

Return to
Jim Wood
315 37th Ave SW#8
Puyallup WA 98973

AWD 100

1-19-04
2-19-14

REVIEWED BY
KITITAS COUNTY TREASURER
DEPUTY [Signature]
DATE 5-26-04

ROAD MAINTENANCE AGREEMENT

THIS ROAD MAINTENANCE AGREEMENT ("Agreement") is made as of this 5th day of August, 2003, by and among Cle Elum's Sapphire Skies, LLC, a Washington limited liability company ("CESS"), and Land Lloyd Development ("LLD").

RECITALS

A. The parties desire to set forth a method for the maintenance of certain roads used by the owners of certain property located in Kittitas County, Washington, which are described on attached Exhibit "A" and Exhibit "B" (the "Properties").

B. The Properties are also depicted on the map attached as Exhibit "A - CESS Lots" and Exhibit "B - Lloyd Lots" and are separately referred to. Each lot comprising the Properties and each additional lot created from a segregation, short plat or subdivision of the existing lots (the "Lots" or separately a "Lot") will be assigned certain maintenance shares for certain roads pursuant to this Agreement. Lots created from CESS Lots shall also be CESS Lots; Lots created from Lloyd Lots shall also be Lloyd Lots for purposes of this Agreement and the allocation of costs.

C. The roads are depicted on the map attached hereto as Exhibit "A" and Exhibit "B" and shall be referred to as "Roads."

D. The parties are willing to maintain the Roads on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and commitments set forth herein, the parties agree as follows:

1. Easements. This Agreement shall not govern the easements held by the parties and their successors over the Roads; provided, however, that no party or successor shall be obligated for maintenance over a road on which such party or successor has no easement rights. Furthermore, this Agreement shall not govern or restrict the ability of any Lot owner in granting road easements over such owner's property subject to this Agreement.

2. Maintenance. The cost of road maintenance, snowplowing and resurfacing shall be allocated as follows:

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One equal maintenance share for each CESS Lot, and one equal maintenance share for each LLD Lot.

3.

The parties hereto shall meet and establish necessary maintenance provisions. Such provisions shall include, but shall not be limited to:

- (a) The appointment of CESS as temporary maintainer, who will perform or cause to be performed, at a reasonable and agreed upon rate, the maintenance and resurfacing of the road or the portion thereof being used, and snowplowing. At CESS's sole discretion, CESS will relinquish the position of maintainer and the Home Owner's Association established for the CESS lots shall become the maintainer. CESS shall have no further involvement or responsibility for the road upon the establishment of the Home Owner's Association.
- (b) The Roads shall be snowplowed, at a minimum, 16 feet wide. Upon 6 inches of snowfall, the Roads shall be snowplowed. It is the intent of these standards to maintain the Roads passable by four-wheel drive vehicles. It shall be the responsibility of Lot owners to plow their own driveways; and
- (c) If the roads through and adjacent to the LLD lots are not hard-surfaced, they shall be oiled annually within 60 days of the road being free of snow and ice, generally in the spring time, or additionally by majority vote to control dust.
- (d) A method of payment by which each lot served by the easement and road or a portion thereof shall pay its share of the cost incurred by said maintainer in maintaining or resurfacing said road or portion thereof. Lloyd Lots shall commence payment of dues when: 1) construction begins on said lot(s) or 2) said lot(s) are sold or transferred to any other entity.
- (e) If the road is used to access any additional Lloyd not shown on Exhibits A & B, dues shall commence beginning at the time of use, as defined as any vehicular traffic on the road at any time, and shall continue in perpetuity.

For the purposes of this easement, maintenance is defined as the work normally necessary to preserve and keep the roadway, road structure and road facilities as nearly as possible in their present condition or as hereafter improved.

3. Maintenance Fund and Assessment. Creation of the Lien and Personal Obligation of Assessments: The Owner of each lot that is subject to this agreement, hereby covenants, and each Owner of any Lot by acceptance of a deed or contract therefore, whether or not it shall be so expressed in such deed or contract, is deemed to covenant and agree to pay to a Road Maintenance fund the following Assessments, which shall be established and collected by the maintainer herein, as needed and in a manner prescribed by the following:

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Regular Assessments;



Extraordinary Assessments; and

(a) All Assessments, together with interest, costs, and actual attorneys' fees, shall be a charge and a continuing lien upon the Lot against which each Assessment is made. However, such lien shall be subordinate to the lien of any first mortgage or construction loan. Such liens may be enforced or foreclosed according to law, with attorney's fees and costs to be charged against the party being foreclosed. Each such assessment together with interest, costs and actual attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. No Owner of a Lot may exempt himself or herself from liability for his or her contribution toward the Common Expenses by waiver of the use or enjoyment of the Easements or by the abandonment of his or her Lot.

