

**After Recording Return To:**  
**SKAGIT LAW GROUP, PLLC**  
**P. O. Box 336**  
**Mount Vernon, WA 98273**



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Skagit County Auditor

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LAND TITLE OF SKAGIT COUNTY  
137336.0AE

### ROAD MAINTENANCE AGREEMENT

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**GRANTOR:** **WENDELYN T. McDANIEL**, Personal Representative of the Estate of **WENDELL B. McDANIEL**, Deceased

**GRANTEE:** **WENDELYN T. McDANIEL**, Personal Representative of the Estate of **WENDELL B. McDANIEL**, Deceased

**Legal Description; Abbreviated Form:**

1. Tract D of Survey AF 200910210063; aka Ptns Lots 4-10, Blk 3, Hamstrom's Add to Grassmere; recorded July 7, 1909, Vol 3, Pg 82; as reflected by BLA PL09-0437
2. Tract C of Survey AF 200910210063; aka Ptn of Lot 19, all of Lots 14-18, Ptn of Lot 13, Ptns of Lots 6-10, Blk 3, Hamstrom's Add to Grassmere; recorded July 7, 1909, Vol 3, Pg 82; as reflected by BLA PL09-0437
3. Tract A of Survey AF 200910210063; aka Lots 1-3 & Lots 22-24, Blk 3, Hamstrom's Add to Grassmere; recorded July 7, 1909, Vol 3, Pg 82; as reflected by BLA PL09-0437
4. Tract B of Survey AF 200910210063; aka Ptn Lot 21, all of Lot 20, Ptn of Lot 19, Ptns of Lots 4, 5 & 6, Blk 3, Hamstrom's Add to Grassmere; recorded July 7, 1909, Vol 3, Pg 82; as reflected by BLA PL09-0437

**Additional on Page:** Exhibit "A"

**Assessor's Tax Parcel Nos:**

1. 4067-003-006-0000; P71045
2. 4067-003-018-0006; P71049
3. 4067-003-024-0008; P71050
4. 4067-003-021-0008; P129999

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THIS AGREEMENT is entered into by **WENDELYN T. McDANIEL**, in her capacity as the duly appointed, qualified and acting Personal Representative for the Estate of **WENDELL B. McDANIEL**, Deceased, under Skagit County Superior Court Cause No. 08-4-00076-1, and **WENDELYN T. McDANIEL**, as Personal Representative for the Estate of **WENDELL B. McDANIEL**, Deceased (collectively referred to herein as "Owners"). The Owners are the owners of that certain real property located in Skagit County, Washington, which is more particularly described in the attached Exhibit "A".

In consideration of the mutual promises and covenants herein, the Owners hereby agree as follows:

### I. DESCRIPTION OF AGREEMENT

- 1) This agreement establishes cost sharing for a common access road shared by the Owners, which access road is commonly known as McDaniels Drive, Concrete, Washington, is approximately \_\_\_\_\_ feet in length, and is more particularly described in the map shown in the attached Exhibit "B", which Exhibit B is a copy of a survey recorded under Skagit County Auditor's File No. 200910210063. The access road may hereinafter be referred to as the "Road."
- 2) The intent of the parties in executing this agreement is to provide for maintenance and repair of the Road, including contribution to the payment of associated costs.

### II. AGREEMENT IS APPURTENANT

The Owners agree and declare that all of the above described property is, and will be, held, sold and conveyed subject to and burdened by the following agreement, which is for the purpose of enhancing and protecting the value, desirability and attractiveness of said property, and further agree that this document shall be binding upon all parties having or acquiring any right, title or interest in the above described property or any part thereof, shall inure to the benefit of the owners thereof, and shall otherwise in all respects be regarded as covenants running with the land.

### III. OBLIGATION FOR COST SHARING FOR ROAD

- 1) Decisions Concerning Maintenance. Any decision to take action to maintain the Road must be approved in writing by a majority of the eligible votes, as defined herein. Any written record of the vote shall be signed by those persons representing a majority of the eligible votes. Each lot identified on the attached Exhibit "A" shall be deemed to be a separate lot and each lot shall be entitled to one (1) vote, all of which votes shall constitute the eligible votes. If a lot is owned by more than one person, the one (1) vote for that lot shall be cast by them in such manner as they determine among the owners of the lot. If the owners of a lot



are unable to agree how to cast the vote for that lot, then the vote for that lot shall not be counted.

