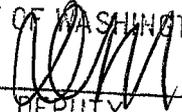


FILED
COURT OF APPEALS
DIVISION II

No. 47129-9-II

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**COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON
BY  DEPUTY

JAMES AND LAURA WALSH, a married couple,
KIM AND LORI HASSELBALCH, a married couple

Appellants/Defendants

v.

RONALD HALME, an individual

Respondent/Plaintiff

BRIEF OF RESPONDENT

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I. Introduction

This appeal presents the court with three overarching issues.

1. Is it a Subdivision? Throughout their opening brief, the Appellants repeatedly refer to the “Nosko Tract—Phase II” as though their property were part of a subdivision with that name. But no such subdivision plat has ever been recorded, and no other requirements for creating a subdivision have been met. Is the subject property part of any legally recognized subdivision?

2. Is it a Homeowners’ Association? The governing statute defines a “homeowners’ association” as a “corporation, unincorporated association, or other legal entity” that satisfies certain conditions.¹ No document or agreement explicitly created any such legal entity, or evidences any implicit intention to create one, for the subject properties. Nevertheless, the Appellants argue that the governing statute automatically transformed the parties to a garden-variety road maintenance agreement (“RMA”) into a full-blown homeowners’ association. Is this what the Legislature intended?

3. Amendments to the RMA? Before this suit was filed, the Appellants purported to call the first meeting of the “Nosko Tract—Phase II Homeowners Association.” At the meeting, they purported to elect a Board

¹ RCW 64.38.010.

of Directors, amend the Declaration of Covenants, Codes and Restrictions (“CC&Rs”), adopt By-Laws, and adopt a schedule of fines. After the Respondent demonstrated that the Appellants lacked the votes to take any of these actions under the CC&Rs, the Appellants changed their position and argued their actions were authorized under the RMA. Can a simple RMA, however, be “amended” in such a dramatic fashion without the consent of all the parties?

II. Statement of the Case

The parties to this lawsuit all own properties that were once part of an 80-acre parcel owned by Eldon and Mary Stroup. Roughly 30 years ago, the Stroups recorded a “Declaration of Limitations, Covenants, Conditions, Restrictions, and Reservations” (hereinafter referred to as the “CC&Rs”) that affected the entire 80-acre parcel.² The CC&Rs provided they would be “binding and effective for a period of thirty (30) years...at the end of which they shall be automatically extended...unless an instrument signed by a two-thirds majority of the then owners of said property described above has been

² Appendix A; Clerk’s Papers (“CP”) 49-51.

rendered, agreeing to change said covenants and restrictions in whole or in part.”³

The 30-year anniversary of the CC&Rs passed on October 4, 2013. A few months later, in May 2014, Respondent Ronald Halme (“Halme”) received a “Notice of Special Meeting” stating that the “Homeowners Association, Nosko Tract—Phase Two” would be holding a meeting for the purpose of electing a Board of Directors, amending the CC&Rs, and adopting Bylaws.⁴ The notice is the first document that ever referred to the existence of this purported homeowners’ association. Because Halme had never heard of any such association—and because he did not believe any such association existed—he did not attend the meeting.⁵

According to the “Meeting Minutes,” the Appellants James Walsh, Laura Walsh, and Kim Hasselbalch were the only attendees at the meeting.⁶ They purported to elect themselves to the “three-member Board of Directors,” to appoint themselves President, Vice President, and Secretary/Treasurer, to adopt “amendments to the CC&R’s [sic],” to “approve the Bylaws,” and to direct their attorney, “Michael Simon, to

³ Appendix A, page 1; CP 49.

⁴ Appendix C; CP 25.

⁵ CP 2, Para. 9.

⁶ Appendix D; CP 26.

proceed with drafting a fine schedule...for anyone accused of violating the CC&R's....”⁷

After the meeting, the Appellants recorded with the county a document entitled “Amendments to Nosko Tract—Phase II CC&R’s [sic].”⁸ But, contrary to the clear language of the original CC&Rs—which specified that they shall apply to “every tract, part or parcel” of the original 80-acres—the Appellants recorded the amendments against less than half of the property governed by the original CC&Rs.⁹ Moreover, contrary to the clear language of the original CC&Rs—which required a two-thirds majority of the owners of the 80-acre tract to sign any amendments—the three Appellants were the only signatories.¹⁰

In his summary judgment motion, Halme demonstrated that the amendments were not agreed to by a two-thirds majority of the owners of the seventeen parcels then covered by the original CC&Rs. The Appellants had thought they had enough signatures because they had mistakenly believed only eight parcels were governed by the CC&Rs, and they owned six of them. In their opposition to Halme’s summary judgment motion, the

⁷ *Ibid.*

⁸ Appendix E; CP 27-32.

⁹ *Ibid.*

¹⁰ *Ibid.*

Appellants conceded that—contrary to their prior belief—the original CC&Rs applied to “a total of seventeen (17) lots,” and they did not have enough votes to amend them.¹¹

Undaunted, the Appellants simply shifted their position. Realizing that they could not justify their actions under the CC&Rs, the Appellants claimed their actions were authorized by a completely different document—the Road Maintenance Agreement (“RMA”). Appellants’ new theory was that parties to the RMA were somehow transformed into a homeowners’ association when the Legislature passed Chapter 64.38, which regulates homeowners’ associations. Under their new theory, the parties to the RMA were now all members of a homeowners’ association and—as the self-anointed leaders of this new entity—the Appellants were authorized to adopt rules, regulations, bylaws, and fines.¹²

The parcels owned by the litigants do not have access to any public road. Accordingly, they share a private road that connects them to the nearest public road. Back in 1990, the predecessor owners of these parcels entered into the RMA.¹³ It was a garden-variety form agreement, with blanks filled in to identify the subject property and the location of the private

¹¹ CP 184.

¹² CP 185-188.

¹³ Appendix B; CP 57-66.

road.¹⁴ The RMA dedicates a private road “to be used and administered forever for ingress, egress, and utility purposes, for the benefit of the persons residing within the boundaries of certain real property....”¹⁵ The RMA further states that the private road:

[I]s to be used and administered under such regulations consistent with other conditions set forth in this instrument as may, from time to time hereafter, be established by the owners...for the purpose of safeguarding the road/roads or improvements thereon from damage or deterioration, and for the further purpose of protecting the residents...from any uses or conditions in or upon said private road or property which are, or may be, detrimental to the amenities in the neighborhood.¹⁶

The RMA called on the owners to “share proportionately in regards to the costs and expenses of maintenance and repairs” of the road.¹⁷ Moreover, the owners, “by an 80% vote, shall have the right to adjust the amount of annual contribution as is deemed necessary.”¹⁸ Any such adjustment, however, “shall require a written addendum to this agreement, which shall be recorded.”¹⁹

¹⁴ Appendix B, Page 2; CP 58.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Appendix B, Page 3; CP 59.

¹⁹ *Ibid.*

The RMA calls for the designation of a “Manager,” who shall serve for one year, after which “the duty shall rotate among the owners.”²⁰ The Manager is supposed to call meetings, inspect the road, determine any needed repairs or maintenance, and decide “the state of compliance with the rules and regulations of this agreement.” All such decisions, however, “shall require a majority vote, except for the increasing of annual contributions, which shall require an 80% vote.”²¹

With respect to the “Rules of Conduct,” the RMA states that a “reasonable speed limit will be observed at all times,” that all “property owners will park or store their personal vehicles, boats, trailers, campers or other equipment on their own property,” and that no “owner shall engage in any activity which might reasonably interfere with traffic flow...or safety of the road.”²²

With respect to enforcement, the RMA provides that if any “owner or owners engage in any activity which causes excess damage or deterioration to the road beyond normal wear and tear, said owner or owners shall be required, at their sole expense, to make immediate and appropriate repairs on

²⁰ *Ibid.*

²¹ *Ibid.*

²² Appendix B, Page 5; CP 61.

said road....”²³ If voluntary compliance is not forthcoming, then, “[i]f necessary, [the Manager] shall initiate legal action...in order ensure that such repairs are completed in a timely and proper manner.”²⁴ Finally, the RMA provides that if “any suit or action to enforce this agreement” is brought, then the prevailing party “shall be awarded reasonable attorney’s fees....”²⁵

Thus, the RMA is specifically limited to matters that involve the use, maintenance, repair, and safety of the shared private road. The RMA does not explicitly create any homeowners’ association, nor does it evidence any implicit intention to create one: it does not call for the election of any board of directors or any officers; it does not allow for any assessment for common expenses, except for those specifically related to maintaining or repairing the private road; and, it does not call for the adoption of any fines for violations of the RMA. Similarly, the RMA does not contain any provision for its amendment, other than an amendment regarding the amount of annual dues.²⁶

²³ Appendix B, Page 3; CP 59.

²⁴ *Ibid.*

²⁵ Appendix B, Page 5; CP 61.

²⁶ Appendix B; CP 57-66.

III. Argument

A. The Subject Properties are not Part of Any Subdivision

At various points in the chain of title for these properties, there are references to the “Nosko Tract—Phase I” and “Nosko Tract—Phase II.” These references make it seem as though these are two subdivisions, but they are not.

Washington law generally defines a “subdivision” as the “division or redivision of land into five or more lots, tracts, parcels, sites, or divisions for the purpose of sale, lease, or transfer of ownership.”²⁷ In order to create a “subdivision,” the developer must generally record a “plat” with the local government. “*A preliminary plat of proposed subdivisions and dedications of land shall be submitted* for approval to the legislative body of the city, town, or county within which the plat is situated.”²⁸ Moreover, each and every subdivision plat must contain numerous approvals from the local government, must be accompanied by a “complete survey of the section” where the subdivision lays, must be “acknowledged by the person filing the plat,” and must contain a certification “that all taxes and delinquent assessments” have been paid.²⁹ Finally, the plat must “contain a certificate”

²⁷ RCW 58.17.020(1)

²⁸ RCW 58.17.070 (emphasis added)

²⁹ RCW 58.17.160

that the subdivision has been made “with the free consent and in accordance with the desires of the owner or owners.”³⁰

None of these requirements have ever been met by the current or prior owners of the subject property. While the Stroups may have initially entertained the prospect of creating a subdivision or subdivisions within the 80-acre tract, neither they—nor anyone else—have ever followed through and created an actual subdivision. Halme demonstrated this fact in his summary judgment motion, and the Appellants did not submit any controverting evidence. Thus, although the Appellants continue to refer to the “Nosko Tract—Phase II” as though it were a legal subdivision, it is not. This is an important fact because it bears directly on the next issue: whether there is any “Nosko Tract—Phase II Homeowners Association.”

