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, Skagit County Auditor

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Document Title:

HERON LAKE COMMUNITY
WELL ASSOCIATION AGREEMENT

Reference Number :

Grantor(s):

☐ additional grantor names on page ____.

1. GERALD ROSENBERG
2. MARIE-FLORENCE MORAVIA ROSENBERG
3. THOMAS CONROK
4. KATHRYN ALEXANDRIA

5. HERON LAKE COMM.
ASSOC.

Grantee(s):

☐ additional grantee names on page ____.

1. PUBLIC
- 2.

Abbreviated legal description:

☐ full legal on page(s) ____.

14-34-1

Assessor Parcel / Tax ID Number:

☐ additional tax parcel number(s) on page ____.

P19373

**HERON LAKE COMMUNITY WELL ASSOCIATION
CONSTRUCTION AND MAINTENANCE AGREEMENT**

WHEREAS, the parties to this agreement own property upon which is placed and/or over which runs a community well/water system and from which the properties obtain domestic water supply; and

WHEREAS, the parties wish to formalize an agreement for the purposes of the completion, repair and/or maintenance of said system in perpetuity and to allocate the costs of each, including the preparation of this agreement, among themselves;

THEREFORE BE IT AGREED among the parties as follows:

1. Parties.

The parties to this agreement are the owners respectively of real property legally described as:

Tract B and C of Short Plat No. 93-054, as approved 11-4-94, and recorded 11-8-94 in volume 11 of Short Plats, page 139 under Auditor's file No. 9411080001, records of Skagit County, Washington being a portion of the E ½ of the W ½ of Section 14, Township 34 North, Range 1 East of the Willamette Meridian



And Tract 4 of Short Plat No. 1-82 dated 1-13-82, as approved 2-9-82 and recorded 2-11-82 in volume 5 of Short Plats, page 169 under Auditor's file No. 820211032, records of Skagit County, Washington being a portion of the E ½ of the W ½ of section 14, Township 34 North, Range 1 East of the Willamette Meridian

Situated in Skagit County, Washington.

Those parties at the signing of this agreement are: Kathryn Alexandra, owner of Tract B; Thomas Conroy, owner of Tract C; Jerry Rosenberg and Marie-Florence Moravia-Rosenberg, husband and wife, and owners of Tract 4. All references to a "party" or "parties" in this agreement shall include the parties herein named and their heirs, successors, or assigns to the real property described herein.

2. Consideration.

The consideration for this agreement is the mutual promises and duties considered herein.

3. Definition of Party.

The collective owners of each tract of property described in Section 1 shall each be considered "one party" for purposes of this agreement. The future division of ownership of said tracts by multiple individuals and/or entities shall not affect the definition of a party herein. The purpose of this provision is to provide that the collective owners; however they may be comprised in the future of each parcel; however divided in the future in Section 1 as they now exist or are owned, shall be a single party for purposes of financial obligations and voting rights.

4. System Components and Party's Shares and Allotments.

The system, which is the subject of this agreement, consists of various components, including but not limited to the following:

- A well situated on Short Plat No.93-054, Tract A (Department of Ecology Unique Well #AGH018) approximately 360 feet deep and any casings pertinent thereto;



- All distribution piping, including piping from the well to the pump house and from the pump house to the residence's side of the water meter serving each party; and
- The pump house and its components, as well as any electrical utility serving said pump house or the well itself; or any water treatment equipment.

Each party recognizes and acknowledges that the Association's well will serve only three (3) parties and that all rights to the water from said well run with the three tracts of real property described herein in Section 1. The rights to the water allotted from said well will be equal for each of the aforementioned tracts and the water will be used only for the purposes of those living on said tracts of land.

No party herein may assign his or her rights or a portion thereof except as provided for in this agreement.

All parties recognize that it is in the Association's best interest to conserve water to whatever extent that is reasonably possible. All parties are encouraged to utilize water conservation devices and conservation practices on each of their properties and to minimize or eliminate consumption for irrigation purposes.

Each party is allotted water from the community well system as follows:

- The maximum daily consumption of each party, averaged over ninety (90) days, shall not exceed three hundred (300) gallons per day. If in any ninety (90) day period a party exceeds this limitation or any other limitation that may be duly imposed, he or she shall be notified of said overuse and charged a rate of one (1) cent per gallon for the total amount of water used over the daily allotment for that ninety (90) day period, which surcharge shall be paid within thirty (30) days of notification or become an assessment and collectible as such as stated herein.
- Should any party exceed the allotment as defined above during four (4) ninety (90) day periods in any two (2) year period, said overuse shall be grounds for termination of that party's participation in this association pursuant to Section 14 herein.



