

COUNTY CLERKS OFFICE  
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JUN 13 2016

JOAN P. WHITE  
SAN JUAN COUNTY, WASHINGTON

SUPERIOR COURT OF WASHINGTON, COUNTY OF SAN JUAN

CLARE LINN WELKER and ABIGAIL  
METZGER WELKER, Trustees of the Big  
Sky Trust UDT 11-14-2002,  
Plaintiffs,

v.

MOUNT DALLAS ASSOCIATION, a  
Washington non-profit corporation; et al.,  
Defendants.

NO. 15-2-05069-0

**DECLARATION OF MARY L.  
STONE RE: PRESENTATION  
OF ORDER**

I, Mary L. Stone, declare as follows:

1. I am co-counsel for Mount Dallas Association and make this declaration from my own personal knowledge.

2. I have filed herewith a proposed **Order Granting Plaintiffs' Motion for Order Cancelling Road Maintenance Agreement** in the form that I believe the court should enter.

Mr. Brain and I have exchanged drafts of this Order and it is clear that we do not agree on a few important points that the Court will have to resolve.

**A. Paragraph 1.** I believe that the first sentence should end with the word "TERMINATED." Mr. Brain has added "and shall be deemed legally null and void." We oppose the addition of those words because they imply that the RMA itself will no longer be enforceable. However, the RMA was not determined to be null and void; we

1 have simply agreed that the RMA document will be “unrecorded”. Mr. Brain has  
2 espoused throughout this litigation that an RMA need not be recorded to be enforceable.  
3 We agree. The existing RMA has been signed by a substantial majority of Mt. Dallas  
4 property owners, and Defendants expect it to remain enforceable until a new RMA  
5 supersedes it. Mr. Brain’s addition to the proposed Order of language goes beyond the  
6 Court’s ruling and undermines Defendants’ expectation that the existing RMA will  
7 remain enforceable, although “unrecorded.”  
8

9  
10 **B. Paragraph 2.** We have cleaned up the middle section of this paragraph so  
11 that it parses properly and is more understandable, but we have not changed the meaning  
12 of what Mr. Brain wrote. We expect that Mr. Brain will agree with the revised language.

13 **C. Paragraph 3.** Mr. Brain added a Paragraph 3 which states that any party may  
14 record a copy of this Order with the San Juan County Auditor. I have deleted this  
15 Paragraph in its entirety. We would prefer not to record a document that would appear  
16 on title reports for all 84 parcels in perpetuity. As an alternative, I proposed to Mr. Brain  
17 that we record a **Declaration of Revocation of Recording of the Road Maintenance**  
18 **Agreement**, which I prepared. This proposed Declaration of Revocation was sent to Mr.  
19 Brain on May 25, 2016, and is filed herewith. Mr. Brain opposes this Declaration of  
20 Revocation. However, if we record this Declaration of Revocation, then neither the  
21 original RMA, the recording of which is being revoked, nor the Order Cancelling the  
22 RMA, will appear on the title report for any parcel in the future. *See Declaration of*  
23 *Dean Prather, June 1, 2016, filed herewith at paragraph 6.* This outcome is preferable to  
24 having the Order Cancelling the RMA appear on title reports for all 84 parcels, in  
25  
26  
27  
28

1 perpetuity.

2 3. Additionally, I have filed herewith a proposed **Order Regarding Revised Road**  
3 **Maintenance Agreement and Joinder**, which we ask the Court to sign, finding that the Revised  
4 RMA (attached hereto as Exhibit "A") and Revised Joinder (attached hereto as Exhibit "B") do  
5 not cloud title to parcels owned by parcel owners who do not sign the Revised RMA or Revised  
6 Joinder, thereby allowing the Revised RMA and Revised Joinder to be recorded, should the  
7 Defendants so choose.  
8

9  
10 On April 15, 2016, the Court ruled that after some discussion, Plaintiffs agreed to  
11 withdraw their request for attorney fees and costs in connection with their Motion, and  
12 Defendants agreed to include in their Order Granting the Motion to Cancel the RMA language  
13 by which Defendants would be prohibited from recording another RMA unless approved in  
14 advance by Plaintiffs or by the Court. Defendants proceeded to revise the RMA to remove all the  
15 language addressed by Mr. Brain at the hearing that he believed clouded title to all properties  
16 along Mt. Dallas Road, regardless of whether the property owner signed the RMA or a Joinder.

