



201109280084
Skagit County Auditor

9/28/2011 Page 1 of 15 3:47PM

LAND TITLE OF SKAGIT COUNTY

140319-0
After recording return document to:

NICOL LAW, PLLC
904 South Third
Mount Vernon, WA 98273

DOCUMENT TITLE: ROAD MAINTENANCE AGREEMENT

REFERENCE NUMBER OF RELATED DOCUMENT: 9710100070; 9709190108

GRANTOR(S): MELVIN R. CALL and ANN M. CALL, husband and wife

GRANTEE(S): DAY CREEK CORPORATION, a Washington Corporation

ABBREVIATED LEGAL DESCRIPTION:

Section 33, Township 35, Range 6, Portion NE $\frac{1}{4}$ - NW $\frac{1}{4}$ and NW $\frac{1}{4}$ - NE $\frac{1}{4}$

Section 33, Township 35, Range 6, Portion NE $\frac{1}{4}$; NW $\frac{1}{4}$; and PTN N $\frac{1}{2}$ of NE $\frac{1}{4}$
of NW $\frac{1}{4}$

ADDITIONAL LEGAL DESCRIPTION ON PAGE(S) 2 OF DOCUMENT.

ASSESSOR'S TAX PARCEL NUMBER(S): P42153; P103894; P103382;
P42147; P42155; P14256; and P42154

ROAD MAINTENANCE AGREEMENT

This ROAD MAINTENANCE AGREEMENT is entered into as of September 28, 2011 by and between MELVIN R. CALL and ANN M. CALL, husband and wife (hereinafter collectively "Calls") and DAY CREEK CORPORATION, a Washington Corporation (hereinafter "Day Creek") and was executed by each of the parties on the date shown on the signature pages below.

RECITALS:

Whereas Calls are the legal owners of the real properties known as Skagit County Tax Parcel Nos. P103894, P103382, P127637, P42153, P42155, and P42156 and more particularly described in **Exhibit A** (hereinafter "Call Properties"), which Call Properties were conveyed, in part, to Calls by Day Creek pursuant to a Statutory Warranty Deed between Day Creek as Grantor and Calls as Grantee dated October 8, 1997 and recorded under Skagit County Auditor Number 9710100070 ("1997 Deed").

AND whereas Day Creek is the legal owner of the real property known as Skagit County Tax Parcel No. P42147 and more particularly described in **Exhibit B** (hereinafter "Day Creek Property"), and Day Creek is the legal owner of a roadway easement set forth in the Roadway Easement Agreement between Jeremy Hailey and Vanessa Hailey as Grantor and Day Creek as Grantee dated August 15, 1997 and recorded under Skagit County Auditor Number 9709190108 which easement is situate on Skagit County Tax Parcel P41975 (hereinafter "Roadway Easement").

AND whereas the Roadway Easement recites that the easement set forth therein is appurtenant to the real properties specifically described in section 2 of the Roadway Easement and that said easement is a covenant running with the land for benefit of Day Creek as the owner of said described real properties and other real properties described in section 2 and Day Creek's successors and assigns.

AND whereas Day Creek conveyed to Calls the easement rights set forth in the Roadway Easement for the benefit of the Call Properties as set forth in Exhibit A of the 1997 Deed (hereinafter "Call Roadway Easement").

AND whereas Day Creek also conveyed to Calls an access easement under, on and across the Day Creek Property for the benefit of the Call Properties as set forth in Exhibit A of the 1997 Deed (hereinafter "Call Access Easement").

AND whereas Day Creek conveyed the Call Roadway Easement and the Call Access Easement to Calls for the benefit of the present and future owners of the Call Properties and other real properties adjacent to the Call Properties currently owned by Calls or owned in the future by Calls or their successor and assignees ("Calls' Benefited Properties").



201109280084
Skagit County Auditor

AND, whereas Day Creek has certain obligations to repair and maintain the roads and other improvements located in the easement areas described in the Roadway Easement, the Call Roadway Easement and the Call Access Easement (hereinafter collectively "Easements").

AND, whereas it is anticipated that future use of the Easements and easement areas by Day Creek and assigns will consist of occasional light vehicular traffic and foot access that will have negligible impact on the condition of the road, except for the requirement to enter and demolish structures.

AND, whereas Calls and Day Creek find that it is necessary and desirable that Day Creek transfer to Calls the responsibility for any and all maintenance, repairs, upkeep and re-construction of the existing right of way in its current location and composition involving said Easements and for any roads presently located in the easement areas of the Easements and/or constructed in the future by Calls and their successors and assignees in accordance with the terms and conditions of this Road Maintenance Agreement (hereinafter the "Agreement") and to declare that said Agreement shall run with the land and attach to the Easements.

