

APPENDIX B

Exhibit A

BYWATER WAY ROAD MAINTENANCE ASSOCIATION BYLAWS

Revised 9 February, 2002

Article I

TITLE

This organization shall be known as the Bywater Way Road Maintenance Association, hereinafter the "Association."

Principal Office. The principal office of the Association shall be in the State of Washington. The Association may have such other offices as the Board may determine or as the affairs of the Association may require.

Article II

GOALS AND OBJECTIVES

- Section 1: The Association is a voluntary, not-for-profit organization whose primary goals are to establish and administer a road maintenance program for the property owners whose properties are accessed via Bywater Way, Bywater Way North, Hidden Springs and other subsidiary roads accessed off of the aforementioned streets in Port Ludlow, Jefferson County, Washington.
- Section 2: The Association shall represent the Members in following the guidelines as set forth in the recorded Road Maintenance Agreement (hereinafter "Road Maintenance Guidelines") as filed with Jefferson County, Washington, and as they may be subsequently amended or modified by action of the property owners.
- Section 3: The Association, through its Board of Directors, shall:
- A. Make recommendations to the Members regarding the maintenance and or improvements of said roads;
 - B. Make recommendations to the Members regarding the selection of road maintenance contractors and road maintenance materials;
 - C. Review bids from prospective contractors for road maintenance;
 - D. Oversee all contracted road work in an effort to assure the quality of work meets the contractual agreement;
 - E. Recommend to the Members a road maintenance assessment to be collected from all lot owners;
 - F. Collect said assessment on an annual basis and hold these funds in trust in a checking and savings account; and
 - G. Disperse said funds to the road contractors in accord with work accomplished and approved by the Members of the Board of Directors of the Association and otherwise as necessary to accomplish the purposes of the Association.

Article III

MEMBERSHIP

- Section 1: The members of this voluntary Association (hereinafter the "Members") shall consist of those property owners whose properties are subject to the Covenants and Private Road Easement and Maintenance Agreement dated November 16, 1988 and recorded under Jefferson County, Washington auditor's file number 31866 (the "Original Declaration"), which Covenants were modified by a Declaration of Road Maintenance Covenants, Conditions and Restrictions dated January 16, 1989 and recorded under Jefferson County, Washington auditors file number 319389 (the "Amended Declaration"). The included properties and roads are represented graphically on the map attached. The real property subject to the Declaration shall be referred to herein as the "Property". Each individually subdivided parcel of the property shall be referred to herein as a "Lot."
- Section 2: Initial membership in the Association shall be those property owners of record as of May 1, 2001.
- Section 3: Each Member in good standing (road maintenance assessment paid) shall have one (1) vote.
- Section 4: The owner(s) of each legally subdivided lot (each a "property") shall be eligible for membership. If a property is divided into multiple parcels, then membership rights and responsibilities shall be bestowed upon the owners of each of the created parcels, each parcel receiving one (1) vote.
- Section 5: If a property is sold, the prior owner(s) shall relinquish all rights to membership in the Association and those rights and responsibilities shall be transferred to the designated purchaser(s).
- Section 6: The Association shall issue no certificates of membership or certificates of stock.
- Section 7: In the event that the roads included within the purview of this Association are legally transferred to the County or other governmental entity, all monies held by the Association on behalf of the membership, shall be distributed equally among the current Members in good standing, one share per Member.

Article IV MEETINGS

- Section 1: Regular Meetings. An annual meeting of the Members of the Association shall be held on the last Saturday of April at 12:00 noon at a location to be announced by the Board of Directors no later than March 31 of that year.
- Section 2: Special meetings of the Members may be called by the Board of Directors or upon a petition of twenty percent (20%) of the current Members. Notification of the date, time, place and purpose of such meeting will be delivered to each Member in person or by mail to the last address of record at least ten (10), but *no more than fifty (50) days prior to the meeting date, by or at the direction of the Director, officer or other person calling the meeting.* No business shall be transacted at a special meeting except as stated in the notice.
- Section 3: Voting
- A All voting shall be by each Member in person or by written proxy. The proxy may be given by any Member to another and must specify the issue on which it is to be cast.
 - B. All meetings of the Association shall be governed by Robert's Rules of Order (current edition).
 - C. All motions shall be approved by a simple majority of those present or represented by proxy.

