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10:10:42AM

Document Title: Tenants In Common Agreement

Reference Number: 200212120077

Grantor(s): ☐ additional grantor names on page \_\_\_\_

1. James W. Sherburne

2.

Grantee(s): ☐ additional grantee names on page \_\_\_\_

1. Pamela Hom

2.

Abbreviated legal description: ☐ full legal on page(s) \_\_\_\_

LT1, SP 93-073

Assessor Parcel / Tax ID Number: ☐ additional tax parcel number(s) on page \_\_\_\_

D16347

## TENANTS IN COMMON AGREEMENT

**THIS AGREEMENT** is made this 30 day of November, 2009 by and between **PAMELA HOM ("HOM")**, and **JAMES W. SHERBURNE (SHERBURNE")**. The parties hereto may be referred to collectively as "Tenants in Common" and individually as "Tenant in Common" or "Tenant".

### RECITALS

**Whereas** in 2002 HOM acquired real property located near Mount Vernon, Skagit County, Washington, hereafter referred to as the "**Property**", and legally described in **Exhibit "A"**, attached hereto and incorporated herein by this reference.

**Whereas** in the purchase of the property, HOM paid the down payment and SHERBURNE made all subsequent payments on the underlying mortgage.

**Whereas** HOM and SHERBURNE entered into a an Agreement Among Tenants in Common on November 25, 2002 and recorded under Skagit County Auditor's File No. 200212120077.

**Whereas** HOM and SHERBURNE were married on 6 Jan 2009.

**Whereas** HOM and SHERBURNE are currently separated and are contemplating dissolution of their marriage. Whether or not the parties dissolve their marriage or remain married, HOM and SHERBURNE intend to continue to hold the Property described herein as tenants-in-common in accordance with the terms of this agreement.

**Whereas** it is the intent of the parties herein to own the Property as Tenants in Common and to hold the property for the production of income and/or incidental personal use and have agreed to the following terms and conditions setting forth the nature of their ownership of the property and the relationship among themselves.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. **Payment for Property.** In the purchase of the property, Pam Hom shall pay the down payment and James W. Sherburne shall make all payments on the underlying mortgage unless otherwise agreed to in writing by the parties.
2. **Ownership.** Each of the parties hereto is the owner of an undivided interest as Tenants in Common of the ownership and of all rights and liabilities relating to the Property as set forth below.

**Pamela Hom**

**1/2 (50%)**



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3. **Purpose.** The purpose for which the Tenants in Common hold the property is for the production of income, personal use, and appreciation over a period of time. The parties may make further improvements to the residence and property and may eventually sell the same.
4. **Profits and Losses.** Any profits and losses of this tenancy in common shall be shared by the Tenants according to their ownership percentages as set forth above.
5. **Improvements and Repairs.** The parties shall mutually agree on an annual budget for any renovation and repairs and share equally in the same.
6. **Sale of Property.** In the event of any sale of said real property, the net proceeds shall be divided as follows: after all expenses of the sale and any underlying mortgages or debts of record are paid, the net proceeds shall be paid to HOM and SHERBURNE hereby waives any claim to said net proceeds, except that after SHERBURNE pays off the underlying mortgage or debt, the parties shall agree to renegotiate the splitting of the proceeds of any sale.
7. **Management.** All decisions relating to the management and sale of the real property shall be made by a unanimous vote of the Tenants in Common which shall be taken at such meetings as are provided for herein. The Tenants in Common shall endeavor to meet annually to discuss management of the real property. The Tenants in Common may appoint one as managing agent for the following year, or they may choose to manage the property. The first annual meeting shall occur on the date of execution hereof, and each subsequent annual meeting shall be held as close to this date as is practicable for the Tenants in Common. Special meetings may be held upon 5 days notice by any one of the Tenants in Common, or as soon thereafter as all of the Tenants in Common are able to convene. All meetings of the Tenants in Common shall be held at locations mutually convenient to the parties. The notice period may be waived by unanimous written agreement among all of the Tenants in Common.
8. **Salaries and Draws.** No Tenant in Common shall receive a salary for services rendered on behalf of the Tenants in Common unless otherwise agreed in writing by all of the Tenants in Common.
9. **Bank Accounts.** All funds, if any, of the tenancy in common shall be deposited in the names of the Tenants in Common in such checking account or accounts as shall be designated by the Tenants in Common, as necessary. Each of the Tenants in Common shall have the capacity to sign checks on behalf of the tenancy in common provided that any check greater than Two Hundred Fifty Dollars (\$250.00) shall be approved by a majority of the Tenants in Common.



