

Road Maintenance Agreement

This Road Maintenance Agreement (this "Agreement") is made as of this _____ day of _____, 2006 by and among the Raccoon Point Road Maintenance Association (the "Association") and the property owners identified on Exhibit A, attached hereto and incorporated herein, and their successors and assigns with respect to real property located on Orcas Island, in San Juan County, Washington, as further defined herein. Such property owners are hereinafter referred to collectively as "Lot Owners" and individually as a "Lot Owner."

WHEREAS, Raccoon Point Road, for purposes of this Agreement, is described as a private single road on Orcas Island in San Juan County, Washington which starts at the intersection of Buckhorn Road and ends at the Raccoon Point entrance gates (the "Road), as further described in Exhibit B attached hereto and incorporated herein;

WHEREAS, the Lot Owners share a common right of ingress and egress over the Road, which serves the Lot Owners' properties, as further described herein (individually a "Lot" or collectively the "Lots");

WHEREAS, the parties desire to provide for the repair and maintenance of the Road;

WHEREAS, the parties desire to keep the Road private and limit access to Lot Owners and invited guests;

WHEREAS, the parties intend for this Agreement to supersede all road maintenance and use agreements in regards to the use, maintenance and control of the Road between and among all parties hereto, including, but not limited to the Road Maintenance Agreement recorded under San Juan County Auditor's File No. 119880 and the Easement Agreement recorded under San Juan County Auditor's File No. 69432 incorporated by reference; and

WHEREAS, the parties enter into this Agreement in order to provide a governing structure and authority to maintain and regulate the use of the Road.

NOW THEREFORE, in consideration of the promises and mutual covenants herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree to the following which shall be a covenant upon the Lots.

1. **Property.** This Agreement shall apply to the easements and/or use rights to the Road held by the Lot Owners with regard to the property legally described in Exhibit A.
2. **Purpose of Agreement.** The purpose of this Agreement is to maintain and regulate the use of the Road, which services the Lots for the use and benefit of all Lot Owners, and shall be binding upon all Lot Owners.

3. **Road Maintenance Association.** The Association has been formed to be the governing entity and is responsible for granting rights to use the Road, maintaining and regulating the Road, and ensuring compliance with this Agreement. The Association is governed by its Bylaws, as recorded under San Juan County Auditor's File No. _____, which have been adopted by Association's Board of Directors and may be amended from time to time as provided in the Bylaws.
4. **Grant of Easement.** With respect to any portion of the Road that currently crosses a Lot Owner's Lot, then such Lot Owner hereby grants the Association: (i) the right to maintain, improve and control use of the Road in accordance with its Bylaws; and (ii) the right to grant each Lot Owner an easement for ingress and egress on the Road for so long as such Lot Owner is a member of the Association in good standing (as defined in the Association's Bylaws). The Association hereby grants each Lot an easement for ingress and egress on the Road in accordance with its Bylaws for so long as its respective Lot Owner is a member of the Association in good standing (as defined in the Association's Bylaws).
5. **General Maintenance and Regulation of Use.** The Association is responsible for maintenance of the Road and regulation of its use. Road maintenance shall include, without limitation, repair of ordinary wear and tear to the Road, erosion prevention, snow removal, dust control and any other activities to maintain the Road. Road maintenance shall not include improvements or upgrades to the Road. Improvements or upgrades to the Road shall be done pursuant to a special assessment as defined in the Bylaws. Regulation of use shall include, without limitation, speed of vehicles, road closures, vehicle size, third party use of the Road, and use of the Road for commercial purposes.
6. **Assessments.** The Board of Directors shall have the authority subject to the Bylaws to collect from Lot Owners amounts sufficient to cover the costs of the maintenance and regulation of the use of the Road. These amounts shall be referred to as Assessment(s), and shall include all costs associated with the operation of the Association and the maintenance and regulation of the use of the Road. Assessments include without limitation, maintaining the Association as a nonprofit corporation in good standing under the laws of Washington, the cost of enforcing any provision of this Agreement, and other costs and expenses necessary and proper for the effective and efficient functioning of the Association and the maintenance and use of the Road.
7. **Liens.** Each Lot Owner, by signing this Agreement, does covenant and agree to pay to the Association, within sixty (60) days after the date of notice of an Assessment, all Assessments levied by the Association. Each Lot Owner agrees that each Assessment, together with interest at rates specified by the Board of Directors and together with attorneys' fees and any other costs of collection, shall constitute a lien against the Lot, which lien shall continue until the Assessment is paid in full. In addition, any unpaid Assessment(s), together with interests in amounts or at rates specified by the Board of Directors and together with attorneys'

fees and any other costs of collection shall constitute a personal obligation of the Lot Owner(s), which shall not be released upon sale of the Lot.

8. **Enforcement.** The Association may bring a civil action for payment of the unpaid Assessment(s) against the Lot Owner(s) personally obligated to pay such Assessment(s). The lien arising herein may be judicially enforced by the Association or its authorized representative 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 the Association is the prevailing party, the Association shall be entitled to interest on the Assessment, together with all the Association's 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.
9. **Subordination.** The Association's lien shall be subordinate to the lien of any encumbrance recorded prior to this Agreement, to the lien of any mortgage or mortgages, or to the lien for any governmental assessments or real property taxes now or hereafter placed upon the Lots. Upon request by a Lot Owner or a mortgagee of a Lot, the Association shall issue such certificates necessary to indicate the status of the Assessments. Sale or transfer of a Lot shall not discharge the lien of the Association for any Assessment.
10. **Indemnification.** Each Lot Owner shall indemnify and hold the Association harmless from and against all common law or statutory liabilities, damages, obligations, losses, claims, civil actions, costs or expenses, including attorneys' fees, arising from any act, omission or negligence of the Lot Owner or its, contractors, licensees, agents, guests or invitees on or about the Road, or arising from any injury or damage to any person or property, including the Road, occurring on or about the Road as a result of any act, omission or negligence of the Lot Owner, or its contractors, licensees, agents, guests, or invitees, or arising from any breach or default under this Agreement by the Lot Owner.
11. **Covenants Run With the Land.** The benefits and burdens of and the obligations set forth in this Agreement are intended to and shall run with the land and shall be binding upon and inure to the benefit of the parties and the present and future owners thereof and the heirs, assigns, successors, tenants and personal representatives of the parties hereto.
12. **Effective Term.** This Agreement shall be perpetual, and shall encumber and run with the land.
13. **Recording and Filing.** A copy of this Agreement shall be recorded with the San Juan County Auditor's Office.
14. **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.

APPENDIX A
Lot Owners

Note: This section will include a list of the Lots in the association and the legal descriptions of each lot. It is being compiled by the association attorney and will be added to the document prior to filing.

Appendix B Road Description

The Road is a 60 foot wide strip of land lying 30 feet on either side of the currently established centerline for roadway and utility purposes, including any required ditches and culverts, which is comprised of:

- The real property (San Juan county tax parcel 170744017000) owned by the Association
- The easements for ingress/egress granted by the Easement Agreement of May 1968 - San Juan County Auditor's File No. 69432