AND whereas Day Creek and Calls wish to enter into this Agreement wherein Calls and their successors and assigns agree to take and assume all responsibility for the maintenance, repair and upkeep on the Easements and to relieve Day Creek from all responsibility for said same maintenance, repair and upkeep other than for damage to the roadways and other improvements located in the Easement areas directly caused by Day Creek during demolition of existing structures.

AND whereas Day Creek is the legal owner and has title to that certain real property more particularly described in **Exhibit C** ("Parcel 42154") which is desired by Calls.

AND whereas Day Creek is willing to transfer ownership of Parcel 42154 to Calls by cooperating in the execution of a Boundary Line Adjustment as consideration for Calls' assumption of the maintenance, upkeep and repair of the Easements detailed in this Agreement and to fully and completely satisfy any past or additional claims Calls may have against Day Creek for any maintenance performed (or not performed) on said Easements in the past.

AND whereas Calls, on behalf of themselves and their respective heirs, successors or assigns and the future owners of the Calls' Benefited Properties, and each of them, wish to enter into this Agreement for maintenance, repair and upkeep of the roads and Easements on the terms and conditions set forth below in this Agreement; and for said Agreement to run with the land.

AND whereas, each party hereto on behalf of itself, himself or herself, and their respective heirs, successors or assigns, and each of them agrees that this Agreement is entered into as the free and voluntary act of the parties hereto for consideration acknowledged as good and sufficient.



201109280084
Skagit County Auditor

THE PARTIES TO THIS AGREEMENT AGREE AS FOLLOWS:

1. DAY CREEK:

A. Day Creek shall fully cooperate in the transfer of Day Creek's ownership interest in Parcel 42154 to Calls through the operation of a Boundary Line Adjustment. Day Creek represents and warrants that it is the legal owner of Parcel 42154, that it has, upon approval by Skagit County Planning and Development of said Boundary Line Adjustment, the legal authority to transfer to Calls by a Boundary Line Adjustment Parcel 42154 and to execute this Agreement, and that there are no monetary liens, deeds of trusts, mortgages or other financial liens or claims recorded against Parcel 42154 other than the second half taxes for 2011.

B. Day Creek agrees that the "Call Access Easement" shall be for the primary use of Calls (Calls' Benefited Properties), its assigns or successors and Day Creek, its assigns or successors. Calls shall be permitted to restrict vehicle entry to the Call Access Easement by use of the gate presently located near the North entrance to the Call Easement Area (or any other gate installed hereafter by Calls at Call's expense in the same general vicinity) and a key to such gates shall be provided to Day Creek, its assigns or successors upon execution of this document or upon installation of a new gate as set forth in this paragraph. The Calls also may post a sign in the vicinity of the northerly end of the easement reading "Authorized Vehicles Only". Day Creek further agrees not to assign any of its rights, title and interest in the Roadway Easement to any other party other than the present and future owners of the Day Creek Property and the Calls' Benefited Properties.

2. CALLS:

A. On and after the date of recording of the Boundary Line Adjustment further discussed herein, Calls and their successor and assignees shall assume the maintenance, upkeep and repair of the Easements and shall bear the full expenses for said maintenance, upkeep and repair. The Calls agree that said Easements shall not be covered or resurfaced in any type or kind of "impervious surface material" such as concrete or asphalt. No expense shall be incurred by the present and future owners of the Day Creek Property for the maintenance, upkeep or repair of any roads or other improvements located in the easement areas of the Easements other than for the repair of any damage to the roadway or other improvements located in the Easements area that are caused by use of the Easements by the present and future owners of the Day Creek Property as a direct result of the demolition of the buildings on Day Creek's property. Prior to such demolition by Day Creek, Calls and Day Creek and/or its successors shall jointly inspect the road condition and document any existing defects. The same parties shall then jointly re-inspect the road once demolition is complete to determine if any change has occurred due to demolition activities. In the event that Calls fail to reasonably cooperate in both the "before" and "after" inspections, the present and future owners of the Day Creek shall have no obligation to make any repairs as a result of the demolition



201109280084

Skagit County Auditor

activities. Calls and their successors and assigns shall release any claim or claims Calls may hold against Day Creek for prior or additional maintenance on the Easements. This Agreement shall run with the land and Easements. Other than above described demolition activities, if in the future Day Creek and/or its successors' use of the road and/or Easement area becomes more intensive than occasional light vehicular traffic and foot traffic, and such use causes excessive wear and tear on the road, then the parties agree in good faith to revisit this Agreement to determine an equitable distribution of road maintenance costs. Any disagreement between the parties regarding such determination shall be resolved through the Dispute Resolution process described below in Section 3.J.