- 2) Allocation of Costs. Any costs incurred in the property performance of approved maintenance to the Road shall be divided into equal shares, with one share being allocated to the owner(s) of each lot.
- 3) Subdivision. In the event the owner of any lot, or their successors, subdivides their property, then, following said subdivision, the owners of the newly created lots shall each have one (1) vote for each newly created lot. Any newly created lot shall receive one full share of the allocation of any costs pursuant to Section III (2) above.
- 4) Damage to Road. In the event an owner causes identifiable damage to the Road (for example: through the installation of utilities, other improvements, or the use of heavy equipment or abuse of the road), then that owner shall, as soon as is reasonably possible, immediately restore the Road to as good or better condition as it was in prior to the damage by the owner. If the owner does not reasonably comply with the provisions of this Section within ninety (90) days of receipt of a written demand to repair such damage, then the other owners, after majority approval of the eligible votes (excluding the owner that caused the damage), shall have the right to repair the damage and to assess a lien against the owner's lot(s) for the full cost of the repair.

#### IV. ENFORCEMENT

- 1) Authorization of Lien; Personal Obligation. Each Owner and each subsequent owner of any lot within the described subject property, by virtue of this agreement, or a subsequent acceptance of a deed therefor, whether or not it shall be expressed in such deed, covenants and agrees to participate in the payment of maintenance and repairs to the Road as provided herein by means of any assessments that may be established by the majority vote of the eligible votes. Each assessment so established, together with interest, costs and reasonable attorneys' fees required for any enforcement, shall also be a personal obligation of the person(s) who was/were the owner(s) of such lot(s) at the time the assessment fell due. In addition, any owner who is the prevailing party in any litigation against a defaulting owner shall have the right to assess a lien against the defaulting owner for any and all assessments, sums, costs, and attorneys' fees incurred by an owner in enforcing this agreement.
- 2) Priority of Lien for Assessments. All sums expressed as against any lot pursuant to this agreement, together with any interest, costs and reasonable attorney's fees, as provided herein, shall be a charge upon the land and shall be a continuing lien upon the subject lot. The lien shall be for the benefit of the contributing owners for the repair or maintenance project giving rise to the lien and for the benefit of any owner who is a prevailing party in any litigation as set forth in Section IV (1) above. Such lien shall be superior to all other



liens and encumbrances on such lot, except for (a) liens of ad valorem taxes, or (b) liens for all sums on an unpaid first mortgage.

All other persons acquiring liens or encumbrances on any lot after the date this agreement shall have been recorded shall take subject to this agreement and such liens or encumbrances shall be inferior to all future liens as provided herein, whether or not consent is specifically set forth in the instruments creating such liens or encumbrances.

- 3) Effect of Non-Payment; Remedies. Any amounts assessed under this agreement which are not paid when due shall become delinquent. If the assessment(s) are not paid within sixty (60) days of assessment, a lien as herein provided shall attach, which lien shall also include interest from the due date of the assessment at the lesser of: (i) twelve percent (12%) per annum, or (ii) the maximum allowable legal rate, payable on the principal amount due, together with all costs of collection, reasonable attorneys' fees, and all other amounts permitted by law. In the event the assessment remains unpaid after sixty (60) days, any contributing owner may institute suit to collect such amounts or to foreclose the lien. All payments shall be applied first to costs and attorneys' fees, then to interest, then to delinquent assessments. Foreclosure of any lien created by this agreement shall be by the same process provided for the non-judicial foreclosure of a deed of trust pursuant to RCW 61.24, et seq., and as hereafter amended.

#### V. MISCELLANEOUS PROVISIONS.

- 1) Indemnification. Each Owner, and their successors or assigns (the "Indemnifying Owner"), will indemnify and hold each and every other Owner, and their successors or assigns, harmless from any damage or injury, either to persons or personal property, sustained by the Indemnifying Owner, their contractors, invitees, agents, employees or others, which damage or injuries are caused by any act or omission of the Indemnifying Owner, their agents, contractors, invitees or employees or caused by any condition or defects now or hereafter existing or occurring in the Road and any improvements now or hereafter made to the Road.
- 2) Deadlock. If at any time any dispute, difference, or disagreement shall arise upon or in respect of this agreement, the meaning and construction hereof, or with respect to any decision on which the owners are deadlocked, every such dispute, difference and disagreement shall be resolved by submission of the dispute to arbitration pursuant to the Mandatory Arbitration Rules then in effect for Skagit County. The arbitration shall be binding on all owners and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The owners shall equally share in the cost of the arbitration, regardless of the number of votes held by each, and each owner shall be responsible for their own attorneys' fees.
- 3) Termination of Owner. If an owner voluntarily or involuntarily terminates any right of the owner to use the Road for the purpose of ingress and/or egress from the owner's property



(e.g., the owner has obtained or constructed alternate access to the owner's property), then upon the recording at the Skagit County Auditor's office of such documents as are necessary to terminate all such rights, the owner shall be released from any obligations under this agreement to pay for any maintenance or repair that is performed after the date of such recording. The owner shall remain liable for any and all costs under this agreement which accrued prior to the date of recording. After the date of recording, such owner shall have no further rights with respect to this agreement.