- Should a party's daily use ever: exceed two (2) times the maximum average daily consumption allotted for a single day for three separate days during any ninety (90) day period; and/or cause the other parties of the Association to be without water, then said overuse shall be grounds for having that party's water rationed. The party will be required to install and pay for: a storage tank on said party's property that will hold at least one day's allotment of water; and a reliable mechanism that will automatically ration no more than the allotted amount of water to this party's tank each day. This measure is to protect the limited water supply for the other two parties in the association.
- If there is a shortage of water requiring that allotments be reduced, such allotments shall be reduced equally, provided that the parties may agree to transfer portions of their allotment between themselves if such transfers are agreed upon in writing and approved by all parties subject to this agreement. A signed copy of the agreement must be given to the manager. Penalties for exceeding these amended allotments shall be the same as for exceeding the three hundred (300) gallon per day limitation as outlined above.
- An accident or an emergency on a party's property, which causes an over use, as defined herein will not constitute an infraction of these allotments. However, this clause does not release a party from the responsibility of immediately correcting any such problem by taking appropriate measures as soon as the manager contacts that party. This shall assure that the other parties' average daily allotments are not unnecessarily affected.

5. Financial Obligations and Assessments

WHEREAS, the Heron Lake Community Water System is not yet complete; and

WHEREAS, Thomas Conroy now owns the well, equipment, easements, and distribution lines for the water system; and

WHEREAS, this investment of about \$28,000 already represents over 75% of the total cost of said water system;



THEREFORE BE IT AGREED among the parties that Thomas Conroy will complete said system and be responsible for any expenses for labor and materials necessary to finish said water system design as approved by Skagit County Health Department; and that the owners of Tract B and Tract 4 agree to each pay Thomas Conroy twelve thousand dollars (\$12,000) as payment for their 1/3 share each in the ownership of the aforementioned water system in accordance with the written terms agreed upon by each party. Thomas Conroy will have no later than October 31, 2001 to have said system completed as originally approved and fully inspected by Skagit County Health Department.

If the system as originally approved is not complete by October 31, 2001 then a majority of the parties may then vote to contract the necessary professionals to complete the system. Thomas Conroy will be given a special assessment on Tract C that will be due at the time of said special assessment. If Thomas Conroy fails to pay this assessment such failure to pay shall be considered default and the other parties shall have all remedies available pursuant to the laws of the State of Washington. Further, upon nonpayment of this assessment such amount when due shall become a lien upon Tract C which is subject to this agreement, notice of which lien may be recorded with the Skagit County Auditor.

If, however, county officials alter the system's approved design to the extent that considerable changes to the system are required, then the cost of such specific modifications shall be borne equally by all parties.

Each party hereto agrees to pay a three hundred-dollar (\$300.00) per year assessment in perpetuity. The first assessment will be due on the 15th day of the month following the recording of this agreement with the Skagit County Auditor and annually thereafter.

As described in Section 6 herein, the parties may agree to special assessments over and above the annual three hundred-dollar (\$300.00) assessments. Each party shall be liable for one-third (1/3) of any such special assessment, unless otherwise agreed to by a majority of the parties to this agreement.

All parties agree to a first year only special assessment to cover each party's share of the cost of any legal services to prepare this



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agreement, license fees, permit fees, Puget Sound Energy hook-up fee or any other expense necessary to complete this community well that is not a physical part of the water system and its necessary components as described in Section 4 and approved in the final design by Skagit County Health Department. The manager is authorized to promptly pay any such fees and/or expenses on behalf of the Association to assure that there are no unnecessary delays in the completion of said water system.

The amount of said first year special assessment shall be two hundred dollars (\$200.00) each for Rosenberg/Moravia and Conroy and four hundred and fifty dollars (\$450.00) for Alexandra. This special assessment shall be due at the same time as the first regular assessment.

The parties also agree that they shall share in all future costs in the amount of one-third (1/3) each. Those costs shall include all costs to test, sample, and maintain the community well and distribution system on these contiguous parcels of property currently owned by Alexandra, Conroy and Rosenberg on Ginnett Road near Anacortes, Washington.