10. **Books and Records.** A set of books and records reflecting all transactions of the tenancy in common, shall be kept and maintained by the Tenants in Common; and each Tenant in Common shall have access to and have the right to inspect and audit such books and records at any reasonable time.
11. **Insurance.** The Tenants in Common may obtain liability and property damage insurance for their mutual protection and for the protection of their respective interests in the property and any improvements thereon..
12. **Transferability.**
- a) Except as otherwise provided herein, no individual Tenant in Common shall, except as agreed to in writing and in strict accordance with this agreement, sign, mortgage, encumber, or sell or transfer any rights or interests he or she may have in the tenancy in common or its real and/or personal property, or enter into any agreement as a result of which any person, firm, or corporation shall become interested with him in the tenancy in common. Each party hereto irrevocably waives any and all right that he or she may have to maintain any action for partition with respect to his or her undivided interest in the real and personal property of this tenancy in common or to compel any sale thereof in accordance with any statutes now existing or hereafter enacted.
  - b) Any Tenant in Common desiring to sell his or her undivided interest herein shall so inform the other Tenant in Common by written notice mailed by certified mail. The other Tenant in Common shall have the option to purchase the seller's interest on the terms as are described herein, provided said option to purchase is exercised in writing and mailed to the seller within 30 days after the date of mailing of the seller's notice of intention to sell.
  - c) For the purpose of computing the price of any interest in the Property that is for sale, pursuant to the terms of this agreement, unless and until change is provided hereinafter, the full fair market value of the premises is the value stated in **Exhibit "B"**, attached hereto, which exhibit is made a part of this agreement. Commencing 12 months from the date of this agreement, the parties shall review the last stipulated value of the Property. Upon such review, the parties may agree either on a new value or to retain the last stipulated value. In either case, the agreed value shall be endorsed upon **Exhibit "B"** attached hereto in the following form: "The undersigned mutually agree on this 30 day of November, 2009, the value of the real property shall be \$275,000.00 \_\_\_\_\_." This endorsement shall be signed by all Tenants. If the Tenants fail to review the last previous valuation or agree upon a valuation after review, the last stipulated valuation shall govern. Provided, however, that if improvements have been made to



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the Property after the last stipulated valuation, there shall be added to the last stipulated valuation, the cost of the improvements made subsequent to the stipulated valuation. Any purchase price shall be payable in cash at the time of closing; title to said undivided interest shall be conveyed by statutory warranty deed, free of all encumbrances. The selling Tenant shall be required to provide purchasers with standard coverage title insurance.

- d) If none of the non-selling Tenants in Common exercise the purchase option provided above in subparagraph (b) within the time provided herein, then the seller may sell his or her interest for the price and on the terms set forth in his or her notice of intent to sell, provided that any purchaser shall be bound by the terms of this agreement to the same extent as the selling Tenant.
- e) Upon the death of a Tenant in Common, the surviving Tenant in Common shall have the option to purchase, in the proportion described in subparagraph (b) above, the deceased Tenant's undivided interest. Such option shall be exercised by giving written notice to the legal representative of the estate of the deceased Tenant within 30 days after the date of his appointment. The legal representative of the deceased Tenant in Common shall be required to sell such interest only in the event the entire interest of the deceased Tenant is acquired by exercise of said options. The price shall be determined pursuant to the provisions of subparagraph (c) above. Full payment for such undivided interest shall be made to the deceased Tenant's legal representative within 30 days of the date of notice that the purchase option will be exercised. This option shall not be exercisable with respect to a deceased Tenant's interest if the deceased Tenant's spouse inherits the deceased Tenant's interest and holds the same pursuant to the terms of this agreement.
- f) In the event of bankruptcy or insolvency of a Tenant, or in the event of the attachment, levy, or execution against or upon a Tenant's undivided interest, or in the event that a Tenant's undivided interest is subject to a judicial sale under the laws of any local, state, or federal government, or if a Tenant's undivided interest is to be transferred by any legal action brought by any person, including the spouse or former spouse of said Tenant, or by reason of the death of said spouse, the remaining Tenants shall have the right to purchase some or all of the Tenant's undivided interest that is subject to any such transfer or any legal action at the price and on the terms specified above in subparagraph (c). Such right shall commence upon the date on which all of the other Tenant's receive notice of the transfer or legal action and shall be exercisable according to the same procedure as set forth in subparagraph (b) above. If the entire property interest subject to the transfer or legal action is not purchased by the remaining Tenants in a timely manner as set forth herein, it shall be a condition precedent to the effectiveness of any such transfer that the transferee of such interest agree in writing to be



bound by all of the terms and conditions of this agreement and to be included as a Tenant in Common pursuant to the terms hereof.