Article V BOARD OF DIRECTORS

- Section 1: The business of the Association shall be managed by a Board of Directors, consisting of a minimum of five (5) and a maximum of seven (7) current Members of the Association. Each Director shall serve until the next annual meeting and until his/her successor is elected or appointed.
- Section 2: During its first year of existence, the Board of Directors shall consist of those property owners who have volunteered to serve, their term being for one year or until the first annual meeting of the Association. Thereafter, Members shall be elected at the annual meeting and serve for one year.
- Section 3: Vacancies in the Board of Directors shall be filled by a majority vote of the Board and each person so elected or appointed shall be a Director until a successor is elected by the Members at the next annual meeting, or at a special meeting called for that purpose.
- Section 4: The term of each Director shall be for one (1) year.
- Section 5: Any Director can be removed from the Board, with or without cause, prior to the end of his/her term by a majority vote of Members of the Association at any special meeting called for that purpose. Upon removal of a Director, a successor shall then and there be elected by the members of the association to fill the vacancy for the remainder of the term of such Director.
- Section 6: Directors are to serve without compensation for their service. This section shall not prevent any Director from being reimbursed for expenses authorized by the Board to be incurred on behalf of the Association. Nothing herein or in the Articles of Incorporation shall prohibit the Association from compensating a Director, or any entity affiliated with a Director, for services or supplies furnished to the Association in a capacity other than as a Director pursuant to a contract or agreement with the Association, provided that such Director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested Director.
- Section 7: The Board shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs.
- Section 8: In accordance with the Articles, the Association shall have the right to contract with any person for the *performance of various duties and functions.*

Article VI MEETINGS OF THE BOARD OF DIRECTORS

- Section 1: The Board of Directors shall meet at a time and place determined by its membership. Special meetings of the Board may be called at any time by its Chairperson or at the request of any two of its Members, with a minimum of 3 days notification.
- Section 2: Quorum and Voting
- A. A majority of the members of the Board shall be necessary to constitute a quorum for any meeting and each Board member shall possess one (1) vote.
 - B. Proxy votes shall be allowed, but only if submitted in writing and signed by the Board member requesting the proxy.
- Section 3: An affirmative vote of a majority of the whole of the Directors shall be required for any decision. All findings requiring action by Members of the Association shall be communicated to each Property owner along with a Board recommendation and a minority report, if requested.

- Section 4: Open Meeting. All Board meetings shall be open to all Members; Members other than Directors may participate in any discussion or deliberation. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, excluding Members to discuss matters of a sensitive nature, such as pending or threatened litigation and personnel matters.
- Section 5: Minutes. Minutes of all regular and special meetings of the Board of Directors shall be taken and kept by the Secretary and distributed in person, by mail or electronically to each Director prior to the next scheduled meeting.

Article VII OFFICERS OF THE ASSOCIATION

- Section 1: Officers of the Association shall consist of a President, Secretary and Treasurer who shall be elected by the Board of Directors at the annual meeting of the Association to serve until the next annual meeting or until their successors have been elected. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.
- Section 2: President
- A. The President shall preside over all meetings of the Association and of its Board of Directors.
 - B. The President shall call any special meetings of the Association and instruct the Secretary to inform all Members of such meetings
 - C. The President shall set the agenda for meetings of the Association and of the Board of Directors.
 - D. The President shall execute, on behalf of the Association, all contracts in writing that may be required by the Board, and approved by the Association.
- Section 3: Secretary
- A. The Secretary shall record the proceedings of the meetings of the Association and of the Board of Directors.
 - B. The Secretary shall keep and preserve the minutes, records and papers of the Association and of its Board of Directors.
 - C. The Secretary shall issue all written notices of special meetings of the Association as called by the President.
 - D. The Secretary shall answer all communications directed to the Board or to the Association.
 - E. The Secretary shall have at each business meeting a copy of the Bylaws of the Association, a list of all then-current Members and the minutes from the preceding 12 business meetings of the Board of Directors.
 - F. The Secretary shall, in the absence of the President, perform the duties of that office until the return or replacement of the president.
- Section 5: Treasurer
- A. The Treasurer shall collect all money due the Association and document these transactions by written receipts.
 - B. The Treasurer shall keep a regular accounting of money received and shall pay out monies for bills approved by the board of directors accrued on behalf of the Association.
 - C. The Treasurer shall prepare an annual itemized report of the income and expenses of the Association, each accompanied by proper vouchers.
 - D. The Treasurer shall submit the books annually to a committee appointed by the President, to enable them to make a proper audit.
 - E. Any expenditure of more than \$50.00 shall require the signature of at least two board members.

