

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

Bradley W. Andersen  
Schwabe, Williamson & Wyatt  
700 Washington Street, Suite 701  
Vancouver, WA 98660

GRANTORS: Gary R. Hegewald, Personal Representative of the  
Estate of Helen B. Hegewald and City of Stevenson

GRANTEE: Gary R. Hegewald, Personal Representative of the  
Estate of Helen B. Hegewald and City of Stevenson

ABBREVIATED LEGAL: BK 32 PG 150~; BK 42 PG 119~; BK 43 PG 272~;

ASSESSOR’S TAX PARCEL NOS.: 0207020010000; 02070210010100;  
0207021010200; \_\_\_\_\_

OTHER REFERENCE NOS.: \_\_\_\_\_

**ROAD MAINTENANCE AGREEMENT**

THIS ROAD MAINTENANCE AGREEMENT (the “Agreement”) is made and executed by and between The Estate of Helen B. Hegewald, and its Personal Representative, Gary R. Hegewald, and the City of Stevenson.

**RECITALS**

- A. Gary R. Hegewald is the Personal Representative of the Estate of Helen B. Hegewald (“Estate”);
- B. The Estate owns three Parcels described in the attached Exhibit “A” (“Parcel 100”), Exhibit “B” (“Parcel 101”), and Exhibit “C” (“Parcel 102”);
- C. The City of Stevenson (“City”) occupies, for the purpose of maintaining a municipal well, certain real property located in Skamania County, Washington, and described on the attached Exhibit “D” (“City Well Property”);
- D. Under the terms of a separate Easement Deed, the Estate possesses a 30-foot wide Road and Utility Easement (“Road”) that runs across Parcels 102 and 100 for the benefit of Parcels 100 and 101;
- E. Under the terms of a certain Warranty Deed that was recorded with the Skamania County Auditor in Book 65, page 461, Skamania County owns a 20-foot wide easement for utilities, and for access, across Parcels 100, 101, and 102

("County/City Easement") to serve the City Well Property which the City uses and occupies;

- F. The City further owns and maintains a municipal water main ("Water Main") that runs through the County/City Easement.
- G. The Estate and the City wishes to execute this Agreement for the purpose of sharing in the common expenses of maintaining the Road that runs across and/or serves their respective properties.

## **AGREEMENT**

THEREFORE, in consideration of the promises contained in this Agreement, the Estate, on behalf of Parcels 100, 101, and 102, and the City agree as follows:

**1. City's Responsibilities:** The City currently uses certain portions of the County/City Easement to access the City Well and for utilities to serve the City Well. The City's use of the County/City Easement is sporadic and is related to its need to access the City Well and to maintain the Water Main. Provided the City's use remains the same, it shall only be responsible to, at least once a year, cut back or remove any brush that may interfere with vehicular traffic along the Easement and to restore or repair the Road if the City's use of the Road causes any damage to the Road, beyond regular wear and tear. If the City ever becomes a more regular User of the Road than their current use, they shall be considered Users and subject to Section 2 of this Agreement. Nothing herein shall relieve any party, or their heirs, transferees and/or assigns from having to obtain the necessary permits or approvals to develop their respective properties.

**2. Parcels 100, 101, and 102's Responsibilities/Road Users:** The terms of this Road Maintenance Agreement will only go into effect if and when: (1) the Road is actually constructed and when two or more of the owners of Parcels 100, 101, and 102 begin to regularly use the Road. The intent is to only require those who actually use the Road ("Users") to be responsible for its maintenance. A person is considered a "User" if they use the Road on more than a sporadic basis, or are using the Road to access a residence, or as part of any development or use of their respective properties. The Users of the Road shall therefore share in the cost of repairing and maintaining the Road in a good and working condition as follows:

