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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR SAN JUAN COUNTY

CLARE LINN WELKER and ABIGAIL
METZGER WELKER, Trustees of the Big
Sky Trust UDT 11-14-2002

Plaintiffs,

v.

MOUNT DALLAS ASSOCIATION, a
Washington non-profit corporation; et a.

Defendants.

NO. 15-2-05069-0

PLAINTIFFS' MOTION FOR
SUMMARY DECLARATORY
JUDGMENT

I. INTRODUCTION AND RELIEF REQUESTED

The Plaintiffs, Clare and Abigail Welker as trustees of Big Sky Trust UDT 11-14-2002 (the "Welkers"), own property on San Juan Island accessed via the Mt. Dallas Road (the "Road"), a private easement road serving a total of 84 properties (collectively the "Benefitted Properties"). Currently there are approximately 60 owners of Benefitted Properties (collectively the "Benefitted Owners"), as some Benefitted Owners own more than one of the Benefitted Properties. The Benefitted Owners are all listed as Defendants in this action.

The Road was created by several recorded easements granting the Benefitted Properties the use of the Road for ingress, egress, and utilities (collectively the "Road Easements"). For reference purposes, a preliminary survey of the Road prepared by San Juan Surveying on July 23, 2015 is attached to the Declaration of Christopher I. Brain ("Brain Decl.") as Exhibit 1 (the "Survey"). As referenced on the Survey by name at the point they intersect with the Road

1 (Kiya Way, Larkspur Lane, Nighthawk Lane, etc.), some of the Benefitted Properties are
2 located on side roads (collectively, the “Side Roads”) that separately link to and are accessed
3 via the Road. Each of the Side Roads was created through a separate easement granted to the
4 Benefitted Properties located on the Side Roads (the “Side Roads Easements”). The Side Road
5 Easements are standalone easements and are not included in or part of the Road Easements.

6 The Road Easements that created the Road benefit only the Benefitted Properties.
7 Significantly, the Road Easements (1) do not establish any association or entity to manage or
8 maintain the Road; (2) do not authorize the creation of any association or entity to manage or
9 maintain the Road; (3) do not authorize any association, entity, or any party whatsoever to (a)
10 determine Road maintenance requirements, (b) assess Road maintenance expenses against the
11 Benefitted Properties, or (c) collect Road maintenance assessments from the Benefitted Owners
12 or Benefitted Properties; and (4) most importantly, do not mention, authorize, appoint, or
13 designate Defendant Mt. Dallas Association (the “Association”) to act in any such capacity, or
14 grant the Association any rights in or to the Road whatsoever. Declaration of Abigail Welker in
15 Support of Motion for Summary Judgment (“Welker Decl.”) ¶ 3. The primary Road Easements
16 that created the Road were recorded in 1964 and 1987 respectively. The Association was not
17 even formed until 1989, at which time it was formed as a strictly “voluntary” association.

18 Despite these undisputed facts, the Association has claimed authority to manage the
19 Road for all Benefitted Properties, has established its own unilateral methods for assessing and
20 imposing Road maintenance expenses, and has threatened to file liens and sue the Plaintiffs and
21 other Benefitted Owners if they do not pay the assessments that the Association seeks to
22 impose.

23 Although the Welkers agree that all the Benefitted Owners whose Benefitted Properties
24 are served by the Road should equitably share in road maintenance costs, they specifically
25 challenge that the Association—a totally unauthorized and voluntary homeowners’ association--
26 has any legal authority to manage the Road, make Road maintenance decisions binding upon

1 all Benefitted Properties, or impose Road maintenance assessments.

2 As a result, the Welkers have proposed that all of the affected Benefitted Owners come
3 to a binding agreement that would create an authorized association, with proper legal authority,
4 to manage the Road and determine and collect maintenance assessments. The Association, and
5 specifically its Board, has not made any such proposal and instead continues to assert its
6 baseless authority over the Road, at the expense of a legal and long-term solution that would
7 provide certainty to current Benefitted Owners and, importantly, future Benefitted Owners.

