

Filed for Record at Request of:
Whistle Lake, LLC
PO Box 319
Anacortes, WA 98221

201811290002
11/29/2018 08:52 AM Pages: 1 of 11 Fees: \$109.00
Skagit County Auditor

**ACCOMMODATION
RECORDING ONLY**

Land Title

Grantor: Forrest A. and Cheryl R. Foss
Jedediah and Jade Barth
Matthew G. and Jessica F. Coleman
Grantee: Whistle Lake, LLC
Abbreviated legal: a: Lot 1, Short Card No. PL06-1147; b:
Lot 3, Short Card No. PL 06-1147; c: Lot 4,
Short Card No. PL 06-1147;
d: W 1/2 of SW 1/4 SE 1/4 S31 T35N R2E WM
Tax Parcel No: a: 350231-4-013-0106
b: 350231-4-013-0300
c: 350231-4-013-0400
d: 350231-4-013-0007

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

NOV 28 2018

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

EASEMENT FOR UTILITIES

THE AGREEMENT, is effective this 27th day of November, 2018, and is by and between Forrest A. Foss and Cheryl R. Foss, husband and wife; Jedediah Barth and Jade Barth, husband and wife; and Matthew G. Coleman and Jessica F. Coleman, husband and wife, hereinafter collectively referred to as "Grantors" and Whistle Lake, LLC, a Washington limited liability company, hereinafter referred to as "Grantee".

RECITALS

A. Grantors are the owners of a certain parcel of real property located in Skagit County, Washington, legally described as follows:

See Exhibit "A" attached hereto and incorporated herein.

Said property is hereinafter referred to as the "Servient Estate". The Servient Estate is east of and immediately adjacent to real property owned by Grantee.

B. Grantees are the owners of a certain parcel of real property located in Skagit County, Washington, legally described as follows:

See Exhibit "B" attached hereto and incorporated herein.

Said property is hereinafter collectively referred to as the "Dominant Estate". The Dominant Estate lies west of and immediately adjacent to the Servient Estate.

C. The parties hereto wish to make provisions formalizing an easement which provides the Dominant Estate utilities over, under and across the Servient Estate.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Description of Easement.** The easement herein is twenty feet (20' in width and traverses a portion of the Servient Estate as depicted on Exhibit "C" attached hereto and incorporated herein by reference, and as legally described on Exhibit "D" attached hereto and incorporated herein by reference (hereinafter "Easement Area").

2. **Grant of Easement.** Grantor hereby grants to Grantee a utility easement, over, under and across the Easement Area.

3. **Purpose.** The Easement is for the purpose of installing, accessing and maintaining utilities within the Easement Area.

4. **Permits and Approvals.** Grantee warrants that prior to the commencement of any work within the Easement Area that it will provide written notice to those parties on the Grantor's property impacted by the work. In addition, they will obtain any governmental approvals or permits which may be necessary or a condition to commencement of such work and will at all times personally and through their agents, employees and contractors comply with such permits. Grantee further warrants that it will use best practices as required by the Skagit County Code in placing the utilities and will insure that utility providers who are involved in the said work comply with the said best practices and that if there is any damage or degradation to wetlands or other environmentally sensitive areas on the Servient Estate resulting from the placement of utilities, Grantee will indemnify and hold harmless Grantors for all costs of repair and remediation of such damage and degradation. In addition should the placement of utilities in the Easement Area by Grantee cause delay or adverse effect on Grantor's pending plat application, Grantee agrees to indemnify and hold harmless Grantor for all such adverse effects and delay.

5. **Maintenance.** The Dominant Estate is responsible for all costs associated with the installation, maintenance, and repair of the easement on the Servient Estate for the benefit of the Dominant Estate.

6. **Repair.** The Dominant Estate shall, upon completion of the installation of the utilities within the Easement Area, perform the following: (a) return the Easement Area to the condition it was in prior to the work performed by the Dominant Estate, at the Dominant Estate's sole cost and expense; and (b) shall add one (1") inch of gravel to the existing gravel road located upon the Servient Estate, grade and compact the additional gravel and assure there is a slight crown to the gravel road when grading.

7. **Restriction on Use, Covenants and Conditions.**

7.1 The current owner of the Dominant Estate agrees that it shall not allow an easement for ingress and egress benefitting real property within the Plat of

Fidalgo Bay Addition to Anacortes or any other real property located east of the Dominant Estate, unless the owner(s) of the Servient Estate consent in writing. As the Dominant Estate is developed, the owner/Declarant shall include in the CC&R's a provision that would prohibit the individual property owners from granting an easement for ingress and egress benefiting the real property within the Plat of Fidalgo Bay Addition to Anacortes.