(b) Purpose of Assessments: The Assessments levied by the Maintainer shall be used exclusively for the maintenance and repair of the Easements. The Maintainer may elect to have Regular Assessments designed to establish an adequate reserve fund for maintenance and repair of the Easements.

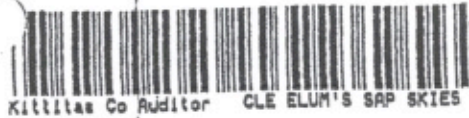
(c) Optional Regular Assessments: If the Maintainer so elects, it may establish Regular Assessments, initially in the amount of \$30 per month. If it chooses to do so, the Maintainer shall determine and fix the amount of the maximum annual Regular Assessment against each Lot at least sixty (60) days in advance of the start of each fiscal year; provided, however, that the maximum annual Regular Assessment may not be increased by more than ten percent (10%) above the maximum Regular Assessment for the immediately preceding fiscal year, without the vote or written consent of two-thirds (2/3) of the Lot Owners.

(d) Extraordinary Assessments: In addition to the Regular Assessments authorized above, the Maintainer may levy, in any fiscal year, an Extraordinary Assessment applicable to that year only for the purpose of covering the actual cost of any construction, reconstruction, repair or replacement of any Easements, or to defray any unanticipated or underestimated expense not covered by the Regular Assessment.

(e) Date of Commencement of Assessments; Due Dates: The Regular Assessments provided for herein shall commence as to all Lots in the Property on the first day of the month following the execution of this agreement. Due dates of Assessments shall be the first day of every calendar month. No notice of such Assessment shall be required other than an annual notice setting forth the amount of the monthly Assessment.

4. Road Damage. Each party using any portion of said road shall repair or cause to be repaired at its sole cost and expense that damage to said road occasioned by it that is in excess of that which it would cause through normal and prudent usage of said road. Should inordinate damage to said road occur which is not caused by an authorized user of said road, the parties hereto shall meet to agree on the cost of replacement, and the shares of replacement cost to be borne by each user of said road.

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5. Construction and Improvement. Unless a majority of the Lot owners responsible for maintaining a particular Road (under Section 2 above) approve in advance any road improvements (other than the routine maintenance provided for in Section 2 above), the costs of said improvements shall be solely for the account of the improver. When a majority of responsible Lot owners approve said improvements, however, the cost of said improvements shall be shared by all responsible Lot owners in accordance with Section 2, above, and said costs shall constitute a lien on the property of each responsible Lot owner until paid. All work performed or caused to be performed to install or maintain utilities shall be completed in a careful and workmanlike manner to CESS'S reasonable satisfaction, free and clear of all claims or liens and in accordance with applicable law. All areas disturbed by the improver in installing or maintaining utilities shall be promptly restored to their prior condition.

6. Default; Remedies. In the event of a breach of this Agreement by any party, the damages suffered by the other parties are difficult if not impossible to ascertain, and therefore the non-breaching parties shall have the right to obtain specific performance of the obligations of the breaching party in addition to damages for all loss and expense (including, without limitation, attorneys' fees and costs) arising from such breach.

7. Notices. All notices or other communications shall be in writing and shall be sent by personal delivery, telephone facsimile transmission, first-class mail, postage prepaid, or express courier or delivery service, addressed as follows:

If to CESS, to:

James E. Wood
Cle Elum's Sapphire Skies, LLC
315 39th Avenue SW #8
Puyallup, WA 98373

with a copy to:

Michael J. Murphy
Groff Murphy Trachtenberg
& Everard PLLC
300 E. Pine
Seattle, WA 98122
with a copy to:

If to Lloyd, to:

Bob Lloyd
Address
City, State, Zip

8. Home Owner's Association. CESS has formed a Home Owner's Association ("HOA") with the power to enforce it's Road Maintenance Agreement by written approval of fifty percent plus 1 of the Members. By written approval of fifty percent plus one of the Members, the LLD lots may be admitted as Members and the LLD lots shall be governed by the provisions in the Home Owners Association. Any such HOA shall replace Maintainer at Maintainer's sole discretion and shall have the enforcement rights set for in Paragraph 9 below, as well as the powers and responsibilities set forth in this agreement.

9. Enforcement. Any Owner, and any governmental or quasi-governmental agency or municipality having jurisdiction over the Property shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens, and

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charges now or hereafter imposed by this Declaration, and in such action shall be entitled to recover costs and reasonable attorneys' fees as are ordered by the Court. The Board may enforce any right any provisions contained herein relating to the maintenance and operation of the Easements. Failure by any such person or entity to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

10. Successors and Assigns. This Agreement shall be a covenant running with the land and shall benefit and burden the Property. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns. CESS, at its option, may record a copy of this Agreement, or a memorandum of same in the real property records of Kittitas County, Washington. *GM*

11. Severability. If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

12. Amendments; Waivers. This Agreement may be amended only by a written instrument signed by all parties. No breach of any agreement, warranty or representation shall be deemed waived unless expressly waived in writing and signed by the party who might assert such breach. No failure or delay by either party in exercising any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any right preclude any other or further exercise of such right or the exercise of any other right. The remedies provided in this Agreement are cumulative and not exclusive of remedies provided by law.

13. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

14. Entire Agreement. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, written or oral, between the parties, with respect to its subject matter.

15. Counterparts. This Agreement may be signed in several counterparts, each of which shall be an original, but all of which together shall constitute the same instrument.

16. Legal Fees. In the event of legal action or proceeding to enforce any of the provisions of this Agreement, costs and reasonable attorneys' fees (including reasonable charges allocated for internal counsel) shall be awarded to the prevailing party.

17. Termination. This Agreement shall terminate in part or in whole, as the case may be, with respect to any portion of the Roads, which become public roads.

18. Additional Conditions

- a) CESS and LLD shall share in the expense of installing a security gate at the entrance of the LLD lots. The security gate shall include the gate structure, stone or similar pillars; an electronic key pad and remote entry system, and a phone system to contact residents. Expense for the gate shall be allocated on a

per lot basis. The expense to LLD shall be for three lots less Two Thousand Dollars, which sum shall act as payment and consideration by LLD to permit CESS to install two 4'X8' sign, advertising the CESS properties in the general area of Cle Elum for sale. Signs shall be installed at the intersection of the Roads and Westside Road, in a location to be seen from traffic west and east bound on Westside Road. GATE SHALL BE INSTALLED BY NOV 13, 2014. COST SHALL NOT EXCEED \$22,500. LLD SHALL APPROVE

- b) If at any time LLD elects to allow additional lots access to the Road, or any further lots use the road, LLD shall make payment to CESS for the pro rata share of the gate installation for the additional lots. FINAL PLANS.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the year and date first written above.

Cle Elum's Sapphire Skies, LLC

By: The Herbrand Company, Managing Member

By: James E. Wood
James E. Wood, Vice President

By: Bob Lloyd
Bob Lloyd

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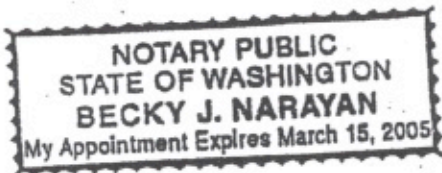


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STATE OF WASHINGTON)
COUNTY OF Pierce) ss.

On this day personally appeared before me the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, James E. Wood to me known or proved to me on the basis of satisfactory evidence to be the Vice President of THE HERBRAND COMPANY, a Washington corporation, to me known or proved to me on the basis of satisfactory evidence to be the Managing Member of CLE ELUM'S SAPPHIRE SKIES, LLC, the Washington limited liability company that executed the foregoing instrument, and acknowledged the same instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that James E. Wood is authorized to execute the said instrument.

Given under my hand and official seal this 18 day of ^{Nov}~~June~~ 2003.



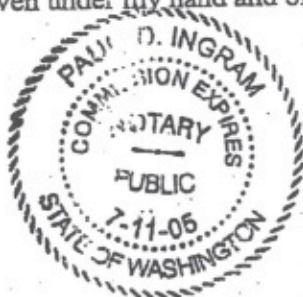
Becky J. Narayan
Print Name: Becky J. Narayan
NOTARY PUBLIC in and for the State of
Washington, residing at Puyallup
My Appointment Expires: 3-15-05

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STATE OF WASHINGTON)
COUNTY OF Kittitas) ss.

On this day personally appeared before me the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, Bob Lloyd to me known or proved to me on the basis of satisfactory evidence to be the President of Hubbard Road Development, a Washington Corp, that executed the foregoing instrument, and acknowledged the same instrument to be the free and voluntary act and deed of said Hubbard Road Development for the uses and purposes therein mentioned, and on oath stated that He is authorized to execute the said instrument.

Given under my hand and official seal this 14 day of Nov ~~June~~ 2003.



Paul D. Ingram
Print Name: PAUL INGRAM
NOTARY PUBLIC in and for the State of
Washington, residing at Chelan Wa
My Appointment Expires: 7-11-05

STATE OF WASHINGTON)
COUNTY OF _____) ss.

On this day personally appeared before me _____ and _____ to me known or proved to me on the basis of satisfactory evidence to be the individuals described in and who executed the within and foregoing instrument, and I acknowledge that _____ and _____ signed the same as a free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this _____ day of June 2003.

