

*New Except Homes destroyed 2 Original 1st page
that was in error. 8/13/93 CTE*

F92-790A
PH90-1607

PRIVATE ROAD CROSSING EASEMENT
WITH UTILITIES

THIS INDENTURE, made and entered into this 26th day of July, 1993, by and between **WEYERHAEUSER COMPANY**, a Washington corporation, of Tacoma, Washington, herein called "Grantor," and **NEW CONCEPT HOMES, INC.**, a Washington corporation, herein called "Grantee," WITNESSETH:

I.

Grantor, for and in consideration of the payment of \$12,300.00 and other valuable consideration, and in consideration of the faithful observance and strict performance of the terms and conditions hereof by the Grantee, hereby grants to the Grantee, for the purpose of providing ingress to and egress from Grantee's Oakview Heights Subdivision for no more than 83 parcels located in Section 3, Township 17 North, Range 2 East, W.M., Pierce County, Washington, an easement and right of way for a road together with the right to install, bury, maintain, remove, repair, replace and use buried utilities over and across Grantor's 100-foot strip of land in the Francis Gravaillie Donation Land Claim No. 38 in Township 17 North, Range 2 East, W.M. in Pierce County, Washington. Said easement and right of way shall be 50 feet in width, being 25 feet on each side of a centerline and shall intersect the centerline of Grantor's railroad track approximately at right angles at Engineer's Station 634+53.56, as shown on the attached Exhibit A.

Subject as to said lands to all matters of public record, to all outstanding easements, leases, licenses and permits, whether recorded or unrecorded, and to all matters which a prudent inspection of the premises would disclose.

II.

The parties hereto hereby agree that the rights hereinabove granted shall be subject to the following terms and conditions:

1. Grantor reserves the right to cross and recross said right of way and the road at

2. If, in the clearing, grubbing, grading or improvement of said right of way, or in the building, construction, finishing or maintenance of any road thereon, any damage is done to any property of Grantor through any acts or omissions, whether negligent or otherwise, of any contractor or subcontractor on such work or any person or persons authorized by the Grantee to do such work, the Grantee shall be liable therefor to the same extent as for acts or omissions of its employees, and for such purpose and as between the parties hereto, any such contractor or subcontractor, or person or persons authorized to do such work, shall be deemed to be the agent of the Grantee.

3. The Grantee shall:

a. Construct, operate, use and at all times maintain the residential road crossing and appropriate signalization in accordance with the laws, rules and regulations of the United States of America and the State of Washington Utilities and Transportation Commission, governing the construction, operation, use and maintenance of the residential road crossing the Grantor's tracks.

b. Comply with the General Guidelines for Railroad Crossing Protection as published by the Washington State Department of Transportation (i.e., visibility triangle) and with the sight distance requirements as established by said Department of Transportation.

c. At Grantee's sole cost and expense, keep the weeds, brush and other vegetation on each side of the said road cut and mowed so as to provide adequate crossing visibility.

d. Take appropriate action to preserve the structural integrity of the Grantor's railway roadbed and track, and provide for the safe use of the same. Furthermore, the Grantee shall provide a plan of operation for the Grantor's review and comment at least thirty (30) days prior to initiating any construction, reconstruction and/or betterment of said residential road crossing or for any utility installations that may be needed by the Grantee as heretofore provided.

any operation of the Grantor on its said railroad right of way; provided, however, the Grantor will use reasonable care in conducting any excavation activities it may undertake that are reasonably expected to damage the underground facilities authorized under this easement. The Grantor shall have no liability for any such damage unless it is caused by reckless disregard for known risks to the underground facilities. Any liability of the Grantor for such damage shall be limited to the reasonable costs of repairing the underground facilities directly damaged by excavation activities, including temporary repairs and replacements, but not including any indirect or consequential damages to Grantee's authorized facilities outside the excavation area or for interruption of Grantee's authorized services or for losses suffered by customers of the Grantee. The Grantee waives any rights it may have against the Grantor under 1984 Laws of Washington Chapter 144 and any other statutes and regulations dealing with damage to utility lines. The Grantor does not assume any liability for damages or injuries caused or resulting from acts or omissions by other than the Grantor's employees.

