

Filed for Record at Request of:

CSD Attorneys at Law P.S.
1500 Railroad Avenue
Bellingham, WA 98225

REVIEWED BY
SKAGIT COUNTY TREASURER
DEPUTY Candi Newcombe
DATE 01/22/2024

DOCUMENT TITLE(S):

TRACT 7 MAINTENANCE AND ACCESS EASEMENT AGREEMENT

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED, AMENDED, OR RELEASED:

N/A

GRANTOR(S):

JON and KRISTEN MCKEE

Additional Grantors found on page N/A of document.

GRANTEE(S):

NOOKACHAMP HILLS HOMEOWNERS ASSOCIATION

Additional Grantees found on page N/A of document.

ABBREVIATED LEGAL DESCRIPTION (Lot, block, plat or section, township, range)

**LOT 202, NOOKACHAMP HILLS PUD, PHASES 3 & 4;
TRACT 7, NOOKACHAMP HILLS PUD, PHASES 3 & 4**

Additional legal on Page 1 of document.

ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER(S):

**P127755 / 4963-000-202-0000;
P127813 / 4963-000-999-0700**

**TRACT 7 MAINTENANCE
AND ACCESS EASEMENT AGREEMENT**

This **TRACT 7 MAINTENANCE AND ACCESS EASEMENT AGREEMENT** ("Agreement") is made this 8th day of January, 2024, by **JON and KRISTEN MCKEE**, a married couple ("McKee"), and **NOOKACHAMP HILLS HOMEOWNERS ASSOCIATION**, a Washington nonprofit corporation (the "Association") (collectively the "Parties" or individually the "Party").

WHEREAS, McKee is the owner of certain real property located in Skagit County, Washington commonly known as 24167 Fly Fish Lane, Mount Vernon, WA 98274, Tax Parcel Number P127755 / 4963-000-202-0000, with the following legal description:

Lot 202, "PLAT OF NOOKACHAMP HILLS PUD PHASES 3 and 4, PL07-0870," as recorded on July 24, 2008, under Auditor's File No. 200807240089, records of Skagit County, Washington.

SITUATE IN THE COUNTY OF SKAGIT, STATE OF WASHINGTON.

(the "Benefitted Property").

WHEREAS, the Benefitted Property was created pursuant to the "Plat of the Nookachamp Hills PUD Phases 3 and 4, PL07-0870" (the "Plat"), recorded under Auditor's File No. 200807240089;

WHEREAS, Note 10 of Sheet 2 of the Plat granted the Benefitted Property an easement for ingress, egress, and utilities (the "Easement") over and across "Tract 7," as shown on Sheet 5 of the Plat (the "Easement Area");

WHEREAS, the Association owns Tract 7, Tax Parcel Number: P127813 / 4963-000-999-0700 and the following Legal Description:

Tract 7 of the Nookachamp Hills PUD Phases 3 and 4, recorded under Auditor's File No. 200807240089, located in Northwest 1/4 of Section 31, Township 34 North, Range 5 East; being a portion of Southeast 1/4 of Section 25 Township 34 North, Range 4 East, and Northeast 1/4 of Section 36, Township 34 North, Range 4 East and Northwest 1/4 of Section 31, Township 34 North, Range 5 East, and Southwest 1/4 of Section 30, Township 34 North, Range 5 East.

SITUATE IN THE COUNTY OF SKAGIT, STATE OF WASHINGTON

(the "Burdened Property");

WHEREAS, the Burdened Property is a "common area" pursuant to those Covenants, Conditions, and Restrictions recorded under Auditor's File No. 200807240091 on November 2, 1998, amended on August 23, 2005, under Auditor's File No. 200508230083, and again amended on December 31, 2008, under Auditor's File No. 200812310104 (the "CC&Rs");

WHEREAS, the Easement provides the Benefitted Property road access to Fly Fish Lane;

TRACT 7 MAINTENANCE AND
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WHEREAS, no other lot within the Plat is benefited by the Easement over Tract 7, and no other lot within the Plat is benefited by any other easement over Tract 7;

WHEREAS, the Easement was originally a gravel road until McKee (the "Benefitted Property Owner") paved a portion of the Easement Area in 2023;

WHEREAS, the Association (the "Burdened Property Owner") acknowledges and accepts the current, paved condition of the Easement Area; and

