

Doc # 2006162929
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Date: 09/08/2006 02:41P
Filed by: PLANNING DEPARTMENT
Filed & Recorded in Official Records
of SKAMANIA COUNTY
J. MICHAEL GARVISON
AUDITOR
Fee: \$42.00

WHEN RECORDED RETURN TO:

DOCUMENT TITLE(S)

ROAD AND STORMWATER FACILITIES MAINTENANCE AGREEMENT
RE-RECORD TO ADD AUDITOR FILE # FOR EAGLE PEAK SHORT PLAT AF# 2006 162927

REFERENCE NUMBER(S) of Documents assigned or released:

AF 2006162897 9/6/06
MOUNTAIN VIEW SHORT PLAT AF# 2006162893
EAGLE PEAK SHORT PLAT AF# 2006 162927

☐ Additional numbers on page _____ of document.

GRANTOR(S):

JUSTIN R. LAWRENCE
STEVEN K. POLITO

☐ Additional names on page _____ of document.

GRANTEE(S):

MOUNTAIN VIEW SHORT PLAT
EAGLE PEAK SHORT PLAT
DHARMA WAY (PRIVATE)

☐ Additional names on page _____ of document.

LEGAL DESCRIPTION (Abbreviated: i.e. Lot, Block, Plat or Section, Township, Range, Quarter):

PORTION OF S ½ S5 T1N R5E WM

☒ Complete legal on page 8-10 of document.

TAX PARCEL NUMBER(S):

01-05-05-0-0-1100-00
01-05-05-0-0-0700-00

☐ Additional parcel numbers on page _____ of document.

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information.

After recording return to:

Albert F. Schlotfeldt
Duggan Schlotfeldt & Welch PLLC
900 Washington Street, Suite 1020
PO Box 570
Vancouver, WA 98666-0570

Grantors : Justin R. Lawrence
Steven K. Polito
Grantees : Mountain View Short Plat
Eagle Peak Short Plat
Dharma Way (Private)
Abbreviated Legal : Portion of S ½, S5, T1N, R5E, WM
Tax Parcel No. : Base Parcel Nos. 01-05-05-00-1100-00; 01-05-05-00-0700-00
Other Reference No(s). : Mountain View Short Plat, Auditor's File No. 2006162893
Eagle Peak Short Plat, Auditor's File No. _____

**ROAD AND STORMWATER FACILITIES MAINTENANCE AGREEMENT
OF SHORT PLAT APPROVED "DHARMA WAY (PRIVATE)" ROADWAY**

Effective Date: Upon Recording.

Parties: JUSTIN R. LAWRENCE, owner of Tax Parcel No. 01-05-05-00-1100-00 (proposed Lots 1, 2 and 3, Mountain View Short Plat);

and

STEVEN K. POLITO, owner of Tax Parcel No. 01-05-05-00-0700-00 (proposed Lots 1, 2, 3, and 4, Eagle Peak Short Plat);

Each being the owner of real property that accesses a portion of Dharma Way (Private) for ingress, egress, or utilities, collectively, the "Landowners" as to the named Parties, and the "Property" as to the Parcels.

The undersigned, on behalf of themselves and their respective heirs, successors, and assigns, covenant and agree that:

1. Responsibility.

1.1. Road and Stormwater Facilities. The Landowners, or the owner of any Lot that has been or is subsequently created on or out of the Property, that in any manner uses the private road known as Dharma Way (Private), as depicted on the Mountain View Short Plat (the perimeter description of the Plat being attached hereto as Exhibit A and incorporated herein by reference) and the Eagle Peak Short Plat (the perimeter description of the Plat being attached hereto as Exhibit B and

incorporated herein by reference) (collectively, the "Short Plats") for ingress, egress, or utilities relative to their property (referred to collectively as the "Owners" or individually as an "Owner") shall be responsible for the maintenance of said Dharma Way and its related easements ("Dharma Way"). In addition, the Owners shall be responsible for maintenance of the stormwater runoff system serving Dharma Way and the Property, or any Lot that has been or is subsequently created on or out of said Short Plats, including, but not limited to, all ditches, ponds, pipes, and catch basins therefor that lie within the Dharma Way easement and other drainage easements as depicted on said Short Plats (the "Stormwater Facilities").

