



200302210046

Page: 2 of 6

02/21/2003 03:24P

Kittitas Co Auditor CONE, GILREATH, ELLI AGR 24.00

DECLARATION OF ROAD USE AND MAINTENANCE AGREEMENT

THIS DECLARATION made and executed by Earl E. Gentry and Valérie K. Gentry, husband and wife (hereinafter referred to as Gentry), the owner of the property described herein:

WITNESSETH:

WHEREAS, Gentry is the owner of certain real property described herein and for these purposes referred to as "The Property"; and

WHEREAS, it is the intent of Gentry that certain covenants and restrictions be placed in existence with respect to road use and maintenance with respect to property herein described; and

WHEREAS, it is desirable to provide for the covenants and restrictions to exist in perpetuity with regard to road use and maintenance to insure the enjoyment thereof by all future owners and to preserve and protect the rights and benefits herein set forth;

NOW THEREFORE Gentry declares as follows:

1. Property Benefited.

Lots 1, 2, 3 and 6 as delineated on that certain survey recorded August 13, 2002 under Auditor's File No. 200208130003, Book 27 of Surveys, Page 248 and 249, records of Kittitas County, Washington, together with such other real property as may subsequently be provided access to Big Creek Road by Gentry.

2. Description of Easement.

The easement is for ingress and egress and installation of utilities for the benefit of the above described property. Said easement is also known as Big Creek Road and is described as follows:



200302210046

Page: 3 of 6

02/21/2003 03:24P

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An easement across a portion of the Northwest Quarter of Section 28, Township 20 North, Range 14 East, W.M. in the County of Kittitas, State of Washington, 60.00 feet in width (perpendicular measure), lying westerly of, adjacent to and abutting the following described line:

Beginning at the southwest corner of Lot 1 of the Gentry Short Plat (Kittitas County Short Plat No. SP-91-06), as per short plat thereof recorded December 16, 1991 in Book D of Short Plats at pages 18 and 19, under Auditor's File No. 545364, Records of Kittitas County, State of Washington, which is the true point of beginning of said described line; thence N 00°23'33" E. along the west line of said Lot 1, 629.96 feet, more or less, to the ~~northwest corner of said Lot 1; thence continuing N~~ 00°23'33" E. along the west line and west line projected of Parcels 1, 2 and 3 of that certain survey as recorded August 13, 2002, in Book 27 of Surveys at pages 248 and 249, under Auditor's File No. 200208130003, Records of said County, 1324.90 feet, more or less, to the north line of the Northwest Quarter of Section 28, Township 20 North, Range 14 East, W.M., and the terminus of said described line.

The sidelines of said easement to be lengthened or shortened to intersect the north right of way boundary of Nelson Siding (County) Road along the south and the north line of the Northwest Quarter of Section 28, Township 20 North, Range 14 East, W.M. on the north.

3. Covenants and Restrictions.

Section 1. All of the owners of the above described parcels benefited by the easement contained herein, and such other real property as may subsequently be designated by Gentry shall have the right of use of the road as a method of access and egress and for the purpose of installation of utilities to any portion of their property to which the road is contiguous.

Section 2. The method of allocation of maintenance expense for the road shall be divided equally among the parcels above described and such other additional parcels as may be designated by Gentry regardless of the frequency of use, such that each parcel benefited shall pay an equal amount for all assessments for maintenance, snow removal, repair and other expenses reasonably associated with the easement.

Section 3: There shall no gates, cattle guards, fences or other restrictions placed on or across the roadway.



The roadway shall be for the benefit and use of each parcel owner, their guests and invitees.

Section 4. Any improvement of the road to a condition better than gravel surface roadway shall only be accomplished with consent of all property owners entitled to utilize such road.

Section 5. The term maintenance as used herein shall be defined to mean the filling of potholes, grading, repair of culverts and ditches, plowing of snow, and other maintenance necessary to provide a reasonably smooth unpaved surface, as now exists.