B. There is no “Nosko Tract—Phase II Homeowners Association”

As mentioned earlier, the Appellants James Walsh, Laura Walsh, and Kim Hasselbalch have proclaimed themselves to be the sole directors and officers of the “Nosko Tract—Phase II Homeowners Association.” Armed with their self-anointed powers, they recorded purported amendments to the CC&Rs that are abhorrent to Halme. Like the Emperor’s New Clothes,

³⁰ RCW 58.17.165

however, the Appellants have cloaked themselves in the garb of a homeowners' association that simply does not exist.

As a factual matter, the Appellants admit in the minutes of their "Special Meeting" that this "was the first annual meeting of the members of the Nosko Tract—Phase II Homeowners Association."³¹ This begs an important question: When was this homeowners' association first created? If it were first created in 1990, when the RMA was executed, then how can one explain the fact that the homeowners' association never had any meetings, never had any directors, and never had any officers for the first quarter century of its existence? The Appellants have offered no explanation.

Instead, the Appellants argue that this homeowners' association was automatically created in 1995, when the Legislature enacted RCW Chapter 64.38. Even if that were true, there would still be no explanation for the lack of directors, officers, and meetings for the first two decades of the association's existence. Thus, as a factual matter, none of the parties to the RMA ever behaved as though a homeowners' association were ever created, either in 1990 when the RMA was executed, or in 1995 when RCW 64.38 was enacted.

³¹ Appendix D; CP 26.

But the Appellants' argument is also wrong for a more fundamental reason—it ignores the clear and unambiguous language of that statute upon which it relies. The Legislature made clear its intent when it enacted RCW Chapter 64.38: “The intent of this chapter is to provide consistent laws regarding the formation and legal administration of homeowners’ associations.”³² The Legislature then defined a “Homeowners’ Association” as follows:

“Homeowners’ association” or “association” means *a corporation, unincorporated association, or other legal entity*, each member of which is an owner of residential real property located within the association’s jurisdiction, as described in the governing documents, and by virtue of membership or ownership of property is obligated to pay real property taxes, insurance premiums, maintenance costs, or for improvement of real property other than that which is owned by the member.³³

There is no dispute that the “Nosko Tract—Phase II Homeowners Association” is not a corporation, it is not an unincorporated association, and it is not registered with the State as any other legal entity. Thus, there is nothing that fits even the basic definition of a homeowners’ association within the clear and unambiguous terms of the statute upon which the Appellants so heavily rely.

³² RCW 64.38.005

³³ RCW 64.38.010 (emphasis added).

If the Appellants change theories again, and argue that a homeowners' association was created when the original parties to the RMA executed that agreement, this argument must also fail. As noted above, there is nothing within the four corners of that straightforward document to support such a fantastical interpretation. If the drafters of the RMA had intended to create a homeowners' association, then they could easily have expressed this intent. Instead, the RMA merely describes the rights and responsibilities of the owners of the property vis-à-vis the shared private road, and nothing more.

Thus, the plain language of the RMA belies any claim that its purpose was to create a homeowners' association. In their brief, the Appellants simply state that “[a]ll of the owners of property in Nosko Tract—Phase Two fit” the statutory definition of a homeowners' association, and then they engage in a lengthy discussion of statutory interpretation and legislative history. But this discussion is superfluous because the Appellants have not explained—and cannot explain—how the RMA ever gave rise to any “corporation, unincorporated association, or other legal entity” that could later morph into a homeowners' association.

In the trial court, the Appellants argued that a “homeowners' association includes an unincorporated association or other legal entity, *such as parties to a contract...*” In other words, by some verbal sleight of hand,

the Appellants seek to transform the parties to a contract into a “legal entity.” But there are many contracts, even those involving the use of real property, that do not create any “legal entity.” For example, a commercial lease may require the tenant to pay for improvements, to pay insurance premiums, to pay property taxes, and to pay maintenance costs for the landlord’s property, but it does not create a homeowners’ association. Similarly, an easement agreement may require the owner of the dominant estate to pay for the maintenance of the easement across the servient owner’s estate, but it does not create a homeowners’ association. Finally, an option to purchase real estate may require the potential buyer to make similar payments during the option period, but it does not create a homeowners’ association.

In other words, there are a many types of contracts involving land that do not create a homeowners’ association simply because they require one party to pay for improvements, taxes, insurance premiums, or maintenance costs on property owned by another party. Just because the Legislature passed a law to regulate homeowners’ associations, the parties to these types of contracts do not automatically become members of a homeowners’ association. Instead, only those agreements evincing some intention of the

parties to create a homeowners' association should be construed as actually creating such an entity.

In sum, the factual record makes clear that the original parties to the RMA did not intend to create any homeowners' association. If they had, they would have expressed this intention within the RMA, and they would have conducted themselves as though they had formed a homeowners' association. To the contrary, the RMA does not express any intention to form a homeowners' association, and for more than two decades all the property owners behaved as though no such association existed.

Finally, if this Court accepted the Appellants' argument, it would wreak havoc throughout the State. There are literally thousands of road maintenance agreements already in place in Washington. Under Appellants novel interpretation of RCW 64.38, thousands of heretofore-nonexistent homeowners' associations would unwittingly spring to life across the State. This would lead to chaos, as it would create new unrecorded and unknown rights and responsibilities regarding tens of thousands of parcels of property.

C. The Appellants' Actions are not Authorized by the RMA

As explained above, the subject properties are not part of any subdivision or homeowners' association. The Appellants' back-up argument

is that all their actions were nevertheless authorized by the RMA. This argument fails for three reasons: (1) with the exception of annual contribution levels, the RMA cannot be amended without unanimous consent; (2) the record shows that the Appellants did not seek to actually amend the RMA—instead, they sought to amend the CC&Rs; and (3) even if the Appellants could and did amend the RMA, these “amendments” go so far beyond the scope of the RMA that they are contrary to Washington law, which provides that “an amendment may not create a new covenant that has no relation to the existing covenants.”³⁴

As noted above in the Statement of the Case, the CC&Rs expressly allow for their amendment by “an instrument signed by a two-thirds majority of the then owners” of the property affected by the CC&Rs. The RMA, with one limited exception, contains no such provision allowing a majority or even a super-majority to amend the RMA. There is only one type of non-unanimous amendment allowed under the terms of the RMA—and that is to change the amount of money the owners must contribute each year to repair and maintain the road. Subparagraph F under the header “Maintenance Fund” provides that the “owners, by an 80% vote, shall have the right to

³⁴ *Ebel v. Fairwood Park II Homeowners' Ass'n*, 136 Wn.App. 787, 150 P.3d 1163, 1167 (2007) (quoting *Meresse v. Stelma*, 100 Wn.App. 857, 865, 999 P.2d 1267 (2000))

adjust the amount of annual contribution as is deemed necessary.”³⁵

Similarly, as Subparagraph A under the header “Duties of the Manager” reiterates, “the *increasing of annual contributions*...shall require an 80% vote.”³⁶

The RMA contains no other provisions authorizing any amendments by a majority or super-majority vote. It is black-letter law that “[o]nce a contract has been entered into, mutual assent of the contracting parties is essential for any modification of the contract.”³⁷ As a result, the only way for the RMA to be amended would be if all the property owners agreed to do so. But the record clearly shows that the Appellants are the only parties to the RMA advocating for its amendment. Halme does not agree to any amendment, and neither did the other property owners covered by the RMA. Accordingly, the court should reject any unilateral attempt by the Appellants to amend the RMA.

Not only does this record show that the Appellants *could not* have amended the RMA, it also shows that the Appellants *did not* amend the RMA. Every action taken by the Appellants was actually aimed at amending the CC&Rs—not the RMA. For example, the “Notice of Special

³⁵ Appendix B, Page 3, CP 59.

³⁶ *Ibid.*

³⁷ Washington Pattern Jury Instructions—Civil, WPI 301.07.

Meeting” states that the purpose was to “vote on the proposed amendments to the *Declaration* which are attached....”³⁸ The “Meeting Minutes” generated by the Appellants also make clear that the “second motion was to adopt the amendments to the *CC&R’s* [sic] as proposed in the Notice of Special Meeting....” These minutes further state that an “Executive Session” was held to discuss “how to enforce the *CC&R’s* to protect the character of the neighborhood” and that the attorney was directed to draft “a fine schedule and an appellate procedure for anyone accused of violating the *CC&R’s*....”³⁹

Similarly, the document attached to the special notice was entitled “Amendments to Nosko Tract—Phase II *CC&R’s*.” The recitals section of that document explicitly refers to the CC&Rs: “WHEREAS, the *Declaration of Limitations, Covenants, Conditions, Restrictions and Reservations* allows them to be amended by a two-thirds majority vote.” The amendments further state that “the Board of Directors hereby adopts the following amendments to the *Declaration of Limitations, Covenants, Conditions, Restrictions and Reservations*.”⁴⁰

³⁸ Appendix C; CP 25.

³⁹ Appendix D; CP 26.

⁴⁰ Appendix E; CP 27-32.

Thus, the record makes abundantly clear that the Appellants thought they were able to, and did, amend the CC&Rs; they never attempted to or did amend the RMA. In fact, in the seventeen pages containing the notice, the minutes, the amendments, the bylaws, the fine schedule, and the appeals procedure, there is not a single reference to the RMA—every single reference is to the CC&Rs.⁴¹ It was only after the Appellants realized they lacked the votes necessary to amend the CC&Rs that they decided to pretend that what they had done was amend the RMA.

Finally, even if the Appellants could have amended the RMA, and even if they did actually amend the RMA, these so-called “amendments” would violate Washington law, which provides that “an amendment may not create a new covenant that has no relation to the existing covenants.”⁴² The RMA deals exclusively with the private road. From this narrow subject matter, the Appellants seek to justify new rules relating to whether someone can operate their business from inside their own home, how long certain vehicles “with one or more tires removed” can be stored on a homeowner’s own property, and the creation of an entirely new homeowners’ association,

⁴¹ Appendices C, D, E, F, and G.