6. The Grantee will, at its sole cost and expense, prepare the grading for the approaches and install the necessary drainage therefor and thereafter maintain, repair and renew the said approaches and drainage so as to prevent water, mud or debris from entering the track zone area. All material used and all work performed hereunder will be of a quality as will meet the approval of the Grantor's designated representative.

7. Grantees shall not and will not permit said road to be used as a public road. Grantees use of said road shall at all times be subordinate to the rights of the Grantor and not in any way interfere with or impair the use of the right of way, tracks or other facilities of the Grantor, or in any way interfere with, obstruct or endanger railroad operations.

8. Grantee will form a homeowners or other association to conduct, operate and provide for a common maintenance fund for maintenance of said road and railroad grade crossing. Said maintenance fund shall be adequate to fund all forms of

9. The Grantor makes no representation as to the present or future condition of its property or the character of the traffic on its railroad tracks and railroad right of way, and the Grantee assumes all risk of damage to property or of injury to the Grantee in connection with the exercise of rights hereunder.

10. The Grantee is aware of the fact that this railroad track is in daily use by Grantor's trains and the Grantee assumes all risks of using said road. Specifically, the Grantee assumes the risk of death, personal injuries and property damage resulting from (1) collisions with trains, (2) collisions with other vehicles using said road or (3) the presence or use of said road.

11. Grantee hereby agrees to defend, indemnify and save harmless Grantor and its employees against any and all loss, damage, liability, claims, demands or costs resulting from injury or harm to persons or property (including, without limitation, Grantee's employees or property) arising out of or in any way connected with Grantee's exercise of the rights herein granted, excepting only such injury or harm as may have been caused solely by the fault or negligence of Grantor or its employees. The Grantee's activities shall be deemed to include those of its Contractors.

12. Grantee shall obtain and maintain in full force and effect during the term hereof, at Grantee's sole expense, the following insurance coverage:

Comprehensive General Liability, including contractual, XCU, products and completed operations with minimum limits of \$500,000.00 per occurrence and \$1,000,000.00 aggregate bodily injury and \$500,000.00 property damage or combined single limit of \$1,000,000.00. Grantor shall be an additional insured.

Grantee shall furnish Grantor with Certificates of Insurance evidencing compliance herewith. Grantor shall have the right to require the use of its Insurance Certificate form by Grantee's insurance carrier. Grantee shall require Grantee's insurance

13. Grantee shall pay all taxes and assessments of every kind which may hereafter be levied or become a lien against Grantor's said land based on any assessment or valuation of Grantee's utility installations and residential access road.

14. The Grantee understands that the Grantor owns additional land in the vicinity of the easement hereby conveyed, which it uses for railroad purposes, including but not limited to the loading, unloading and switching of railroad cars. The Grantee recognizes that such railroad operations may adversely affect the aesthetic characteristics of the area; may produce noise, dust and vibration at any hour of the day or night, and may temporarily block the railroad crossing hereinabove described. Nevertheless, said railroad operations are considered compatible with the Grantee's intended use of said crossing.

15. To minimize potential conflicts between the Grantee's use of the road and Grantor's use of its railroad, the Grantee agrees, as a covenant running with the easement rights hereby conveyed, that the Grantee will not protest, prohibit or contest any of Grantor's railroad activities or operations in the vicinity; provided, however, that this covenant is not to be considered as an abrogation of the Grantee's right to protect, support or comment on proposed uses of adjoining lands to the same extent as available to other adjoining land owners.

16. The Grantor shall be under no obligation to construct, reconstruct or maintain any fences along its railroad right of way.

17. The herein terms and conditions are a covenant running with the land appurtenant to the easement herein granted, and full performance of said terms and conditions is required. Failure to perform in whole or in part is failure of consideration and shall allow the Grantor, at its sole option, to declare said easement terminated based on failure of consideration. In such a case (failure of consideration), the Grantor shall have the right and privilege to remove any or all improvements placed by Grantee on Grantor's property without notice or otherwise providing alternative access to Grantee.

rights under this easement shall immediately cease and terminate and this easement shall thereafter be null and void without further notice being required.

IN WITNESS WHEREOF, the parties hereto have executed this easement, in duplicate, as of the day and year first above written.

WEYERHAEUSER COMPANY

By: *D. W. Wilbur*
Forest Land Use Manager

Attest: *Pamela M. Redmon*
Assistant Secretary

ACCEPTED BY:
NEW CONCEPT HOMES, INC.