WHEREAS, the Parties wish to execute this Agreement to allocate rights and benefits regarding maintenance of the Easement Area.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. **THE EASEMENT.** The Parties reaffirm that the Easement for ingress, egress, and utilities over, across, and through Tract 7 of the Plat exists and shall continue to exist for the benefit of the Benefitted Property.
2. **MAINTENANCE AND REPAIR.** The Benefitted Property Owner shall be responsible for all maintenance and repair of the Easement Area or other Improvements made by the Benefitted Property Owner within the Easement Area that results from the Benefitted Property Owner's use of the Easement and that of the Benefitted Property Owner's guests, invitees, or licensees using the Easement. The Burdened Property Owner shall be responsible for the maintenance and repair of its infrastructure or Improvements within the Easement Area that results from the Burdened Property Owner's use of the Easement or that of third parties not associated with the Benefitted Property Owner. Maintenance and repair are defined as maintaining the Improvements within the Easement Area in decent, workable condition for the stated purpose of ingress, egress, and utilities. If any maintenance and repair require a permit or approval from Skagit County or any other government entity, it shall be the responsibility of the Party responsible for that maintenance and repair to obtain such permit(s) and/or permission prior to conducting any work.
3. **NO OBLIGATION TO IMPROVE.** The Benefitted Property Owner has no obligation to improve the Easement beyond its current condition. An Improvement is defined as adding a feature to the Easement Area, such as a bike lane or speed bump.
4. **INITIATING MAINTENANCE AND REPAIR.**
 - 4.1 **Routine Repairs or Maintenance.** The Benefitted Property Owner may conduct routine repairs or maintenance without notice or approval from the Burdened Property Owner. Routine repairs or maintenance is any work that does not require a permit from Skagit County or any other governmental body. The Benefitted Property Owner shall have sole discretion in administering such work, including but not limited to choosing and directing the contractor, so long as such discretionary choices reasonably accomplish the primary goal of maintaining the Easement Area in decent, workable condition for the Easement's stated purpose of ingress, egress, and utilities.

4.2 Repairs or Maintenance Requiring Permits. The Benefitted Property Owner may conduct repairs or maintenance beyond routine repair or maintenance, i.e., repair or maintenance that requires a permit from a government body such as but not limited to Skagit County, so long as the Benefitted Property Owner provides written notice to the Burdened Property Owner, 45 calendar days in advance of such repairs or maintenance, and the proposed work is reasonably necessary to use the Easement Area for the Easement's stated purpose of ingress, egress, and utilities.

If the Benefitted Property Owner believes permitted repairs or maintenance is necessary, the Benefitted Property Owner shall provide written notice to the Burdened Property Owner, 45 calendar days in advance of any repair or maintenance, identifying the condition of the Easement Area that needs maintenance or repair and the specific permit(s) believed to be required. The Benefitted Property Owner shall have sole discretion in administering such work, including but not limited to choosing and directing the contractor, so long as such discretionary choices reasonably accomplish the primary goal of maintaining the Easement Area in decent, workable condition for the Easement's stated purpose of ingress, egress, and utilities.

The Burdened Property Owner's approval of such repair or maintenance under this Section 4.2 shall not be unreasonably withheld. If the Burdened Property Owner objects to such work, the Burdened Property Owner must provide written notice to the Benefitted Property Owner no later than 30 calendar days after receipt of the notice originally given. If the Burdened Property Owner fails to object within 30 calendar days, such failure to object shall be deemed approval. If upon an objection, the Parties cannot reach a resolution, then this dispute shall be governed by Paragraph 8 below. Notice under this Section 4 is not required for work that is necessary as a result of an emergency, which is governed by Paragraph 5 below.

5. EMERGENCY WORK. In the case of an emergency or other unforeseen condition that requires immediate repair, maintenance, or replacement within the Easement Area, including any utilities, the Benefitted Property Owner shall give as much advance notice to the Association and the Association's current management company, as reasonably possible prior to commencing work. However, in the event it is unreasonable to provide advance notice, the Benefitted Property Owner may commence such emergency work on the Easement and shall provide notice to the Burdened Property Owner as soon as possible. For the purposes of this Agreement, "emergency" is defined as any circumstance which creates an immediate danger to life or property if left unaddressed.

6. OBSTRUCTIONS. The Parties shall keep the Easement Area free from obstructions, such as parked vehicles, which prevent or are otherwise inconsistent with the Benefitted Property's use of the Easement for its intended purposes. The Parties shall keep the Easement free from conditions that would make use of the Easement Area dangerous or hazardous.

7. INDEMNIFICATION, DEFENSE, AND HOLD HARMLESS. The Parties shall assume full responsibility and liability for the acts of their licensees, invitees, employees, agents, contractors, or other authorized people within the Easement Area. In this regard, the Parties agree to indemnify, defend, and hold each other harmless against any and all loss, claim, liability (including attorneys' fees and costs) incurred as a result of the other Party or the other Party's agents', invitees', or licensees' use of the Easement. Other lot owners within the Plat are considered agents, invitees, or licensees of the Burdened Property Owner.

