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REGISTER'S OFFICE
WAUKESHA COUNTY, WI
RECORDED ON

08-03-2004 9:09 AM

MICHAEL J. HASSLINGER
REGISTER OF DEEDS

REC. FEE: 16.00
REC. FEE-CO: 5.00
REC. FEE-ST: 2.00
TRAN. FEE:
TRAN. FEE-STATE:
PAGES: 7

Return to: Don Heidorn
Title West, Inc.
N14 W24200 Tower Pl.
Suite 110
Waukesha, WI 53188

UC3190776-007

EASEMENT AGREEMENT

This Agreement is being executed by and between William A. Saeger and Nancy Saeger, husband and wife, hereinafter First Party and 4S, LLC, hereinafter Second Party. This Easement Agreement affects Lots 1 and 2, and Outlot 1, Certified Survey Map No. 9809, being a redivision of all of C.S.M. No. 1805, and a part of the NW ¼ of the SW ¼ of Section 19, T8N, R17E, Village of Lac Labelle, Waukesha County, Wisconsin, recorded July 12, 2004 in Volume 91, Pages 38-44 inclusive, as Document No. 384161.

First Party is the owner of said Lots 1 and 2 and Outlot 1. Second Party is purchasing Lot 2 and Outlot 1 from First Party, simultaneously with the execution of this Agreement. Certified Survey Map No. 9809 sets forth an area labeled "30.00' WIDE UTILITY EASEMENT AND SHARED DRIVEWAY EASEMENT". The parties are executing this Agreement for the purpose of establishing an agreement for the continued maintenance and use of said utility and shared driveway easement, for the purpose of establishing utility easements for the continued use of such utility lines presently located on Lot 1 which service Lot 2 and Outlot 1, and for the purpose of establishing easements for the connection of utilities to existing utilities on Lot 1 to service Lot 2 and Outlot 1.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency of which by each party is hereby acknowledged, the undersigned agree as follows:

1) First Party hereby grants to Second Party easement(s), 20 feet in width, for all utilities, if any, presently located on Lot 1 which either service Lot 2 or Outlot 1 or for which the applicable utility, now or in the future, allows a connection for the purpose of servicing Lot 2 or Outlot 1. For each utility line for which the applicable utility, now or in the future, allows a connection for the purpose of servicing Lot 2 or Outlot 1, First Party further hereby grants to Second Party utility easement(s), 20 feet in width, extending from the point of connection on Lot 1 to Lot 2 and Outlot 1, by such route as will minimize the cost of installation to Second Party without unreasonably interfering with the then existing structures and landscaping on Lot 1, or that portion of the "BUILDING ENVELOPE" on Lot 1, as shown on the Certified Survey Map, which is outside of the "30.00' WIDE UTILITY EASEMENT AND SHARED DRIVEWAY EASEMENT" as shown on the Certified Survey Map. The center line

of each of said easement(s) shall be the location of the applicable utility line. If any of said easement(s) is/are located within the "30.00' WIDE UTILITY EASEMENT AND SHARED DRIVEWAY EASEMENT" as shown on the Certified Survey Map, the width of such easement(s) shall be deemed increased so as to include the entire "30.00' WIDE UTILITY EASEMENT AND SHARED DRIVEWAY EASEMENT". The "30.00' WIDE UTILITY EASEMENT AND SHARED DRIVEWAY EASEMENT", as shown on Certified Survey Map No. 9809, and each of the easements granted herein, are hereafter collectively referred to as the "Easement Area". Outlot 1 shall be deemed to be included in the term "Lot 2", as used in this Agreement, whether or not specifically mentioned, and, together, Lot 2 and Outlot 1 shall be deemed to be one (1) Lot for purposes of this Agreement.

2) All costs and expenses incurred hereafter for the construction, maintenance, repair and/or replacement of any driveway located within the Shared Driveway Easement and/or within that portion of the public road right of way located immediately adjacent to the Shared Driveway Easement shall be borne equally by the owners of Lots 1 and 2. By way of enumeration, and not by way of limitation, maintenance expenses, for purposes of this Agreement, include the removal of snow and ice, the repair of potholes and ruts, the creation and maintenance of proper drainage, the removal of fallen trees and branches, the maintenance, repair and/or replacement of pavement and the maintenance, repair and/or replacement of any culvert. Maintenance expenses specifically include expenses relating to the maintenance of any common driveway within the public road right of way immediately adjacent to the Easement Area. Notwithstanding any other provision of this Agreement, in the event of any damage to the Easement Area and/or the road right of way located immediately adjacent to the Easement Area caused by the intentional or negligent actions of a Lot owner and/or any guest or invitee of any Lot owner, the owner of such Lot shall be solely responsible for the cost of repairing any such damage. Further, in the event either Party disturbs the surface of the driveway for the purpose of constructing, maintaining, repairing or replacing any utility service or utility appliance which services only such Party's Lot, the cost of restoring the driveway shall be borne solely by such Party.