B. Calls agree to execute the real estate excise tax affidavit or other and additional documentation related to or necessary for the execution of the Boundary Line Adjustment further discussed herein.

C. Calls agree to grant an easement to Day Creek, its successors and assigns, in substantially the form attached hereto as **Exhibit "D"**.

3. GENERAL TERMS:

A. This Agreement shall be recorded with the Skagit County Auditor on the date of this Agreement and immediately prior to the recording of the Calls Quit Claim Deed and this Agreement shall run with the real properties described in this Agreement and shall bind the respective heirs, assigns, legal representatives and successors in interest of the parties hereto.

B. The parties to this Agreement and each of them, represent and warrant that it/they are the sole owner of the actual or alleged claims, rights, causes of action, and other matters which are released herein, that the same have not been assigned, transferred, or disposed of in fact, by operation of law, or in any manner, and that they have the full right and power to grant, execute and deliver the releases, undertakings, and agreements contained herein.

C. This Agreement will be governed by and construed exclusively in accordance with the laws of the State of Washington without reference to its choice of law principles. Any disputes arising under this Agreement shall be brought in a court of competent jurisdiction in the State of Washington. In the event that either party attempts to enforce any or all provisions of this Agreement, whether by arbitration, mediation, and/or litigation in any court of competent jurisdiction, the prevailing party shall be entitled to reimbursement of their reasonable costs and attorney's fees by the other party. Both parties agree that unless enforcement of this Agreement is attempted by either party, this Agreement shall not be filed in any court.

D. No modification or waiver of this Agreement will be effective unless evidenced in a writing signed by all parties. Any party's failure to enforce this Agreement in the event of one or more events which violate this Agreement shall not constitute a waiver of any right to enforce this Agreement against subsequent violations. The



201109280084
Skagit County Auditor

provisions of this Agreement are severable, and if any part of it is found to be unlawful or unenforceable, the other provisions of this Agreement shall remain fully valid and enforceable to the maximum extent consistent with applicable law. This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which together shall constitute one agreement. The parties agree to execute any and all documents that may be reasonably necessary to effectuate the intent of this Agreement.

E. This Agreement contains the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior negotiations, discussions, agreements, or understandings, whether oral or written, with respect to the same subject matter.

F. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of all Parties hereto. No presumption of other rules of construction which would interpret the provisions of this Agreement in favor of or against the Party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

G. Authority: The parties hereto certify by their respective signatures below that said signatories are authorized to act on behalf of and bind their respective corporations or organizations to this Agreement and their respective corporations or organizations, if any, will be bound by the terms of this Agreement and mutual release through the operation of said signatures. Both parties further agree to obtain whatever documentation or perform whatever action is necessary under the terms of their respective corporate documents, agreements, by-laws or articles of incorporation, if any, to bind their respective organizations to the terms of this Agreement before signing below.

H. By signing this Agreement and taking receipt of consideration the parties to this Agreement, and each of them affirms that they are accepting the terms and conditions of this Agreement. A reproduction and/or facsimile of this document shall have the same force and effect as the original signed document. The parties represent, understand and agree that this Agreement is made and entered into as their free and voluntary act and that the consideration exchanged is sufficient for the purposes herein.

I. Except as otherwise discussed in this Agreement, each party will bear the cost of their respective attorney's fees and costs incurred to the date of this Agreement.

J. Dispute Resolution: Any dispute that arises between the parties concerning the enforcement and interpretation of this Agreement shall be resolved as follows. A party shall give notice thereof in writing to the other party and the parties shall meet at least once within fourteen (14) days thereof in attempt to resolve said dispute. If said dispute cannot be so resolved, then the sole venue for dispute resolution shall be commencement of an arbitration proceeding subject to the Washington State statutes in Washington State Superior Court Rules and Skagit County Superior Court



201109280084
Skagit County Auditor

Local Rules for Mandatory Arbitration, irrespective of the amount in controversy or the remedies sought. The parties waive any right of appeal except on the basis set forth in Chapter 7.04 RCW and agree to promptly pay the arbitrator's fees on a 50/50 basis. An Arbitrator's Award may be reduced to judgment in Superior Court. Venue for commencement of an action to compel arbitration or to enforce an Arbitrator's Award is vested solely in Skagit County Superior Court. The prevailing party in any arbitration proceeding, in any suit to compel arbitration, or in any action to enforce an Arbitration Award, shall receive its costs, including attorney's fees, (including appeal).