1.2. Initial Owners. During the completion of construction of Dharma Way and the Stormwater Facilities, and for one year from the date of recording of said Short Plats, the Owners for assessment purposes shall be limited to the Owners at the time of recording the Short Plats, except as otherwise provided in Sections 4 and 5 (the "Initial Owners"). Thereafter, each Owner of a Lot within the Short Plats shall participate in the maintenance and repairs provided for in this Agreement, and assessments therefor, except as otherwise provided in Sections 4 and 5.

1.3. Multiple Owners. If more than one person or entity owns the Property, or any Lot within the Property, all the owners thereof will collectively be considered the Owner for the purpose of assessments and voting. That is, each Lot shares equally in the total assessments provided for in this Agreement and has one vote in all matters requiring the agreement of the Landowners or Owners.

1.4. Substituted Owners. If an Owner shall sell any portion of the Owner's Property that is subject to this Agreement (e.g., a Lot within the Short Plats), the new owner of such Property or Lot shall be substituted for such owner and automatically become a party to this Agreement as an Owner, as the case may be, and shall share in the responsibilities and costs apportioned under this Agreement.

1.5. Addition of Owners. Any new or additional lots that may be created within or added to the Property that uses Dharma Way, as now existing or as may be hereafter extended, in any manner for ingress, egress, or utilities, or that lies within the Short Plat Property that is subject to the Stormwater Facilities, shall automatically become a party to this Agreement as an Owner and shall share in the costs apportioned under this Agreement.

1.6. County Responsibility. Skamania County has no responsibility to build, improve, maintain, or otherwise service Dharma Way or the Stormwater Facilities.

1.7. Acknowledgment of Easements. The Landowners agree that Dharma Way and the Stormwater Facilities constitute easements that both benefit and burden their respective parcels and the Property and any Lots created as a result of the Short Plats.

2. Maintenance and Repair. That so long as Dharma Way is designated as a private road as defined in Skamania County Code Chapter 12.03, the methods, standards, contracting, and financing of maintenance and repair costs for Dharma Way and the Stormwater Facilities shall be determined by the agreement of a majority of Owners.

2.1. Dharma Way. At a minimum, Dharma Way shall be maintained in good, passable condition under all traffic and weather conditions, and such maintenance shall consist of the annual filling of potholes, ruts, gullies, and similar road imperfections, the removal of debris or repair of damage caused by adverse weather as needed, and the rocking or graveling and grading, paving, or other surface repair of Dharma Way at such intervals as a majority of the Owners shall determine are necessary.

2.2. Stormwater Facilities. At a minimum, the Stormwater Facilities shall be kept free of debris and other obstructions that could back up or otherwise impede the system from allowing stormwater to runoff or otherwise be diverted to ditches, pipes, ponds, pipes, and catch basins as contemplated in the Stormwater Facilities Plan.

3. Costs Assessed on Per Lot Basis. Costs for the maintenance and repairs to Dharma Way or the Stormwater Facilities described in or otherwise contemplated by this Agreement shall be assessed equally among the Owners, on a per lot basis, regardless of their travel distance along said private roadway or nexus to the Stormwater Facilities. For purposes of illustration only and not for limiting assessments, this means that if there are a total of six lots and the same person or entity owns two lots, their portion of the assessed costs will be 2/6 or 1/3.

4. Extraordinary Use of Dharma Way. In the event an Owner is constructing or improving a home, removing timber or other trees and vegetation, excavating, or planning other activities that requires the use of heavy or large tractors, trailers, or other equipment that would travel along Dharma Way, that Owner shall notify each other Owner in person or by first class mail addressed to the Owner at the address of record with the Skamania County Assessor's Office at least seven calendar days before commencement of such Extraordinary Use. Said Owner shall be responsible for the repair of any damage to Dharma Way or the Stormwater Facilities that may be caused by such Extraordinary Use, whether incurred by the Owner or by a third party acting on behalf of the Owner.