7.12 Grantee shall place a three inch (3") conduit and a one and one-half inch (1.5") water line in the utility trench Grantee creates within the Easement Area, for a distance of approximately one hundred fifty (150) feet, from the Easterly boundary line of the Servient Estate, stubbed from the main for use by the Grantor. All connection fees and hook-up fees for such services relating to such 3" conduit and 1.5" water line shall be at the sole expense of Grantor.

7.13 Grantee shall run a two inch (2") conduit from the closest transformer located on the Dominant Estate to the common boundary line of the Servient Estate and Dominant Estate at the existing gravel road, for the purpose of providing power to a gate that may be installed in the future by the Grantor. The running of a power line within the conduit, as well as the purchase and installation of any such gate, shall be at Grantor's sole cost and expense.

7.14 The Dominant Estate shall not allow the construction or placement of any buildings within the east fifty (50) feet of the south 650' of the Dominant Estate.

8. **Hold Harmless and Indemnification.** Grantee shall hold Grantor harmless and indemnify Grantor from any claim for recovery of monetary sums by John Miller and/or Fidalgo Bay Community Association, a non-profit corporation, arising from that Easement dated August 26, 1997, recorded under Skagit County Auditor's File No. 9709080043. Grantee's maximum exposure and liability under this hold harmless and indemnity provision shall be \$50,000.00, plus attorney fees. This hold harmless and indemnification provision is personal between Grantor and Grantee.

9. **Further Division of Dominant Estate.** The Dominant Estate may be further subdivided resulting in more lots within the Dominant Estate, however no more than 7 lots will be developed. Should the owner of the Dominant Estate subdivide the Dominant Estate, the owners of the Servient Estate shall cooperate with the owners of the Dominant Estate in the installation of such utilities by agreeing to the following:

9.1.1 acknowledging and agreeing this Easement shall benefit any further lots created within the Dominant Estate; not to exceed 7 lots in total.

9.2.2 acknowledging that there will be possible disruptions in ingress and egress for the owners of the Servient Estate during construction and installation of utilities in the Easement Area and not objecting thereto. The owner of the Dominant

Estate agrees that to the maximum extent possible all pipes, lines, cables, vaults, switches, and conduit to serve the seven anticipated lots shall be installed at the initial construction for utilities and the owner of the Dominant Estate agrees to coordinate with all providers of utility services to the expected 7 lots to accomplish this construction at the same time;

9.2.3 executing necessary easements from Puget Sound Energy benefitting the Dominant Estate that traverse the same Easement Area;

9.2.4 executing additional utility easements within the Easement Area if required by Puget Sound Energy, Comcast (Xfinity), Cascade Natural Gas, or the City of Anacortes, to properly service the additional lots within the Dominant Estate. In such event, the owner of the Servient Estate shall fully cooperate in granting any such easements to benefit the Dominant Estate (and additional lots therein) that traverse the same Easement Area.

10. **Binding Effect.** Except for paragraph 8 herein, which is personal to Grantor and Grantee, this Easement shall be perpetual and shall be a covenant running with the land for the benefit of the Dominant Estate. This Easement shall be binding on the parties hereto, and the respective successors, assignees, transferees, grantees and heirs.

11. **Litigation.** In the event any action is brought by either party to enforce the terms of this Easement, or for damages resulting from a breach of this Easement, prevailing party in such action shall be entitled to reasonable attorneys' fees and costs.

12. **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.

13. **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.

14. **Consideration.** The Grantee agrees to compensate the Grantors for a portion of their legal fees incurred in negotiating this easement, in the amount of twenty-nine hundred dollars (\$2,900). This consideration is in lieu of any and all other amounts previously discussed including without limitation the cost of framing the Grantor's shop.

15. **Counterparts.** This Easement may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF the parties have caused this instrument to be executed on the day, month, and year first above written.

GRANTORS:

Forrest A. Foss
Forrest A. Foss

Cheryl R. Foss
Cheryl R. Foss

Jedediah Barth
Jedediah Barth

Jade Barth
Jade Barth

Matthew G. Coleman
Matthew G. Coleman

Jessica F. Coleman
Jessica F. Coleman

GRANTEE:

Whistle Lake, LLC

Nels Strandberg
By: Nels Strandberg
Managing Member

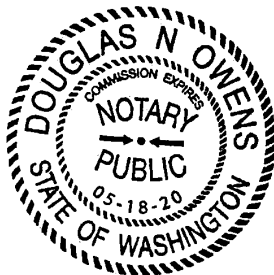
STATE OF WASHINGTON

COUNTY OF SKAGIT

) ss
)

On this day personally appeared before me Forrest A. Foss and Cheryl R. Foss, to me known to be the individuals described in and who executed the within an d foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Subscribed and Sworn to before me this 15th day of NOVEMBER 2018.