Article VIII COMMITTEES

- Section 1: General. Committees are hereby authorized to perform such tasks as may be delegated to a committee under Washington law and to serve for such periods as may be designated by Board resolution. Each committee shall operate under the terms of the Board resolution designating the committee and the rules adopted by the Board governing such committee.

Article IX MISCELLANEOUS

- Section 1: Inspection by Members. The Bylaws, and Articles, any amendments to the foregoing, the rules of the Association, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees shall be made available for inspection and copying by any Member of the Association.

Reasonable procedures will be established by the Board and all duplicating costs will be paid by the requesting member.

Article X AMENDMENTS

- Section 1: Changes in these Bylaws may be proposed by any Member of the Association and shall be presented in writing, at a regular meeting of the board of directors.
- Section 2: Proposed amendments to these Bylaws together with a ballot shall be mailed to all Members at least thirty (30) days prior to a meeting at which action is to occur. Ballots shall be returned to the President in sealed envelopes. Ballots shall be opened and counted at the designated meeting of the Board of Directors.
- Section 3: A two-thirds vote of the voting membership is required for passage of any amendment to these Bylaws.
- Section 4: Amendments to any article or section of these Bylaws shall not result in modification or alteration of any other section not directly affected by the amendment or modification.

Article XI FISCAL YEAR

- Section 1: The fiscal year of this Association shall begin on the first day of April and shall terminate on the last day of March of each year.

Article XII ASSOCIATION DUES

- Section 1: The Board of Directors of the Association shall be empowered to levy dues on the membership of the Association, said dues to be limited to the cost of postage, supplies and reasonable administrative costs.
- A. These dues shall be in addition to any sum assessed for road maintenance.
 - B. Determination of dues shall be based on actual expenditures of the prior year plus a reasonable inflation factor.
 - C. Dues in excess of the above amount shall be submitted to the Association for approval prior to their imposition.
 - D. Separate accounts will be maintained for membership dues and road maintenance fees.

Article XIII DISSOLUTION

- Section 1: The Association may only be dissolved by a two-thirds (2/3) majority vote of all the Members of the Association.
- Section 2: Upon the dissolution of this Association, the assets, after payment of all debts, liabilities and taxes then due, shall be distributed in equal shares to each current Member in good standing of the Association.

Article XIV ORDER OF BUSINESS

- Section 1: The order of business at annual meetings shall be:
- A. Call to Order
 - B. Secretary's Report
 - C. Treasurer's Report
 - D. Old Business
 - E. New Business
 - F. Communications
 - G. Adjournment

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Ronald D. Allen
eMail: rallen@bpmlaw.com

December 20, 2000

**Bywater Way Road Maintenance
Committee**

c/o Mr. Jim McGillis
782 Bywater Way North
Port Ludlow, WA 98365

Re: Committee and Corporate Issues

Dear Committee Members:

It was a pleasure meeting with you a few weeks ago to discuss your organization's plans and legal issues affecting its continuing activity. We discussed such a diverse array of topics in such a short period of time that I believe it is important to summarize some of them in writing. I regret the delay in providing this summary, but I left town on business and vacation shortly after our meeting, and the period since my return has been extraordinarily hectic.

A. Committee Authority

The fundamental issue affecting your group is whether it has authority to act with regard to the road maintenance issues we have discussed. It is an unfortunate attribute of the road maintenance documents which control this situation that even that basic question cannot be answered with certainty.

At the simplest level, we note that each property owner subject to the Covenants and Private Road Easement and Maintenance Agreement dated November 16, 1988, as subsequently amended (the "Covenants") has the authority to enforce the restrictions and reservations they contain. Accordingly, nothing prevents a group of those individuals from joining together in an enforcement or administrative effort. At that level, it would be difficult for anyone to challenge the committee's existence or its activities in evaluating the road questions.

