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ROAD MAINTENANCE AGREEMENT

A DECLARATION OF COVENANT REQUIRING PRIVATE MAINTENANCE OF APPROVED
PRIVATE ROAD AND DEDICATION TO COUNTY WHEN REQUIRED

Declaration of Covenant

In consideration of the approval by Island County of Short Plats
Numbered 84/08-3... through 84/21-3... which said development creates
the lots/tracts described as follows:

1. Lots 2A and 2B of Short Plat 84/08-3.13230.506-1330
2. Lots 10A and 10B of Short Plat 84/09-3.13230.444-1370
3. Lots 9A, 9B, 14A, and 14B of Short Plat 84/10-3.13230.444-2080;
400-1790
4. Lots 3A and 3B of Short Plat 84/11-3.13230.503-2090
5. Lots 4A and 4B of Short Plat 84/12-3.13230.507-2870
6. Lots 5A and 5B of Short Plat 84/13-3.13230.507-3600
7. Lots 6A and 6B and Tracts 18 and 19 of Short Plat
84/14-3.13230.436-3750; 370-3400; 358-2590
8. Lots 7A, 7B, 8A, and 8B of Short Plat 84/15-3.13230.436-3220;
436-2760
9. Lots 17A and 17B of Short Plat 84/16-3.13230.13230.344-1910
10. Lots 13A, 13B, 15A, and 15B of Short Plat 84/17-3.13230.372-1170;
306-1160
11. Lots 16A and 16B of Short Plat 84/18-3.13230.291-1850
12. Lots 12A and 12B of Short Plat 84/19-3.13230.417-0460
13. Lots 1A and 1B of Short Plat 84/20-3.13230.506-0470
14. Lots 11A and 11B of Short Plat 84/21-3.13230.465-0470

As all of the said Short Plats are recorded on behalf of "Penn Cove
Associates", a Washington partnership, in the records of Island County,
State of Washington.

The undersigned covenant and agree as follows:

1. The owner(s) of the aforescribed property or of any lot
which has been or is subsequently created on said property shall be
proportionately responsible for the maintenance of all private roads
within or leading to said development.
2. The road(s) and any private road name and/or stop sign(s)
shall be maintained consistent with Island County Standards for such
private roads and / or signs.
3. Roadway maintenance, financing, or cost sharing shall be in a
manner determined by the owners of a majority of the buildable legally
created lots, parcels, or tracts within the aforesaid property lots or
tracts described above.
4. In the event such private road(s) is/are improved to county
standards for public streets, and the county is willing to accept the
dedication of such road(s), each lot, parcel, or tract owner shall execute
any documents necessary to accomplish such dedication.

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CSD - Jon Sitkin <jsitkin@chmelik.com>4/24/2021 4:28 PM
RE: Sky Meadows Community Association
To: Sky Meadows Community Association

The history of the Sky Meadows development in its creation through a series of short plats is not unheard of. Thank you for the map to focus on the sections of the private roads in question.

Background

After reviewing the material that you provided to me, and without independent research or confirmation the validity of each document (e.g., was the Declaration of Amended CC&RS properly executed, recorded etc.), I find that the controlling documents are:

Each of the Short Plats

The Road Maintenance Agreement (Auditor File Number 86007065); and
The Declaration of Amended CC&RS (Auditor File Number 4170971)(referred to herein as the "Amended CC&Rs").

Each of the Short Plats dedicated an access and utility easement and specifically refer to the Road Maintenance Agreement. The Road Maintenance Agreement, and the Short Plats were all dedicated or created by Penn Cove Associates and refer to each other. With the common grantor and cross reference, the Road Maintenance Agreement, and the Short Plats should be read together to be implemented with consistency and to give meaning to all provisions of each document. Similarly, the Amended CC&Rs also refers to each Short Plat and the Road Maintenance Agreement. Indeed, the Association, as the Declarant under the Amended CC&Rs confirmed the binding nature of the Road Maintenance Agreement for all of the referenced tracts, which include all of the lots or tracts benefited by the access roads on the highlighted map that you sent to me. Accordingly, the Amended CC&Rs should be read to also be consistent with and further implement the Road Maintenance Agreement, and the Short Plats, and all provisions of the Amended CC&Rs should be given meaning consistent with the Road Maintenance Agreement and the Short Plats.

Per your email, the Association has historically maintained the subject private roads since 1989, although how the costs of maintenance are allocated is not referenced.

Conclusion.

It is my conclusion that the dedication of the access easement on the face of each Short Plat was to allow a private road to be constructed within said easement that the Association would maintain and allocate costs proportionally amongst the owners of the lots within the Association in accordance with the Road Maintenance Agreement. Note: the exception in section 7.5 of the Amended CC&Rs related to Tract 13-1 and 13-B. The manner of cost sharing is to be determined by the majority of buildable lots. See Section 3 of the Road Maintenance Agreement. I note that Article 4, section 4.1 of the Amended CC&Rs provides that assessments may be collected for the purposes of maintenance of the roadways. It is presumed for the purposes here that all lots or tracts that are owned by members of the Association are buildable lots/tracts. As such, the Association Board, having been elected by a majority of members of the Association have been delegated the authority to determine the Annual Assessment which would include the costs of maintenance of the private roads located within the easements dedicated on the face of the Short Plats, including those that

you highlighted on the map. However, I would note that I do not see any limitation in the Amended CC&Rs that would bar the Association from having a differential assessment based upon a proportional allocation as determined by the Board of Directors, although for a small Association the accounting could be difficult.

I see a creative, but very unpersuasive argument that the Short Plats dedicated an access easement that only benefits those lots within the individual short plat and therefore the obligation and cost of maintenance would only be allocated to those lots within that specific short plat. In other words, the maintenance of a roadway within a short plat would be the obligation of those lots within that short plat, and the costs of such maintenance would only be allocated to those lots. However, this argument fails, in my view. This argument necessarily ignores the Road Maintenance Agreement, the Amended CC&Rs and the historical practice. Should this argument be presented in court, it is my assessment that any judge would quickly come to the same conclusion as I have, deny such a claimant's motion for summary judgment.

Further, that a private road is within an access easement only serves a single lot is not an exception from the maintenance obligation or cost allocation addressed above.

If a lot owner contested the Association's authority to levy these assessments causing the association to bring suit to enforce the Amended CC&Rs, a court would likely determine the Association is the prevailing party, for the reasons above, and grant the Association an award of its attorney's fees incurred.

Let me know if you have any further questions, or seek clarification of the forgoing. If you would like me to put this analysis in a formal memorandum, please let me know

Jon

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