Print Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My Appointment Expires: _____

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Exhibit A

WESTSIDE HEIGHTS
SECTION 1, TOWNSHIP 19 NORTH, RANGE 14 EAST, T.M.
KITITAS COUNTY, WASHINGTON

**OFFICIAL
SAPPHIRE SKIES**

САНКТ-ПЕТЕРБУРГ. - 25 ФЕВ

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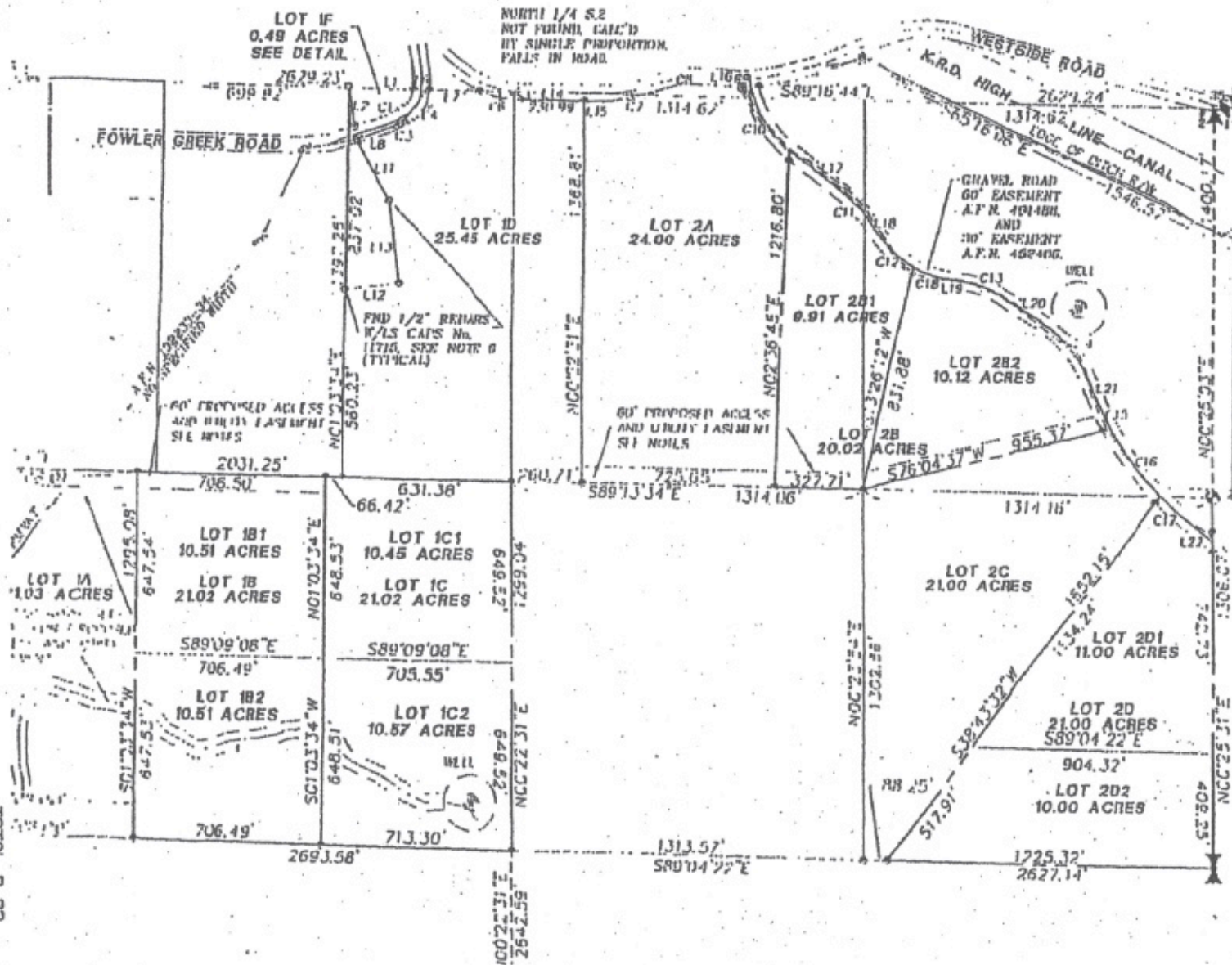
Exhibit B

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SE CORNER S 1/4
FND CASED W-11 IN
WESTSIDE ROAD
VISITED JUNE, 1991

NE CORNER CORNER S
FND BRASS "P" IN S
TRUE CORNER POSITION
CALC'D PER BVS 16, 26
REVISITED SEPT 1990

GRAVEL RAMP
30' EASEMENT
A.F.M. 402400

SOUTH 1/4 S 2
FND 1/2" IRON PIPE
WITH FLAG AND TACK
ACCEPTED POSITION
REVISITED SEPT 1990

EAST 1/4 S 2
FND 2" IRON PIPE
AS SET BY 17 No
7122, ACCEPTED
VISITED JUNE, 1991

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FROM REPLY

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