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Pages: 6



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**Recording Requested By:**

Western Highland Mortgage Fund I, LLC

**When Recorded Return To:**

Western Highland Mortgage Fund I, LLC  
3170 US Highway 50, Suite 10  
South Lake Tahoe, CA 96150

REGINA ALCOMENDRAS  
SANTA CLARA COUNTY RECORDER  
Recorded at the request of  
Chicago Title

RDE # 001  
1/10/2011  
8:00 AM

**AGREEMENT AND DECLARATION OF COVENANTS AND  
EASEMENTS FOR SHARING PRIVATE STREET MAINTENANCE**

This Agreement and Declaration is made by Western Highland Mortgage Fund I, LLC, (hereinafter referred to as "Owner"). This Agreement and Declaration is intended to comply with California Civil Code Sections 845 and 1468, and relates to the sharing of the costs of maintenance of the certain private street that is located on portions of the land shown on the Parcel Map recorded on December 2, 2010 Book 840 of Maps, at Pages 35 and 36, File No. 20984548 ("Parcel Map") in the County of Santa Clara, State of California.

This Agreement and Declaration is made with reference to the following recited facts and objectives:

- A. The real property described on the Parcel Map is being developed into a residential development of four (4) residences on four (4) adjacent Parcels as shown on the Parcel Map ("Parcels 1, 2, 3 and 4") and is sometimes referred to herein as "the Project".
- B. Owner is the sole owner of all of the real property shown on the Parcel Map.
- C. The purpose of this document is to confirm the easement rights of the parties, their successors and assigns, over and across that portion of the land which on the Parcel Map is shown as the private street, and to allocate the responsibility of the Owner of Parcels 1, 2, 3 and 4 for the costs of such maintenance and repair.
- D. The provisions of this Agreement shall run with the property described and shown on the Parcel Map and shall be binding on the Owner of each of Parcels 1, 2, 3 and 4, and their successors and assigns, and on all parties having or acquiring any right, title or interest in or to the property described, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

Now, Therefore, Owner agrees and declares as follows:

**1. Private Street Non-Exclusive Easements:** The parties hereto confirm the existence of the non-exclusive easement for ingress and egress purposes by pedestrians and vehicles over and across the private street as shown on Parcel Map.

A. Said easements over the private road are non-exclusive, permanent, and appurtenant to the properties, and constitute covenants running with the land.

B. Said easements over the private road shall remain in effect in perpetuity unless otherwise terminated by operation of law, or otherwise pursuant to this Agreement, and shall be appurtenant to the said properties, and may not be separated therefrom.

**2. Maintenance of Private Streets:** The roadbed, surface and drainage of the private street shall be maintained and repaired by the owners of Parcels 1, 2, 3 and 4.

**3. Costs of Maintenance:** The cost of maintenance and repair of the private road ("Private Road Maintenance Costs") shall be shared equally by the owners of Parcels 1, 2, 3 and 4. Each Owner's share of funds for such Private Road Maintenance Costs shall be paid within ten (10) days after the contracting costs have been determined, a contract has been awarded, and billing mailed.

**4. Maintenance Work - Contracting and Payment:** The contracting and performance of maintenance work on the private street shall be as agreed upon by the owners of Parcels 1, 2, 3 and 4, each of whom shall pay an equal one-fourth (1/4) share. Each such owner shall be entitled to enforce any of the covenants contained herein.

**5. Right to Remedy Failure to Maintain Private Street.** In the event that there is a failure to maintain the Private Street so that any owners, lessees, or their guests suffer, or will suffer, substantial diminution in the enjoyment, use, or property value of one or more Parcels, thereby impairing the health, safety and welfare of any such owners and/or residents thereof, the County of Santa Clara, by and through its duly authorized officers and employees, will have the right to enter upon the project, and to commence and complete such work as is necessary to maintain said Private Street. The County will enter and repair only if, after giving the owners written notice of the failure to maintain the Private Street, they do not commence correction of such conditions within thirty (30) days from the giving of the notice, and proceed diligently to completion. All expenses incurred by the County shall be paid within thirty (30) days of written demand. Upon a failure to pay within said thirty (30) days, the County will have the right to impose a lien for the proportionate share of such costs against each Parcel in the Project.

**6. Utility and Other Easements:** Parcels 1, 2, 3 and 4 are subject to certain public and private utility easements as shown on the Parcel Map, including **to be completed per Parcel Map..** By virtue of these easements, it shall be expressly permissible for the providing utility company to install and maintain the necessary equipment and underground facilities within the private street as shown on the Parcel Map. **To be completed per Parcel Map e.g.** said Parcels are additionally subject to an Emergency Vehicle Access Easement designated E.V.A.E.