The more troubling issue is whether your group has any authority to act in a representative capacity. The answer to that question is probably "no," unless you either obtain the unanimous support of the other parties bound by the Covenants, or obtain a court order modifying the

Covenants to allow the election or appointment of a centralized governing body. As discussed further below, we recommend at least attempting the former, as a first step in your process.

B. Corporate Formation

I learned at our meeting that your committee has formed a nonprofit corporation to act as the governing entity. We applaud that move, both because it should provide some liability insulation for individual directors and officers, and because it provides a framework for governing if and when the corporation's authority is established. In fact, our initial advice was to accomplish a similar goal by using the existing owner's association. That plan, of course, is not feasible due to the difference in coverage and constituency between the Covenants and the owners' association.

We have reviewed and revised the Bywater Way Road Maintenance Association Bylaws. A revised version of the document, is attached for your review. Please review the revised document with particular attention to the following comments and contact us if you would like to discuss any of the provisions.

1. We deleted references in the document to an "oversight committee" and a "managing agent," on the basis of our impression that the Board of Directors will actually govern. If we have misunderstood your intent, please let us know.
2. We note that the Bylaws as drafted contain no provisions tailored specifically to expand the scope of the road maintenance covenants (for example, authority to levy assessments or expand the scope of the maintenance operations to include paving and other work), although they do refer in Article II to making recommendations, etc. We presume the choice not to include those provisions is calculated to avoid controversy, and believe that goal is important. If in the future you wish to expand the coverage of the document or the authority of the company, we would be pleased to assist you in that process.
3. In Article VI, Section 4, the Bylaws provide that the affirmative vote of a majority of the entire Board of Directors is necessary for a decision. An alternative is to state that a majority of a quorum is adequate. The difference, of course, is that under the Bylaws as drafted, if you call a meeting and only 5 of 9 Board members attend, you will need unanimous consent to act. Under the alternate treatment, the vote of 3 would be adequate.

C. Short-Term Maintenance

A pressing issue confronting you is what maintenance operations you can undertake in the short term—specifically, whether you may perform maintenance work more than once per year, and whether you may pave roads. The conservative answer is to abide strictly by the letter of the Covenants. That course is the only way to be relatively certain you will not be sued or otherwise

The other option with regard to the short-term maintenance issues (with apologies to Nike) is to "just do it"—i.e., proceed with whatever maintenance you believe is necessary, and see if your efforts are challenged. The obvious benefit of that approach is that it gets the work done. A number of potential drawbacks must also be considered, however. For example, you may be unable to perform operations on all affected roadway areas. If, as you have explained, the roadways exist as easements across private property, it is entirely possible that a property owner would forbid you from setting foot on his property. We discussed the consequences of proceeding without permission. Logically, an owner would be hard-pressed to prove that it was damaged in any way by road improvement activities, but an owner could theoretically argue damage in the form of loss of aesthetics, emotional damage, or other claims. Few rights are as jealously guarded as real property ownership, and there is significant risk of reprisal and of liability. As we discussed, under no circumstances should you attempt to enter the property of another in the face of active resistance by the owner. Such conduct could result in significant damages on theories of trespass, assault and others.²

Another drawback of the self-help approach is that you may have difficulty collecting your neighbors' contributions to costs. If you are acting beyond the strict letter of the Covenants, we would not be surprised if one or more neighbors simply refused to pay. In that regard, we discussed whether your committee could act as "contractor" and assert lien rights pursuant to the Covenants. For the reasons we discussed, I believe the answer is "no." The Covenants seem to contemplate use of the materialmen's lien provided pursuant to RCW Ch. 60.04, which would, among other things, require that the lien claimant be properly licensed and registered as a contractor. You would also need to institute a system of delivery of pre-claim notices. Our sense is that the risk and effort involved in attempting that course would not be justified.

D. Conclusions and Recommendations

Having said all of the above, the only clear conclusion that results from this discussion is that there is no obvious right answer as to how to proceed. One clear conclusion, however, is that you will never have complete certainty of your committee's authority without modification or supplementation of the existing Covenants. Accordingly, we recommend proceeding as follows.