17  
18 In particular:

- 19
- 20 • Mr. Brain felt that the legal description of the road attached to the original RMA  
21 as Exhibit A-1 clouded the titles of all properties traversed by the road because  
22 the legal description included at least a portion of each property traversed by the  
23 road. *The Revised RMA no longer contains the legal description of the road.*
  - 24 • Mr. Brain felt that the map of the road attached to the original RMA as Exhibit A  
25 clouded all titles because it showed all parcels accessed via the road, all parcels  
26 traversed by the road, and all tax parcel numbers of such parcels. *The Revised*  
27 *RMA does not contain a map of the road.*  
28

1  
2 • Mr. Brain pointed out that the original RMA defined “Property Owner” as the  
3 “owner of a Parcel, whether or not such owner is a Consenting Property Owner,”  
4 and he pointed to sections within the RMA that purportedly gave the Association  
5 rights over Property Owners, such as at Section 12. Assessments, Section 15,  
6 Liens, and Section 16, Enforcement. *The Revised RMA removes the definition*  
7 *of “Property Owner,” and removes all references to that term, instead defining*  
8 *and using the terms “Bound Parcel,” and “Bound Property Owner.”*  
9  
10 *Importantly, the Revised RMA burdens only Bound Parcels and Bound*  
11 *Property Owners, and delegates to the Association maintenance rights only for*  
12 *those portions of the road covered by access easements benefiting Bound*  
13 *Parcels.*

14  
15 • Mr. Brain was concerned because the RMA mentioned “Side Roads”. *Although*  
16 *the original RMA simply listed the names of the Side Roads, making no*  
17 *provision for their maintenance, the listing of the names of the Side Roads has*  
18 *been removed from the Revised RMA.*

19  
20 After finalizing the Revised RMA, we sent it and the Revised Joinder to Mr. Brain,  
21 seeking his approval, as required by the Court. His response was to tell us he was having the  
22 documents evaluated by an expert. On May 27, 2016, I received the Declaration of George N.  
23 Peters, Jr. Because Mr. Peters’ declaration was completely out of line with what I have come to  
24 expect from a title company, I asked Dean M. Prather of Chicago Title to read Mr. Peters’  
25 declaration and to comment on it. Mr. Prather so thoroughly disagreed with Mr. Peters’ opinion  
26 that he offered to write a declaration on our behalf, which is filed herewith.  
27  
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1 Mr. Peters asserts that title companies, when issuing a preliminary commitment and a  
2 final policy, will except from title "off record" matters that can be ascertained only by inspection  
3 or survey of that land or inquiry of parties in possession, or that are otherwise disclosed to or  
4 known by the company. *Declaration of George N. Peters, Jr. page 3, lines 24-26.* Presumably  
5 this would include the RMA recorded by the Mt. Dallas Association. Mr. Prather says that Mr.  
6 Peters' claim that "off-record" matters are shown on title commitments is inaccurate, and that  
7 off-record matters are shown as exceptions only on extended-coverage policies, which are rarely  
8 provided for owners' coverage. *Declaration of Dean M. Prather, page 2, lines 1-10.* Mr. Peters  
9 goes on to say that where there is no recorded road maintenance agreement, a title company  
10 should include an exception on Schedule B for such likely maintenance obligation liabilities.  
11 *Peters, page 4, lines 21-25.* Mr. Prather disagrees, saying that a title company will not raise  
12 these off-record matters unless the policy to be issued is an extended-coverage policy. He states  
13 that five commitments have been written this year for properties on Mount Dallas Road, and in  
14 none of those did Chicago Title raise an exception for possible road maintenance costs. *Prather,*  
15 *page 2, lines 11-21.*

19 Mr. Peters also states that after he reviewed the recorded RMA, it was his opinion that the  
20 recorded RMA should be shown on Schedule B as an exception from coverage on any  
21 commitment or policy issued with respect to any of the 84 properties accessed by the Mt. Dallas  
22 Road, whether or not the property owner had executed or was a party to the RMA. *Peters, page*  
23 *5, lines 1-5.* Mr. Prather disagrees completely with that entire paragraph. Mr. Prather states that  
24 he is aware of the RMA, he has read it in its entirety, multiple times, and that the RMA clearly  
25 requires a properly executed Joinder in order to bind any party. Specifically, he states "To show  
26 the RMA as an exception to title when there is no Joinder would be misrepresentative. The  
27  
28