⁴² *Ebel v. Fairwood Park II Homeowners’ Ass’n*, 136 Wn.App. 787, 150 P.3d 1163, 1167 (2007) (quoting *Meresse v. Stelma*, 100 Wn.App. 857, 865, 999 P.2d 1267 (2000))

complete with rules regarding membership, elections of directors and officers, and approval of a budget.⁴³

The RMA is a simple and straightforward document with the humble aim of dedicating, maintaining, and repairing (if necessary) a private road so people can access their property from the public road. The Appellants ask far too much of this limited agreement to justify their actions. For this reason, and the other reasons discussed above, the RMA does not authorize any of the actions taken by the Appellants, and the trial court did not err in so finding.

D. None of the Appellants' Other Arguments Has any Merit

The issues in this dispute are limited to the proper interpretation of the RMA, the CC&Rs, and Washington's laws governing homeowners' associations. The Appellants seek to cloud these issues by introducing controverted evidence regarding Halme's alleged personal conduct. Because this case does not hinge on whether Halme and his sons drive "too slowly" on the road, or walk down the middle of the road, or rev the engines on their all-terrain vehicles, Halme did not seek to refute these accusations below, and he will not seek to refute them here. Simply put, even if these

⁴³ Appendix D; CP 27-32.

accusations were true (which they are not), it would have zero effect on whether the RMA authorized the Appellants' actions. In sum, these accusations are designed to do nothing more than besmirch Halme's character, which is not at issue in this case.

In addition, the Appellants argue that “[t]here are no provisions in the RMA that provide for consequences for violations of the Rules of Conduct.” This is patently untrue. The RMA clearly provides that if any of the property owners violate the Rules of Conduct, any other owner can sue “to enforce this agreement” and, if they prevail, they “shall be awarded reasonable attorney’s fees and reasonable costs of prosecuting” the suit. The RMA also allows the Manager to require any party who “causes excess damage or deterioration to the road” to immediately repair the road “at their sole expense” and to sue them if they do not comply. Thus, there is no gap in the RMA that needs to be filled, either by amendments to the CC&Rs, the creation of a homeowners’ association, or the adoption of bylaws, fine schedules, and appeals procedures.

The Appellants also attack the trial court’s ruling as though it violated Washington’s rules of statutory construction, admonishing that “[g]rafting on exceptions to the legislation by court *fiat* is simply not allowed.” But the trial court did not graft exceptions onto the definition of a homeowners’

association—the court simply found that a garden-variety RMA does not fit within the statute’s definition of a homeowners’ association. This rather unremarkable finding was not an *ultra-vires* act of judicial *fiat*, as suggested by the Appellants; it was a common-sense interpretation of Washington’s laws relating to homeowners’ associations.

The Appellants’ lengthy discussion of the legislative history is also unhelpful. The Appellants cull from this history the Legislature’s concern that “[a]djustments need to be made in the bill to protect small associations from some of the bookkeeping details,” and that the “associations sometimes take advantage of uninformed owners.” But this case has nothing to do with either of those concerns.

Similarly, the Appellants quote the Legislature’s observation that homeowners’ associations are often “formed by the land developer or builder of planned unit developments pursuant to a restrictive covenant or a contract.” While this is true, it has no bearing on this case because there was no “land developer,” and there was no covenant or contract that expressed any intention to create a homeowners’ association.

Moreover, the Appellants note the Legislature’s finding that “[c]urrently, there is no statutory law that specifically address the organization, management, and powers of homeowners’ associations.”

Again, while this may have been true, it is hard to see how this statement evidences any legislative intent to convert the parties to a simple RMA into a full-blown homeowners' association.

Along these same lines, the Appellants engage in a lengthy discussion of some decisions from Colorado interpreting the "Colorado Common Interest Ownership Act."⁴⁴ Because there is no ambiguity or uncertainty regarding Washington's law, however, it is unnecessary to parse the two Colorado cases cited by the Appellants, which deal with starkly different factual situations and a much different set of laws.

Finally, the Appellants attack the trial court's ruling as interfering "with the internal governance of an association...." But this begs the question of whether there is any such "association"—this record clearly demonstrates there is not. Thus, there is no "association" into whose affairs the trial court could have interfered.

IV. RAP 18.1 Fee Request

Both the CC&Rs and the RMA provide for an award of attorney's fees to the prevailing party in any action brought to enforce them.

Mr. Halme brought this declaratory relief action to enforce the provisions of

⁴⁴ Colorado Revised Statutes, Title 38, Article 33.3.

both agreements. Accordingly, the trial court correctly awarded Mr. Halme his attorney's fees in the proceeding below. Under RAP 18.1, Mr. Halme hereby requests that—should he prevail on this appeal—he be awarded his attorney's fees and costs incurred in responding to this appeal.

V. Conclusion

For the foregoing reasons, Respondent Ronald Halme respectfully requests this court affirm the trial court's judgment and award Halme his attorney's fees and costs on this appeal.

Dated this 20th day of May, 2015

Respectfully Submitted,



Steven E. Turner, WSBA No. 33840
*Attorney for Respondent Ronald
Halme*

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APPENDIX A

DECLARATION OF LIMITATIONS, COVENANTS, CONDITIONS, RESTRICTIONS
AND RESERVATIONS AFFECTING THE REAL PROPERTY DESCRIBED AS FOLLOWS:

The North half of the Southeast quarter of Section 36, Township 4 North, Range 2 East of the Willamette Meridian, in Clark County, Washington AND the fractional Southwest quarter of the Northwest quarter of Section 31, Township 4 North, Range 3 East of the Willamette Meridian in Clark County, Washington.

EXCEPT the South 30 acres of the Northeast quarter of the Southeast quarter of Section 36, Township 4 North, Range 2 East, W.M.

AND EXCEPT Public Roads.

ELDON D. STROUP and MARY L. STROUP, husband and wife, hereinafter referred to as the Owners.

The following limitations, covenants, restrictions, reservations and conditions shall run with the land and shall be binding upon and inure to the benefit of all parties hereto, their heirs, successors and assigns, and all persons claiming under them and shall be a part of all transfers and conveyances of the property herein described above, or any future division thereof. Such limitations, covenants, restrictions, reservations and conditions shall be binding and effective for a period of thirty (30) years from the date hereof, at the end of which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a two-thirds majority of the then owners of said property described above has been rendered, agreeing to change said covenants and restrictions in whole or in part:

EXCEPT however, if during the first thirty (30) year period, it appears to the advantage of said property herein described above that these covenants and restrictions should be modified, then and in that event, any modification desired shall require an affirmative vote of 100% of the then owners of said property and evidenced by suitable instrument filed for public record.

Invalidation of any of these covenants and restrictions by judgement or court order shall in no way affect any of the other provisions contained herein, which shall remain in full force and effect.

1. PROPERTY SUBJECT TO THESE COVENANTS AND RESTRICTIONS: The real property which is subject to said covenants and restrictions is the property described hereinabove, and shall include every tract, part or parcel thereof.

2. RESIDENCES - BUILDING USE: No part or parcel of the property embraced hereunder shall be used for other than single-family residence purposes. Further, no mobile homes or trailer houses shall be permitted, except under the following conditions:

1. Said residence shall comply with the requirements of the County Assessor for taxation as real property.
2. Said residence shall contain no less than 1200 square feet of living area.
3. Said residence shall be placed on a permanent foundation of concrete or other comparable material.
4. Exterior siding and roofing shall be of similar materials as would be used on a contractor-built single-family home. Further, said residence shall have a pitched roof of some type.
5. The owner of said residence shall take all due care to insure that said residence is landscaped and maintained in a manner which is attractive and in harmony with other vicinal dwellings.

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2. RESIDENCES - BUILDING USE continued.....

The aforementioned building limitations notwithstanding, it is not the intent of this paragraph to prohibit agricultural activities.

3. TEMPORARY STRUCTURES: No structure of a temporary nature, trailer, camper, tent, shack, garage, barn or other similar structure shall at any time be used as a residence.

4. CONSTRUCTION: The work of construction of all buildings shall be in accordance with all building codes and regulations and shall be prosecuted diligently and continuously from commencement of construction until the exteriors of such buildings are completed and painted or otherwise suitably finished. Exterior work on any building shall be completed within one (1) year from start of construction.

5. GARBAGE AND REFUSE: No part or parcel of the land embraced by this Agreement shall in any way or manner be used or maintained as a dumping ground for rubbish, trash, garbage, junk cars or any other waste or hazardous, unsightly or discarded refuse.

6. COMMERCIAL ACTIVITY: No commercial activity nor the placing or displaying of advertising or signs for such, shall be permitted on any part or parcel of the land embraced by this Agreement unless the owner of said part or parcel shall have first obtained written permission from 100% of the then owners of the land embraced by this Agreement. Such permission, if obtained, is in no way intended to pre-empt, avoid or interfere with the laws, regulations, codes or zoning ordinances of local, county, state or federal authorities.

7. USE OF ROADS AND EASEMENTS: All roads and easements for same, and including any roads or easements for same which may be created in the future, shall be for the exclusive use of, and inure to the sole benefit of the land embraced by this Agreement and so described herein and none other. EXCEPT, that the non-exclusive easement for ingress, egress and utilities over, under and across the East 30 feet of the Northwest quarter of the Southeast quarter of Section 36, Township 4 North, Range 2 East of the Willamette Meridian, which said easement is now of public record and is appurtenant to the Northeast quarter of the Southeast quarter of Section 36, Township 4 North, Range 2 East of the Willamette Meridian, is hereby acknowledged.

8. ENFORCEMENT: The failure on the part of any of the parties affected by these covenants and restrictions, at any time to enforce any of the provisions thereof, shall in no event be deemed a waiver thereof, and shall not operate to bar or prevent said parties from enforcing any succeeding violation or breach, either of the same condition or covenant or otherwise.

Further, the prevailing party in any suit or action to enforce this Agreement shall be awarded reasonable attorney's fees and the reasonable costs of prosecuting or defending said suit or action.

9. HEADINGS: The headings of the sections and paragraphs herein contained are for convenience only and shall not be used in construction or interpretation of this declaration.