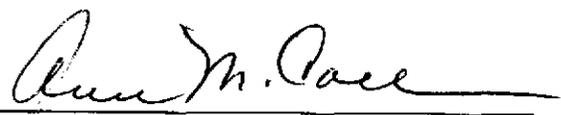
Dated this 28th day of September, 2011.

Day Creek Corporation

By: 
Peter Edelson, President

Calls;


Melvin R. Call


Ann M. Call

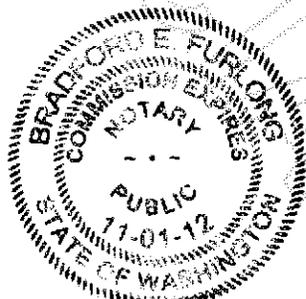


201109280084
Skagit County Auditor

STATE OF WASHINGTON)
) SS.
COUNTY OF SKAGIT)

On this 28th day of September, 2011, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared PETER EDELSON, to me known to be the President, of DAY CREEK CORPORATION, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

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

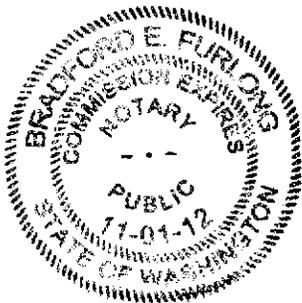


Bradford E. Furlong
Notary Public in and for the State of
Washington, residing at mt. Vernon.
My commission expires: 11-1-12

STATE OF WASHINGTON)
) SS.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that Melvin R. Call and Ann M. Call are the persons who appeared before me, and said persons acknowledged that they signed this instrument and acknowledged it to be their free and voluntary act for the uses and purposes therein mentioned in this instrument.

Dated: September 28, 2011.



Bradford E. Furlong
Print Name: Bradford E. Furlong
Notary Public for the State of Washington
Residing at: mt. Vernon
My Commission Expires: 11-1-12



201109280084
Skagit County Auditor

EXHIBIT A

Legal Descriptions of Call Properties

P103894

The South $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 33, Township 35, Range 6 East, W.M., EXCEPT that portion described as follows:

Beginning at the Northeast corner of the said subdivision; thence South 100 feet to point of beginning;

thence West 350 feet;

thence South 248 feet;

thence East 350 feet to the Easterly line of the said subdivision;

thence North to the point of beginning.

Situate in the County of Skagit, State of Washington.

P103382

The East 800 feet of the South 275 feet of the North $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 33, Township 35, Range 6 East W.M. Survey

AF#201101240142.

Situate in the County of Skagit, State of Washington.

P127637

A portion of the South $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 33, Township 35, Range 6 East, W.M. described as follows: Beginning at the Northeast corner of said subdivision; thence South 100 feet, thence West 350; thence North 100 feet; thence East 350 feet to the point of beginning.

Situate in the County of Skagit, State of Washington.

P42153

The North 230 feet of the West $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of the East $\frac{1}{2}$ all in the South $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 33, Township 35, Range 6 East, W.M.

Survey. Note: This parcel is included in the legal description of P103894 outlined above and is separate for property tax assessment purposes. P103894 is an open space parcel and P42153 is separated since it is a residential tax assessment parcel.

P42155

Mobile Home only 2912 Rex 72 60x12 located on P103382.

P42156

Mobile Home only B1123B Buddy 69 60x12 located on P127637.



201109280084
Skagit County Auditor

EXHIBIT B

Legal Description of Day Creek Property

P42147

The Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 33, Township 35, Range 6 East, W.M.,
EXCEPT that portion described as follows:

The North 300 feet of the West 150 feet of said subdivision.

Situate in the County of Skagit, State of Washington.



201109280084

Skagit County Auditor

EXHIBIT C

Legal Description of Parcel 42154

Portion of the South $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ DAF of Section 33, Township 35N, Range 6 East W.M., beginning at the NE Corner of the Corner of said Subdivision thence South 100FT to the True Point of Beginning thence West 350FT, thence South 248FT, thence East 350FT, to the East Line said Subdivision Thence North to the True Point of beginning.

Situate in the County of Skagit, State of Washington.