1 RMA plainly states that a Joinder is *required* in order for the RMA to be binding. The Court  
2 should understand that special exceptions become those items that are *warranted by the seller*  
3 when they execute a Statutory Warranty Deed to complete the transfer of title. In other words,  
4 when we include the exceptions on the deed, the seller is warranting that all the items listed  
5 thereon burden the property being conveyed. If the seller did not execute the joinder, the  
6 property is not burdened by the RMA, and therefore a warranting of such would be improper,  
7 nonsensical, and counter to the seller's intentions if in fact the seller never executed on the  
8 joinder." *Prather, page 2, lines 22-27 and page 3, lines 1-19.*

11 Mr. Peters also states that he believes that if the Revised RMA is recorded, it should also  
12 show up on Schedule B as an exception for all 84 properties accessed by the road, whether or not  
13 the property owner has executed the Revised RMA or a Joinder, because, among other things,  
14 the proposed RMA references the road and each Joinder would reference the recorded shared  
15 legal easement for access over the road or a segment of the road. *Peters, page 5, lines 6-15.* Mr.  
16 Prather disagrees and states that the instruments that created the initial access easement are of  
17 record and they are shown as exceptions; because they are referenced in the RMA does not mean  
18 that they raise them again. *Prather, page 3, lines 21-25.*

21 Mr. Peters also asserts that a title company would likely continue to show the recorded  
22 RMA even if there is a recital in the Revised RMA that states that it supersedes the original  
23 RMA, or if there is a Revocation of the RMA, unless it has been signed by all affected property  
24 owners. *Peters, page 5, lines 20-26.* Presumably Mr. Peters means that all 84 parcel owners  
25 would have to sign the new RMA stating it supersedes the original RMA, or they would have to  
26 sign the Revocation, before the original RMA should be removed as an exception to title. Mr.  
27 Prather disagrees – he would not continue to show superseded or terminated items if properly  
28

1 superseded or terminated. In the case of the RMA, he would require only that the parties who  
2 signed the recorded RMA and any parties who signed Joinders to it sign any termination or  
3 revocation. *Prather, page 3, lines 25-27 and page 4, lines 1-9.*

4  
5 Mr. Peters also asserts that because the recorded RMA included the legal descriptions of  
6 each of the road easements, once the Court enters an Order Cancelling the Recorded RMA, that  
7 Order and the related litigation should also be included as exceptions from coverage on Schedule  
8 B, whether or not the Order is recorded. *Peters, page 6, lines 1-9.* Mr. Prather disagrees, saying  
9 that if a court order cancels a recorded RMA or any other instrument, the instrument should no  
10 longer be shown as an exception to title. He goes on to state that Chicago Title typically only  
11 shows pending litigation when there is a Lis Pendens in force and effect, which there is not in  
12 this case. However, while Mr. Prather was writing his declaration, one of the Plaintiffs, Clare  
13 Welker, deliberately sent Chicago Title a copy of George Peters' declaration, thereby giving  
14 Chicago Title actual notice of the case. *As a result of Mr. Welker's actions, Chicago Title will*  
15 *now begin to show the pending litigation on commitments for all 84 Mount Dallas parcels.*  
16  
17  
18 *Prather, page 4, lines 10-23.*

19 Lastly, Mr. Peters asserts that if the Defendants record the revised RMA, it will show as  
20 an exception in Schedule B, along with the previously recorded RMA, together with any  
21 purported revocation document, and court orders and the pending litigation. *Peters, page 6, lines*  
22 *10-14.* Mr. Prather disagrees, stating that recording a document does not necessarily make it  
23 binding upon all properties it mentions. Chicago Title will not show the currently recorded  
24 RMA on title for a parcel unless there is a properly executed joinder binding the parcel to the  
25 RMA. Similarly, Chicago Title will not show the revised RMA on title unless there is a properly  
26 executed joinder. Finally, if there is a properly recorded Revocation, Chicago Title will not  
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# Road Maintenance Agreement for Mount Dallas Road

This Road Maintenance Agreement ("Agreement"), effective as of the \_\_\_\_ day of \_\_\_\_\_, 2016, is made by and among Mount Dallas Association, a Washington State non-profit corporation ("the Association"), and those owners of parcels of real property accessed via Mount Dallas Road who have executed and delivered to the Association a "Joinder" to this Agreement.

This Road Maintenance Agreement supersedes all of the Association's previous Road Maintenance Agreements for Mount Dallas Road.