The consumption of water shall be metered. The aforementioned special assessment will cover the cost of a water meter and lockable gate valve for each party's service. All distribution lines on the party's side of this valve and meter are the responsibility of that party. The manager will padlock shut this valve to protect the supply of water to the other members of the Association if this party's own distribution lines jeopardizes the integrity or safety of the water system.

6. Special Assessments.

From time to time, the parties may vote to impose a special assessment for purposes of completion, improvement, testing, operation, repair and/or maintenance of the system which are reasonably necessary to assure safe, sufficient and pure water supply and/or to comply with federal, state or local laws or to carry out the purposes of this agreement. Such assessments shall be made upon an affirmative vote of a simple majority of all parties.



7. Assessments are Liens.

In the event any party to this agreement fails to pay an assessment including any interest as called for in this agreement or penalty as imposed by virtue of the foregoing sections, such failure to pay shall be considered a default and the other parties shall have all remedies available pursuant to the law of contract of the state of Washington. Further, upon nonpayment of an assessment, either regular or special, when due such amount then due shall become a lien upon the property of the party, which is subject to this agreement, only after 90 days; notice of which lien may be recorded with the Skagit County Auditor.

Any assessment, either regular or special, which is thirty (30) days in arrears, shall bear interest at 10% per annum upon said assessment.

Any assessment, which is ninety (90) days in arrears, shall entitle the remaining parties to foreclose said lien pursuant to the laws of the state of Washington.

8. Management, Finances and Record Keeping.

A simple majority of the parties shall elect an operations manager and an assistant manager by signing a resolution to this effect by the 15th day of the month following the recording of this agreement with the Skagit County Auditor and biannually thereafter. The initial manager and assistant manager shall serve two years from that date and both shall be selected by a simple majority of those parties voting on the question each two years thereafter.

The duties for the positions of manager and assistant manager, as outlined in this agreement, shall be non-paid. A manager or assistant manager may get paid for their labors beyond the duties of their office if he or she has prior written permission from the other two parties.

If the manager or assistant manager is no longer able to complete his/her term then a new manager will be elected to complete the remainder of that term. A simple majority of the parties to this agreement may remove any manager before his or her term is complete.



The parties shall open an interest bearing money market account with a check writing service in the name of the association into which all funds for the association received from the parties pursuant to this agreement shall be deposited promptly and from which no funds shall be paid unless for the lawful purposes of the association and pursuant to the agreement of the parties as set forth herein. Both managers will have check writing privileges. Any changes to this account will require the signatures of all owners of any two tracts of real property that are party to this agreement. All financial records kept by the manager shall be according to reasonable accounting practices.

It is the responsibility of the operations manager to notify all members in a timely fashion of any scheduled changes, disruptions or reductions in service.

The operations manager shall be responsible for carrying out the decisions of the association's parties with respect to the improvements, operation, maintenance and testing of the system. The manager shall at all reasonable times and hours make available for inspection and/or copying all checking account statements, cancelled checks, invoices and other pertinent financial records relating to this agreement.

The manager shall keep records of the water system showing locations of supply, storage, treatment and distribution, and all testing results and any other pertinent records. In the event of an emergency situation where there is insufficient time to give notices required herein, the manager is authorized to make and/or contract for repairs to the system where the domestic supply of water is jeopardized and/or the integrity of the system is jeopardized should no immediate action be taken. Such authority shall be limited to the minimum repairs to safeguard the integrity of domestic water supply and/or the system and it shall be incumbent upon the manager to immediately contact the other parties and, if possible, obtain oral permission to conduct further repairs.

Additionally, the manager shall maintain all records required by law and arrange for all required routine water quality sampling and maintenance and inform the parties of all testing results. All sampling, maintenance and construction are to be performed to code and to acceptable county/state standards.



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It shall be the duty of the manager to read the individual water meter of each party to determine usage every ninety (90) days. The manager shall have the authority to pay the electric bills as they come due without pre-authorization from the parties.

An assistant manager shall be selected at the same time as the manager is selected pursuant to the above paragraphs and serve the same term. The assistant manager shall carry out the manager's duties when the manager is absent or unable to perform his or her duties. Whenever the manager is unable to perform his or her duties, the manager shall contact the assistant manager and delegate all necessary authority, duties and obligations.

All parties to this agreement will be covered by adequate liability insurance at the expense of the association.