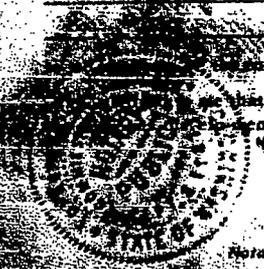
155

IN WITNESS WHEREOF, Eldon D. Stroup and Mary L. Stroup have caused this instrument to be executed this 4th day of Oct, 1983.

Eldon D. Stroup Mary L. Stroup
Eldon D. Stroup CLARK CO. WASH Mary L. Stroup

STATE OF WASHINGTON. Transamerica Title Insurance Co.
County of Clark } ss. OCT 11 2 53 PM '83

On this day personally appeared before me Eldon D. Stroup and Mary L. Stroup
DAVID HICHENER



Individuals described in and who executed the within and foregoing instrument and they signed the same as their free and voluntary act and deed in accordance with the provisions hereof.

Given under my hand and official seal this 4th day of OCTOBER, 1983

John T. McInnis
Notary Public in and for the State of Washington, residing at Vancouver, therein

EXHIBIT A
PAGE 2 OF 3

I, GREG A. KIMSEY, Auditor of Clark County, State of Washington, do hereby certify that the foregoing is a true and correct copy of a: Declaration of limitations, covenanted conditions, restrictions and reservations affecting the the local
Microfilm No. _____ File No. 8310110099
of record in this office. WITNESS my hand and official seal
This 9th day of October, 2014 A.D.
GREG A. KIMSEY, Auditor, Clark County
By (Jana M. Hayford)
Deputy

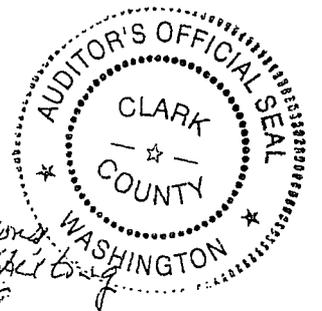


EXHIBIT A
PAGE 3 OF 3

APPENDIX B

ORIGINAL

STATE OF WASHINGTON,

GENERAL AFFIDAVIT

County of CLARK

} ss.

Gordon T. Mac Williams

being first duly sworn on oath deposes and says:

That

The Attached Road Maintenance and Use Agreement for Nosko Tract - Phase Two is a true and actual copy of said agreement, and EXHIBIT "C" attached thereto shows the actual curve of the road across Parcel #9.

Signed and sworn to before me this 9th day of MARCH 1992

Gordon T. Mac Williams

Nellie K. Kuege



Notary Public in and for the State of Wash.

My appointment expires: 8/1/92

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General Affidavit
Washington Legal Blank, Inc., Issaquah, WA Form No. 432 10/88
MATERIAL MAY NOT BE REPRODUCED IN WHOLE OR IN PART IN ANY FORM WHATSOEVER.

EXHIBIT

C

PAGE

1

OF

10

ROAD MAINTENANCE AND USE AGREEMENT

THIS DEDICATION is made and accepted on the condition that the private road herein dedicated is to be used and administered forever for ingress, egress and utility purposes, for the benefit of the persons residing within the boundaries of certain real property within the County of CLARK, State of Washington, commonly known and referred to as: NOSKO TRACT - PHASE TWO. The private road herein dedicated is to be used and administered under such regulations consistent with other conditions set forth in this instrument as may, from time to time hereafter, be established by the owners of THE NOSKO TRACT - PHASE TWO for the purpose of safeguarding the road/roads or improvements thereon from damage or deterioration, and for the further purpose of protecting the residents of THE NOSKO TRACT - PHASE TWO from any uses or conditions in or upon said private road or property which are, or may be, detrimental to the amenities of the neighborhood.

OWNERSHIP. The present ownership of the property to be governed by this agreement is as follows:

Eldon D. Stroup and Mary L. Stroup, husband and wife; Mary L. Leith, as her separate estate; Mark A. Beirdneau and Angela F. Beirdneau, husband and wife;

The legal descriptions of the properties owned by the respective parties named herein are shown on the attached EXHIBIT "A".

DEDICATION OF ROADS. It is the intent of this agreement to dedicate the private road/roads contained in NOSKO TRACT - PHASE TWO for the exclusive use of the owners thereof, their families, guests and official visitors and none other. The legal description of the lands contained in THE NOSKO TRACT - PHASE TWO is as follows:

The Northeast quarter of the Southeast quarter of Section 36, Township 4 North, Range 2 East, W.M. EXCEPT the South 30 acres thereof;

AND

The Fractional Southwest quarter of the Northwest quarter of Section 31, Township 4 North, Range 3 East, W.M.

IDENTIFICATION OF ROADS. The private road (or roads) to be dedicated in this agreement is described as follows:

A portion of N.E. 167th Ave. (private road), the centerline of which portion is described as the East line of the Northwest quarter of the Southeast quarter of section 36, Township 4 North, Range 2 East, W.M.

ALSO a portion of the future N.E. 229th Street (private road), described as the North 60 feet of the Northeast quarter of the Southeast quarter of Section 36, township 4 North, Range 2 East, W.M.

ALSO the following portions of the fractional Southwest quarter of the Northwest quarter of Section 31, Township 4 North, Range 3 East, W.M:

The West 30 feet of the South half thereof; and the South 60 feet of the North half thereof EXCEPT the East one-third thereof. 438

ALSO the North 30 feet of the West 30 feet of the Fractional Northwest quarter of the Southwest quarter of section 31, Township 4 North, Range 3 East, W.M. Range 3 East, W.M. which is intended to aid in understanding the location of the above-described road, is shown on the attached EXHIBIT "B".

SHARING OF COMMON EXPENSES. The individual owners of the parcels of land contained within The Nosko Tract - Phase Two shall share proportionately in regards to the costs and expenses of maintenance and repairs after the initial construction of the road by the developer.

MAINTENANCE FUND. Upon the initial sale of three (3) parcels, there shall be established a road maintenance fund:

A. Said fund shall be set up in an interest bearing checking or savings account at a chartered, local banking institution. All monies in said fund shall be used exclusively for the purposes provided in this agreement and none other;

B. Each owner of a parcel shall make an annual contribution to said fund, on or before February 1st of each calendar year. The amount of the contribution to be paid by each owner shall be computed on the following formula:

Five cents (.05¢) per running foot, as measured along the center of the road, from the point of beginning of the private road to a point opposite the entrance of the owner's driveway. If an owner has more than one driveway, the computation shall be based on the driveway which is furthest from the point of beginning; or, if an owner does not yet have a driveway, the computation shall be made to a point midway along the owner's road frontage.

For clarification, the point of beginning shall be on N.E. 167th Ave. at the Southeast corner of the Northwest quarter of the Southeast quarter of Section 36, Township 4 North, Range 2 East.

C. Withdrawal of funds shall require two signatures as designated by the owners, which shall elect a Manager annually.

D. Any owner, upon selling, cannot receive a refund from said fund and must settle with the new owner in escrow, or privately, for the proration of the year of sale;

E. Any contribution not received by February 15th is delinquent. The owners may take legal action to collect and are entitled to be awarded reasonable costs, including attorney's fees, if action is necessary. The Manager shall be responsible for initiating said legal action and may draw money from the fund to pay for such action. Any money received or awarded from said action must be returned to the fund in its entirety;

F. The owners, by an 80% vote, shall have the right to adjust the amount of annual contribution as is deemed necessary. This action shall require a written addendum to this agreement, which shall be recorded.

G. Should any owner, or group of owners engage in any activity which causes excess damage or deterioration to the road beyond normal wear and tear, said owner or owners shall be required, at their sole expense, to make immediate and appropriate repairs on said road to the extent that it is restored to its regularly maintained condition. The Manager shall be responsible for overseeing said repair work and may, if necessary, initiate legal action, as defined herein-above, in order to ensure that such repairs are completed in a timely and proper manner. Examples of activity which might cause excess damage or deterioration may include, but are not limited to: Logging, heavy truck traffic, moving of heavy equipment and building construction.

MANAGER. One owner shall be designated as Manager. The term for the Manager shall be for one year and the duty shall rotate among the owners. The Manager shall receive no remuneration other than reimbursement for actual costs or expenses incurred for maintenance, administration and repair of the road.

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DUTIES OF THE MANAGER

A. The Manager shall call at least two meetings of the owners per year, or more, as needed. The owners, as a group, will inspect the road and determine its state of repair and the extent and nature of any maintenance to be carried out, and the state of compliance with the rules and regulations of this agreement. All decisions shall require a majority vote, except for the increasing of annual contributions, which shall require an 80% vote. There shall be one vote for each parcel, which shall be made by the owner. Only those owners who are present at the meetings called by the Manager may vote, except they may, by written proxy, designate another owner to vote on their behalf.

B. The Manager shall give each owner notice of any and all meetings by properly postaged mail deposited in the United States Post Office at least ten (10) days prior to any meeting.

C. The Manager shall contract for and oversee the repairs and maintenance authorized. Payment for said repairs and maintenance shall be disbursed from the road maintenance fund as provided. In the event costs of authorized repair or maintenance exceed the amount in said fund, said Manager shall not incur any such costs or expenses until the owners have approved the same.

REPAIR. Any repairs or maintenance undertaken, including but not limited to the filling of chuckholes, without the consent of the other owners, shall be at the sole expense of the party or parties undertaking same; and in any event, no road repairs, other than the filling of chuckholes with approved materials, shall be undertaken unless by the procedure outlined herein.

A. Any and all road maintenance and repair shall be done in a professional manner and with materials of an appropriate nature of equal or greater quality to those existing.

B. No major changes in the road system, nor alteration thereof shall be undertaken except by official action taken in an official meeting called by the Manager, and any decision shall require the approval of a majority of the owners and shall be reduced to writing and signed by the same. Major changes or alteration may include, but not be limited to: total re-surfacing; alteration of drainage systems; changes of street names; changes, alterations or additions to utility services; alteration to design or traffic control; changes in any of the provisions contained herein.

ADDENDA:

1. The owners of Nosko Tract- Phase Two agree to participate equally with the owners of Nosko Tract - Phase One in the maintenance of that portion of N.E. 167th Ave. extending Northerly from the point of beginning of the private road to the intersection at N.E. 226th Circle.