Skagit County Tax Parcel No. 42154



201109280084
Skagit County Auditor

EXHIBIT

D

After recording return document to:

NICOL LAW, PLLC
904 South Third
Mount Vernon, WA 98273

DOCUMENT TITLE: GRANT OF EASEMENT

REFERENCE NUMBER OF RELATED DOCUMENT: 9710100070; 9709190108

GRANTOR(S): MELVIN R. CALL and ANN M. CALL, husband and wife

GRANTEE(S): DAY CREEK CORPORATION, a Washington Corporation

ABBREVIATED LEGAL DESCRIPTION:

Grantor's Parcel: Section 33, Township 35, Portion NE $\frac{1}{4}$; NW $\frac{1}{4}$; and Ptn N $\frac{1}{2}$ of NE $\frac{1}{4}$ of NW $\frac{1}{4}$

Grantee's Parcel: NW $\frac{1}{4}$ SE $\frac{1}{4}$ LESS R/W & RT 4-002-00 O/S#507 #761453-1973

ADDITIONAL LEGAL DESCRIPTION ON PAGE(S) 2 OF DOCUMENT.

ASSESSOR'S TAX PARCEL NUMBER(S): P103894, P42154, P42147, P42148, P42149 and P42166



201109280084

Skagit County Auditor

EXHIBIT A

The land referred to in this report/policy is situated in the State of Washington, County of Skagit, and is described as follows:

PARCEL "A":

The West $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Section 33, Township 35 North, Range 6 East, W.M., EXCEPT the North 300 feet of the West 150 feet thereof;

ALSO EXCEPT that certain 50 foot wide railroad right-of-way lying 25 feet on each side of the Clear Lake Lumber Company's railroad right-of-way as surveyed, staked and laid out on January 25, 1918, and as conveyed to said Company by Deed recorded May 20, 1918 as Auditor's File No. 125738, in Volume 110 of Deeds, page 341, records of Skagit County, Washington.

PARCEL "B":

That portion of the South $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 33, Township 35 North, Range 6 East, W.M., described as follows:

Commencing at the Northeast corner of the said subdivision; thence South 100 feet to point of beginning; thence West 350 feet; thence South 248 feet; thence East 350 feet to the Easterly line of the said subdivision; thence North to point of beginning.

PARCEL "C":

The Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 33, Township 35 North, Range 6 East, W.M.; EXCEPT that certain 50 foot wide railroad right-of-way lying 25 feet on each side of the Clear Lake Lumber Company's railroad as surveyed, staked and laid out on January 25, 1918, and as conveyed to said Company by Deed recorded May 20, 1918, as Auditor's File No. 125738, in Volume 110 of Deeds, page 341, records of Skagit County, Washington.

PARCEL "D":

A non-exclusive 16 foot wide easement for ingress, egress and roadway purposes over and across the Southwesterly corner of the South $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 28, Township 35 North, Range 6 East, W.M., as established by document recorded as Auditor's File No. 9709190108.



201109280084
Skagit County Auditor

EXHIBIT "B"
Call Properties

P103894

The South ½ of the Northeast ¼ of the Northwest ¼ of Section 33, Township 35, Range 6 East, W.M., EXCEPT that portion described as follows:

Beginning at the Northeast corner of the said subdivision; thence South 100 feet to point of beginning;

thence West 350 feet;

thence South 248 feet;

thence East 350 feet to the Easterly line of the said subdivision;

thence North to the point of beginning.

Situate in the County of Skagit, State of Washington.

P103382

The East 800 feet of the South 275 feet of the North ½ of the Northeast ¼ of the Northwest ¼ of Section 33, Township 35, Range 6 East W.M. Survey AF#201101240142.

Situate in the County of Skagit, State of Washington.

P127637

A portion of the South ½ of the Northeast ¼ of the Northwest ¼ of Section 33, Township 35, Range 6 East, W.M. described as follows: Beginning at the Northeast corner of said subdivision; thence South 100 feet, thence West 350; thence North 100 feet; thence East 350 feet to the point of beginning.

Situate in the County of Skagit, State of Washington.

P42153

The North 230 feet of the West ½ of the Southwest ¼ of the East ½ all in the South ½ of the Northeast ¼ of the Northwest ¼ of Section 33, Township 35, Range 6 East, W.M. Survey. Note: This parcel is included in the legal description of P103894 outlined above and is separate for property tax assessment purposes. P103894 is an open space parcel and P42153 is separated since it is a residential tax assessment parcel.

P42155

Mobile Home only 2912 Rex 72 60x12 located on P103382.

P42156

Mobile Home only B1123B Buddy 69 60x12 located on P127637.



201109280084

Skagit County Auditor