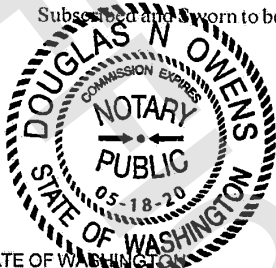
Douglas N. Owens
Notary Public in and for the State of Washington
Print name: DOUGLAS N. OWENS

My commission expires: MAY 18, 2020

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this day personally appeared before me Jedediah Barth and Jade Barth, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Subscribed and Sworn to before me this 15th day of NOVEMBER, 2018.

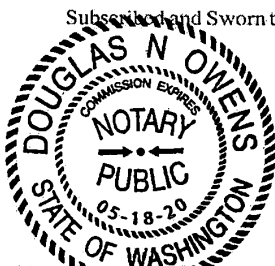


[Signature]
Notary Public in and for the State of Washington
Print name: DOUGLAS N OWENS
My commission expires: MAY 18, 2020

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this day personally appeared before me Matthew G. Coleman and Jessica F. Coleman, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Subscribed and Sworn to before me this 15th day of NOVEMBER, 2018.

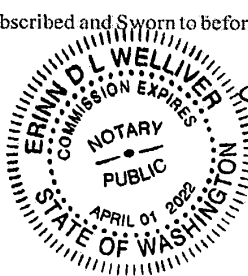


[Signature]
Notary Public in and for the State of Washington
Print name: DOUGLAS N OWENS
My commission expires: MAY 18, 2020

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this day personally appeared before me Nels Strandberg, to me known to be the Managing Member of Whistle Lake, LLC, the company that executed the foregoing and acknowledged said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath, stated that he is authorized to execute the said instrument

Subscribed and Sworn to before me this 27th day of NOVEMBER, 2018.



[Signature]
Notary Public in and for the State of Washington
Print name: Erinn Welliver
My commission expires: 4/1/2022

PERSONAL GUARANTEE

NELS STRANDBERG, on his own behalf acknowledges that the promises and warranties of the Grantee Whistle Lake, LLC in the foregoing easement are a material inducement to the Grantors to enter in to the foregoing easement agreement and agrees that he personally guarantees the performance of all promises and agreements that are the obligation of Whistle Lake, LLC, including without limitation those agreements that survive the recording of the said easement for a period of five (5) years after mutual acceptance of this Agreement. After the five (5) years have passed, all promises, warranties and guarantees contemplated or included in this paragraph shall pass to the Whistle Lake HOA and shall become as permanent as the law allows under the circumstances.

Dated November 27, 2018



Nels Strandberg

EXHIBIT "A"

Legal Description of Servient Estate

Lot 1 as delineated on Short Card No. PL 06-1147, as approved on May 5, 2009 and recorded on May 12, 2009, under Auditor's File No. 200905120079, being a portion of the Southwest ¼ of the Southeast 1/1 of Section 31, Township 35 North, Range 2 East, W.M.

Situate in the County of Skagit, State of Washington.

Parcel No: P33438

Lot 3 as delineated on Short Card No. PL 06-1147, as approved on May 5, 2009 and recorded on May 12, 2009, under Auditor's File No. 200905120079, being a portion of the Southwest ¼ of the Southeast 1/1 of Section 31, Township 35 North, Range 2 East, W.M.

Situate in the County of Skagit, State of Washington.

Parcel No: P128565

Lot 4 as delineated on Short Card No. PL 06-1147, as approved on May 5, 2009 and recorded on May 12, 2009, under Auditor's File No. 200905120079, being a portion of the Southwest ¼ of the Southeast 1/1 of Section 31, Township 35 North, Range 2 East, W.M.

Situate in the County of Skagit, State of Washington.

Parcel No: P128566

EXHIBIT "B"

Legal Description of Dominant Estate

The West Half of the Southwest Quarter of the Southeast Quarter of Section 31,
Township 35 North, Range 2 East of W.M.

Situate in Skagit County, Washington.