First, you should continue your efforts to ascertain whether there is a clear consensus among all affected property owners as to the appropriateness of additional maintenance. If you announce that you want to pave the roads and look for unanimous support, the effort is likely to fail. On the other hand, if you explain that you want to amend the Covenants to create a centralized

² The third option, which does not appear to be a significant possibility, is to encourage government authorities to accept the dedication of the roads. Our understanding is that that possibility has already effectively been foreclosed.

incur the wrath of your neighbors. The problem, of course, is that abiding strictly by the Covenants leaves you effectively unable to perform maintenance operations you believe are necessary, and without means to resolve disagreements about precisely what is necessary. If you want to address those issues, you essentially have two options.

The first option would be to attempt to change the current regime by amending the Covenants. There are an infinite number of ways the Covenants might be amended to satisfy some or all of your goals, but the most obvious would be to allow for a system of majority (or even supermajority) voting. A more direct and controversial (and we believe less effective) approach would be to actually list additional maintenance operations which must periodically be performed, including paving and subsequent repairs.

The key procedural issue is how you would go about accomplishing the amendment, once you decide what it should comprise. As we discussed, there are two ways: by agreement or by legal action. My impression is that you are convinced that unanimous agreement among all parties bound by the Covenants is unlikely. The question, then, is what is the likelihood of victory in litigation. As you all know, the outcome of legal action is extraordinarily difficult to predict, particularly in circumstances such as these which involve multiple parties with differing goals, but the following discussion should prove helpful.

Victory in litigation effectively depends on your ability to convince a court that the existing Covenants are so unfair or so unworkable as to justify reformation. Anecdotal evidence concerning disagreement among property users, poor road conditions, and the divisiveness of the paving issue would all be helpful in that effort.¹ The intent of the original drafter of the Covenants will also be important in litigation. Ideally, you would demonstrate that Pope Resources did not intend to perpetually forbid the paving of roads, but that it set guidelines for initial action only. The Covenants also reflect some degree of expectation that the roads would be dedicated to public use at some point; highlighting that fact may help convince a court that the limitations in the Covenants were prompted by the declarant's desire to avoid cost pending dedication of the roads to the public.

In a sense, even a loss in litigation accomplishes a worthy goal: at least you would have some level of certainty about the parties' rights and obligations. Also, it is possible that the very threat of litigation would result in some compromise or cooperation from those of your neighbors who have refused to cooperate in the past.

¹ Consistent with your instructions to control costs in this matter, we have not performed exhaustive research on the specific factual authority available in Washington (or in other states which may be persuasive). If you elect to go forward with litigation, it will of course be necessary to study that authority further. For the time being, we will continue to limit our comments to general principals of contract interpretation, unless you instruct otherwise.

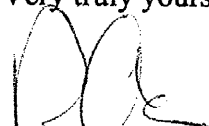
Mr. Jim McGillis
December 20, 2000
Page 5

governing body, and show how unworkable the current system is, you may get the support. There will undoubtedly be holdouts who want to maintain what currently amounts to a veto power, but you obviously won't know who they are until you try. At a minimum, you may learn something about the holdouts' motives for resisting your efforts. As we discussed, some of the owners' objections may be purely financial (particularly for absentee owners), and those concerns are relatively easily addressed.

If that exercise achieves unanimous consent, your quest is over. If it results in widespread disagreement, your quest is also probably over, inasmuch as our advice would be to abandon the effort, at least temporarily. If, as is more likely, you determine that a clear majority favors your position, you will have gathered an important piece of information, which will be material to your evaluation of whether legal action is appropriate. As we discussed, that clear consensus is important both as ammunition to convince a finder of fact of the correctness of your position, and as a measure of the likely level of resistance you will encounter.

We wish there were clearer answers to the questions facing your group. In the absence of certainty, we trust you will find the foregoing discussion helpful. Please consider our comments and contact us with any questions you may have. Thank you for your cooperation and Happy Holidays to all of you and your families.

Very truly yours,




Ronald D. Allen

RDA:aa

Attachment

APPENDIX B

**Bywater Way Road Maintenance Association
P.O. Box 25
Port Gamble, WA 98364**

Date: 10 September 2001
To: Property Owners, Bywater Way Road System
From: Jim McGillis  Chairperson,
Subject: Covenants & Bylaws

Enclosed please find the following:

1. Copy of letter from Attorney Ron Allen describing the need to change our Road Maintenance Covenants.
2. AMENDMENT TO DECLARATION OF ROAD MAINTENANCE COVENANTS, CONDITIONS AND RESTRICTIONS.
3. Exhibit A, "BYWATER WAY ROAD MAINTENANCE ASSOCIATION BYLAWS".

