

# KITTITAS COUNTY

## DEPARTMENT OF PUBLIC WORKS

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### MEMORANDUM

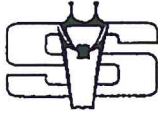
**TO:** Jeff Watson, CDS  
**FROM:** Christina Wollman, Planner III *CW*  
**DATE:** March 20, 2015  
**SUBJECT:** Road Maintenance Agreement  
Big Buck Ridge Plat LP-07-00040

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Kittitas County Road Standards state that private roads shall be: "Maintained by the developer or legally responsible owner or homeowners' association or other legal entity made up of all benefitted property owners, under the provisions of an acceptable and recorded "Private Road Maintenance Agreement." (KCC 12.12.010(6))

The original Road Maintenance Agreement for the "benefitted property owners" served by Deer Creek and Big Tail Road is recoded under AFN 200308260035. The Big Buck Ridge property is shown on Exhibit B to the immediate east of Lot 11-B, which was subdivided as the Plat of Meadow Ridge.

When recorded return to:



Stewart Title of Kittitas County, L.L.C. REVIEWED BY  
208 West 9<sup>th</sup> Avenue, Suite 6  
Ellensburg, WA 98926

KITTITAS COUNTY TREASURER  
DEPUTY Michael M. M.  
DATE 8-26-03

Document Title(s) (or transactions contained therein)  
Road Maintenance Agreement

Reference Number(s) of Documents assigned or released: 200307290057

Grantor(s) (Last name first, then first name and initials)  
1. Cle Elum's Sapphire Skies LLC  
2.  
3.  
4.  
5. Additional names on page \_\_\_\_\_ of document.

Grantee(s) (Last name first, then first name and initials)  
1. DJ Cattle and Land, LP  
2. Cle Elum Homestead LLC  
3. David G. Berry  
4.  
5. Additional names on page \_\_\_\_\_ of document.

Abbreviated legal description  
Additional legal description on page \_\_\_\_\_ of document.

Assessor's Property Tax Parcel/Account Number

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

Return Original To:  
Cle Elum's Sapphire Skies  
315 - 39th Ave SW, Suite 8  
Puyallup, WA 98373

REVIEWED BY  
KITTITAS COUNTY TREASURER  
DEPUTY K. Hill  
DATE 07-29-03

**ROAD MAINTENANCE AGREEMENT**

\*RECORDING TO ADD EXHIBITS A + B

THIS ROAD MAINTENANCE AGREEMENT ("Agreement") is made as of this 16 day of June, 2003, by and among Cle Elum's Sapphire Skies, LLC, a Washington limited liability company ("CESS"), and DJ Cattle and Land, L.P., a Washington limited partnership, Cle Elum Homestead, LLC, a Washington limited liability company and David G. Berry (collectively "Berry").

**RECITALS**

A. The parties desire to set forth a method for the maintenance of certain roads used by the owners of certain property located in Kittitas County, Washington, which are described on attached Exhibit "A" and Exhibit "B" (the "Properties").

B. The Properties are also depicted on the map attached as Exhibit "A" and Exhibit "B" are separately referred to as the "CESS Lots," the "Berry Lots". Each lot comprising the Properties and each additional lot created from a segregation, short plat or subdivision of the existing lots (the "Lots" or separately a "Lot") will be assigned certain maintenance shares for certain roads pursuant to this Agreement. Lots created from CESS Lots shall also be CESS Lots; Lots created from Berry Lots shall also be Berry Lots for purposes of this Agreement and the allocation of costs.

C. The roads are depicted on the map attached hereto as Exhibit "A" and Exhibit "B" and shall be referred to, respectively, as the "Outlet Road," the "South Road" and the "Upper Roads," and collectively as the "Roads."

D. The parties are willing to maintain the Outlet Road, the South Road and the Upper Roads on the terms and conditions set forth in this Agreement.

**AGREEMENT**

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and commitments set forth herein, the parties agree as follows:

1. Easements. This Agreement shall not govern the easements held by the parties and their successors over the Roads; provided, however, that no party or successor shall be obligated for maintenance over a road on which such party or successor has no easement rights. Furthermore, this Agreement shall not govern or restrict the ability of any Lot owner in granting road easements over such owner's property subject to this Agreement.

2. Maintenance. The cost of road maintenance, snowplowing and resurfacing shall be allocated as follows:

- Outlet Road            One equal maintenance share for each CESS Lot, each Berry Lot.
- South Road            One equal maintenance share for each CESS Lot and each Berry Lot, *provided*, however, that the owner of any CESS Lot which relinquishes its easement over the South Road and acquires other access to its Lot shall no longer be obligated for maintenance under this Agreement
- Upper Roads           One equal maintenance share for each Berry Lot.