2. All participants in this agreement acknowledge the Water Well of Byron and Greta Mudd, which said well is encroaching into the easement of 167th Avenue just West of where the private road is actually constructed. This acknowledgement in no way implies that the participants in this agreement accept any liability for said well.

3. In order to lessen the impact of the slope, the road to be constructed will follow a curve in a Northeasterly direction across the Northwest corner of Parcel 9. After completion of the road, the route of the centerline of the curve will be surveyed and its description added to this agreement.

4. For purposes of clarification, regarding the phrase "ingress, egress and utilities" as contained in the descriptions of the road easements herein, it is agreed that CLARK PUBLIC UTILITIES will be included for underground electric lines and U.S. WEST COMMUNICATIONS will be included for underground phone lines to serve the parcels embraced by this agreement.

In further clarification, Clark Public Utilities, legally known as Public Utility District NO.1 of Clark County, shall have the right of ingress and egress for the purpose of installing, repairing, operating and maintaining thereon and therein an underground electric system including surface-mounted transformers. The District shall have the right to tap to or from the underground electrical facilities to serve the present and/or future development of contiguous lands and for the present and future development and/or partitioning of the herein mentioned tract of land. The same rights shall extend to U.S. West Communications with respect to underground phone lines.

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RULES OF CONDUCT.

- A. A reasonable speed limit will be observed at all times. As deemed appropriate by the owners, the Manager may be authorized to post speed limit and/or other traffic control signs along the roadway.
- B. In the event that fire hydrants are installed in the future, there will be no parking allowed in the vicinity of same.
- C. There shall be no parking or storing of vehicles or other equipment on the roadway or on the shoulders of the road. Nor shall access of emergency vehicles be impeded in any way.
- D. All property owners will park or store their personal vehicles, boats, trailers, campers or other equipment on their own property.
- E. Each owner shall be responsible for keeping the road frontage along their respective property free and clear of litter, debris, rubbish or other unsightly or hazardous material.
- F. No owner shall engage in any activity which might reasonably interfere with the traffic flow, sight distance and clearance, drainage, maintenance, repair or safety of the road.
- G. Each owner, their families, guests and visitors, are responsible for obeying all traffic control regulations and other regulations as contained herein.

ATTORNEY FEES. The prevailing party in any suit or action to enforce this agreement shall be awarded reasonable attorney's fees and the reasonable costs of prosecuting or defending said suit or action.

APPLICABLE LAW AND SEVERABILITY. This document shall in all respects be governed by the laws of the State of Washington applicable to agreements executed and wholly performed therein. Nothing contained herein shall be construed so as to require the commission of any act contrary to the law and wherever there is any conflict between any provision contained herein and present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail but the provision of this document which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law. Any action commenced to enforce this agreement shall be brought in Clark County, Washington.

AGREEMENT TO RUN WITH THE LAND. This agreement shall run with the land and shall be binding upon and inure to the benefit of all owners, their heirs, successors or assigns; and further shall be binding upon and apply to all future divisions of land within NOSKO TRACT - as herein described. PHASE TWO

IN WITNESS WHEREOF, THE PARTIES have executed this Agreement on the 29th day of June, 1990, in Clark County, Washington.

Eldon D. Stroup
Eldon D. Stroup

Mary L. Stroup
Mary L. Stroup

Mary L. Leith
Mary L. Leith

X Rueben F. Bidman
Bidman

X Mark A. Peirce
Peirce

Mark W. Belle
M. Belle

ADDITIONAL PARTIES TO THIS AGREEMENT SHALL SIGN BELOW:

SEE EXHIBITS "A" and "B" attached.

EXHIBIT

PAGE

5 OF 10

STATE OF WASHINGTON
County of CLARK

I certify that I know or have satisfactory evidence that _____
ELDON D. STROUP signed this
instrument and acknowledged it to be HIS free and voluntary
act for the uses and purposes mentioned in the instrument.

Dated JUNE 29, 1990

Signature of Notary Public *[Signature]*

Title NOTARY PUBLIC

My appointment expires 12-15-91

STATE OF WASHINGTON
County of CLARK

I certify that I know or have satisfactory evidence that _____
MARY L. STROUP signed this
instrument and acknowledged it to be her free and voluntary
act for the uses and purposes mentioned in the instrument.

Dated JUNE 29, 1990

Signature of Notary Public *[Signature]*

Title NOTARY PUBLIC

My appointment expires 12-15-91

STATE OF WASHINGTON
County of CLARK

I certify that I know or have satisfactory evidence that _____
MARY L. LEIGH signed this
instrument and acknowledged it to be HER free and voluntary
act for the uses and purposes mentioned in the instrument.

Dated JUNE 29, 1990

Signature of Notary Public *[Signature]*

Title NOTARY PUBLIC

My appointment expires 12-15-91

STATE OF WASHINGTON
County of Clark

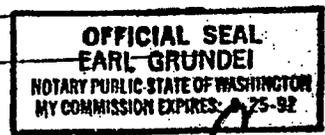
I certify that I know or have satisfactory evidence that _____
Angela B. Beirdson & Mark A. Beirdson signed this
instrument and acknowledged it to be their free and voluntary
act for the uses and purposes mentioned in the instrument.

Dated 7-31-90

Signature of Notary Public *[Signature]*

Title NOTARY PUBLIC

My appointment expires _____



EXHIBIT

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ADDENDUM "A"

ROAD MAINTENANCE AND USE AGREEMENT - NOSKO TRACT - PHASE TWO

LEGAL DESCRIPTIONS OF THE PROPERTY OWNERS:

Eldon D. Stroup and Mary L. Stroud

All of the North half and the East one-third of the South half of the Fractional Southwest quarter of the Northwest quarter of Section 31, township 4 North, Range 3 East, W.M.

AND the Northeast quarter of the Southeast quarter of Section 36, Township 4 North, Range 2 East W.M. EXCEPT the South 30 acres thereof.

SUBJECT TO AND TOGETHER WITH ROAD EASEMENTS

Mary L. Leith

The South half of the Fractional Southwest quarter of the Northwest quarter of Section 31, Township 4 North, Range 3 East, W.M. EXCEPT the East one-third thereof.

SUBJECT TO AND TOGETHER WITH ROAD EASEMENTS

*NOTE: SEE CORRECTION DEEDS recorded under Auditor's File No.s 9008310161 and 9008310162 for corrected description of Leith.

Developer is exempt from annual contribution unless land is retained for their personal residence.

Mark A. Beirdneau and Angela F. Beirdneau

The Northeast quarter of the Southeast quarter of Section 36, Township 4 North, Range 2 East, W.M. EXCEPT THE SOUTH 30 ACRES thereof AND EXCEPT THE WEST HALF thereof.

Larry Riley and Rebecca Riley

The East one-third of the South half of the fractional Southwest quarter of the Northwest quarter of Section 31, Township 4 North, Range 3 East, W.M. Said parcel is more particularly described in Real Estate Contract recorded under Auditor's File NO. 9010110124.

Mark Bellika and Catherine Bellika

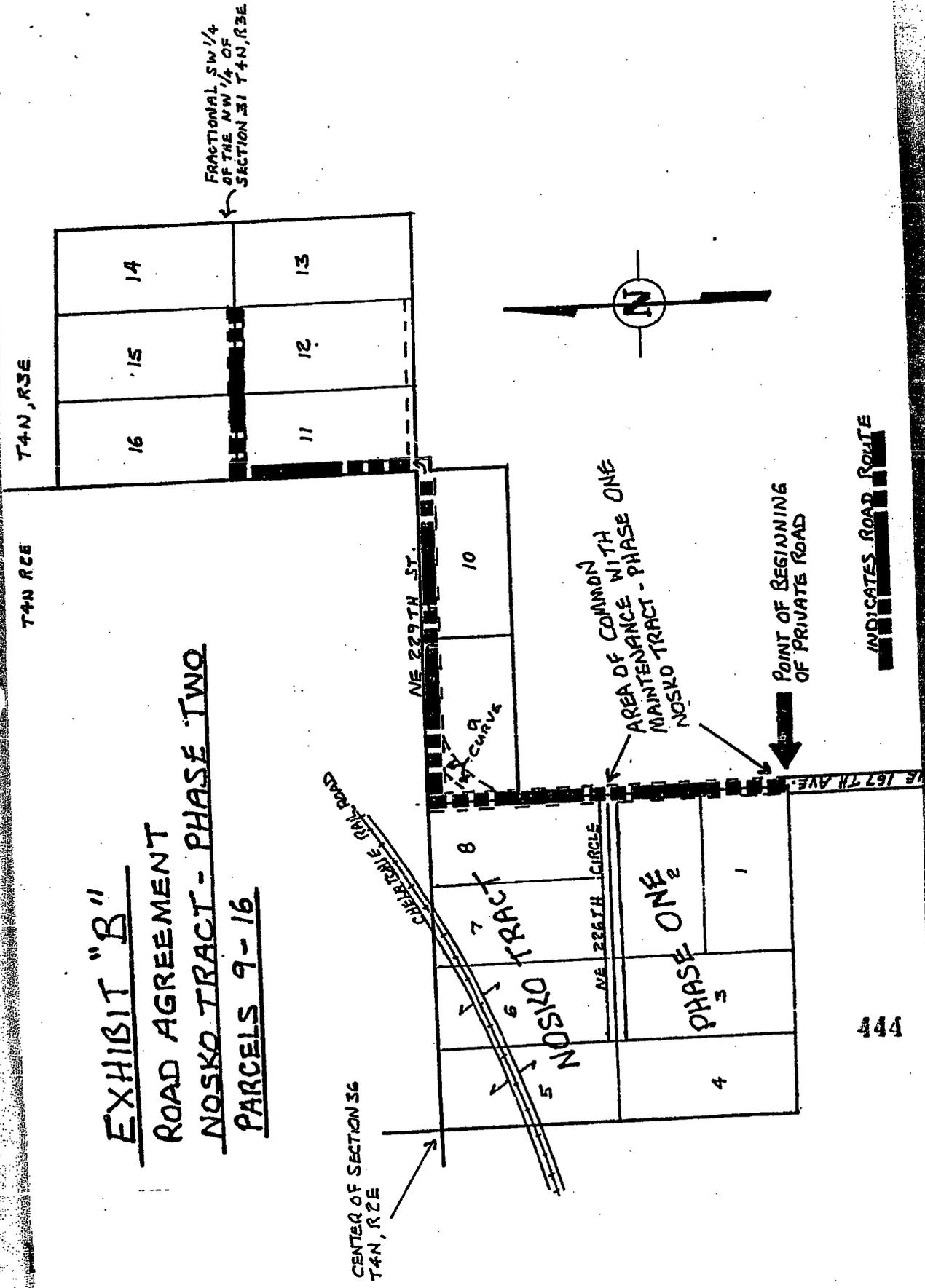
The Northeast quarter of the Southeast quarter of Section 36, Township 4 North, Range 2 East, W.M. EXCEPT THE EAST HALF THEREOF, AND EXCEPT THE SOUTH 30 ACRES THEREOF.