5. Additional Maintenance/Improvement of Dharma Way. Unless otherwise agreed by all other Owners, any additional maintenance, repair, or restoration of Dharma Way required by or for an Owner shall be the requesting Owner's sole financial responsibility. For the purposes of this section "additional maintenance, repair or restoration" shall mean any activity that goes beyond maintaining Dharma Way in the condition existing upon the completion of the roadway contemplated in the Short Plats or the conditions at the standards set forth herein. Any Owner subject to this Agreement wishing to initiate any improvements to Dharma Way shall confer with the other Owners and receive the approval of at least a majority of the other Owners and any state, county, or local government department that may have jurisdiction over such improvements prior to instituting such action.

6. Use of Dharma Way Road Easement. Dharma Way shall be used for the common benefit of all Owners, including the Owners' guests, agents, or other invitees. No signage, gates, or other barriers shall be permitted that would restrict or interfere with such usage, except for any Private Road Warning that may be required by Skamania County.

7. Assessment and Collection of Costs.

7.1. Maintenance Fund. Within 30 days of recording of the Short Plats, the Initial Owners shall determine the estimated cost of completing and maintaining Dharma Way and the Stormwater Facilities as contemplated in the Short Plats and place their respective portion of the costs therefor in a fund at a mutually agreeable financial institution (the "Maintenance Fund" or "Fund"). If agreement cannot be reached as to the financial institution, then First Independent Bank shall be used. Unless otherwise agreed in a separate writing, the costs shall be borne equally between the Initial Owners. All withdrawals from the Fund shall be for completing, maintaining, and repairing Dharma Way and the Stormwater Facilities only and require the signature of two Owners. Initially, Steven K. Polito and Justin R. Lawrence shall be signers on the Fund.

7.2. Determination of Expenses. On or before the anniversary date of the recording of the Short Plats, upon the agreement of at least a majority of the Owners, the scope of maintenance and repairs to Dharma Way (Private) and the Stormwater Facilities, if any, who shall perform the work, and the estimated costs shall be determined for the following year. The estimated costs shall then be assessed to the Owners on a per lot basis. Unless otherwise agreed, the then owner of Lot 2, Mountain View Short Plat, shall provide all Owners with an accounting of the estimated costs, their respective portion of the assessment, the financial institution and account number for the Maintenance Fund, the designated representative for the fund, and the authorized signatories for the Fund. On the second and each successive anniversary date that this Agreement is in effect, the accounting shall include how the prior year's assessments were spent and allocate any debits or credits to the Owners for unused expenses or overages paid by one or more other Owners. Notice of assessment shall be provided to Owners in accordance with Section 10. Within 30 days of the receipt of such notice of assessment, each Owner shall deposit into the Maintenance Fund their respective portion of the assessment and provide the designated representative with a copy of the deposit record, showing the name and lot number(s) of the Owner. It shall be the Owner's responsibility to provide proof of payment of the assessment in the event a question arises concerning such payment.

7.3. Minimum Assessment and Allocation. At a minimum, each Owner shall be charged with a \$120 per year assessment for road maintenance and a \$60 per year assessment for maintenance of the Stormwater Facilities. Although the collected assessments may be deposited into one Maintenance Fund, a separate ledger shall be maintained for each type of assessment, which ledgers shall track the date and amount paid, the Owner making payment, and the month(s) for which the payment was made. Expenses for the maintenance of Dharma Way and for the Stormwater Facilities shall be taken from its respective allocated assessments only.

7.4. Special Assessments. Special assessments may be determined and assessed upon the majority vote of all Owners in the event emergency or other extraordinary repairs are required relative to Dharma Way or the Stormwater Facilities, except as otherwise provided in Section 4. Notice of such special assessment shall be given to each Owner as provided in Section 10 and paid as set forth in Section 7.2 and subject to collection as provided in Section 7.6.