The parties hereto shall meet and establish necessary maintenance provisions. Such provisions shall include, but shall not be limited to:

- (a) The appointment of a maintainer, which may be one of the parties hereto or any third party, who will perform or cause to be performed, at a reasonable and agreed upon rate, the maintenance and resurfacing of the road or the portion thereof being used, and snowplowing; and
- (b) The Roads shall be snowplowed, at a minimum, 16 feet wide. Upon 6 inches of snowfall, the Roads shall be snowplowed. The Roads shall be snowplowed a maximum of one time per day. It is the intent of these standards to maintain the Roads passable by four-wheel drive vehicles. It shall be the responsibility of Lot owners to plow their own driveways; and
- (c) A method of payment by which each party using said road or a portion thereof shall pay its share of the cost incurred by said maintainer in maintaining or resurfacing said road or portion thereof.

For the purposes of this easement, maintenance is defined as the work normally necessary to preserve and keep the roadway, road structure and road facilities as nearly as possible in their present condition or as hereafter improved.

3. Road Damage. Each party using any portion of said road shall repair or cause to be repaired at its sole cost and expense that damage to said road occasioned by it that is in excess of that which it would cause through normal and prudent usage of said road. Should inordinate damage to said road occur which is not caused by an authorized user of said road, the parties hereto shall meet to agree on the cost of replacement, and the shares of replacement cost to be borne by each user of said road.

4. Construction and Improvement. Unless a majority of the Lot owners responsible for maintaining a particular Road (under Section 2 above) approve in advance any road improvements (other than the routine maintenance provided for in Section 2 above), the costs of said improvements shall be solely for the account of the improver. When a majority of responsible Lot owners approve said improvements, however, the cost of said improvements shall be shared by all responsible Lot owners in accordance with Section 2, above, and said costs

shall constitute a lien on the property of each responsible Lot owner until paid. All work performed or caused to be performed to install or maintain utilities shall be completed in a careful and workmanlike manner to CESS'S reasonable satisfaction, free and clear of all claims or liens and in accordance with applicable law. All areas disturbed by the improver in installing or maintaining utilities shall be promptly restored to their prior condition.

5. Default; Remedies. In the event of a breach of this Agreement by any party, the damages suffered by the other parties are difficult if not impossible to ascertain, and therefore the non-breaching parties shall have the right to obtain specific performance of the obligations of the breaching party in addition to damages for all loss and expense (including, without limitation, attorneys' fees and costs) arising from such breach.

6. Notices. All notices or other communications shall be in writing and shall be sent by personal delivery, telephone facsimile transmission, first-class mail, postage prepaid, or express courier or delivery service, addressed as follows:

If to CESS, to:

with a copy to:

James E. Wood  
Cle Elum's Sapphire Skies, LLC  
315 39th Avenue SW #8  
Puyallup, WA 98373

Michael J. Murphy  
Groff Murphy Trachtenberg  
& Everard PLLC  
300 E. Pine  
Seattle, WA 98122

If to Berry, to:

with a copy to:

David G. Berry  
P.O. Box 654  
Port Orchard, WA 98366

7. Successors and Assigns. This Agreement shall be a covenant running with the land and shall benefit and burden the Property. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns. CESS, at its option, may record a copy of this Agreement, or a memorandum of same in the real property records of Kittitas County, Washington.

8. Severability. If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

9. Amendments; Waivers. This Agreement may be amended only by a written instrument signed by all parties. No breach of any agreement, warranty or representation shall be deemed waived unless expressly waived in writing and signed by the party who might assert such breach. No failure or delay by either party in exercising any right under this Agreement shall operate as a waiver of such right, nor shall any single or partial exercise of any right preclude any other or further exercise of such right or the exercise of any other right. The remedies provided in this Agreement are cumulative and not exclusive of remedies provided by law.

- 10. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.
- 11. Entire Agreement. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, written or oral, between the parties, with respect to its subject matter.
- 12. Counterparts. This Agreement may be signed in several counterparts, each of which shall be an original, but all of which together shall constitute the same instrument.
- 13. Legal Fees. In the event of legal action or proceeding to enforce any of the provisions of this Agreement, costs and reasonable attorneys' fees (including reasonable charges allocated for internal counsel) shall be awarded to the prevailing party.
- 14. Termination. This Agreement shall terminate in part or in whole, as the case may be, with respect to any portion of the Roads, which become public roads.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the year and date first written above.