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EXHIBIT C

PAGE 7 OF 10

EXHIBIT "B"
ROAD AGREEMENT
NOSKO TRACT - PHASE TWO
PARCELS 9-16



FRACTIONAL SW 1/4
 OF THE NW 1/4 OF
 SECTION 31 T4N, R3E

T4N, R3E

T4N R3E

NE 229TH ST.

10

8

7

6

5

4

3

2

1

PHASE ONE

NE 226TH CIRCLE

NE 167TH AVE.

INDICATES ROAD ROUTE

POINT OF BEGINNING OF PRIVATE ROAD

AREA OF COMMON MAINTENANCE WITH PHASE ONE NOSKO TRACT

INDICATES ROAD ROUTE

INDICATES ROAD ROUTE

INDICATES ROAD ROUTE

INDICATES ROAD ROUTE

CENTER OF SECTION 36
 T4N, R2E

444

EXHIBIT

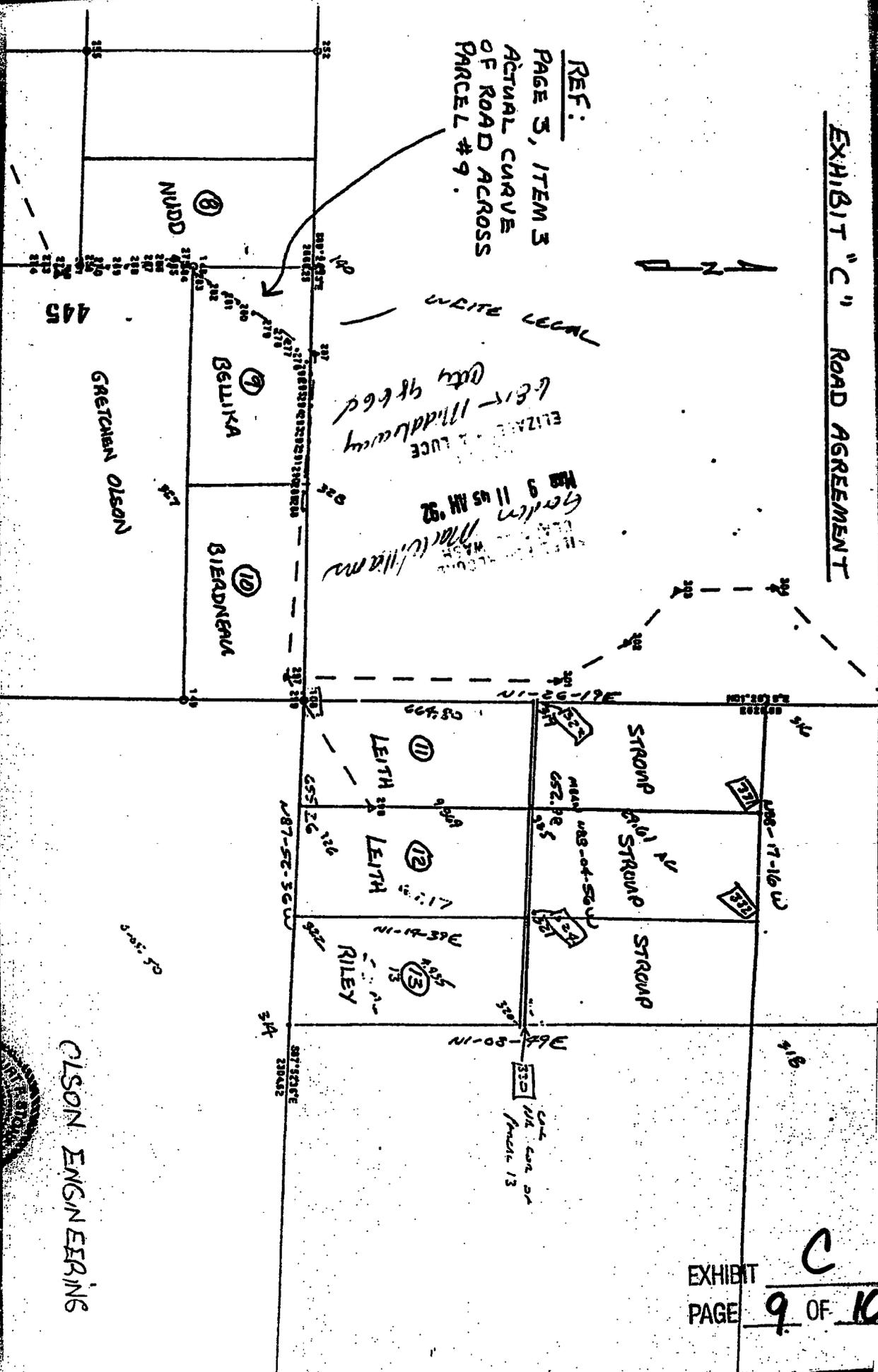
PAGE 8 OF 10

C

EXHIBIT "C" ROAD AGREEMENT



REF:
PAGE 3, ITEM 3
ACTUAL CURVE
OF ROAD ACROSS
PARCEL # 9.



GRETCHEN OLSON

OLSON ENGINEERS

EXHIBIT
PAGE

C
9 OF 10

APPENDIX C

NOTICE OF SPECIAL MEETING

Notice is given that the Homeowners Association, Nosko Tract – Phase Two, will hold a Special Meeting pursuant to RCW 64.38.035(1) on May 20, 2014 at the offices of the Landerholm Law Firm, 805 Broadway Street, Suite 1000 at 5:00 p.m. The purpose of the meeting shall be to (1) elect a Board of Directors; (2) to consider and vote on the proposed amendments to the Declaration which are attached as Exhibit A and are incorporated here by reference; and (3) to consider and adopt Bylaws, a copy of which are attached as Exhibit B and are incorporated here by reference. All members of the Association are entitled to attend. Persons can vote either in person or by proxy. The owner of each lot in the Association shall be entitled to one vote. If you are unable to attend, you can name another person to cast your vote by executing the Proxy which is enclosed with this Notice.

APPENDIX D

MEETING MINUTES

1. Nosko Tract – Phase II Homeowners Association
2. Special Meeting
3. May 20, 2014 at the offices of the Landerholm Law Firm, 805 Broadway Street, Suite 1000, at 5:00 p.m.
4. Attendees: James Walsh, Laura Walsh, and Kim Hasselbalcht
5. Motions. This was the first annual meeting of the members of Nosko Tract – Phase II Homeowners Association. It was called by the owners of more than fifty percent (50%) of the lots in the Association. The purposes of the meeting were to elect a Board of Directors; vote on proposed amendments to the Declaration and to adopt Bylaws for the Association.

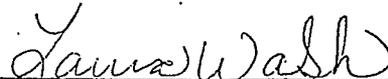
The first motion was to elect the following slate of candidates to the three-member Board of Directors: (1) James Walsh, President; (2) Kim Hasselbalcht, Vice President; and (3) Laura Walsh, Secretary/Treasurer. The motion was made by Kim Hasselbalcht and seconded by Laura Walsh. The vote was taken and the slate was unanimously approved by a 6-0 vote.

The second motion was to adopt the amendments to the CC&R's as proposed in the Notice of Special Meeting and a letter from James Walsh to Members of Nosko Tract by letter dated April 29, 2014. The motion to approve was made by Kim Hasselbalcht and seconded by Laura Walsh. The vote was taken and the motion was passed unanimously.

A motion was made to approve the Bylaws that were sent out in the same mailing as noted above. Again, the motion was made by Kim Hasselbalcht and seconded by Laura Walsh. The vote was taken and the motion was passed unanimously.

6. Executive Session: A general discussion was held on how to enforce the CC&R's to protect the character of the neighborhood and to preserve the common area road. The Members directed their attorney, Michael Simon, to proceed with drafting a fine schedule and an appellate procedure for anyone accused of violating the CC&R's to appeal to the Board or a designated hearing examiner.

There being no further proceedings, the meeting was adjourned at 6:30 p.m.



Laura Walsh, Secretary/Treasurer

APPENDIX E

5097518 AMD

RecFee - \$77.00 Pages: 6 - LANDERHOLM
Clark County, WA 08/19/2014 02:59

After recording, return to:

Michael Simon
Landerholm, P.S.
PO Box 1086
Vancouver, WA 98666-1086

#236086000 #28 S31-T4N-R3E; #23 6147000 #88S31-T4N-R3E;
#236150000 #91 S31-T4N-R3E; #23 6146000 #87S31-T4N-R3E;
#229237000 #52 S36-T4N-R2E; #22 9193000 #8S36-T4N-R2E;
#236149004 #FIALA WAY LOT 2 2.5A SUB 98

Space Above for Recording Information Only

AMENDMENTS TO NOSKO TRACT – PHASE II CC&R's

The Board of Directors of Nosko Tract – Phase II Homeowners Association, developed and existing under Chapter 64.38 RCW, adopts the following resolution:

WHEREAS, Nosko Tract – Phase II Homeowners Association was formed as a neighborhood association in 1983; and

WHEREAS, a Special Meeting of the Association was scheduled and held on May 20, 2014 at 5:00 p.m. at the offices of the Landerholm Law Firm, 805 Broadway Street, Suite 1000; and

WHEREAS, at that meeting, the owners of six lots in Nosko Tract were present; and

WHEREAS, the Declaration of Limitations, Covenants, Conditions, Restrictions and Reservations allows them to be amended by a two-thirds majority vote; and

WHEREAS, the six owners present voted to amend the CC&R's;

THEREFORE, the Board of Directors hereby adopts the following amendments to the Declaration of Limitations, Covenants, Conditions, Restrictions and Reservations:

1. Section 2. RESIDENCES – BUILDING USE will amend the first two sentences to read as follows:

When developed, no part or parcel of any lot shall be used for other than single-family residence purposes. Home businesses

owners of the land embraced by this Agreement. Such permission, if obtained, is not intended to pre-empt, avoid or interfere with the laws, regulations, codes or zoning ordinances of local, county, state or federal authorities.

