

**Filed for Record at Request of:**

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**DOCUMENT TITLE:**

EASEMENT

**REFERENCE NUMBER OF RELATED DOCUMENT:**

Ordinance Recorded at AF # \_\_\_\_\_

**GRANTORS:**

GREGORY E. FABER, a married man, as his separate property  
KEVIN AND JUNE BOLDT, a married couple

**GRANTEES:**

ESTATE OF GORDON C. VAN DRAGT  
GREGORY E. FABER, a married man, as his separate property  
KEVIN AND JUNE BOLDT, a married couple

**ABBREVIATED LEGAL DESCRIPTION:**

Mountain Terrace Lot 15  
Mountain Terrace Lot 16  
Van Dragt Estate Short Plat  
Full legal descriptions on page 2 hereto

**ASSESSOR'S TAX PARCEL NUMBER:**

400321 157456 0000  
400321 140456 0000  
400321 158439 0000 (Preliminary)  
400321 141444 0000 (Preliminary)  
400321 141434 0000 (Preliminary)

**GRANT OF EASEMENT**

THIS **GRANT OF EASEMENT** ("Easement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by GREGORY E. FABER (hereinafter referred to as "Faber") and KEVIN AND JUNE BOLDT ("Boldt") for the benefit of the real properties owned by the ESTATE OF GORDON C. VAN DRAGT ("Estate").

**RECITALS**

**WHEREAS**, Faber, Boldt, and the Estate may be referred to herein individually as "Party" or collectively as "Parties;" and the terms "Faber," "Boldt," and "Estate" include all successors or assigns thereof; and

**WHEREAS**, Faber is the sole owner of real property within the City of Lynden which is legally described as:

Lot 15, Mountain Terrace, an Addition to the City of Lynden, Whatcom County, Washington, according to the plat thereof, recorded in Volume 9 of Plats, Page 37, Auditor's File No. 940903, records of Whatcom County, Washington.

Situate in Whatcom County, Washington.

Hereinafter called the "Faber Property;" and,

**WHEREAS**, Boldt is the sole owner of real property within the City of Lynden which is legally described as:

Lot 16, Mountain Terrace, an Addition to the City of Lynden, Whatcom County, Washington, according to the plat thereof, recorded in Volume 9 of Plats, Page 37, Auditor's File No. 940903, records of Whatcom County, Washington.

Situate in Whatcom County, Washington.

Hereinafter called the "Boldt Property;" and,

**WHEREAS**, the Faber Property and the Boldt Property will be referred to herein as the "Burdened Properties;" and

**WHEREAS**, the Estate is the sole owner of real property within the City of Lynden which is legally described as:

That part of the west 21 rods of the Northeast Quarter of the Northwest Quarter lying south of the south line of Mountain Terrace, an addition to the City of Lynden, as recorded in Book 9 of Plats, Page 37, all in Section 21, Township 40 North, Range 3 East of W.M.

Situate in Whatcom County, Washington.

Subject to and together with all easements, covenants, restrictions and/or agreements or record, or otherwise.

Hereinafter called the "Estate Property;" and,

**WHEREAS**, the Estate Property was short platted into three lots on September 7, 2018, Whatcom County Auditor's File No. 2018-0900573, and this Grant of Easement benefits all three lots of the Estate Property; and

**WHEREAS**, in 1962, the Mountain Terrace Long Plat, recorded at Book 9 of Plats, Page 37, records of Whatcom County, Washington, dedicated a 24-foot-wide and approximately 113-foot-long right of way running between and abutting the Burdened Properties ("Right of Way") to City of Lynden ("City"); and

**WHEREAS**, the Right of Way has never been improved, is narrower than current City standards, and serves only the Estate Property; and

**WHEREAS**, City Ordinance No. 1584 ("Ordinance") vacated the Right of Way, effective the date the Ordinance is recorded with the Whatcom County Auditor; and

**WHEREAS**, it is the purpose of this Grant of Easement to ensure that the Estate Property shall continue to have the right of ingress and egress across the Right of Way after it has been vacated; and

**WHEREAS**, the City shall record the Ordinance concurrently with this Grant of Easement so that the Estate Property shall not be without access; and

**WHEREAS**, there is no monetary consideration being paid for this Grant of Easement; and

**WHEREAS**, these recitals are a material part of this Agreement.

#### **AGREEMENT**

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby covenant and agree as follows:

1. **Grant of Easement.**

Faber and Boldt hereby grant and convey to the Estate, and Faber hereby grants and conveys to Boldt, and Boldt hereby grants and conveys to Faber, a perpetual and non-exclusive easement ("Easement") over and across the entire existing Right of Way on the Burdened Properties for ingress, egress, and utilities. The properties benefited by this Easement are the entire Estate Property, the Faber Property, and the Boldt Property.