Cle Elum's Sapphire Skies, LLC

By: The Herbrand Company, Managing Member

By: James E. Wood  
James E. Wood, Vice President

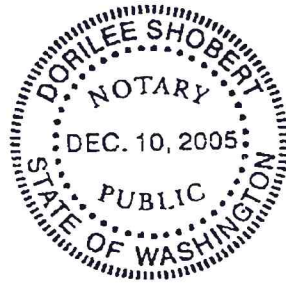
By: David G. Berry  
David G. Berry

By: D.J. Cattle and Land, L.P.  
By: David G. Berry  
David G. Berry

Title: MANAGER  
CLE ELUM

By: Homestead, LLC  
By: David G. Berry  
David G. Berry

Title MANAGER

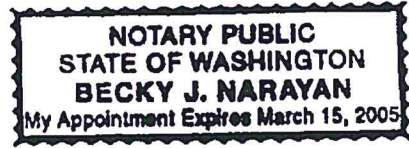


4 - ROAD MAINTENANCE AGREEMENT

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Pierce )

On this day personally appeared before me the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, James E. Wood to me known or proved to me on the basis of satisfactory evidence to be the Vice President of THE HERBRAND COMPANY, a Washington corporation, to me known or proved to me on the basis of satisfactory evidence to be the Managing Member of CLE ELUM'S SAPPHIRE SKIES, LLC, the Washington limited liability company that executed the foregoing instrument, and acknowledged the same instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

Given under my hand and official seal this 21 day of July 2003.



Becky J. Narayan  
Print Name: Becky J. Narayan  
NOTARY PUBLIC in and for the State of Washington, residing at Puyallup  
My Appointment Expires: 3-15-05

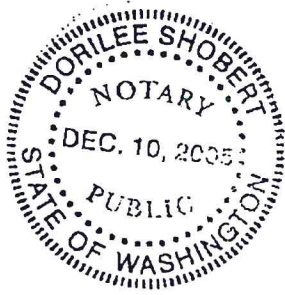
STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KITAP )

On this day personally appeared before me the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, DAVID G BERRY to me known or proved to me on the basis of satisfactory evidence to be the MANAGER of DJ CATTLE + LAND, L.P., a Washington LIMITED PARTNSHP that executed the foregoing instrument, and acknowledged the same instrument to be the free and voluntary act and deed of said L.P. for the uses and purposes therein mentioned, and on oath stated that HE is authorized to execute the said instrument.

5 - ROAD MAINTENANCE AGREEMENT







*Dorilee Shobert*

Print Name: DORILEE SHOBERT  
NOTARY PUBLIC in and for the State of  
Washington, residing at PORT CRICHARD  
My Appointment Expires: 12-10-2005

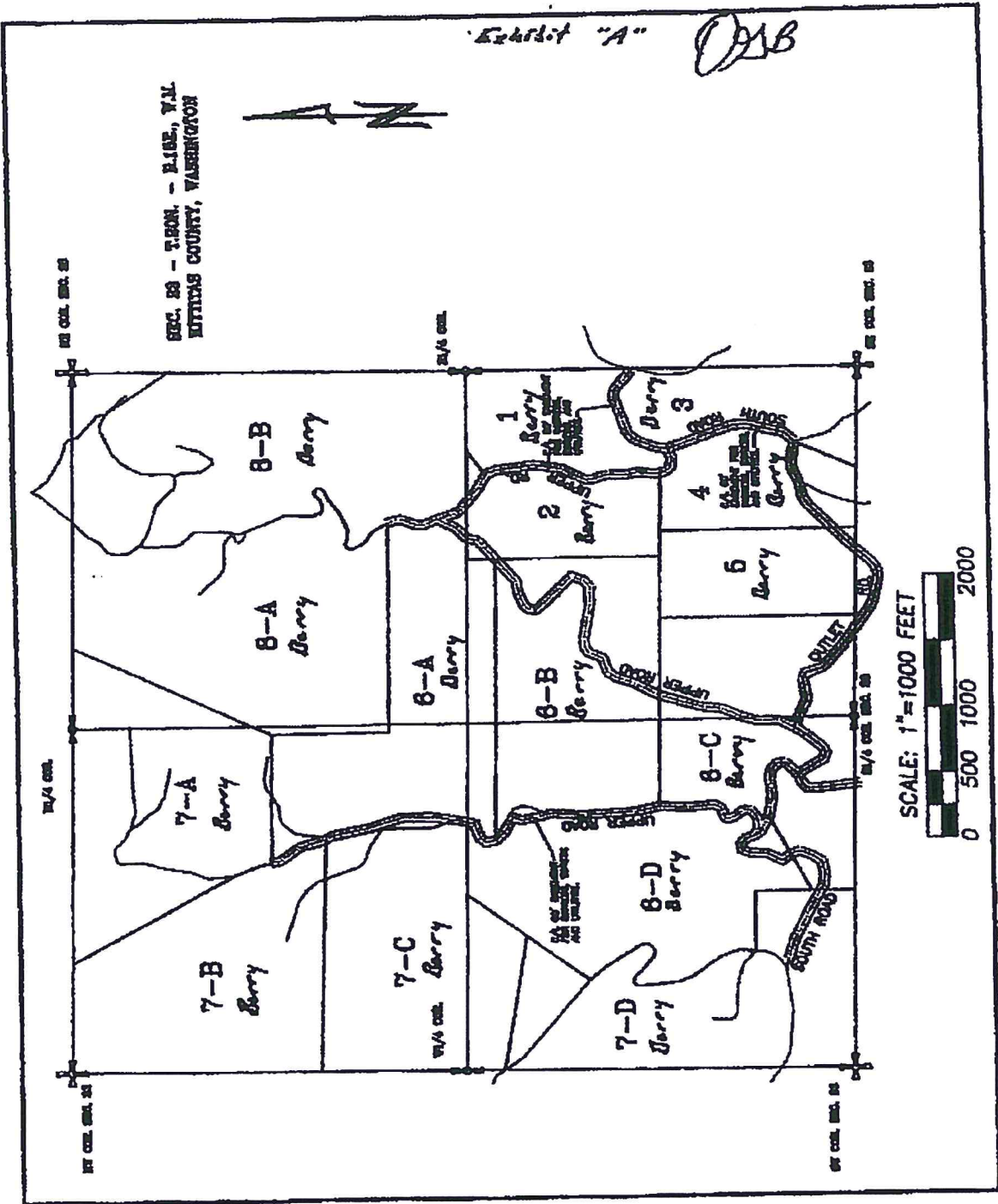
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Page: 7 of 7  
07/28/2003 04:08P  
Kittitas Co Auditor WAYNE NELSEN AGR 25.00