## DEFINITIONS

1. "Parcel," as used herein, is a parcel of real property accessed via Mount Dallas Road.
2. "Bound Parcel," as used herein, is a Parcel, any part of which is bound by this Agreement, according to Section 3 and Section 4.
3. "Bound Property Owner," as used herein, is the owner of a Bound Parcel.
4. "Parcel In Good Standing," as used herein, is a Bound Parcel for which all fees assessed by the Association, per Section 11, to the latest owner of record, for years 2015 and later, together with any interest, collection costs and attorneys' fees due per Section 15, have been paid in full.
5. "Main Road," as used herein, is the currently chip-sealed portion of the private roadway known as Mount Dallas Road, on San Juan Island in San Juan County, Washington, said chip-sealed portion commencing at the County Road (West Side Road), and having a length of approximately 10,860 feet.
6. "Furthest Access Point," as used herein, is defined as follows: For a Parcel adjacent to the Main Road and having one or more driveways, "Furthest Access Point" is the point on the Main Road most distant from West Side Road that is actually traversed in accessing any part of any of the Parcel's driveways. For a Parcel adjacent to the Main Road and not having a driveway, "Furthest Access Point" is the point on the Main Road most distant from West Side Road that is adjacent to any point of the Parcel. For a Parcel not adjacent to the Main Road,

"Furthest Access Point" is the point on the Main Road most distant from West Side Road that is actually traversed in accessing any part of the Parcel.

7. "Maintained Road," as used herein, is the aggregate of every portion of the Main Road that is actually traversed in accessing every Bound Parcel via its Furthest Access Point, starting from West Side Road.

## **AGREEMENT**

In consideration of the mutual covenants contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

**1. Mount Dallas Association.** The Association is a duly licensed and organized Washington State nonprofit corporation (est. 1989), the Board of which consists of certain Bound Property Owners. The election of the Association's Board and the Association's administration and operation are as set forth in the Association's "Articles of Incorporation," "Bylaws," and "Policy and Procedures Manual." Every Bound Property Owner who owns at least one Parcel In Good Standing shall have the right to be a member of the Association as set forth therein.

**2. Delegation of Maintenance Authority to the Association.** Each Bound Property Owner hereby delegates to the Association the right and the responsibility to maintain, repair and improve the Main Road for the benefit of such owner's Bound Parcel(s), commencing at the County Road (West Side Road), and continuing to the Furthest Access Point(s) of such Bound Parcel(s), and to assess, collect, and manage fees for such maintenance and improvements, as specified herein.

**3. Joinders.** The owner of one or more Parcel(s) may bind selected Parcel(s) to this Agreement by executing a "Joinder in Road Maintenance Agreement for Mount Dallas Road," with the legal description(s) of the selected Parcel(s) attached thereto, and delivering said Joinder to the Association for recording. Such an owner is referred to herein as a "Bound Property Owner."

**4. Effect of Joinders.** Upon delivery of a properly executed Joinder, per Section 3, the owner of such selected Parcel(s) shall become bound, and such selected Parcel(s) shall from then forward and forever be held, sold, and conveyed subject to the mutual covenants contained herein ("Bound Parcel(s)," hereunder), which shall run with the land and be binding upon all parties having or acquiring any right, title or interest in such Bound Parcel(s), or any part thereof, with this Agreement inuring to the benefit of all such Bound Parcels.

**5. Voting.** Only owners of Parcels In Good Standing may vote on Association matters requiring member-approval. Each Parcel In Good Standing shall carry a single vote, regardless of the number of part-owners thereof. Such part-owners must agree among themselves on how to vote.

**6. Responsible and Economical Maintenance.** The Association agrees that, to the extent of its financial ability, it shall maintain repair, and improve the Maintained Road as set forth herein, and that it shall carry out such maintenance, repairs, and improvements in a responsible and economical manner.

**7. Road Standards.** The Association agrees that, to the extent of its financial ability, it shall use its best efforts to maintain the Maintained Road in safe and passable driving conditions year-round.

**8. Routine General Maintenance.** To the extent of its financial ability, the Association shall budget for, reserve for, and timely conduct routine general maintenance of the Maintained Road, including, without limitation, repair of ordinary wear-and-tear, repair of normal erosion damage, erosion control, weed whacking, brush clearing, removal of trees and branches, and cleaning of ditches and culverts.