Please read the enclosed materials carefully. This is your opportunity to voice your concerns and suggestions.

After more than a year of study the Board of Directors at our regular meeting on 7 July 2001 unanimously recommended the attached documents. We believe that the recommended covenant changes solve three serious problems with our current Road Maintenance Agreement:

1. The current documents do not provide a way of amending them short of 100% approval by the lot owners.
2. The current document does not provide for a reasonable method of enforcement.
3. The current document is too restrictive to allow cost-effective maintenance of our current gravel roads or the possibility of improvements to the system.

The revisions to the BYWATER WAY ROAD MAINTENANCE ASSOCIATION BYLAWS are a result of the annual membership meeting held in April. They will be Exhibit A to the AMMENDMENT TO DECLARATIONS OF ROAD MAINTENANCE COVENANTS, CONDITIONS AND RESTRICTIONS.

Our intention is to use your responses to assist us in revising these documents. If you do not respond by 1 October 2001 we will assume that the enclosed documents are satisfactory. Necessary changes will be made and the documents will be returned for your approval. At that time a notarized signature will be required to complete the process. If you have questions we would urge you to contact a board member or seek legal advice.

Send your written concerns to the address above or e-mail jmcgillis@olympus.net, or call any board member.

Wanda Anderson, 437-5087 Lou Bacher, 437-0709 Dallas Crow, 437-0805
Joe Krotzer 437-0643 Jim Mc Gillis, 437-7754 Bill Shain, 437-2699 Julie Stevely 437-7954

**Betts
Patterson
Mines**



Attorneys at Law

ITEM 5A

Ronald D. Allen
eMail: rallen@bpmlaw.com

March 28, 2001

Mr. Jim McGillis
Bywater Way Road Maintenance
Committee
782 Bywater Way North
Port Ludlow, WA 98365

Re: Bywater Way Road Maintenance Committee

Dear Jim:

We write to summarize our recent conversations concerning the need for a mechanism to amend the Covenants and Private Road Easement and Maintenance Agreement dated November 16, 1988 and Declaration of Road Maintenance Covenants, Conditions and Restrictions dated January 16, 1989 (collectively the "Declaration"), which govern maintenance of the roads in your neighborhood.

As we have discussed, the Declaration is deficient in a number of respects. For example, it places artificial and unworkable limits on the frequency and type of maintenance operations permitted by the owners of the properties which depend upon the subject roads. As your recent experience has demonstrated, those limitations are inconsistent with your goal of an efficient, effective and economical maintenance program. It may be that the limits were prompted by the expectation that the roadways would ultimately be dedicated to the public and the local government would succeed to the maintenance responsibility. Property developers seeking to avoid short-term costs frequently impose such limitations for the first brief period after development is complete.

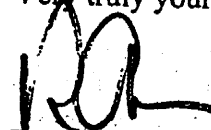
Those deficiencies are compounded by a complete lack of process for amendment of the Declaration or adoption of new rules or guidelines. Most similar documents provide for amendment by a majority or some other portion of the affected owners, simply in acknowledgement of the fact that circumstances change, particularly where newly-developed real

Mr. Jim McGillis
March 28, 2001
Page 2

property is concerned. Indeed, it is difficult to conceive of recording such a document without permitting generations of future owners to modify it as the need arises.¹

In addition to the obvious frustration likely to result from the rigidity of a fixed maintenance program, the inability to modify the Declaration or to expand the maintenance program for which it provides may have a variety of consequences. It may require you to leave the roads in disrepair for long periods of time, particularly if traffic increases. It will leave you unable to adjust to changing circumstances or to implement newly-developed products, processes or technology which may ultimately benefit the community. It may subject the group to the arbitrary whims of a single lot owner seeking to gain leverage by exercising a perceived "veto" power. Ultimately, it may have the effect of substantially diminishing property values in the affected areas, particularly if the roads cannot be properly maintained. For all of these reasons, we strongly recommend that the community collectively adopt an amendment to the Declaration which expressly permits orderly modification. We have prepared a suitable form, and attach it for your review. Please contact us with any questions or concerns you may have about it. We wish you the best of luck in your efforts.