2. **Purpose.**

The purpose of the Easement is to ensure all three lots of the Estate Property will remain accessible and connectable to utilities. Faber and Boldt have mutually granted the Easement to each other to enable access and utilities to each the Boldt and Faber Properties to be made from the Easement instead of from Terrace Drive.

3. **Costs.**

Faber and Boldt shall equally share any recording fees related to this Agreement. Each Party shall be solely responsible for their own attorneys' fees related to the preparation of this Agreement.

4. **Parties' Rights Under Easement.**

Any Party shall have the right to use the Easement for any of the purposes specified in Paragraph 2 above and may improve the Easement as necessary in order to put the Easement to such

uses. This includes the right to build, maintain, and improve a road through the easement and install, operate and maintain water, sewer, gas, electrical, internet, and other utilities.

5. **Easement Improvement and Maintenance Costs.**

The three parcels that make up the Estate Property shall equally share all costs of improving and maintaining the Easement between themselves. Faber and Boldt shall not be required to contribute to these costs. The three parcels that make up the Estate Property may enter into a maintenance agreement for the Easement to supersede this section, but Faber and Boldt shall not be required to contribute without their consent.

In the event that the owner of one of the properties or that owner's employees, agents, guests or invitees causes damage to the Easement in a manner beyond ordinary wear and tear, the cost of repairing such damage shall be borne solely by the owner causing or responsible for the damage.

6. **Scope of Easement/Obligations Run with the Land.**

This Grant of Easement shall be perpetual in duration, shall constitute covenants running with the land, and shall be binding on the undersigned and all successors, assignees, heirs, devisees, or transferees of the Parties and shall in all respects attach to the individual properties legally described in this Agreement.

7. **Severability.**

Should any provision of this Agreement be found to be void or otherwise unenforceable, all other provisions shall remain enforceable and binding.

8. **Governing Law and Venue.**

This Agreement shall be construed under the laws of the State of Washington. The venue of any legal action brought under the terms of this Agreement shall be in the Superior Court for Whatcom County, State of Washington.

9. **Expenses and Attorneys' Fees.**

The prevailing Party in any action brought to enforce any terms and conditions of this Agreement shall be entitled to the recovery of their reasonable attorney's fees, costs, and expenses.

10. **Commencement of Easement.**

This Agreement and Easement shall commence upon the recording of this Agreement with the Whatcom County Auditor.

11. **Nonwaiver of Breach.**

Failure of either Party at any time to require performance of any provision of this Agreement shall not limit such Party's right to enforce such provision. Waiver of any breach of any provision of this Agreement does not constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

12. **Amendment or Termination.**

This Agreement may be amended or terminated only by mutual written agreement of the Parties.

13. **Counterparts.**

This Agreement may consist of two or more separately ratified counterparts, each of which constitutes a duplicate original of this Agreement.

14. **Entire Agreement.**

This Agreement constitutes the entire agreement between the Parties as to the matters contained herein. No oral or written statements made by either Party prior to or following the entry of this Agreement shall be considered a part of this Agreement unless expressly incorporated herein in writing.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement the day and year first above written.

\_\_\_\_\_  
GREGORY E. FABER

\_\_\_\_\_  
KEVIN BOLDT

\_\_\_\_\_  
JUNE BOLDT

STATE OF WASHINGTON        )  
  ) ss  
COUNTY OF WHATCOM        )

On this day before me personally appeared GREGORY E. FABER, to me known to be the individual described in and who executed the within and foregoing instrument and acknowledged to me that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Name (typed or printed): \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington  
Residing at: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF WHATCOM )

On this day before me personally appeared KEVIN BOLDT, to me known to be the individual described in and who executed the within and foregoing instrument and acknowledged to me that he signed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Name (typed or printed): \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington  
Residing at: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF WHATCOM )

On this day before me personally appeared JUNE BOLDT, to me known to be the individual described in and who executed the within and foregoing instrument and acknowledged to me that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Name (typed or printed): \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington  
Residing at: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_