3) Second Party shall have the right to connect to and use any and all utility lines and utility appliances (including but not limited to transformers, junction boxes, valve boxes, manholes and utility owned lift stations) which may now or hereafter be located within any utility easement located on Lot 1, including those set forth on Certified Survey Map No. 9809, and those created by this Agreement, subject only to such limitations as may be set forth by the applicable utility. All costs and expenses incurred hereafter for the construction, maintenance, repair and/or replacement of any utility line or utility appliance located within any utility easement on Lot 1 which is used by both parties for providing service to their respective properties shall be borne equally by the owners of Lots 1 and 2.

4) If either Lot owner incurs expenses which are required to be borne equally by the Lot owners pursuant to this Agreement, the Lot owner incurring such expense shall be

entitled to reimbursement for fifty percent (50%) thereof from the owner(s) of the other Lot only if one or more of the following apply:

a) The expenses are incurred by mutual agreement of the owners of both Lots; or

b) With respect to the Shared Driveway Easement, the expenses are incurred as the result of an emergency situation, defined as a situation wherein any portion of the Shared Driveway Easement and/or the adjacent road right of way is impassable for vehicular and/or pedestrian traffic, or a situation wherein the use of any portion of the Shared Driveway Easement Area and/or the adjacent road right of way used jointly by the Lot owners for pedestrian and/or vehicular traffic presents an immediate and unreasonable risk of damage to persons or property; or

c) With respect to any Utility Easement, the expenses are incurred as the result of an emergency situation, defined as a situation wherein that portion of the utility line or utility appliance used jointly by the Lot owners fails to provide adequate utility service for normal residential use or is in imminent danger of such failure, or a situation wherein the use of that portion of utility line or utility appliance used jointly by the Lot owners presents an immediate and unreasonable risk of damage to persons or property; or

d) In non-emergency situations, without mutual agreement, prior to incurring the expense, the Lot owner has provided not less than ten (10) days written notice to the other Lot owner of the expense proposed to be incurred. Said written notice shall include a description of the work to be performed, the name of the contractor or contractors who will be performing the work, and either the amount of the expense to be incurred, if the proposed contract is a fixed price contract, or, if the contract is to be performed on a time and materials type basis, an estimate of the total cost together with details of how the total cost determined. If no written objection is received by the Lot owner submitting said notice within ten (10) days after such notice is given, the Lot owner who gave the notice shall be entitled to proceed to incur the expense in accordance with the provisions of the notice, and seek reimbursement for fifty percent (50%) of the expenses incurred from the other Lot owner. If written objection is received within ten (10) days after the giving of such notice, and in the event the Lot owners are not able to reach an agreement with respect to the proposed expense, the parties shall resolve the dispute by arbitration. If an arbitration decision is issued prior to the expense being incurred, the claim for reimbursement shall be in accordance with the decision of the arbitrator. If the expenses are incurred prior to commencement of arbitration or during the pendency of an arbitration proceeding, the Lot owner seeking reimbursement shall be entitled to same only if the

arbitrator determines that a proper notice of the proposed work was given in accordance with this section, and that the Lot owner from whom reimbursement is sought unreasonably withheld consent.

5) The Shared Driveway Easement Area and the adjacent road right of way shall, at all times, unless otherwise agreed by the owners of both Lots, be maintained in an adequate and reasonable condition for vehicular and pedestrian traffic. That portion of all utility lines and utility appliances used by both Lots shall, at all times, unless otherwise agreed by the owners of both Lots, be maintained in such condition as will provide reasonable, adequate and reliable service for both Lots. Each Lot owner expressly covenants and agrees that their consent with respect to the incurring of expenses which are to be split between the Lot owners pursuant to this Agreement shall not be unreasonably withheld.

6) Neither party shall have the right to pave any driveway within the Shared Driveway Easement Area with asphalt, concrete or other similar type hard surfaced pavement as may exist now or in the future without the consent of the other party, unless paving is required by any applicable law or ordinance. If the paving is required by any applicable law or ordinance, the cost of such paving shall be borne equally by both parties, whether or not the legal requirement for the paving of the driveway at that time applies to both parties. For example, if paving is required as a consequence of the issuance of a building permit on one of the lots, the cost of paving shall be borne equally by both parties. Expenses for maintaining, repairing and/or replacing pavement shall be borne in the same manner as other maintenance and repair expenses pursuant to this Agreement.