**7. Arbitration:** Any disputes arising among the owners regarding the need for maintenance, repair or replacement of all or any portion of the improvements within the Private Street, the method or quality of maintenance, repair or replacement, the allocation of costs or any related issue, shall be submitted to the American Arbitration Association, or any successor organization thereto, for resolution in accordance with its commercial rules. Any owner of a parcel as shown on the Parcel Map may institute such arbitration proceedings. The decision of the arbitrator shall be binding on Association and each Parcel owner in the subject properties and may be enforced in any court of appropriate jurisdiction. Notwithstanding the foregoing, if any owner incurs an expense in connection with the maintenance, repair or replacement of any improvement within the Private Street and has made a demand on any owner to pay his, her or its allocable cost as provided herein, and the nonpaying owner has failed, within sixty (60) days after notice of such demand, to make such a payment or to institute arbitration proceedings to resolve a dispute over the demand, the nonpaying owner shall be deemed to have waived arbitration in connection with the demand, and the owner may institute legal action to recover the nonpaying owners share of the costs, including interest thereon at the rate of ten percent (10%) per annum (not to exceed the maximum authorized by law) from the date the cost was incurred by the owner until the date paid.

In any legal action, proceeding or arbitration arising out of or relating to this Agreement, including any action, proceeding or arbitration concerning the interpretation or enforcement thereof, brought by any party to this Agreement, its successors or assigns, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred by the prevailing party.

**8. Notice:** Any notice or demand permitted or required herein shall be conclusively presumed to be received by Owner under this Agreement and Declaration when personally delivered to the owner, or forty-eight (48) hours after the notice has been deposited in the United States mail, certified and return receipt requested, postage prepaid, and addressed to owners address for mailing related to the Parcel as shown on the records of the Santa Clara County Assessor's Office, or such other address that the owner has provided to each of the other owners, by first-class mail, for purposes of receiving notice.

**9. Third Party Beneficiary.** The rights of the County of Santa Clara pursuant to this Article will be the rights of an intended third party beneficiary of a contract, as provided in Section 1559 of the California Civil Code, except that there will be no right of Owner to rescind the contract involved so as to defeat such rights of the County of Santa Clara. It is understood that by the provisions hereof, the County is not required to take any affirmative action, and any action undertaken by the County will be that which, in its sole discretion, it deems reasonable to protect the public health, safety and general welfare, and to enforce it and the regulations and ordinance and other laws.

**10. No Waiver.** It is understood that action or inaction by the County, under the provisions hereof, will not constitute a waiver or relinquishment of any of its rights to seek redress for the violation of any interest in or to the property described, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**11. County Remedies.** It is further understood that the remedies available to the County by the provision of this Agreement or by reason of any other provisions of law will be cumulative and not exclusive of the maintenance of any other remedy. In this connection, it is understood and agreed that the failure to maintain the private street will be deemed to be a public nuisance and the County will have the right to abate said condition, assess the costs thereof, and cause the collection of said assessments to be made on the tax roll in the manner provided by appropriate provisions of the Ordinances of the County of Santa Clara or any other applicable law.

**12. Covenants Running with the Land:** The rights and obligations set forth and described in this Agreement above shall constitute covenants running with the land and equitable servitudes that benefit or burden the lands shown on the Parcel Map, including Parcels 1, 2, 3 and 4 and each owner and successive owner thereof.

**13. Liability for Injury to Third Party:** Each owner and his, her or its successors and assigns will bear the liability, in the same percentage as they share the costs of repairs and maintenance as set forth in Paragraph 4 of this Agreement, for any personal injury or property damage to any person performing maintenance or repair work covered by this Agreement, or to third persons, provided the injury or damage results from or arises out of maintenance or repair work undertaken pursuant to this Agreement.

**14. Liability Limited:** This Agreement shall not apply to liability resulting from personal injury or property damage when the injury or damage is not attributable to maintenance or repair or replacement work undertaken pursuant to this Agreement.

**15. Insurance:** The Owner of Parcels 1, 2, 3 and 4 shall maintain insurance to cover the potential liability each has assumed under this Agreement.

**16. Indemnification:** Each owner of Parcels 1, 2, 3 and 4 shall indemnify and hold the other (and the property of the other) free and harmless from any and all liability for personal injury to the owner or for the damage to the property of the owner when the injury or damage results from or is attributable to any maintenance or repair work undertaken pursuant to this Agreement.

**17. Agreement Non-Assignable:** This Agreement shall not be assigned. Any purported assignment of this Agreement or of any interest in this Agreement shall be void and have no legal effect.

**18. Amendment:** Any amendment to this Agreement and Declaration shall be of no force and effect unless it is in writing and signed by the owners of Parcels 1, 2, 3 and 4.

IN WITNESS WHEREOF, the undersigned have executed this Declaration on this 9<sup>th</sup> day of December, 2010.

Western Highland Mortgage Fund I, LLC

*Robert I. Novasel*

Signature of Managing Partner

Robert I Novasel

Print Name

### CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of El Dorado

On 12.17.10 before me, Susan Poscic, Notary Public

personally appeared Robert I. Novasel

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Susan Poscic



Place Notary Seal Above

Signature of Notary Public

#### OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

#### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

#### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

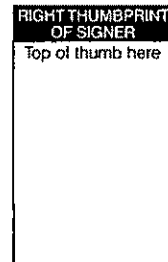
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_