~~Section 6. The word improvement as used herein shall apply to the function of making the road better than it now exists and shall include widening or the application of hard surface road materials or their equivalent so as to provide a better road surface than now exists.~~

4. Road Committee.

Section 1. It shall be the responsibility of the owners of the parcels to participate as members of a road committee. Said committee shall select, by majority vote, a road manager who shall be responsible for maintenance, snow removal, assessment and other duties as to maintenance of the road and the conditions herein set forth. The affirmative vote of a majority of the committee members shall be required to assess expenses associated with the road or further development of said road.

Section 2 - Assessment. The road committee shall have the authority and power to access each parcel above described for the expense of maintaining the road and other required expenses. All expenses associated with the normal operations of the road, as well as expenses dealing with repair of the road or further development, if agreed upon as set forth hereinabove, of said road shall be assessed as described above in paragraph 3, section 2.

Section 3 - Enforcement of Assessments. Any assessments not paid within 30 days of the notice of assessment or billing for assessments shall entitle the road committee to enforce said assessment by recording written notice of said assessment with the Kittitas County Auditor, claim a lien against the parcel to which the delinquent assessments are attached, together with interest thereon at the rate of 12% per annum, or such other legal rate as may be set by the trustees, from the date due until paid.

From and after recording such notice, the parcel to which the assessment is attached shall be subject to a lien in favor of the road committee as security for such sums designated in such notice, together with any other unpaid assessments which may accrue thereafter, including interest thereon, until satisfied of record. Such lien may be foreclosed in the manner of a mortgage of real property and in such foreclosure action the road committee shall be entitled to recover reasonable attorney's fees and costs for searching and abstracting public records, as well as incidental costs and court costs. No satisfaction made of record or for foreclosure shall constitute a release of the association's rights hereunder with respect to future delinquent assessments. ~~Any of the owners of the parcels herein and/or the~~ committee shall have the right and authority to enforce the provisions hereof.

5. Amendment.

This Road Use and Maintenance Agreement may be amended only upon unanimous consent of all owners of the parcels described at paragraph 1 together with such other parcels as may subsequently be provided access to Big Creek Road.

6. Covenants.

The provisions herein shall be covenants running with the land and shall be binding upon the real property and any and all parts thereof, the owners thereof, their heirs, assigns, personal representatives and successors in interest.

7. In the event of any litigation with respect to this document, the prevailing party shall be entitled to an award of reasonable attorney fees together with all costs of suit incurred. The venue of any action shall be in the Superior Court of Kittitas County, Washington.

IN WITNESS WHEREOF, the undersigned have placed their signature this 17 day of FEBRUARY, 2003.


EARL E. GENTRY


VALERIE K. GENTRY

STATE OF ARIZONA)
County of Pima)

200302210046
Page: 6 of 6
02/21/2003 03:24P
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I certify that I know or have satisfactory evidence that EARL E. GENTRY AND VALERIE K. GENTRY are the persons who appeared before me, and said persons 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 17 day of February, 2003.

(Notary Seal)

Notary Public State of Arizona
Pima County
Ginger Lynn Corle
Expires December 03, 2005

Ginger Lynn Corle
NOTARY PUBLIC in and for the
State of Arizona.
My Commission Expires: 12-03-05

STATE OF ARIZONA)
County of Pima) ss,

I certify that I know or have satisfactory evidence that Valerie K. Gentry is the person who appeared before me and said person acknowledged that she signed this instrument, individually, and on oath stated that she was authorized to execute the instrument and acknowledged it as the Attorney in Fact for Earl E. Gentry and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 17 day of February, 2003

(seal)

Notary Public State of Arizona
Pima County
Ginger Lynn Corle
Expires December 03, 2005

Ginger Lynn Corle
Notary Public in and for the State of
Arizona.
My Commission Expires: 12-03-05
Commission Expires: 12-03-05