7.5. Collection; Designated Representative. The designated representative shall be one of the Owners, approved annually by a majority of the Owners at least 30 days before the

anniversary date of recording the Short Plats. The designated representative shall be responsible for collecting the assessments and paying the bills for approved work when they become due. The Owners, upon majority agreement, may replace a designated representative at any time. When a designated representative is replaced, the prior designated representative shall cooperate fully with the new representative to transition the records and accountings of, and authorized signers for, the Fund. The initial designated representative shall be Steven K. Polito.

7.6. Lien of Assessment. If any Owner fails to pay any assessment within 30 days after receipt of notice of assessment, the amount of the assessment, together with interest at twelve percent (12%) per annum from the date thereof until paid, plus any attorney fees necessary for collection, shall automatically become a continuing lien against the parcel of the delinquent Owner. This lien will be superior to all other liens or claims against a Lot except an institutional or purchase money first mortgage and/or deed of trust. The resulting obligation of any other Owners to pay the delinquent Owner's assessment or share of the costs will be an enforceable personal obligation of the delinquent Owner. On the affirmative vote of a majority of all Owners except the delinquent Owner, the designated representative on behalf of the Maintenance Fund for the benefit of all other Owners, or the individual Owner(s) who covered the delinquent Owner's assessment, as the case may be, may record notice of a claim of lien against the parcel owned by the delinquent Owner and thereafter pursue foreclosure on the lien in any manner now or in the future permitted by law or equity with respect to mortgages and/or deeds of trust. Proceeds received at such a sale shall be distributed first to pay the lien being foreclosed upon, plus all costs and expenses, interest, and attorneys' fees, and any surplus shall be distributed in accordance with the priorities established by applicable law. The reimbursed Fund or Owner(s) may, in addition to or instead of foreclosure, obtain a personal judgment against the delinquent Owner.

7.7. If a homeowners' association is created that has jurisdiction over the Lots within the Short Plat, the costs, expenses, and assessments described in this Agreement, and any residual Fund balance, shall be charged and collected by said homeowners' association. Until then, all assessments and other charges shall be paid into the Fund as provided for in this Agreement.

8. Arbitration. In the event the Owners are deadlocked or otherwise unable to agree as to any matters covered by this Agreement, including but not limited to the necessity for maintenance or repair work, the dispute shall be settled by a single arbitrator who shall direct any settlement the arbitrator deems equitable under the circumstances. The arbitrator shall be appointed by the presiding Judge of the Skamania County Superior Court upon request of any Owner bound by this Agreement. The decision may be enforced in any court of competent jurisdiction in Skamania County, Washington, and, except as provided in Section 7.6, all costs in connection therewith, including reasonable attorney's fees in an amount to be set by the court, shall be borne by the losing party.

9. Appurtenant to the Land. This Agreement shall be binding on all heirs, successors, or assigns of any Owner and shall be appurtenant to the Property and each and every Lot thereof burdened by or otherwise benefited thereby.

10. Notices. Unless otherwise specified in this Agreement, any notice required under this Agreement must be in writing and either personally delivered to the Landowner or Owner against whom

it is to have affect or sent by registered or certified mail with return receipt requested, and first class mail, at the mailing address of record with Skamania County for tax statements for such owners. Delivery by first class mail shall be deemed to have occurred three postal days after deposit of the notice in the U.S. Mail. Notices may be given to an alternate person or address, or by electronic delivery (facsimile or e-mail communication), with the written consent of an Owner that is subject to this Agreement given to the designated representative named under Section 7.2, with the consent stating the alternative name and address, fax number, and/or e-mail address for notice purposes. Electronic delivery properly addressed to the last known e-mail address or fax number shall be considered made when sent and the sender should retain written confirmation of such delivery. When Owner consents to the alternate electronic delivery of notice, the Owner may not claim the Owner failed to receive notice unless they can prove the sender received notice that delivery failed or that consent to such delivery was revoked in writing.