**2.1 Maintenance of the Road:**

2.1.1 Parcel 102 User: The Owner of Parcel 102 shall pay 15% of the cost of maintaining the Road;

2.1.2 Parcel 100 User: The Owner of Parcel 100 shall pay 35% of the cost of maintaining the Road;

2.1.3 Parcel 101 User: The Owner of Parcel 101 shall pay 50% of the cost of maintaining the Road.

**2.2 Changes in Respective Use:** The parties agree, however, that if there is a significant change in the respective use of the Road that the Owners and Users, and the City, if the City's use of the Road significantly increases, shall agree to change the allocation of maintenance responsibility to reflect the actual percentage use. For example, if one of the parties divides their property, or develops a use with multiple Users, then the actual percentage use of the Road may change. If the parties are unable to agree, then they shall resolve the matter as provided in Section 4.

**2.3 Scheduled Maintenance:** Such maintenance and repair shall be performed whenever the actual Users agree on the following: (1) that maintenance or repairs are necessary; (2) the nature and extent of the necessary maintenance or repair; and (3) the person or persons who shall be retained to undertake the necessary maintenance or repair. Each User shall pay their proportionate share of the costs of maintenance and repair on or before the date of completion of the maintenance or repair. Each User may pay their proportionate share at a later date only if the payment terms allowed by the person or persons retained to undertake the necessary repairs allow payment at such later date. The Users may also agree to perform the labor themselves and agree on how the cost of the material, if any, shall be paid or shared amongst them.

**3. Extraordinary Damage:** Notwithstanding the provisions of Section 2 above, any User or Owner of any Parcel that uses the Road, or their successors or assigns, the occupants of such party's property, or the guests, agents, or invitees of such party or such occupants, or the City, which causes any extraordinary damage, such as damages caused by trucks, work on any utilities, misuse of the Road, City maintenance or replacement of the Water Main, or other similar use, to any portion of the Road shall, at their sole cost and expense, repair such damage and restore the Road to the condition it was in prior to the extraordinary use.

**4. Indemnification/Hold-Harmless:** Each User and Parcel Owner, and the City, shall indemnify and hold harmless the others from any and all liability associated with their construction, maintenance, and use of the Road or Easement, including, but not limited to, all claims made by their guests, invitees, customers, vendors, contractors, agents, lessees, and employees, except that the User, Parcel Owner, or City shall not indemnify the other for any use or maintenance of the Road by the others, or any of their guests, invitees, customers, vendors, contractors, agents, lessees, licensees, and employees, or from any damage or injury caused by the other User, Parcel Owner, or City's own negligence.

**5. Resolution of Disputes:** The Parties agree, pursuant to RCW Chapter 7.04, to resolve their disputes as provided herein through arbitration. In the event the parties (*i.e.* Parcel Owner, User, or the City) are unable, after good faith efforts to negotiate, to agree on whether maintenance or repair is necessary, the nature and extent of any necessary maintenance or repair, or the person or persons who shall be retained to undertake any necessary maintenance or repair, such dispute shall be settled by a single arbitrator who shall direct any settlement he or she deems equitable under the circumstances. The parties further agree to arbitrate if there is a dispute under Section 2.2 as to whether there has been a Change in Respective Use, including

whether the City's use has changed. The arbitrator, if not mutually agreed upon by the parties, shall be appointed by the presiding judge of the Skamania County Superior Court upon the request of either party to this Agreement. Except as provided in RCW Chapter 7.04, the decision of the arbitrator shall be final and binding. The decision of the arbitrator may be enforced by any party to this Agreement in any court of competent jurisdiction in Skamania County, Washington. The arbitrator, at the arbitrator's sole discretion, may award the costs of the arbitration, including, without limitation, the arbitrator's fee as well as a party's attorney fees and other costs in preparation for and at the arbitration to the prevailing party.