Parcel No: P33437

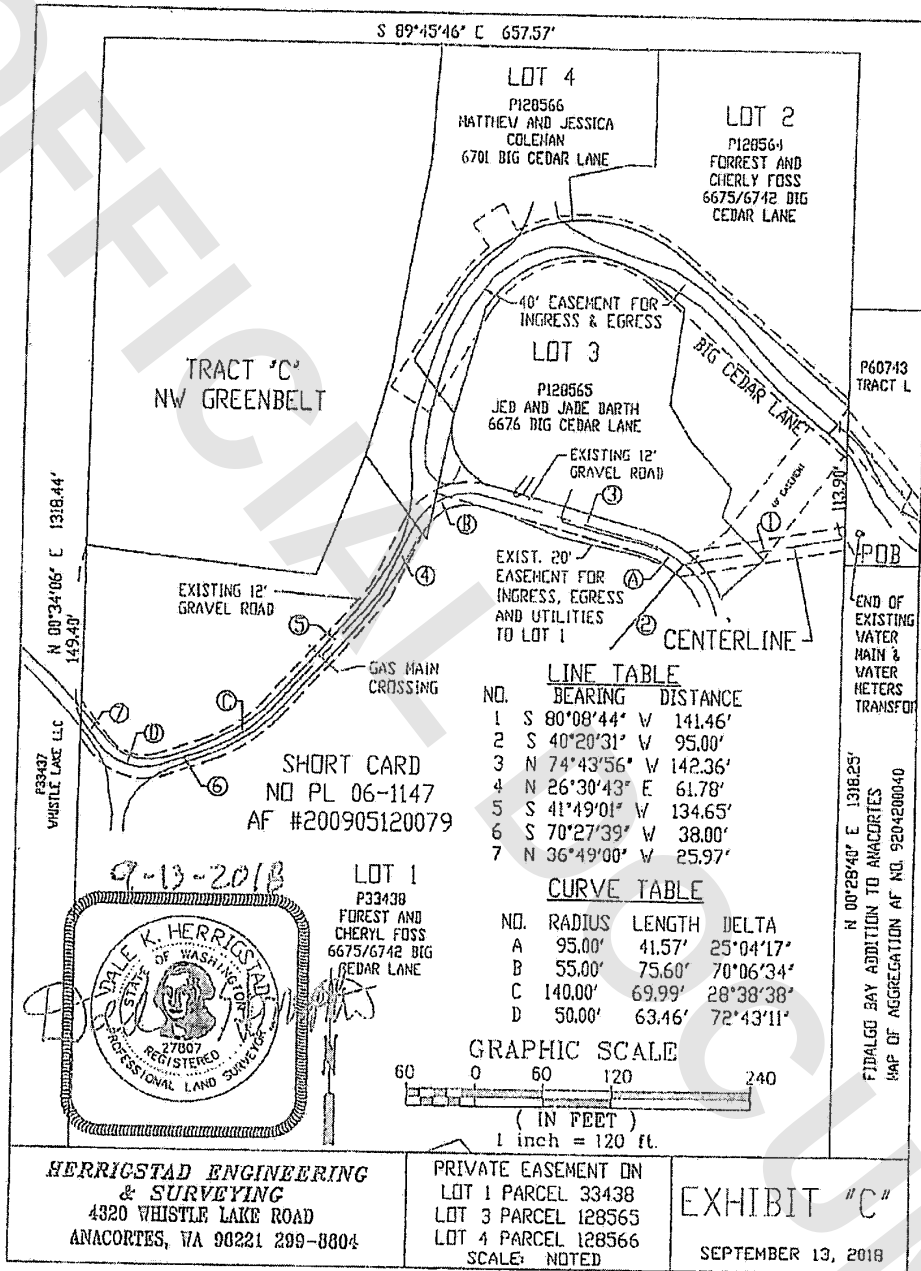


EXHIBIT "D"

A 20 foot wide non-exclusive easement for utilities over and across a portion of Lots 1, 3 and 4 of Short Card No. PL 06-1147, as approved on May 5, 2009 and recorded on May 12, 2009, under Auditor's File No. 200905120079, being a portion of the Southwest ¼ of the Southeast ¼ of Section 31, Township 35 North, Range 2 East, W.M., and described as follows:

Said easement being 10 feet either side of following described centerline:

COMMENCING in the Northeast corner of said Lot 1;

Thence South 0°26'40" West, 113.90 feet along the east boundary of said Lot 1 to the POINT OF BEGINNING;

Thence South 80°08'44" West, 141.46 feet;

To a point on a curve with the radius point of said curve being S 40°20'31" W, 95.00 feet thence Northwesterly on said curve to the left through a central angle of 25°04'17" an arc distance of 41.57 feet;

Thence North 74°43'56" West, 142.36 feet;

Thence Southwest with a curve to the left, a radius of 55.00 feet, a central angle of 70°06'34", and an arc distance of 75.60 feet;

Thence South 26°30'43" West, 61.78 feet;

Thence South 41.49'01" West, 134.65 feet;

Thence Southwest with a curve to the right, a radius of 140.00 feet, a central angle of 28°38'38", and an arc distance of 69.99 feet;

Thence South 70°27'39" West, 38.00 feet;

Thence Southwest with a curve to the right, a radius of 50.00 feet, a central angle of 72°43'11", and an arc distance of 63.46 feet;

Thence North 36°49'00" West, 25.97 feet to a point that is South 0°34'06" West and 149.40 feet of the northwest corner of said Lot 1 and the terminus of said centerline.