11. Validity. In the event that any provisions of this Agreement shall be held to be invalid or unenforceable, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

12. Attorney's Fees. Except as otherwise provided in Sections 7 and 8, in the event a suit, proceeding, arbitration, or action of any nature whatsoever is instituted, including without limitation any proceeding under the U.S. Bankruptcy Code, or the services of any attorney are retained to enforce any term, condition, or covenant of this Agreement, or to procure an adjudication, interpretation, or determination of the rights of the parties, the prevailing party shall be entitled to recover from the other party, in addition to any award of costs or disbursements provided by statute, reasonable sums as attorney fees and costs and expenses, including paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection with such suit, proceeding, or action, including appeal or bankruptcy proceeding, which sum shall be included in any judgment or decree entered therein and such amounts awarded shall be in addition to all other amounts provided by law.

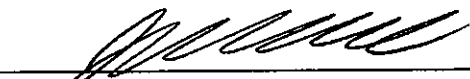
13. Applicable law. Washington law shall govern this Agreement, with venue in Skamania County.

14. Waiver. Failure of any party at any time to require performance of the provisions of this Agreement shall not limit the other party's right to enforce the provision nor shall any waiver of any breach of any provision constitute a waiver of any succeeding breach of that provision or a waiver of that provision itself.

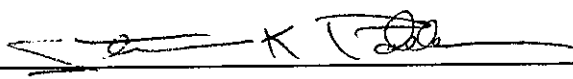
15. Amendment. This Agreement may be amended, modified, or extended without new consideration, but only by written instrument executed by all Owners.

16. Execution in Counterpart. This Agreement may be executed and notarized by counterpart signature and acknowledgment pages, each of which shall be attached to this Agreement as an original and all of which shall constitute execution of the Agreement as a whole.

In witness whereof, the undersigned executed this Agreement as of the date indicated below their name, effective as of date set forth above.



JUSTIN R. LAWRENCE
Date Signed: 8/1/06

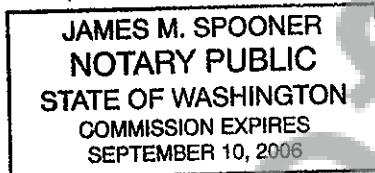


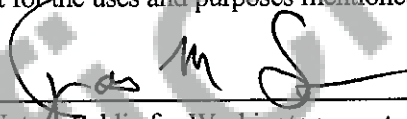
STEVEN K. POLITO
Date Signed: 8/01/06

STATE OF WASHINGTON)
County of Clark) ss.

I certify that I know or have satisfactory evidence that JUSTIN R. LAWRENCE is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Date: 8/1/06



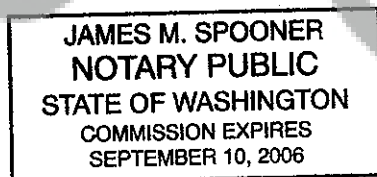


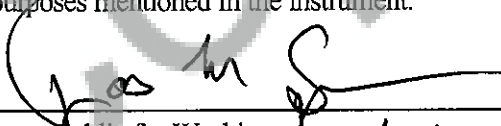
Notary Public for Washington
My Commission Expires: 9/10/06

STATE OF WASHINGTON)
County of Clark) ss.

I certify that I know or have satisfactory evidence that STEVEN K. POLITO is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Date: 8/1/06





Notary Public for Washington
My Commission Expires: 9/10/06

EXHIBIT A

PERIMETER DESCRIPTION FOR MOUNTAIN VIEW SHORT PLAT

Assessor's Tax Parcel No.
01-05-05-0-0-1100-00

A portion of the Southeast quarter of the Southwest quarter and the Southwest quarter of the Southeast quarter of Section 5, Township 1 North, Range 5 East, Willamette Meridian, Skamania County, Washington, described as follows:

BEGINNING at a 5/8 inch iron rod marking the South Quarter Corner of Section 5, as shown in that Survey Recorded in Skamania County Auditors File No. 2004154515; thence South $89^{\circ} 32' 07''$ East, along the South line of the Southeast quarter of Section 5, as shown in said survey, for a distance of 200.00 feet; thence North $01^{\circ} 00' 00''$ East, 267.30 feet; thence North $90^{\circ} 00' 00''$ East, 135.00 feet; thence North $01^{\circ} 00' 00''$ East, 219.90 feet; thence North $90^{\circ} 00' 00''$ West, 324.25 feet; thence North $01^{\circ} 00' 00''$ East, 213.27 feet; thence North $89^{\circ} 19' 36''$ West, 336.65 feet to a point on the West line of the East half of the East half of the Southeast quarter of the Southwest quarter of Section 5; thence South $01^{\circ} 15' 41''$ West, along said West line, 697.17 feet to the Southwest corner of the East half of the East half of the Southeast quarter of the Southwest quarter of Section 5; thence South $89^{\circ} 00' 25''$ East, along the South line of the Southwest quarter of Section 5, for a distance of 329.05 feet to the POINT OF BEGINNING.

SUBJECT TO a 30-foot easement for ingress, egress, and utilities, as more specifically described in that Grant of Easement dated October 14, 2005, recorded March 1, 2006, under Skamania County Auditor's File No. 2006160693.

FURTHER SUBJECT TO a 30-foot easement for ingress, egress, and utilities, as more specifically described in that Grant of Easement dated June 1, 2006, recorded June 5, 2006, under Skamania County Auditor's File No. 2006161811.

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EXHIBIT B

PERIMETER DESCRIPTION FOR EAGLE PEAK SHORT PLAT

Assessor's Tax Parcel No.
01-05-05-0-0-0700-00

A portion of the Southwest quarter of the Southeast quarter and the Southeast quarter of the Southwest quarter of Section 5, Township 1 North, Range 5 East, Willamette Meridian, Skamania County, Washington, described as follows:

BEGINNING at a 5/8 inch iron rod marking the South Quarter Corner of Section 5, as shown in that Survey recorded in Skamania County Auditors File No. 2004154515; thence South $89^{\circ} 32' 07''$ East, along the South line of the Southeast quarter of Section 5, as shown in said survey, for a distance of 200.00 feet; thence North $01^{\circ} 00' 00''$ East, 267.30 feet; thence North $90^{\circ} 00' 00''$ East, 135.00 feet; thence North $01^{\circ} 00' 00''$ East, 219.90 feet to the TRUE POINT OF BEGINNING; thence North $90^{\circ} 00' 00''$ West, 324.25 feet; thence North $01^{\circ} 00' 00''$ East, 213.27 feet; thence North $89^{\circ} 19' 36''$ West, 336.65 feet to a point on the West line of the East half of the East half of the Southeast quarter of the Southwest quarter of Section 5; thence North $01^{\circ} 15' 41''$ East, 630.00 feet to the Northwest corner of the East half of the East half of the Southeast quarter of the Southwest quarter of Section 5; thence South $89^{\circ} 07' 22''$ East, along the North line of the Southeast quarter of the Southwest quarter of Section 5, for a distance of 328.98 feet to the Northwest corner of the Southwest quarter of the Southeast quarter of Section 5; thence South $89^{\circ} 23' 12''$ East, along the North line of the Southwest quarter of the Southeast quarter of Section 5, for a distance of 1117.58 feet; thence South $01^{\circ} 13' 43''$ West, 662.46 feet; thence South $89^{\circ} 27' 41''$ East, 200.02 feet to the East line of the Southwest quarter of the Southeast quarter of Section 5; thence South $01^{\circ} 13' 43''$ West, along said East line, 106.10 feet; thence North $90^{\circ} 00' 00''$ West, 985.66 feet; thence South $01^{\circ} 00' 00''$ West, 59.79 feet to the TRUE POINT OF BEGINNING.

Exhibit B, Continued (Tax Parcel #01-05-05-0-0-0700-00)

TOGETHER WITH a 30-foot easement for ingress, egress, and utilities, as more specifically described in that Grant of Easement dated October 14, 2005, recorded March 1, 2006, under Skamania County Auditor's File No. 2006160693

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