**6. Defaults:** In the event of any default or dispute under this Agreement other than those that must be arbitrated under Section 3 above, each party shall have the right to exercise such other rights and remedies as may be available at law or in equity. If any party defaults on any of its monetary obligations arising under this Agreement and fails to cure such default within ten (10) days after receipt of written notice from the other party, then the non-defaulting party shall have the right, at its election and in addition to such other rights and remedies as may be available at law or in equity, to cure such default for the account of the defaulting party, and shall be reimbursed by the defaulting party for the reasonable costs and expenses so incurred (including attorney fees), plus interest thereon at the applicable statutory rate for interests on judgments from the date of default. This right includes the right to place a lien on the property for the cost of any repair or maintenance that is due.

**7. Attorney Fees:** In the event legal action is commenced in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable attorney fees and costs incurred at trial and on appeal, the term "action" includes action commenced in the bankruptcy courts of the United States and any other court of general or limited jurisdiction. The reference to "costs" includes, but is not limited to, deposition costs, witness fees, out-of-pocket costs, title search and report expenses, survey costs, surety bonds and all other reasonable expenses. The term "prevailing party" shall mean the party that succeeds either affirmatively or defensively on claims having the greatest overall value or importance, as determined by the court of competent jurisdiction.

**8. Severability:** If any provision of this Agreement is declared to be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**9. Successors and Assigns:** This Agreement shall run with the land and shall be binding upon, and inure to the benefit of the Parcel Owners, and their respective heirs, successors, and assigns.

Executed to be effective as of the \_\_\_ day of \_\_\_\_\_, 2010.

**ESTATE OF HELEN B. HEGEWALD**

**CITY OF STEVENSON**

By: \_\_\_\_\_  
Gary R. Hegewald  
Its: Personal Representative

By: \_\_\_\_\_  
\_\_\_\_\_  
Its: \_\_\_\_\_

[NOTARY ACKNOWLEDGEMENTS ON FOLLOWING PAGE]

STATE OF WASHINGTON )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned, a Notary Public in and for the state of Washington, duly commissioned and sworn, personally appeared Gary R. Hegewald, known to be the Personal Representative of the Estate of Helen B. Hegewald, and acknowledged the instrument to be the free and voluntary act and deed of that Estate for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the instrument on behalf of the Estate.

WITNESS my hand and official seal hereto affixed the day and year first above written.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name:  
NOTARY PUBLIC in and for the  
State of Washington residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned, a Notary Public in and for the state of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, known to be the \_\_\_\_\_ of the City of Stevenson, the municipal corporation that executed the foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of that municipal corporation for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the instrument on behalf of the municipal corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name:  
NOTARY PUBLIC in and for the  
State of Washington residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**  
(Parcel 100)

A tract of land in the Northeast Quarter of Section 2, Township 2 North, Range 7 East, of the Willamette Meridian, in the County of Skamania, State of Washington described as follows:

Beginning at the Northeast Corner of the Northwest Quarter of the Northeast Quarter of said Section 2; Thence South 00°15'22" East, a distance of 680.00 feet; Thence South 89°31'33" West, a distance of 590.00 feet; Thence North 00°15'22" West, a distance of 680.00 feet; Thence North 89°31'33" East, a distance of 590.00 feet to the Point of Beginning.

Except the East 70 feet of the North 500 feet of the Northwest Quarter of the Northeast Quarter of said Section 2.

**EXHIBIT "B"**  
(Parcel 101)

A tract of land in Section 2, Township, Range 7 East, of the Willamette Meridian, in the County of Skamania, State of Washington, described as follows:

Beginning at the Northwest Corner of Lot 4, of the George Christensen-Sam Melonas Short Plat, recorded in Book T of Short Plats, Page 18; Thence West along the North line of Felix Iman D.L.C. a distance of 82.34 feet to the East line of a tract of land conveyed to Skamania County by instrument recorded in Book 65, Page 461; Thence South 89°31'33" West 208 feet; Thence North 0°30'27" East 104 feet to the North line of said D.L.C.; Thence West along said North line 202.79 feet to a point; Thence South 0°15'22" East 500.07 feet to the Northwest Corner of a tract of land conveyed to Lawrence Hendrickson by Deed recorded in Book 68, Page 811; Thence North 89°35'11" East along said North line 492.24 feet to the West line of Lot 4 of the Short Plat recorded in Book T, of Short Plats, Page 18; Thence North 0°09'04" West along said West line 500.59 feet to the Point of Beginning.