8. **DISPUTE RESOLUTION.** If either Party believes the other Party is in default under this Agreement, that party shall provide a Ten (10)-Business-Day Notice of Default to the other Party that identifies the specific provision of the Agreement the other Party is alleged to have breached, the facts and circumstances supporting such allegation, and ten (10) business days for the other Party to cure or commence a cure if such a cure requires more than the allotted time. If the other Party does not cure, or if no steps are taken to cure, or if the other Party does not believe it has breached the Agreement, the Parties are obligated to meet and confer to attempt to resolve the dispute. This meet and confer obligation is designed to allow the Parties to resolve the issue before going to arbitration. If the Parties are unable to resolve the issue(s), then the matter shall be resolved by binding arbitration pursuant to Chapter 7.04 RCW, as now in effect or hereafter amended. The arbitrator shall be an attorney appointed by the Skagit County Superior Court. The prevailing Party in any such action shall be entitled to its attorneys' fees and costs.

9. **USE OF BURDENED PROPERTY.** The Burdened Property Owner agrees not to disturb the Easement Area, either directly or indirectly, except as may be reasonably necessary and without hindering the Benefitted Property's use of the Easement Area for the stated purposes of the Easement.

10. **BINDING EFFECT.** The Easement and this Easement Agreement, and all rights associated herewith, and the covenants contained herein shall be perpetual in existence and shall be perpetual in duration and considered and construed as covenants running with the land as a burden on the Benefitted Property and Burdened Property and shall be binding upon and inure and extend to the benefit of the heirs, executors, administrators, successors and assigns of the Parties hereto.

11. **NOTICES.** All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested and postage prepaid to:

Benefitted Property Owner: Jon and Kristen McKee
24167 Fly Fish Lane
Mount Vernon, WA 98274

Burdened Property Owner: Nookachamp Hills Homeowners Association
c/o Blue Lake Property Management
PO Box 1850
317 S. 2nd Street, Suite 145
Mount Vernon, WA 98273

Burdened Property Owner's
Current Property Management Co.: Blue Lake Property Management
PO Box 1850
317 S. 2nd Street, Suite 145
Mount Vernon, WA 98273

Or to such other address as the foregoing Parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

12. **SEVERABILITY.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

13. **GOVERNING LAW.** This Agreement, and the right of the parties hereto shall be governed by and construed in accordance with the laws of the State of Washington and the Parties agree that in any such action venue shall lie exclusively in Skagit County, Washington

14. **CAPTIONS.** The captions and headings provided for in this Agreement are for reference purposes only and do not have any effect on the interpretation of this Lease.

15. **NON-WAIVER.** No waiver of any provision of this Agreement by a Party shall under any circumstances constitute or be deemed as a waiver of any subsequent default or breach of the same, or any other provision or requirement of this Agreement.

16. **AUTHORITY TO SIGN.** The individuals signing this Agreement hereby represent that each are authorized to execute this Agreement on behalf of the identified Parties.

17. **COUNTERPARTS.** This Agreement may be signed in any number of counterparts with the same effect as if the Parties had signed the same Agreement. All counterparts will be construed together and evidence only one Agreement.

18. **ENTIRE AGREEMENT.** The entire agreement between the parties hereto is contained in this Agreement, the Easement, and their respective exhibits; and collectively the Agreement and the Easement supersede all of their previous understandings and agreements, written and oral, with respect to this transaction. This Agreement may be amended only by written instrument executed by the Parties subsequent to the date hereof.

[Signatures and Notaries on Subsequent Pages]

MCKEE:

JON MCKEE

[Signature]

ASSOCIATION:

NOOKACHAMP HILLS HOMEOWNERS ASSOCIATION

By: Krista Jellison
Its: Hill's President

KRISTEN MCKEE

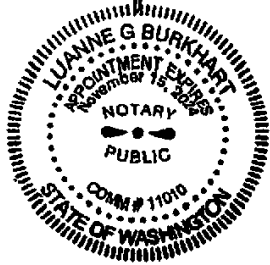
Kristen McKee

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this day personally appeared before me KRISTA JELLISSON to me known to be the PRESIDENT of **NOOKACHAMP HILLS HOMEOWNERS ASSOCIATION**, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument on behalf of the corporation.

GIVEN under my hand and official seal this 29TH day of NOVEMBER 2023

Krista Jellison



[Signature]
Print Name: LUANNE BURKHART
NOTARY PUBLIC in and for the
State of Washington, Residing at SKAGIT COUNTY
My Commission Expires: 11-15-24