**KITTITAS COUNTY, State of Washington**  
I, David B. Bowen, Kittitas County Auditor, do hereby certify  
that the enclosed instrument is a true and correct copy of  
the imaged original record preserved in my office. Witness  
my hand and official seal.  
Date: 8-26-03 By Deputy: S Newkirk

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08/28/2003 03:55P  
Kittitas Co Auditor STEWART TITLE AGR 28.00

7 - ROAD MAINTENANCE AGREEMENT

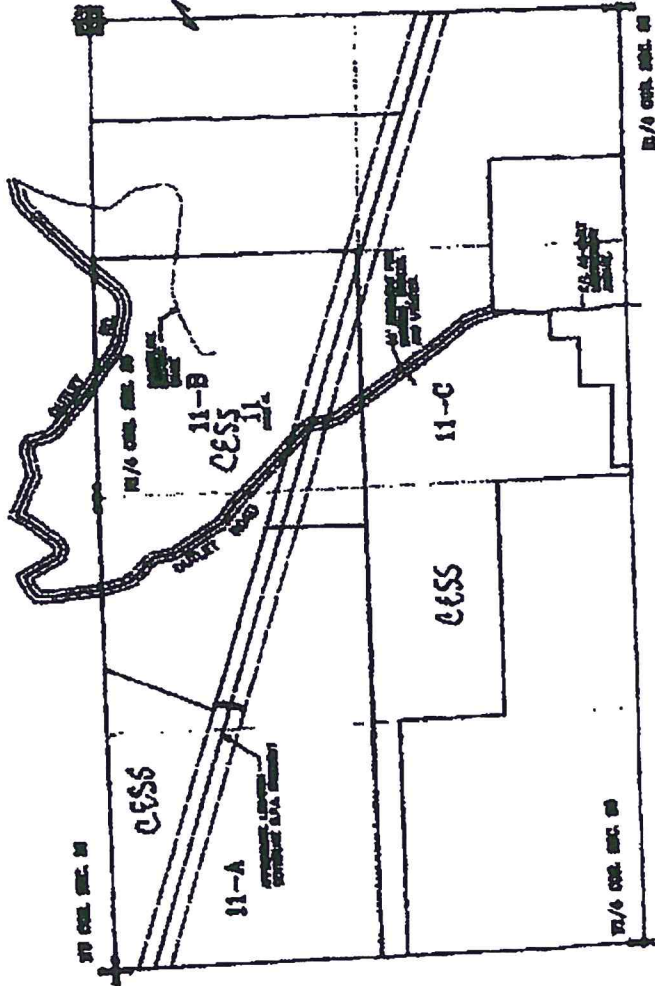



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 Page: 9 of 10  
 08/26/2003 03:59P  
 Kittitas Co Auditor STEWART TITLE AGR 28.00

"Exhibit B"

*Gen*

PART OF SECTION 28  
TOWNSHIP 20 NORTH, RANGE 15 EAST, W.M.  
KITITAS COUNTY, WASHINGTON



SCALE: 1"=800 FEET  
0 400 800 1600



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AGR 28.00

Kittitas Co Auditor STEWART TITLE