- 4) This agreement shall run with the real property described herein and shall be binding upon all parties and persons for a period of fifty (50) years following the date of the recording with the Skagit County Auditor, after which said fifty (50) year period, this agreement shall be automatically extended for successive five (5) year periods. This agreement and the covenants, conditions, and restrictions herein may be supplemented, relaxed, revoked, or amended, in whole or in part, at any time by any instrument signed by owners representing not less than eighty percent (80%) of all of the lots.
- 5) Those portions of this agreement that relate solely to maintenance and repair of the Road shall automatically terminate with respect to any portion of the Road that is dedicated to any municipal corporation or other governmental entity that assumes full responsibility for the maintenance and repair of the Road following such dedication.
- 6) The term "owner" as used in this Agreement shall mean the fee title owner, unless the property is being sold on real estate contract, in which case the owner shall be the contract purchaser; or if the property is subject to a deed of trust, the owner shall be the grantor.
- 7) This agreement shall be construed in accordance with the laws of the State of Washington.
- 8) The subject headings of the paragraphs of this document are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.
- 9) This agreement constitutes the entire agreement of the parties and supersedes all prior agreements or understandings between the parties with respect to the subject matter hereof.
- 10) The failure of the owners to insist upon strict performance of any of the provisions of this agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver but the same shall be and remain in full force and effect.
- 11) The invalidity or unenforceability of any provision hereof shall not affect or impair any other provisions hereof.
- 12) This agreement shall not be deemed to terminate by any merger of the fee ownership of the owners' properties, unless the owners unanimously agree otherwise and record evidence of



such unanimous agreement with the Skagit County Auditor. The fee interest in the owners' properties and this Agreement shall hereafter remain separate and distinct.

13) In the event any owner, title company, potential lender, potential purchaser, realtor or attorney wish to determine whether any liens exist against any lot, such title company, lender or prospective purchaser may send a request for the lien status of the lot in question to the then current owner of each lot identified in the attached Exhibit "A" (and any new lots created as described in Section III (3) herein), as is then shown on the records of the Skagit County Assessor's Office, which request shall be sent to the current mailing address for the owner(s) of such lots as is shown by the Skagit County Assessor's Office. Such request must include the following: (i) a reference to and copy of this Section V (13) of this agreement; (ii) the legal description and street address for the lot for which the lien status is being requested; (iii) a deadline for mailing of a response, which deadline must be no earlier than fourteen (14) days from the date of mailing of the request; (iv) a copy of any liens (which arose pursuant to this agreement) against the lot in question which have previously been filed with the Skagit County Auditor's Office; (v) a statement that the request is being made to determine whether any money is owed by the owner of the lot in question and whether any valid liens exist against the lot in question; and (vi) a mailing address and phone number where the person making the request may be contacted. In the event that any person or entity properly making such a request pursuant to this agreement does not receive any response within five (5) days after the deadline provided in the request, then any and all liens against the lot in question that may have existed on or prior to the date of the request shall be deemed to have been waived. The person making the request must keep all documentation relating to the request, its mailing and lack of response for a period of ten (10) years from the date of the request in order for the waiver to remain effective. The receipt by the requesting party of any timely response which in any way indicates in the affirmative that a lien exists shall defeat these waiver provisions.

IN WITNESS THEREOF, the parties hereto have executed this agreement dated this 24<sup>th</sup> day of August, 2010.

OWNER:

**Estate of WENDELL B. McDANIEL, Deceased**

By Wendell J. McDaniel  
**WENDELYN T. McDANIEL**  
Personal Representative

Road Maintenance Agreement - 6 -

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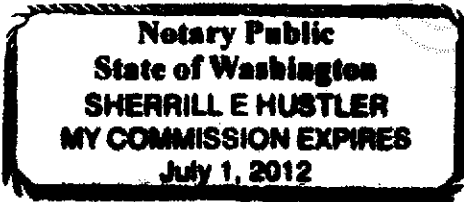
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Skagit County Auditor

STATE OF WASHINGTON }  
COUNTY OF SKAGIT } SS.

I certify that I know or have satisfactory evidence that **WENDELYN T. McDANIEL** is the person who appeared before me, and said person acknowledged that she was authorized to execute the instrument and acknowledged it as the Personal Representative of the Estate of **WENDELL B. McDANIEL, Deceased**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this 24<sup>th</sup> day of August, 2010.



Sherrill E. Hustler  
Printed Name SHERRILL E. HUSTLER  
NOTARY PUBLIC in and for the State of Washington  
My Commission Expires 7/1/2012



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