Growing agricultural crops shall not be considered a commercial activity. Home businesses as defined by County Code are also prohibited.

4. Section 7 will be deleted in its entirety and be replaced by the following:

7. USE OF ROADS AND EASEMENTS:

(a) All roads and easements will remain open and free of any obstructions. Obstructions include gates, bars, fences, structures, traffic calming devices, landscaping or other obstructions except for those required by utilities and that noted in the Road Maintenance Agreement under Addenda number 2 except as allowed in 7(d) below. Any gate to a privately owned lot shall not open into the easement but only onto the lot away from the easement.

(b) The use of any off-road, motorized vehicle on the roads and easements are prohibited. Only vehicles licensed or allowed on County roadways will be allowed to use the private road and easement. Only people licensed to operate vehicles on a County / State road can operate motor vehicles on the private road and easement.

(c) The roads and easements may be used by residents of Nosko Tract – Phase Two (“Nosko”) and their social guests and licensees. A social guest is a person who comes to Nosko with an invitation, express or implied, but for a purpose not connected with any business interest or business benefit of a resident. A licensee is a person who comes to Nosko with the permission or tolerance of a resident but either without any invitation, express or implied, or for some purpose not connected with any business interest or business benefit of a resident.

(d) Notwithstanding 7(a) above, obstructions may be placed in the roads and/or easements if approved by the Board of Directors at the Annual Meeting of the Association or at a meeting called specifically for the purpose of considering the obstruction. If in the future the Board decides that the easement area is needed for any Association purpose, then the obstruction shall be removed at the owner’s sole expense.

(e) Pedestrians walking on the road/easement shall walk along the shoulder, shall be considerate of motorists and shall not block their passage. If necessary, pedestrians shall step off the road/easement to allow motorists to pass.

(f) Motorists shall not block other motorists by traveling slowly, stopping or otherwise obstructing the road/easement. Generally, the minimum speed limit shall be 15 miles per hour. If for any reason a motorist must travel at a lower speed, he/she shall pull over to the side of the road at a place and in a manner that allows other motorists to pass safely.

5. The existing section 8 will be renumbered as section 12 and will be replaced by a new section 8 which will read as follows:

8. STORAGE OF MOTORIZED VEHICLES AND EQUIPMENT: There shall be no parking or storing of vehicles, boats, trailers, tools or equipment on any lot unless owned by a current resident of the Property. No inoperable vehicles may be stored on a lot for more than ten (10) days. All vehicles, trailers, and other items meant for use on a roadway can be stored for no more than ten (10) days with one or more tires removed. If there is a dispute as to whether or not certain activities violate this paragraph, the majority of the lot owners shall decide.

During farming activities such as cultivating fields, planting, fertilizing, harvesting, etc., farming equipment used on the property is exempt from the storage requirements.

6. Section 9 will not change but will be renumbered to section 13.

7. A new section 10 will be added to read as follows:

10. SURVEILLANCE EQUIPMENT: The Association may install monitoring or surveillance equipment on the common areas.

8. A new section 11 will be added to read as follows:

11. RULES AND REGULATIONS: The Board of Directors of the Homeowners Association has the authority to adopt rules and regulations, a fine schedule and an appellate procedure to further implement and to enforce the CC&R's and to comply with Chapter 64.38 RCW, the Homeowners Association statute.

APPENDIX F

BY-LAWS
OF
NOSKO TRACK – PHASE TWO HOMEOWNERS ASSOCIATION

1. Definitions.

As used, the following terms are defined to have the following meanings:

1.1 The term “Nosko Track – Phase Two Homeowners’ Association” (“Association”) shall mean and refer to real property recorded under Clark County Auditor’s Recording No. 8310110099.

1.2 The term “Board” shall mean and refer to the Board of Directors of the Homeowners Association.

2. Membership.

Unless changed by adoption or amendment of Articles of Incorporation of this Civic Association and these By-Laws, Membership in this Association shall be:

2.1 **Members.** Each owner of a Lot in the HOA shall be a Member subject to the By-Laws; provided, that the purchaser(s) in a contract for the purchase and sale of a residential unit shall be deemed the “owner” and “Member” of such residential unit for these purposes. Each Member shall be at least eighteen (18) years of age. Each Member shall be entitled to one vote per residential lot owned by such member; provided that if two (2) or more Members or an investment entity shall own any residential lot by any form of co-tenancy or community property type of interest, such ownership is entitled to one vote, and the community or co-owners shall designate in writing filed with the secretary of the Homeowners Association the one of their number who shall exercise the voting rights for such residential lot.

The rights and privileges of a Membership shall terminate when the holder of any such Membership shall cease to qualify as an owner, and his recognition of membership shall thereupon be void.

3. Meetings of Members

3.1 **Annual Meetings.** The annual meeting of the members shall be held in the first quarter of the calendar year. All meetings of members shall be held as provided for in the notice of such regular meeting, at such place within the County of Clark, State of Washington, as shall be stated in the notice.

3.2 **Special Meetings.** Special meetings of the members may be called by the president of the Board, a majority of the Board members, or by three (3) of the Members.

3.3 **Notices.** Written or printed notices stating the place, day, and hour of the annual and any special meetings, and in the case of special meetings, the purpose or purposes for which the meeting is called, shall be delivered not less than fourteen (14) nor more than sixty (60) days before the date of the meeting of the members, either personally or by mail, or at the direction of the president, the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, with postage fully prepaid thereon, addressed to the member at the most recent address as it appears on the records of the Association. All procedures and notices for the annual meeting shall comply with the requirements of RCW 64.38.

3.4 **Quorum for Meetings and in Voting.** The vote of a majority of the members present or represented by proxy at a meeting at which a quorum is present, except for the adoption of the yearly budget or special assessments, shall be necessary for the adoption of any matter voted upon by the members. Four of the members of the association present at the commencement of any annual or special meeting of members constitute a quorum at the meeting.

3.5 **Adjourned Meetings.** Whether for failure to obtain a quorum or otherwise, an adjournment of any meetings of Members may be taken to the date, time, and place as the majority of those present (in person or by proxy) may determine without any other notice than announcement at the meeting being adjourned.

3.6 **Waiver of Notice.** Any Member may, in writing, waive notice of any meeting before, at or after the meeting, and this waiver will be deemed equivalent to the giving of notice. Attendance by a Member at any membership meeting, whether in person or by proxy, will be a waiver of notice of the time and place of the meeting, except where a Member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Any objection must be made at the beginning of the meeting and the objection will be waived if the Member votes on any action at the meeting.

3.7 **Consent to Actions Without Meeting.** Whenever the vote of the Members is required, the meeting and vote of the Members may be dispensed with if all Members who would have been entitled to vote upon the action consent in writing to the action being taken, and, unless otherwise provided in the consent, the action will be effective when the last Member signs the consent.

3.8 **Mail-In Ballot.** Whenever the vote of the Members is required, the vote may be taken by mail-in-ballot if full instructions for and the mail-in ballot are described in the notice for a meeting established for the actions upon which the ballots will be cast and the instructions are not in contradiction to any provisions contained in the applicable statute or Governing Documents. In order to be counted, all mail-in ballots must be sent to the Secretary of the Association and must be received before the date and time identified in the balloting instructions.

3.9 **Open and Closed Meetings.** All meetings of the Board of Directors must be open for observation by all members of record and their authorized agents, except that, upon a motion duly made and seconded and the affirmative vote of the directors present in open meeting

to assemble in closed session, the Board of Directors may convene in closed executive session to consider the following matters:

- 3.9.1 To discuss personnel matters;
- 3.9.2 To consult with legal counsel or consider communications with legal counsel;
- 3.9.3 To discuss likely or pending litigation;
- 3.9.4 To discuss matters involving possible violations of the Governing Documents of the Association; and
- 3.9.5 To discuss matters involving the possible liability of a Lot Owner to the HOA.

The motion must state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session must be included in the minutes. The Board of Directors must restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion. No motion or other action adopted, passed, or agreed to in closed session may become effective unless the Board of Directors, following the closed session, reconvenes in open meeting and votes in the open meeting on the motion or other action which is reasonably identified. The requirements of this subsection may not require the disclosure of information in violation of law or which is otherwise exempt from disclosure.

3.10 **Minutes.** The Board of Directors must keep minutes of all actions taken by the Board, which must be available to all members.

3.11 **Waiver of Notice.** Attendance of a director or committee member at a meeting in person constitutes a waiver of notice of the meeting, except where a director or a committee member attends for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened. A waiver of notice signed by the director or directors, whether before or after the time stated for the meeting, will be equivalent to the giving of notice.

3.12 **Action by Directors Without a Meeting.** Any action required by law or by these By-laws to be taken at a meeting of the directors, or at a meeting of a committee, or any action which may be taken at a meeting, may be taken without a meeting by a consent in writing, describing the action taken, and signed by all of the directors or committee members entitled to vote with respect to the subject matter. The consent will have the same force and effect as a unanimous vote.

3.13 **Actions of Directors by Other Communications Means.** Directors may participate in a meeting of directors by means of a telephone conference or similar communications equipment by means of which all persons participating in the meeting can

communicate with each other at the same time and participation by these means will constitute presence in person at a meeting.

4. Directors.

4.1 **Number, Election, and Tenure.** The property and affairs of the corporation shall be managed and controlled by a Board of Directors, the membership of which shall consist of three (3) persons who shall have been duly elected from among the members of the HOA. The members of the Board to be elected by the membership shall be elected at the annual meeting of the members, each for a one (1) year term. Nominations for Directors shall be received by the HOA for a period of thirty (30) days ending twenty-one (21) days prior to the annual meeting. All persons nominated and who consent to such nomination shall have their names placed on the ballot. Directors shall serve during their respective terms and until their successors have been elected and qualified. Any vacancy in the Board of Directors as a result of a vacancy among the members elected by the membership shall be filled by appointment of the remaining Directors. During the existence of any vacancy, the remaining Directors shall possess and may exercise all powers vested in the Board.