**9. Major Road Work.** To the extent of its financial ability, the Association shall budget for, reserve for, and timely conduct major road work on the Maintained Road, including, without limitation, major ditch work, preparation for resurfacing, and application of resurfacing.

**10. Other Improvements.** Improvements of the Maintained Road other than routine general maintenance described in Section 8, major road work described in Section 9, and repairs covered by special fees described in Sections 11(F), 11(G), and 11(H), for example, widening a portion of the Maintained Road, shall require the affirmative votes of owners of at least sixty-seven percent (67%) of all Parcels In Good Standing that benefit from access easements across any portion of said improvements. All such improvements of the Maintained Road must also be approved by the Association Board and shall be managed by the Association Board.

**11. Assessments.** Each Bound Property Owner shall pay to the Association certain assessments, as follows:

A. An annual insurance fee to pay for liability insurance. This fee shall be assessed only to Bound Property Owners covered by said liability insurance, and shall be the same for each Bound Parcel.

B. An annual administrative fee to pay for those of the Association's costs that benefit all Bound Property Owners equally, including, without limitation: licensing, legal, accounting, surveying and other professional fees, and printing, postage, website hosting, and other administrative expenses. This fee shall be the same for each Bound Parcel.

C. An annual fire-prevention fee to pay for those of the Association's costs intended to help prevent neighborhood fires, including, without limitation: weed whacking, brush clearing, and removal of trees and branches. This fee shall be the same for each Bound Parcel.

D. An annual fee for a reserve fund to pay for routine general maintenance and major road work as described in Sections 8 and 9. This fee, assessed only for Bound Parcels, shall be prorated, based on the area of the Main Road actually traversed in accessing each Parcel via the Parcel's Furthest Access Point, starting from West Side Road, and whether the Parcel is developed or undeveloped. A developed Parcel is defined as one (a) that has a habitable space (such as a house, habitable trailer or mobile home) connected to a septic system; or (b) for which a building permit has been issued and construction has commenced. Exhibit A (attached and incorporated herein by this reference) sets forth the mathematical method for such proration.

E. A special fee for other improvements of the Maintained Road, per Section 10. This fee, assessed only for Bound Parcels benefited by the improvements, shall be prorated, based on the area of the improvements actually traversed in accessing each Parcel benefited by the improvements via the Parcel's Furthest Access Point, starting from West Side Road, and whether the benefited Parcel is developed or undeveloped. Exhibit B (attached and incorporated herein by this reference) sets forth the mathematical method for such proration.

F. A special fee for the repair of major, abnormal damage to the Maintained Road. This fee, assessed only for Bound Parcels benefited by the repairs, shall be prorated, based on the area of the repairs actually traversed in accessing each Parcel benefited by the repairs via the Parcel's Furthest Access Point, starting from West Side Road, and whether the benefited Parcel is developed or undeveloped. Exhibit B (attached and incorporated herein by this reference) sets forth the mathematical method for such proration.

G. A project fee in an amount determined by the Association Board to be appropriate for the repair of damage and/or wear-and-tear of the Maintained Road reasonably expected to be caused by construction projects, landscaping projects, or logging operations active on any Bound Parcel, such fee to be assessed on a per-project basis to the owner of such Bound Parcel.

H. A fee for abnormal use of the Main Road. Normal use of the Main Road is deemed to be residential ingress and egress using ordinary passenger vehicles. If any Bound Property Owner uses the Main Road in such a way or with such equipment so as to cause abnormal damage to the Maintained Road, or so as to cause higher-than-normal maintenance costs for the Maintained Road, or if any Bound Property Owner is otherwise responsible for causing abnormal damage to the Maintained Road, then such Bound Property Owner shall be responsible for paying the full costs for any corresponding repair or maintenance.

**12. Equitable Contributions.** In addition to assessing Bound Property Owners, the Association shall seek equitable contributions, to the extent permitted by law, from owners of Parcels that are not Bound Parcels.

**13. Annual Meeting.** The Association shall conduct an annual meeting open to all Bound Property Owners, and shall give Bound Property Owners thirty (30) days' notice for the meeting.

**14. Bank Accounts and Financial Reporting.** The Association shall establish and maintain bank accounts, as appropriate, and shall annually prepare and distribute to all Bound Property Owners an income-and-expense report and a year-end balance sheet, accounting for all funds received and disbursed during the year.