Together with the East 70 feet of the North 500 feet of the Northwest Quarter of the Northeast Quarter of Section 2, Township North, Range 7 East of the Willamette Meridian, in the County of Skamania, State of Washington.



EXHIBIT "C"  
(Parcel 102)

A tract of land in Section 2, Township 2 North, Range 7 East, of the Willamette Meridian, in the County of Skamania, State of Washington, described as follows:

Beginning at the Northeast Corner of the Northwest Quarter of the Northeast Quarter of Section 2, Township 2 North, Range 7 East, Willamette Meridian; Thence West along the North line of said Section 2 a distance of 1055 feet, more or less, to the Easterly right-of-way line of the County road known as Red Bluff road (now Ryan Allen road); Thence Southeasterly along said right-of-way line to its intersection with the East line of the Northwest Quarter of the Northeast Quarter of said Section 2; Thence North along said Quarter line, a distance of 1400 feet, more or less, to the Point of Beginning.

Excepting there from the following:

Beginning at the Northeast corner of the Northwest Quarter of the Northeast Quarter of Section 3, Township 2 North, Range 7 East of the Willamette Meridian, in the County of Skamania, State of Washington; Thence South  $00^{\circ}15'22''$  East along the East line of the Northwest Quarter of the Northeast Quarter of said Section 2, a distance of 680.00 feet; Thence  $89^{\circ}31'33''$  West, a distance of 590.00 feet; Thence North  $00^{\circ}15'22''$  West, a distance of 680.00 feet; Thence North  $89^{\circ}31'33''$  East, a distance of 590.00 feet to the Point of Beginning.

Also Excepting there from the following:

A parcel of land in the Felix Iman D.L.C. in the West Half of the Northeast Quarter of Section 2, Township 2 North, Range 7 East, Willamette Meridian, described as follows:

Commencing at the intersection of the North line of the Baughman D.L.C. and the East line of said West Half; Thence North  $00^{\circ}40'57''$  East along the East line thereof 295.00 feet, to the True Point of Beginning; Thence North  $73^{\circ}52'27''$  West 83.95 feet to an existing rebar; Thence North  $4^{\circ}31'17''$  West 209.00 feet to an existing iron pipe; Thence North  $86^{\circ}20'55''$  East 100.16 feet to the East line of said West Half; Thence South  $0^{\circ}40'57''$  West 238.06 feet along said East line to the True Point of Beginning, which is also described in Deed recorded in Book 147, Page 928, Skamania County records.

**EXHIBIT "D"**  
(City Well Property)

A tract of land located in the Felix G. Iman D.L.C. in Section 2, Township 2 North, Range 7 E. W. M., described as follows:

Beginning at the quarter corner common to Section 2, Township 2 North, Range 7 E. W. M., and Section 35, Township 3 North, Range 7 E. W. M.; thence north 89° 36' 46" east along the section line common to said sections 1,519.06 feet to the initial point of the tract hereby described; thence due south 208 feet; thence north 89° 36' 46" east 208 feet; thence due north 208 feet to said section line; thence south 89° 36' 46" west along said section line 208 feet to the initial point; said tract containing one acre, more or less; EXCEPT the South 104 feet of the above described legal description as described and disclosed by that certain Deed recorded in Skamania County Auditor Book 169, Page 845.

TOGETHER WITH all right, title, and interest of the grantors in the shaft of an existing well and all of the equipment and apparatus installed and used in connection therewith;

TOGETHER WITH an easement and right of way for utilities and for an access road not exceeding 20 feet in width adjacent to the aforesaid section line, and southerly thereof, extending westerly from the northwest corner of the aforesaid acre tract to County Road No. 2073 designated as the Red Bluff Road.