9. Hiring of Work and Expenditure of Funds.

No funds shall be expended by the manager except upon the direction of the parties as set forth herein. The parties shall otherwise decide to expend funds, derived by virtue of Section 5 or 6 herein, and/or perform or hire construction, maintenance, or sampling work to be done on the system and designate the person, persons or entity to perform such work and to expend funds by a written order in the affirmative and signed by all parties to this agreement.

10. Parcels and Property Encumbered.

These covenants shall encumber and run with the land for the tracts of real property legally described in *Section 1* and *Tract A* legally described herein as:

Tract A of Short Plat No. 93-054, as approved 11-4-94, and recorded 11-8-94 in volume 11 of Short Plats, page 139 under Auditor's file No. 9411080001, records of Skagit County, Washington being a portion of the E ½ of the W ½ of Section 14, Township 34 North, Range 1 East of the Willamette Meridian

Situated in Skagit County, Washington.

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AND; shall permanently attach thereto so that any subsequent owners, assignees, purchasers, lessors or other successors in interest shall be bound fully by these covenants. The duties and restrictions imposed upon the real property encumbered hereby shall be discharged and removed only upon the recording of an instrument signed by all of the remaining parties whose signatures shall be fully notarized on a document complying with the legal requirements for a deed in the state of Washington.

11. Easements.

All parties and the aforementioned Tract A agree to honor the Declaration of Covenant under Auditor's file No. 9306040071, records of Skagit County and all easements as drawn on the face of Short Plat No. 93-054. These easements are to distribute in favor of Tracts B, Tract C and Tract 4 for the installation and/or placement of the system and provision of water to said Tracts and for access to all components of the system for maintenance, testing and repairs of the system. Said easements shall be for the exclusive benefit of Tracts B, Tract C and Tract 4. The easements granted shall run with the land and bind the grantor and his successors and assigns and shall benefit grantees and their successors and assigns.

These easements shall be construed to allow grantees or their successors and/or assigns the right to enter upon Tract A, Tract B, Tract C, and Tract 4 between 8 AM and 5 PM to excavate, remove, repair, construct or test any component of the system. These time restrictions do not apply during an emergency. The operations manager must always make every effort to give notice to the grantor when it becomes necessary to access any of these easements for repairs and/or maintenance. No workers are allowed on the grantor's property without initially being accompanied by the operations manager or assistant manager.

Access to the water distribution system will be over existing driveways or some other overland route that will provide the necessary access to the ten-foot wide easements that are centered over all existing utilities associated with the Heron Lake Community Well Association. The grantor reserves the right to designate to the manager or other workers a

specific route to these easements as long as the preferred route is accessible and is at least ten-foot wide.

All actions on the behalf of the grantees pursuant to this agreement shall minimize any inconvenience to the grantor or any detrimental effects upon the property of grantor. Any damage caused to grantor's property shall be repaired at the expense of the Association to the original condition upon completion of associated work. The grantor's driveway shall not be blocked for more than two hours in any twenty-four hour period and the grantor must be informed one-hour prior to the time that the closure will actually occur.

The grantor shall erect no impediments to the access of the system's components and shall take no action or make any improvements, which would directly jeopardize the system. The grantor may provide and construct alternative routes for distribution lines so long as the grantor provides the proper easements and pays all costs involved with any modifications to the distribution system and that these modifications will meet all codes and standards for state and county approval of the water system.

The manager must be given a two-week notice of any such proposed changes and will be allowed to inspect all work before burial. No work will begin until all these conditions have been addressed and the manager has given his approval with his or her signature. The manager's approval shall not be withheld if the aforementioned conditions have been adequately addressed.

12. Notices.

Each party shall receive notices required hereby at these addresses:

JERRY ROSENBERG and
MARIE-FLORENCE MORAVIA ROSENBERG
17852 40TH. AVE NE
SEATTLE, WA 98155



THOMAS CONROY
4307 GINNETT ROAD
ANACORTES, WA 98221

KATHRYN ALEXANDRA
6155 CAMPBELL LAKE ROAD
ANACORTES, WA 98221

If the address of a party changes, then said party shall submit the new address in writing to all other parties.

13. Amendments Hereto.

The terms of this agreement that bind the parties as defined in Section 1 shall only be amended by an affirmative unanimous vote at a lawful meeting of this Association or by a written amendment signed by all parties. Any such amendment to this agreement shall be recorded with the Skagit County Auditor in such a form that the amendments will have binding affect upon the parties and property subject to this agreement.