**15. Liens.** Each Bound Property Owner and each subsequent owner of any Bound Parcel within the 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, by signing this Agreement does covenant and agree to pay to the Association the amount assessed per this agreement (the "Assessment"), within sixty (60) days of the date of the corresponding invoice. Each such owner also agrees that such Assessment, if unpaid within said sixty (60) days, shall accrue interest at a rate of 12% per annum, or the maximum rate allowed by law, and together with attorneys' fees and any other cost of collection, shall constitute a charge upon the land and a continuing lien against each of the Bound Parcels owned by such owner, which lien shall continue until the Assessment, interest amounts, attorney fee amounts, and other collection fees are paid in full. Partial payments shall be applied first to such costs and fees, second to accrued interest, and then to the outstanding principal balance.

**16. Enforcement.** The Association may bring a civil action for payment of any unpaid Assessment(s) against the Bound Property Owner(s) obligated to pay such Assessment(s). The lien may be judicially enforced by the Association or its authorized representatives in the manner set forth in the Revised Code of Washington Chapter 61.12 or non-judicially in the manner set forth in the Revised

Code of Washington Chapter 61.24. In the event that the Association is the prevailing party, the Association shall be entitled to interest on the Assessment(s), at a rate of 12% per annum, or the maximum rate allowed by law, together with attorneys' fees and expenses and costs of the action. In addition, the Association may pursue any other legal or equitable remedies available to it for Assessment collection and/or violations of its rules and regulations.

**17. Subordination.** The Association's lien shall be subordinate to the lien of any encumbrance recorded prior to this Agreement, to the lien of any first mortgage, and to the lien for any governmental assessment or real property taxes. Upon request by the owner or mortgagee of a Bound Parcel, the Association shall issue such certificates as are necessary to indicate the status of the Assessments for the Bound Parcel. Sale or transfer of a Bound Parcel shall not discharge the lien of the Association against the owner personally for any Assessment.

**18. Insurance.** The Association shall maintain liability insurance coverage in an amount not less than one-million dollars (\$1,000,000).

**19. Liability and Indemnification.** The Association makes no warranties regarding the condition of Mount Dallas Road, and Bound Property Owners, and their guests and invitees, elect to utilize Mount Dallas Road for access at their sole risk. Each Bound Property Owner and their successors or assigns (the "Indemnifying Owner") agrees to indemnify and hold the Association and other Bound Property Owners and their successors or assigns (the "Indemnified Parties") 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 Indemnified Parties, their agents, contractors, invitees or employees or caused by any condition or defects now or hereafter existing or occurring in Mount Dallas Road.

**20. Disputes/Arbitration.** If at any time any dispute, difference or disagreement shall arise out of or in relation to this Agreement, the meaning and construction hereof, or with respect to any decision on which parties to this agreement 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 the Superior Court of San Juan County. Such arbitration shall be binding on said parties, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Said parties shall share equally in the cost of the arbitration. The arbitrator may award the substantially prevailing party its costs and reasonable attorneys' fees. This arbitration provision shall not apply to any action by the Association to lien or enforce its lien rights against any Bound Property Owner. In addition, the provisions of this section shall

not impair the pursuit of other available remedies at law or equity for disputes and claims by any persons or entities who are not parties to said binding arbitration.

**21. Severability.** Invalidation of any one provision of this Agreement by competent authority shall in no way affect any other provision, which shall remain in full force and effect.

**22. Amendment.** This Agreement may be amended by a written instrument in recordable form signed by the Association and by owners of at least sixty-seven percent (67%) of all Bound Parcels. Any amendments to this document must be recorded.

**23. Continuation of Existing Easements.** Nothing herein is intended to amend or supersede any provisions of any easement of record benefiting any Bound Parcel.

**24. Non Waiver.** The failure of any party to insist upon strict performance of any of the terms, covenants, or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any such terms, covenants or conditions.

**25. Counterparts.** This document may be executed in counterparts, all of which shall be construed to constitute one and the same document.

**26. Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of Washington and venue for any action shall be the state courts of San Juan County.

**27. Duration and Effect.** This Agreement shall be binding upon the Bound Parcels, and upon the Bound Property Owners, their heirs, successors, and/or assigns, and shall be perpetual and run with the land.