Very truly yours,



Ronald D. Allen

RDA:aa

¹ Although we recommend that the Amendment be executed by all of the affected property owners, it is not crystal clear that unanimous approval is necessary. There are arguments available which support the possibility of effective amendment by a smaller number of owners. However, the conservative approach, and the one most likely to appeal to the owners at large, is to obtain signatures from all property owners.

**AMENDMENT TO DECLARATION OF ROAD
MAINTENANCE COVENANTS, CONDITIONS AND
RESTRICTIONS**

This Amendment to Declaration of Road Maintenance Covenants, Conditions and Restrictions (this "Amendment") is executed effective the _____ day of _____, 2001 by and among the undersigned individuals, each of whom shall be referred to herein as a "Lot Owner" and collectively as the "Parties."

RECITALS:

- A. The Parties collectively own all of the real property and improvements which are subject to the Covenants and Private Road Easement and Maintenance Agreement dated November 16, 1988 and recorded under Jefferson County, Washington auditor's file number 318666 (the "Original Declaration"), which Covenants were modified by a Declaration of Road Maintenance Covenants, Conditions and Restrictions dated January 16, 1989 and recorded under Jefferson County, Washington auditor's file number 319389 (the "Amended Declaration"). The Original Declaration and Amended Declaration shall be referred to herein collectively as the "Declaration." The real property subject to the Declaration shall be referred to herein as the "Property." Each individually subdivided parcel of the Property shall be referred to herein as a "Lot."
- B. Among other things, the Declaration governs maintenance of certain roadways in and serving the Property. In recent years, the Parties or their predecessors in interest have perceived a need for maintenance and repair operations of a type or at times not expressly permitted by the Declaration. The Declaration does not provide a mechanism for amendment, nor does it allow the Parties to effectively enforce individual Lot Owners' payment obligations under the Declaration.

- C. By this Amendment, the Parties desire and intend to modify the Declaration to create a mechanism for future modification, and otherwise to clarify the terms of the Declaration, all on the terms and conditions set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Recitals. Recitals of fact A through C above are true and correct and are hereby adopted as part of this Amendment.
2. Amendment. The Declaration is hereby amended and modified as follows.

A. Future Amendment. The following provision is hereby added as Section 9 of the Amended Declaration:

9. Amendment. This Declaration may be amended only by affirmative vote of a majority of the total number of votes held by all Lot Owners. For purposes of approving any proposed amendment, each Lot shall be entitled to one vote, which may be wielded by the Lot Owner. No amendment of this Declaration shall be effective until reflected in a written instrument duly executed and acknowledged by the owners of a majority of the Lots which comprise the Property, duly recorded in the records of Jefferson County, Washington

B. Enforcement. The following provision is hereby added as Section 10 of the Amended Declaration:

10. Enforcement. A Lot Owner shall be deemed to be in default of this Declaration upon the expiration of thirty days (ten days in the case of failure to pay money) from receipt of written notice from any other Lot Owner or association of Lot Owners specifying the particulars in which such Lot Owner has failed to perform its obligations under this Declaration unless the Lot Owner has, prior to the expiration of the cure period, cured the matter specified in the notice of default. In the event the failure (except the failure to pay money) cannot reasonably be cured within the thirty-day cure period, the Lot Owner shall not be in default so long as it has commenced cure of the default and is using good faith, diligent efforts to cure the default.

When any Lot Owner is in default hereunder, and without limiting any other legal rights or remedies, any non-defaulting Lot Owner or association of Lot Owners shall have the right (but not the obligation) to perform the obligation of the defaulting party, after expiration of the cure period specified above. In the event a non-defaulting party undertakes cure on behalf of a defaulting party, the non-defaulting party shall be entitled to reimbursement from the defaulting party for reasonable costs incurred in performing or contracting for performance of such obligations. Any such reimbursement owing but not promptly made shall bear interest at the

lessor of (i) 12 percent (12%) per annum or (ii) the highest interest rate permitted by law.