8 For that reason, and as set forth below, the Welkers respectfully move the Court for
9 summary declaratory judgment that the Association (1) has no legal rights or interests in the
10 Road, whether established by the Road Easements or otherwise; (2) lacks any legal authority to
11 manage the Road on behalf of all of the Benefitted Properties; (3) lacks any authority to enter
12 into contracts related to the management or maintenance of the Road; and (4) lacks any legal
13 authority to establish, assess, or collect Road maintenance expenses against all of the
14 Benefitted Properties.

15 At the time, the Welkers commenced this litigation, they hoped that it would be possible
16 to reach a binding agreement on Road management, maintenance and assessments. At this
17 point, it appears highly unlikely that all Benefitted Owners will be able to agree. Therefore,
18 following the Court's ruling on this Motion, the Welkers anticipate requesting that the Court
19 enter a declaratory judgment establishing a reasonable, fair, and equitable method of allocating
20 maintenance expenses for the Road under this Court's inherent equitable power to do so.¹

21 II. STATEMENT OF GROUNDS

22 For the convenience of the Court, the Welkers have divided this statement of grounds
23 into two main sections: the first presents the undisputed material facts upon which the Welkers
24 base this Motion; the second section presents background facts that, while useful for a full
25 understanding of the circumstances surrounding this case, are not material facts for the
26

¹ This equitable power is set forth in *Buck Mountain Owners' Ass'n v. Prestwich*, 174 Wn. App. 702 (2013).

1 purposes of granting relief on summary judgment.

2 **A. Undisputed Facts**

3 *Mt. Dallas Road*

4 The Welkers' trust owns two contiguous parcels of land on San Juan Island, both of
5 which the Welkers access via the Road. Welker Decl. ¶ 1. The Road was created by recorded
6 easements² that provide access to 84 Benefitted Properties owned by 60 different Benefitted
7 Owners, all of whom are parties to this action. Brain Decl. ¶ 3. In the case of the Defendant
8 property owners further up and down the Road from the Welkers, separate recorded easements
9 link the Road easements together, creating a contiguous roadway that is 10,857 feet in length.³
10 Brain Decl., Ex. 1. As noted earlier and in the Survey, separate recorded Side Road Easements
11 also govern the Side Roads that branch off from the Road, providing access via the Road to the
12 Benefitted Properties located on the Side Roads.⁴ Brain Decl. ¶ 4.

13 Each of the Benefitted Properties owns easement rights over the Road for ingress,
14 egress, and utilities to that property from West Side Road. Brain Decl. ¶ 5. All easement rights
15 in the Road run directly—and *exclusively*—to the Benefitted Properties. Brain Decl. ¶ 6;
16 Welker Decl. ¶ 3. However, no master road maintenance agreement, recorded or otherwise,
17 exists with respect to the methodology and procedure for maintaining the Road and assessing
18 the Benefitted Properties for their share of the Road's maintenance costs.⁵ *Id.* Nor do the Road
19 Easements authorize the creation of a homeowners' association to manage the Road or to

20 _____
21 ² Specifically, the Road, as used by the Welkers to access their properties, was originally created as an easement in
22 the "Real Estate Contract" recorded in 1964 under San Juan County Auditor's File No. 58558. Welker Decl. ¶ 4.
23 On March 26, 1987, an "Extinguishment and Grant of Substitute Easement," recorded under File No. 87144952,
24 amended the original easement. Welker Decl. ¶ 5. The right of all Benefitted Properties to use Mt. Dallas Road
25 flows from these two documents, which are the foundation for the easement rights over Mt. Dallas Road of all the
26 Benefitted Properties.

³ The Welkers' properties are 5,455 feet up the Road from West Side Road. Brain Decl. ¶ 7.

⁴ At least eleven side roads branch off from the Road or off another side road: Kiya Way; Larkspur Lane;
Nighthawk Lane; Tumac Road; Windridge Lane; Sunridge Lane; Skylark Lane; Rascal Road; Rockledge Road;
Brookshaw Road; and Stormridge Road.