## EXHIBIT A

### Mathematical Method per Section 11(D) for Proration of the Annual Fee for a Reserve Fund

The amount assessed for each Bound Parcel shall be calculated as follows:

1. For each Parcel, calculate a Parcel Numerator as follows: If the Parcel is developed, then the Parcel Numerator shall be equal to the total area of the portion of the Main Road actually traversed in accessing the Parcel via the Parcel's Furthest Access Point, starting from West Side Road. If the Parcel is undeveloped, then the Parcel Numerator shall be equal to twenty-five percent (25%) of the total area of the portion of the Main Road actually traversed in accessing the Parcel via the Parcel's Furthest Access Point, starting from West Side Road.
2. The amount assessed for a given Bound Parcel shall be equal to the total annual fee times the fraction  $X/Y$ , where  $X$  is the Parcel Numerator for said Bound Parcel, and  $Y$  is the sum of the Parcel Numerators for all Parcels.



## EXHIBIT B

### Mathematical Method per Section 11(E) for Proration of the Special Fee for Other Improvements

and

### Mathematical Method per Section 11(F) for Proration of the Special Fee for Repair of Major, Abnormal Damage

The amount assessed for each Bound Parcel benefited by the improvements (11E) or repairs (11F) shall be calculated as follows:

1. For each Parcel benefited by the improvements (11E) or repairs (11F), calculate a Parcel Numerator as follows: If said benefited Parcel is developed, then the Parcel Numerator shall be equal to the total area of the improvements actually traversed (11E) or repairs actually traversed (11F) in accessing the Parcel via the Parcel's Furthest Access Point, starting from West Side Road. If said benefited Parcel is undeveloped, then the Parcel Numerator shall be equal to twenty-five percent (25%) of the total area of the improvements actually traversed (11E) or repairs actually traversed (11F) in accessing the Parcel via the Parcel's Furthest Access Point, starting from West Side Road.
2. The amount assessed for a given Bound Parcel benefited by the improvements (11E) or repairs (11F) shall be equal to the total projected cost of the improvements (11E) or repairs (11F) times the fraction  $X/Y$ , where  $X$  is the Parcel Numerator for such Bound Parcel, and  $Y$  is the sum of the Parcel Numerators for all benefited Parcels.

IN WITNESS WHEREOF, the parties hereto have set their hands, intending to be legally bound, as of the date first above written.

MOUNT DALLAS ASSOCIATION

\_\_\_\_\_  
by: Susan D. Allen, President

\_\_\_\_\_  
by: Robert C. Tauscher, Secretary

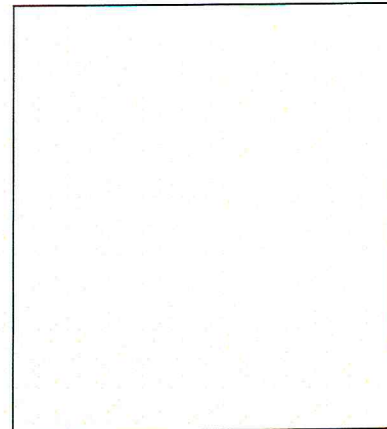
STATE OF WASHINGTON    )  
  ) ss.  
COUNTY OF SAN JUAN    )

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Susan D. Allen and Robert C. Tauscher, to me known to be the President and Secretary of Mount Dallas Association, 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 they were authorized to execute the said instrument for said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

AFTER RECORDING MAIL TO:  
Mount Dallas Association  
P O Box 2481  
Friday Harbor, WA 98250  
OR EMAIL TO:  
MountDallasAssociation@gmail.com



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**RECORDING COVERSHEET**

Name of Document:

**“JOINDER IN ROAD MAINTENANCE AGREEMENT FOR MOUNT DALLAS ROAD”**

Parties Affected: \_\_\_\_\_ (“Grantor”)

**MOUNT DALLAS ASSOCIATION (“Grantee”)**

Abbreviated Legal Description of Grantor's Parcel(s):

Portion of \_\_\_\_\_,  
Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_ West of W.M.

(Full Legal Description(s) at Exhibit A, attached hereto)

Tax Parcel Number(s) of Grantor’s Parcel(s): \_\_\_\_\_

Documents of Record Affected: \_\_\_\_\_

**EXHIBIT B**



STATE OF WASHINGTON            )  
  ) ss.  
County of San Juan                )

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_  
to me known to be the individual(s) described in and who executed the foregoing instrument, and acknowledged to me that he/she signed and sealed the said instrument as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal hereto affixed the day and year in this certificate above written.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

# EXHIBIT A

# EXHIBIT B