Any non-defaulting Lot Owner or an association of Lot owners shall have a lien on the defaulting Lot Owner's Lot if the defaulting Lot Owner fails to reimburse the non-defaulting party as required above; provided, however, that if there is a bona fide dispute as to the existence of such default or the amount due, and all undisputed amounts are paid, there shall be no right to place a lien on such Lot Owner's Lot until the dispute is settled by a final court decree or mutual agreement. Such lien shall be effective when filed for record by a non-defaulting party as a claim of lien against the defaulting Lot Owner in the office of the Jefferson County, Washington recorder, signed and acknowledged by the claimant, which shall contain at least: (1) an itemized statement of all amounts due and payable pursuant thereto; (2) a description sufficient for identification of the Lot which is the subject of the lien; (3) the name of the owner or reputed owner of the Lot which is the subject of the lien; and (4) the name and address of the non-defaulting party claiming the lien. The lien, when so established against real property described in the lien, shall be prior and superior to any right, title, interest or claim which may be or has been acquired or attached to such real property after the time of filing the lien. The lien shall be for the use and benefit of the non-defaulting party and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

C. Maintenance. Section 1 of the Amended Declaration is hereby deleted in its entirety and the following provision is substituted in its place:

Section 1. Maintenance standards for roads. Maintenance of the Roads (herein "Road Maintenance") may include all repair, replacement and maintenance activities reasonably required to keep the roads in serviceable, safe condition, including filling of potholes, re-grading of roadways, ditches and gravel, paving and application of other surface and resurfacing materials, and installation or maintenance of striping, signage and other safety measures. Such maintenance shall be performed by the Contractor (as that term is defined below) as often and at such time or times of year as directed by the Lot Owners.

3. Association. The Lot Owners hereby agree that the Bywater Way Road Maintenance Committee, a Washington non-profit corporation (the "Association") shall have the full authority to administer and enforce the Declaration as agent and on behalf of the Lot Owners collectively. The bylaws attached hereto as Exhibit A are hereby approved and accepted as the Bylaws of the Association. Such delegation of authority to the Association shall not in any manner restrict or limit the right of any Lot Owner to enforce the Declaration to the extent and in the manner permitted by the Declaration, following adoption of this Amendment.

4. Confirmation. Except as expressly modified by this Amendment, the Declaration shall remain in full force and effect, and the Lot Owners hereby confirm the Declaration as so modified. In the event of any inconsistency between the terms of the Declaration and the terms of this Amendment, the terms of this Amendment shall control.
5. Miscellaneous. This Amendment shall be interpreted and enforced in accordance with the laws of the state of Washington. Any action to interpret or enforce this Amendment shall be venued in Jefferson County, Washington. This Amendment and the Declaration shall constitute a covenant or covenants running with the land comprising the Property, and shall bind and inure to the benefit of the current Lot Owners and their successors and assigns. In the event of any controversy over the terms of this Amendment, the prevailing party shall be entitled to collect from the other party or parties its reasonable attorneys' fees and costs incurred. This Amendment shall be recorded in the public records of Jefferson County, Washington

DATED the date first above written.

Signature

Printed Name

Date

STATE OF WASHINGTON)

COUNTY OF _____)

ss.

On this ____ day of _____, 2001, 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 described in and who executed the foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes herein mentioned.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of Washington

Printed Name: _____

My appointment expires: _____

P.O. Box 25
Port Gamble, WA 98364

Bywater Way Road Maintenance Association

January 10, 2003

Dear Lot Owner:

Shortly after this group was organized in 1999 it became clear that the current covenants that deal with road maintenance were not functional. In September of 2001 we sent some proposed changes to all lot owners for comments and suggestions. Based on the information we received from the owners the covenant amendments and bylaws of this association were revised and in February of 2002 they were returned to the lot owners for approval or disapproval. As of today's date we have received 35 responses to the amendments, 85% favorable.

Our records indicate we have not heard from you. Our plan is to present the results to the owners at our annual membership meeting at the end of April of this year and request guidance as to how to proceed.

Please complete the attached questionnaire and return at the earliest possible convenience. If you have questions please contact any board member.

Thank you,

Jim Mc Gillis
Treasurer

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**Bywater Way Road Maintenance Association
P.O. Box 25
Port Gamble, WA 98364**

Date: 10 January 2003
To: Property Owners, Bywater Way Road System
Subject: Covenant and Bylaw change questionnaire

_____ I agree with the changes and support moving forward.

_____ I agree that the covenants need changing but have the following concerns.

_____ I disagree with any changes to the existing covenants.

COMMENTS:

SIGNED _____

PRINT NAME _____

DIVISION _____

LOT NUMBER _____

Thank You.