14. Termination.

A party, including its successors or assigns, may be excluded as a party to this agreement only (1) upon a unanimous vote of all parties or (2) upon a simple majority vote of all parties for the case of a specific cause or causes on only the following grounds. Grounds for removal of a party from this agreement by a majority vote of the parties shall be limited to any of the following four (4) causes: (1) any basis where the removal is ordered by the Superior Court in and for Skagit County; (2) willful and/or intentional destruction of any component of the system and/or intentional destruction of any component of the system and/or intentional interference with use and enjoyment of the system by any other party or parties; (3) use of water in excess of the allotment as defined in Section 4 for any four (4) ninety day periods in any two year period; (4) failure to pay any assessment within two (2) years of the date of notification of the assessment, unless the other parties agree to payment terms or to waive the assessment.



Such a vote for exclusion from participation may only be taken upon thirty (30) days notice to all parties, which notice shall state the specific cause for the removal of the party. All parties must sign for receipt of such notice.

15. Miscellaneous Provisions.

This instrument shall be construed pursuant to the laws of the state of Washington. Should a dispute arise among the parties or should any party bring an action to enforce or carry out the provision of this agreement, venue shall be in Skagit County Superior Court and the parties hereby agree that such action, despite its nature or the amount in controversy, shall be referred to mandatory arbitration pursuant to the laws of the state of Washington, the Washington State Superior Court Rules and the local rules for Mandatory Arbitration of Skagit County. The prevailing party(ies) in any such action shall receive its/their reasonable attorney's fees and costs.

THIS AGREEMENT shall have no force and affect whether recorded or not unless and until it contains; the duly notarized signatures of all owners of record of Tract A, Tract B, Tract C and Tract 4 herein; AND Tract B and Tract 4 have paid twelve thousand dollars (\$12,000) each as agreed to by Thomas Conroy for their 1/3 share of the Heron Lake Community Well Association at the signing of this document.

The signatures of each owner of record of Tract A, Tract B, Tract C and Tract 4 as given herein shall bear witness that to the best of their knowledge that all legal owners of said Tracts are signatories of this agreement.

Gerald Rosenberg

GERALD ROSENBERG
17852 40TH. AVE NE
SEATTLE, WASHINGTON 98155

6/12/2001

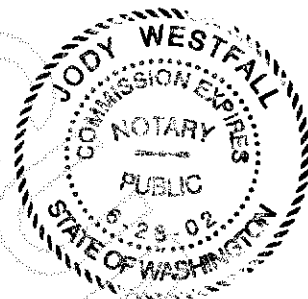
Date Signed

STATE OF WASHINGTON)
COUNTY OF King) SS.

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

GIVEN under my hand and official seal this 12th day of June, 2001.

[Signature]
Notary Public in and for the state of Washington
My appointment expires: 06-28-2002



Marie-F. Moravia Rosenberg

6/12/01

MARIE-FLORENCE MORAVIA ROSENBERG
17852 40TH. AVE NE
SEATTLE, WASHINGTON 98155

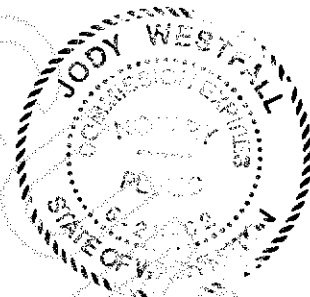
Date Signed

STATE OF WASHINGTON)
COUNTY OF King) SS.

On this day personally appeared before me MARIE-FLORENCE MORAVIA ROSENBERG to me known to be the individual described herein and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposed therein mentioned.

GIVEN under my hand and official seal this 12th day of June, 2001.

[Signature]
Notary Public in and for the state of Washington
My appointment expires: 06-28-2002



Kathryn Alexandra

6-7-01

KATHRYN ALEXANDRA
6155 CAMPBELL LAKE ROAD
ANACORTES, WA 98221

Date Signed

STATE OF WASHINGTON)
COUNTY OF Skagit) SS.

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

GIVEN under my hand and official seal this 7th day of June, 2001.

Nina R. Mead
Notary Public in and for the state of Washington
My appointment expires: 8-29-02



Thomas Conroy

THOMAS CONROY
4307 GINNETT ROAD
ANACORTES, WASHINGTON 98221

6/11/01

Date Signed

STATE OF WASHINGTON)
COUNTY OF Skagit) SS.

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

GIVEN under my hand and official seal this 11th day of June, 2001.

Rachel J. Reed
Notary Public in and for the state of Washington
My appointment expires: 10-15-04