By: *Herbert E. Mull*
Title: PRESIDENT

Attest: *Greg M. Jensen*
Title: Project Manager

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 26th day of July, 1993, before me personally appeared D. W. Wilbur and Pamela M. Redmon, to me known to be the Forest Land Use Manager and Assistant Secretary, respectively, of **WEYERHAEUSER COMPANY**, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

EXHIBIT B**SPECIFICATIONS FOR ANY UTILITY CROSSING
UNDER RAILROAD TRACKS OF WEYERHAEUSER COMPANY**

1. Construction, installation and maintenance of the utility under the railroad tracks shall be performed in a manner so as not to unreasonably interfere with or prevent train operations. Further, it is required that boring or tunnelling be used in the construction and installation of said underground utility crossing.

However, any boring or tunnelling will be performed in such a manner so as to at all times provide adequate lateral and subjacent support, and prevent any subsidence of the surface, shifting of the subsurface or accumulation of water.

2. No machinery or equipment shall be placed on the railroad grade or tracks.
3. No construction, installation, maintenance or repair work of any kind shall be performed without the prior consent and approval of the Train Dispatcher or designated representative for Weyerhaeuser Company, or its successors and assigns. The Train Dispatcher or designated representative shall be notified at least 24 hours prior to any construction, installation, maintenance or repair work which is to be performed under the railroad grade or tracks. Said Train Dispatcher or designated representative may be contacted at 206/264-4770 or such other number as may be designated from time to time.

However, nothing contained herein shall prevent the entity authorized to perform repair work from responding to an emergency relating to the facilities on the right of way. Provided that in the event emergency repair to or replacement of the utility is required, the authorized entity shall immediately notify said train dispatcher or designated representative of the location of said utility, and the authorized entity shall also notify said train dispatcher or designated representative when the emergency repairs or replacement have been completed.

4. (a) At all times during the construction and installation of or maintenance, replacement and repair to the utility crossing under the railroad tracks, a watchman shall be employed and furnished by the entity performing the work to flag all rail traffic and adequately warn such traffic that work is being performed under the tracks.
- (b) At all time during the construction and installation of or maintenance, replacement and repair to the utility crossing under the railroad tracks, warning flags shall be placed alongside the track at a distance of one

<u>Distance from Centerline of Track</u>	<u>Depth</u>
0' - 10'	6'
10' - 25'	4'
Over 25'	3'

If railroad tracks or ditches are lowered at any future time, the casing pipe must be lowered to provide the above depths. The work of lowering the utility shall be performed by the entity owning the utility and the cost shall be borne by said entity.

7. Utility pipe shall be capable of withstanding 1.5 times working pressures but not less than 150 pounds per square inch. If metal, outside of pipe shall be suitably coated with an approved preservative. Pipe shall be laid with slack in the line or with an expansion joint or loop near point of rail crossing.
8. Casing pipe and joints shall be of iron or steel construction capable of withstanding the working pressures in the carrier pipe and the load of railroad roadbed, track and traffic.
9. The casing pipe shall have an inside diameter of at least 2 inches greater than the outside diameter of joints or couplings. Where casing pipe terminates below ground surface, the ends shall be suitably sealed. The casing pipe shall be fitted with vertical pipe vents having a diameter of not less than 2 inches and carried to a height of not less than 48 inches above the ground surface. Vent pipe at low end of casing shall be connected with the bottom of casing. Top of vent pipe shall be fitted with downturned elbow properly screened.
10. The casing pipe shall not extend less than 10 feet on each side from the centerline of the nearest railroad track measured at right angles thereto, and shall be given an even bearing throughout its entire length. If additional tracks are constructed in the future, the casing shall be correspondingly extended at the expense of the entity owning the utility.
11. After said underground utility crossing has been installed, permanent metal signs mounted on metal posts shall be placed on each side of the railroad grade by the entity owning the utility showing the exact location of the buried utility.
12. Where laws or orders of appropriate authority prescribe a higher degree of protection than specified herein, then the higher degree of protection so prescribed shall be deemed a part of the specifications set forth in this Exhibit.
13. Any utility installed alongside of, or parallel to the railroad track shall be at a minimum of 5 feet