The owners of one lot may have only one representative on the Board. If more than one person or a legal entity own more than one lot, then they or it may have two (but not more than two) members on the Board.

4.2 **Regular Meetings of Directors.** A regular meeting of the Board shall be held immediately following the annual meeting of the membership and at the same place. Other regular meetings of the Board may be held without notice at such times and places as the Board by resolution may determine.

4.3 **Special Meetings of Directors.** Special meetings of the Board may be called from time to time by the president or by any two (2) Directors.

4.4 **Notices.** The secretary shall give written notice of each special meeting of the Board by mailing such notice by hand delivery or by United States mail to the respective Directors at their last known post office address, at least three (3) days prior to the date of such meeting. No notice of any regular meeting need be given. Directors may waive notice of meetings of the Board, and a waiver thereof signed by the Director entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, unless the Director attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If a Director agrees, notice may also be provided by e-mail.

4.5 **Quorum in Voting.** A majority of the members of the Board shall constitute a quorum for the transaction of all business, but if at any meeting of the Board there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. When a quorum exists, action may be taken by the majority vote of the Directors present.

5. Officers and Agents.

5.1 **Elective Officers.** The officers of the association shall consist of a president, a vice president, a secretary, and a treasurer. Any two (2) or more offices may be held by one person except the offices of president and secretary.

5.2 **Election of Officers.** The officers of the Association shall be elected by the Board at its first meeting and thereafter at each regular annual meeting. All officers except the secretary shall be members of the Board, and the secretary may be a Director. In the event of the failure to hold any annual meeting as provided, officers may be elected at any time thereafter at a special meeting of the Board called for that purpose. Each officer shall hold office for the term of one (1) year and until his successor shall be elected and qualified. Each officer and agent shall be subject to removal at any time by a vote of the majority of the entire Board whenever in the judgment of the Board the best interest of the Association will be served by such removal.

5.3 **Vacancies.** A vacancy in any office shall be filled by the Board at any regular meeting or a special meeting called for that purpose.

5.4 **Employees and Agents.** The Board shall be empowered to employ such employees and agents and to execute such contracts as it may deem necessary to properly carry out its objectives and proposes as stated in the Articles of Incorporation and in these By-Laws.

5.5 **President.** The president shall be the chief executive officer and have general and active charge of the management of the Association, subject to control by the Board. When present, he shall preside at all meetings of the Board. The president shall have the power to appoint and discharge agents and employees, subject to the approval of the Board.

5.6 **Vice President.** The vice president shall in the absence or disability of the president exercise the powers and perform the duties of the president. The vice president shall also exercise such other powers and perform such other duties as shall be prescribed by the Board.

5.7 **Secretary.** The secretary shall give such notice of meetings to the Board as required by these By-Laws and shall keep a record of the proceedings of all such meetings. The secretary shall have custody of all books and records and papers of the Association except those which are in the care of the treasurer or some other person to have custody and possession thereof by resolution of the Board. The secretary is authorized to sign with the president or vice president in the name of the Association all official documents, papers, deeds, and contracts including those in any way affecting the property or interests of the Association and shall affix the seal of the Association thereto. The secretary shall submit such reports to the Board as may be requested by it from time to time. An assistant secretary may, if authorized by the Board, perform the duties of the secretary in the event of the absence or inability of the secretary.

5.8 **Treasurer.** The treasurer shall account for all the monies of the Association received and disbursed, and shall deposit all the monies in the name of and to the credit of the Association in such banks and depositories as the Board shall designate, subject to withdrawal in the manner determined by the Board, and subject to the Board, shall safely keep all valuables of



the Association. The treasurer shall from time to time make such reports to the officers and Board as may be required, and shall perform such other duties as the Board from time to time shall delegate. An assistant treasurer may, if authorized by the Board, perform the duties of the treasurer in the event of the absence or inability of the treasurer.

6. Amendments.

These By-Laws may be amended at any regular meeting of the Board or at any special meeting of the Board called for that purpose. A vote of two (2) of the Board shall be required for any amendment of the By-Laws.

7. Offices.

7.1 Principal Office. The principal office of the HOA will be that of the current President serving the HOA.

7.2 Registered Office/Agent. The registered office and the registered agent located at that office may be identified in the Articles of Incorporation of the HOA, or any amendment filed with the Washington Secretary of State.

8. Budget.

8.1 Authority. The Board of Directors has the power to recommend and amend budgets for revenues, expenditures, and reserves, and impose and collect Assessments for common expenses from Lot Owners.

8.2 Board Action. Within thirty (30) days after adoption by the Board of Directors any proposed regular or special budget of the Association, or any amendment, the Board must set a date for a meeting ("budget meeting") of the Members to consider ratification of the budget or budget amendment.

8.3 Date of Budget Meeting. The budget meeting may not be held sooner than fourteen (14) days nor more than sixty (60) days after the date the notice of the meeting and a summary of the budget to the Members is sent.

8.4 Vote. At the budget meeting, the proposed budget or amendment shall be deemed ratified by the members unless a majority of Members in the HOA reject the proposed budget.

8.5 Rejection of Budget. In the event the proposed budget is rejected or the required notice and summary is not given, the periodic budget last ratified by the Members will continue until the Members ratify a subsequent budget proposed by the Board of Directors.

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9. Miscellaneous.

9.1 Conflicts.

9.1.1 Statute Controls. In case of any conflict between the statute, Chapter 64.38 RCW, (the "Act") and the Articles of Incorporation and/or By-laws of this HOA, the Act will control.

9.1.2 Articles Control. If there is any conflict between the Articles of Incorporation and these By-laws, the Articles of Incorporation will control.

9.1.3 Declaration Control. If there is any conflict between the Declaration and these Bylaws, the Declaration will control.

IN WITNESS WHEREOF, Declarant has executed this instrument this 20th day of MAY, 2014.

James M Walsh
Print Name: JAMES M WALSH
Title: PRESIDENT

Kim Hasselbalch
Print Name: KIM HASSELBALCH
Title: V. P.

Laura Walsh
Print Name: Laura Walsh
Title: Secretary / Treasurer



APPENDIX G

ADOPTION OF FINE SCHEDULE

The Board of Directors held a Special Meeting on June 28, 2014 to consider the adoption of a Fine Schedule and Appellate Procedure for Rules Violations. The Board, pursuant to its authority by statute and by Section 11 of the Association's CC&Rs, hereby adopts the following Fine Schedule and Appellate Procedure:

RULES VIOLATIONS – FINE SCHEDULE

There are two type of offenses for which the Association will levy fines. The first type is "an event" where a violation may occur once and then subsequently separately by time. For example, if someone had a barking dog or blocked the road and if these were violations of the CC&Rs or Rules and Regulations, each time would be an event. So, if an owner or someone who is responsible blocked the road on May 1, again on May 3 and again on May 5, each would be a single event and the fines for each subsequent event would increase according to the Fine Schedule. Given the below adopted Fine Schedule, the first offense would result in a warning, the second offense would be a \$100 fine and the third offense would be a \$500 fine, with subsequent events increasing the fine amount.

The second type of offense is a "condition" such as parking junk cars, having a structure blocking the road, etc. For these offenses, a warning will be given to the owner requiring that the condition be removed within five (5) days. If the condition is not removed within that time period, then each day after that will be considered a separate offense giving rise to the increased fine amount. For example, if someone had a junk car on their property beyond the time allowed, the Association would write that owner a letter, requiring the removal of the junk car within five (5) days. On the sixth day, a fine of \$100 would be made, on the seventh day, a fine of \$500 would be made and for each subsequent day, a \$1,000 fine would be levied.

A condition can also become an event. For example, if someone had a parked junk car on their property but removed it within the five days and then brought it back on their property, the Association would not have to wait another five days to levy a fine. A fine could be levied immediately and every subsequent time that or any other junk car appeared on the property would be a separate event subjecting the owner to an increased fine.

Violation of these rules will lead to the following fines subject to the above explanations and to the discretion of the Board:

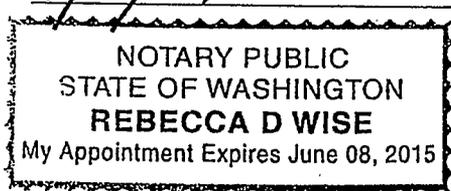
First Offense:	Written warning to owner.
Second Offense:	\$100 fine to owner.
Third Offense:	\$500 fine to owner.
Additional Offenses:	\$1,000 fine to owner for each additional event or condition.



STATE OF WASHINGTON)
) ss.
COUNTY OF CLARK)

I certify that I know or have satisfactory evidence that ^{Feb} KIM HASSELBALCH is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: 7/1/14

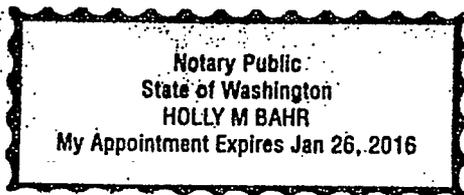


Rebecca D. Wise
Notary Public in and for the State of
Washington, residing at Clark County
My appointment expires 6-8-15

STATE OF WASHINGTON)
) ss.
COUNTY OF CLARK)

I certify that I know or have satisfactory evidence that LAURA WALSH is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: 6/25/2014



Holly M Bahr
Notary Public in and for the State of
Washington, residing at Clark County
My appointment expires Jan 26, 2016

CERTIFICATE OF SERVICE

FILED
COURT OF APPEALS
DIVISION II

2015 MAY 22 PM 1:13

I hereby certify that I served the foregoing **Brief of**

STATE OF WASHINGTON

BY 
DEPUTY

Respondent on:

Michael Simon
Landerholm, P.S.
805 Broadway Street, Suite 1000
P.O. Box 1086
Vancouver, WA 98666-1086

by the following indicated method or methods:

- E-mail.**
- Facsimile communication device.**
- First-class mail, postage prepaid.**
- Hand-delivery.**
- Overnight courier, delivery prepaid.**

DATED this 20th day of May, 2015.



Steven E. Turner, WSBA No. 33840

Attorney for Respondent

Ronald Halme