⁵ The Association admits this in its Answer. Mt. Dallas Assoc. Answer at 4:1-5.

1 collect assessments for those costs. *Id.*

2 *The Mount Dallas Association*

3 In 1989, a small number of owners of the Benefitted Properties filed the Articles of
4 Incorporation (the “Articles”), creating the Association. Welker Decl. Ex. 3. As set forth in the
5 Articles, the Association’s first stated purpose is “[t]o maintain and upgrade the Mt. Dallas
6 Road.” *Id.* The “regulation of the internal affairs” of the Association “shall be set forth in the
7 By-Laws. *Id.*

8 The By Laws of Mt. Dallas Association (the “By Laws”) state that owners of the
9 Benefitted Properties are “eligible” for membership in the Association⁶ and that “[m]embership
10 in the [Association] requires the payment of *voluntary* dues covering operations, maintenance
11 and reserve funds.” Brain Decl. Ex. 2 (By Laws § 1.3) (emphasis supplied). Without the
12 payment of voluntary dues, an owner’s membership in the Association automatically expires at
13 the end of the calendar year. *Id.*, § 1.4. Not all of the owners of the Benefitted Properties are
14 members of the Association. Welker Decl. ¶ 8. Nor are they required to be members, given that
15 membership in the Association is expressly voluntary.

16 As the rights in the Road created by the Road Easements run exclusively to the
17 Benefitted Properties, the Association does not possess any rights or interests in the Road.
18 Welker Decl. ¶ 3. In an ostensible effort to address its lack of authority to maintain and upgrade
19 the Road, in 2006 the Association attached a so-called “Notice to Lenders” to its Articles.
20 Welker Decl. Ex. 3. The inefficacious and rather misleading “Notice to Lenders” only stated
21 that “[t]o verify road maintenance agreement and payment of related fees on an individual tax
22 parcel, contact Todd Kromer... or [Defendant and then-Association president] Bob
23 Tauscher]...” *Id.*

24 There are no recorded agreements, documents, or easements that purport to provide the
25 Association with any rights or interests in the Road. Welker Decl. ¶ 3. To be absolutely clear,

26 _____
⁶ Brain Decl. Ex. 2 (By Laws § 1.2).

1 and as referenced above, the Road Easements do not provide the Association with any legal
2 authority to manage the Road, make Road maintenance decisions binding upon all Benefitted
3 Properties, or impose Road maintenance assessments.

4 Despite this, by letter dated April 8, 2015, sent to owners of the Benefitted Properties by
5 the Association, the Association stated that recent case law⁷ provided it with legal authority to
6 collect assessments from owners of Benefitted Properties, even absent easements benefitting
7 the Association. Welker Decl. ¶ 8, Ex. 4. It also stated that such case law required owners of
8 the Benefitted Properties to pay “an equitable/fair share of the road maintenance... based on the
9 length of the road that the owner uses.”⁸ *Id.* The Association went on to state that

10 [t]here will be no retroactive enforcement of this [case] law, but
11 going forward, you will be billed and expected to pay per the terms
12 of this law. If no payment is received, then we will have no
13 recourse but to follow the letter of the law and pursue legal action.
14 2015 invoices are expected to be mailed later this month.

15 *Id.*

16 *The Association’s Actions Subsequent to the Welkers Filing Suit*

17 Since the Welkers commenced this suit, the Association has attempted to have all
18 owners of the Benefitted Properties sign a number of separate “petitions needed to help resolve
19 the Welker lawsuit.” Brain Decl. Ex. 3. In those “petitions,” the Association seeks, *inter alia*,
20 to have Benefitted Owners sign documents stating that the Benefitted Owner “authorize[s]
21 Mount Dallas Association, formed in 1989, to be the managing entity of Mount Dallas
22 Road...” *Id.* at p. 2. Other “petitions” purport to authorize the Association to collect
23 assessments for annual expenses (such as liability insurance, website expenses etc.); general
24 road maintenance; and a reserve fund for major road repairs. *Id.* at p. 2-7. And, like the

25 ⁷ Specifically, the Association cited *Buck Mountain Owners’ Ass’n v. Prestwich*, 174 Wn. App. 702 (2013) (“*Buck*
26 *Mountain*”).

