHEHALIS ROAD, BLAINE, WA 98230
PH. 360.410-2562