- g) The options contained herein shall not be transferable by the Tenants in Common.
13. **Arbitration.** In the event of disagreement with respect to any matter arising under this agreement or of the breach thereof or with respect to the conduct of the Tenants in Common business, such disagreement shall be determined by arbitration in accordance with the provisions of the statutes of the State of Washington relating to mandatory arbitration then in effect, and judgment upon the award rendered may be entered by the Superior Court of the State of Washington for Skagit County.
14. **Modification.** No change or modification of this agreement shall be valid or binding upon the parties, nor shall any waiver of any term or condition thereof be deemed a waiver of such term or condition in the future, unless such change, modification or waiver shall be in writing signed by all the parties hereto.
15. **Binding Effect.** Except as otherwise provided herein, this agreement shall inure for the benefit of and be binding upon the parties hereto, their legal representatives, heirs, and assigns.
16. **Duration.** This agreement shall continue in force and effect as long as any two or more of the Tenants in Common hereto shall own an interest in said real estate.
17. **Severability.** If any term or provision of this agreement, or the applicability thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby and shall continue in full force and effect.
18. **Notices.** All notices hereunder may be delivered or mailed. If mailed, they shall be sent by certified or registered mail to the respective addresses of the parties set forth below; or to such other respective addresses as the parties hereto may hereafter from time to time designate in writing. Notices sent by mail shall be deemed to have been given when properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing.

**Name**

PAMELA HOM

**Address**

18791 Cedardale Road  
Mount Vernon, WA 98274



JAMES W. SHERBURNE

18765 Cedardale Road  
Mount Vernon, WA 98274

19. **Prior Agreements.** This agreement supersedes and/or replaces any and all prior oral or written agreements between or among the parties or any of them relating to the real property described herein, and specifically the Tenants in Common Agreement executed on November 25, 2002 and recorded under Skagit County Auditor's File No. 200212120077.
20. **Dissolution.** Should HOM and SHERBURNE subsequently dissolve their marriage, the parties agree that this Tenants in Common Agreement shall be incorporated by reference in any property settlement agreement and decree and shall not be modified in any way unless specifically agreed to in writing by both HOM and SHERBURNE.
21. **Occupancy, Rent and Ordinary Repairs and Maintenance Expenses.** Any Tenant who resides on the Property shall not be required to pay any rent to the other Tenant. However, any Tenant who resides on the Property shall be responsible for all utilities and ordinary maintenance and repair expenses.
22. **Effective Date.** The effective date of this agreement will be on the date set forth in the first paragraph herein

**IN WITNESS WHEREOF**, the parties hereto have duly executed this agreement the day and year first above written.

  
PAMELA HOM

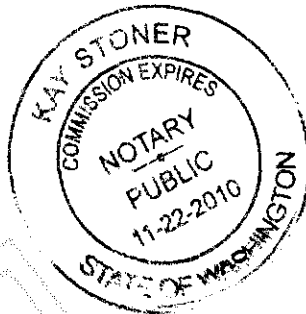
  
JAMES W. SHERBURNE

STATE OF WASHINGTON     )  
COUNTY OF SKAGIT        )

I certify that I know or have satisfactory evidence that **PAMELA HOM** 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 this 2 day of <sup>December</sup>~~November~~, 2009.

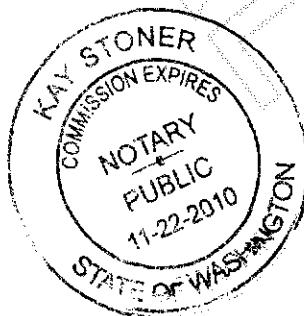


Kay Stoner  
Notary Public  
Kay Stoner  
(Print or Type name)  
My Commission expires 11-22-2010

STATE OF WASHINGTON )  
COUNTY OF SKAGIT )

I certify that I know or have satisfactory evidence that **JAMES W. SHERBURNE** 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 this 2 day of <sup>December</sup>~~November~~, 2009.



Kay Stoner  
Notary Public  
Kay Stoner  
(Print or Type name)  
My Commission expires 11-22-2010





## EXHIBIT "A"

### LEGAL DESCRIPTION

LOT 1 OF SHORT PLAT 93-073, BEING A PORTION IN THE SW1/4 of Section 5, Township 33N, Range 04 E, W.M.,. EXCEPT THAT PORTION OF LOT 1, SHORT PLAT 93-073, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 1, SHORT PLAT 93-073, THENCE NORTH 35 FEET ALONG THE WEST LINE OF SAID LOT 1, THENCE EAST 115 FEET PARALLEL TO THE SOUTH LINE OF SAID LOT 1, THENCE SOUTH TO SAID SOUTH LINE OF SAID LOT 1, THENCE WEST ALONG SAID SOUTH LINE TO POINT OF BEGINNING.

Situated in Skagit County, Washington.

**Tax Parcel Number: P16347/330405-0-021-0015**



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**EXHIBIT "B"**

**TENANTS IN COMMON AGREEMENT NOVEMBER \_30\_, 2009**

The undersigned mutually agree on this \_30\_ day of November, 2009, that the value of the Property shall be \_\_\_\_\_ (\$\_275,000.00).

  
PAMELA HOM

  
JAMES W. SHERBURNE



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