⁸ However, contrary to the Association’s representation, *Buck Mountain* did not hold that an owner’s equitable
share is based on the length of the road that owner uses. Instead, it simply held that, absent an agreement between
owners, a court may exercise its equitable powers to require owners to fairly share road maintenance costs. *Buck*
Mountain, 174 Wn. App. at 716-17.

1 Because membership in the Association is voluntary, and because the Association lacks
2 the legal authority to impose mandatory maintenance assessments on the Benefitted Owners,
3 some Benefitted Owners are simply not members of the Association; some who are members
4 disagree with the Association’s methodology and procedures for seeking assessments; and
5 some do not pay all or a portion of the assessments sought by the Association. *Id.* ¶ 8.
6 Moreover, despite the fact that the Articles do not address the Association seeking assessments
7 for maintenance of the Side Roads, the Association continues to seek such assessments from
8 the Benefitted Owners. *Id.*

9 *Background of the Present Dispute*

10 Following the Welkers’ receipt of the Association’s April 8, 2015, letter, they
11 responded through counsel and noted that they, too, desired a formal methodology by which
12 maintenance assessments for the Road could be collected, ensuring the continued value of their
13 and the other Benefitted Owners’ properties. Brain Decl. Ex. 4. However, and aside from the
14 Association’s lack of legal authority, they noted the problems inherent in the Association’s plan
15 to collect assessments and sue those Benefitted Owners who did not pay, including that the
16 Association lacked authority under its Articles to collect mandatory assessments; that *Buck*
17 *Mountain* did not authorize the Association to collect mandatory maintenance assessments for
18 the Road; and that *Buck Mountain* did not prescribe a specific formula for assessments based
19 on the length of road used by a Benefitted Owner, as the Association stated it would do. Brain
20 Decl. ¶ 11.

21 In light of these significant problems and the fact that the maintenance of the Road
22 benefitted all owners using it, and desiring to reach an amicable long-term solution to the issue
23 of assessments, the Welkers set forth a proposed course of action to “clarify and provide
24 certainty with regard to the situation with the Road” so as to “protect the value of all of the
25 Benefitted Properties.” Brain Decl. ¶ 12. Specifically, the Welkers proposed, *inter alia*, as
26 follows:

- 1 • That a formal Road Maintenance Agreement (“RMA”) be prepared that
2 reflected the equitable maintenance obligations and that all Benefitted
3 Properties Owners could agree to. *Id.* at p. 5.
- 4 • That the RMA would be recorded, be binding all of the Benefitted Properties,
5 and formally authorize the Association to manage the assessments and road
6 maintenance—providing it with the actual authority that it currently lacked. *Id.*
- 7 • That each of the Side Roads could then separately adopt their own respective
8 maintenance agreements and could even establish separate associations to
9 handle assessments and maintenance of the Side Roads. *Id.*

10 However, in recognition of the fact that obtaining the agreement of 60 different
11 Benefitted Owners to a formal road maintenance agreement would be, from a practical
12 perspective, highly unlikely, the Welkers stated that they would also seek this Court’s
13 assistance in resolving the issues surrounding maintenance of the Road and Side Roads. *Id.*

14 III. STATEMENT OF ISSUES

15 Whether the Welkers are, under the Uniform Declaratory Judgments Act, RCW 7.24 *et*
16 *seq.*, entitled to summary declaratory judgment that the Association lacks the authority to
17 manage the Road, or to allocate or impose maintenance assessments for the Road when

18 (1) the benefits of the recorded Road Easements creating the Road inure only to the
19 Benefitted Properties;

20 (2) no agreement or recorded document establishes any association or entity to manage
21 or maintain the Road or to determine Road maintenance requirements, assess Road
22 maintenance expenses against the Benefitted Properties, or collect Road maintenance
23 assessments from the Benefitted Owners or Benefitted Properties;

24 (3) no agreement or recorded document mentions, authorizes, appoints, or designates
25 the Association to act in any such capacity, or grants the Association any rights in or to the
26 Road whatsoever; and

1 (4) no binding agreement of any kind exists between all of the present or past Benefitted
2 Owners and the Association relating in any way to maintenance of the Road or related
3 assessments, or granting the Association any authority with respect thereto.