7) In the event any Lot owner pays any expenses which are the responsibility of the owner of the other Lot, reimbursement shall be due and payable fifteen (15) days after written demand is given. Any sum not timely paid shall thereafter bear interest at a rate equal to the rate then in effect in the State of Wisconsin for interest on judgments.

8) Except to the extent necessary to create and/or maintain proper drainage within the Shared Driveway Easement Area, First Party shall have the sole right and responsibility to install and maintain landscaping within that portion of the Shared Driveway Easement Area which is located within the boundaries of such owner's Lot and outside of the limits of any pavement installed within the Easement Area.

9) The "30.00' WIDE UTILITY EASEMENT AND SHARED DRIVEWAY EASEMENT" is currently located such that it interferes with the "BUILDING ENVELOPE" on Lot 1, as shown on the Certified Survey Map. Upon reasonable demand by First Party, the parties shall execute an amendment to this Agreement relocating the "30.00' WIDE UTILITY EASEMENT AND SHARED DRIVEWAY EASEMENT", and any utility easements granted by this Agreement, on Lot 1, so as to minimize or eliminate interference with the "BUILDING ENVELOPE". The relocated Easement Area shall not be located so as to create an undue burden with respect to access, utility service and/or maintenance expenses for Lot 2. In the event Second Party objects to the proposed relocation on the basis that the proposed new

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location will create an unreasonable burden on Lot 2, the dispute shall be resolved by arbitration. First Party shall pay all costs and expenses for relocating the Easement Area, including surveying, preparation of the amendment to this Agreement, and removal and reconstruction of the driveway and all affected utilities. The relocation shall be undertaken by First Party in a manner so as to avoid unreasonable disruption of utility services and access to Lot 2.

10) In the event that, at any time, there is more than one owner of a Lot subject to this Agreement, all of the owners of such Lot shall be jointly and severally liable for the maintenance expenses required to be borne by said Lot and the owners thereof pursuant to this Agreement. Any consent given by any one owner of a Lot, or by any one trustee, partner, member, officer, director or shareholder of an entity having an ownership interest in a Lot, with respect to incurring or contracting for installation and/or maintenance pursuant to this Agreement, shall be binding upon all owners of such Lot. Further, any notice required or permitted by the terms of this Agreement which is given to any one owner of a Lot, or any one trustee, partner, member, officer, director or shareholder of any entity having an ownership interest in a Lot, shall be deemed to have been given to and received by all owners of such Lot.

11) Upon demand by any Lot owner, any dispute in any way relating to this Agreement shall be resolved by arbitration. The arbitrator(s) shall have the discretionary authority to award to the prevailing party some or all of the costs of arbitration, including but not limited to some or all of the prevailing party's reasonable actual attorneys fees, providing the arbitrator(s) make a determination that the other party acted unreasonably with respect to the matter in dispute. To the extent not covered by the arbitration award, the expenses of the arbitration proceeding itself shall be borne equally by the parties, and each party shall be responsible for their own attorneys fees.

12) This Agreement shall be deemed a covenant running with the land, and shall be binding upon, and shall inure to the benefit of the owners of each of the Lots subject to this Agreement, and their respective heirs, executors, administrators, successors and assigns forever. This Agreement may be amended, modified or terminated only with the written consent of all owners of all Lots subject to this Agreement.

Dated this 15th day of July, 2004.

First Party:

William A. Saeger Nancy Saeger

William A. Saeger Nancy Saeger

ACKNOWLEDGMENT

STATE OF WISCONSIN)
)SS
WAUKESHA COUNTY)

Personally came before me this 15th day of July, 2004, the above-named William A. Saeger and Nancy Saeger to me known to be the persons who executed the foregoing instrument and acknowledge the same.

Mark D. Hevo
Notary Public, State of Wisconsin
My commission: is permanent

Second Party:
4S, LLC

Michael D. Schutte, Managing Member

ACKNOWLEDGMENT

STATE OF WISCONSIN)
)SS
WAUKESHA COUNTY)

Personally came before me this 15th day of July, 2004, the above-named Michael D. Schutte, to me known to be the persons who executed the foregoing instrument and acknowledge the same.

Mark D. Hevo
Notary Public, State of Wisconsin
My commission: is permanent

Drafted by:
Attorney Daniel R. Heiden
State Bar No. 1017551