4 IV. EVIDENCE RELIED UPON

5 Plaintiffs rely on the papers and pleadings on file in this matter and the Declaration of
6 Christopher I. Brain and Declaration of Abigail Welker in Support of Motion for Summary
7 Declaratory Judgment.

8 V. LEGAL AUTHORITY

9 A. Summary Judgment Standard

10 Under CR 56(c), summary judgment is appropriate when the evidence in the record
11 demonstrates that no genuine issue as to any material fact exists and the moving party is
12 entitled to a judgment as a matter of law. CR 56(c); *Int'l Ass'n of Firefighters, Local 1789 v.*
13 *Spokane Airports*, 146 Wn.2d 207, 223, 45 P.3d 186 (2002). “[W]here the facts are undisputed
14 and reasonable minds could not differ, [a court] may determine the issue as a matter of law.”
15 *Dice v. City of Montesano*, 131 Wn. App. 675, 687-88, 128 P.3d 1253 (2006). For purposes of
16 summary judgment, a “material fact” is “one upon which all or part of the outcome of the
17 litigation depends.” *Id.* In other words, a court should grant the motion “if, from all the
18 evidence, reasonable persons could reach but one conclusion.” *Denaxas v. Sandstone Court of*
19 *Bellevue, L.L.C.*, 148 Wn.2d 654, 662, 63 P.3d 125 (2003).

20 Here, the Association has claimed it possesses this authority under the *Buck Mountain*
21 decision. But, in that case, the association had authority to assess and collect because it was
22 created by recorded instruments that were binding on all the properties. *Buck Mountain*, 174
23 Wn. App. at 716-17. Despite that authority, no road maintenance agreement existed and, as the
24 court decided, when no such agreement exists, only the court—not the association—can
25 establish an equitable methodology and require owners of benefitted properties to share road
26 maintenance costs under that methodology. *Id.*

1 As the Association here lacks such authority to contract for and impose mandatory road
2 maintenance assessments, and as no road maintenance agreement exists, only this Court can
3 establish an equitable methodology and require the Benefitted Owners to share road
4 maintenance costs in accordance with that methodology. The Welkers are therefore entitled to
5 summary judgment on their declaratory judgment claim that the Association (1) has no legal
6 rights or interests in the Road, whether established by the Road Easements or otherwise; (2)
7 lacks any legal authority to manage the Road on behalf of all of the Benefitted Properties; (3)
8 lacks any authority to enter into contracts related to the management or maintenance of the
9 Road; and (4) lacks any legal authority to establish, assess, or collect Road maintenance
10 expenses against all of the Benefitted Properties.¹⁰

11 **B. The Welkers are Entitled to a Declaratory Judgment that the Association**
12 **Cannot Collect Assessments Because a Justiciable Controversy Exists Between the Parties**
13 **and the Undisputed Evidence Shows that the Association Lacks Any Legal Authority**
14 **Over the Property Owners**

15 The Uniform Declaratory Judgments Act (“UDJA”), codified at RCW 7.24 *et seq.*,
16 governs actions for declaratory judgments. *Schreiner Farms, Inc. v. Am. Tower, Inc.*, 173 Wn.
17 App. 154, 159, 293 P.3d 407 (2013). Courts liberally construe and administer the UDJA to
18 provide relief from uncertainty regarding legal relations. *Id.* (citing RCW 7.24.120). To obtain
19 a declaratory judgment under the UDJA, a party needs only to show the existence of a
20 justiciable controversy. *See Nollette v. Christianson*, 115 Wn.2d 594, 598-99, 800 P.2d 359
21 (1990) (stating that “we have firmly maintained that, absent issues of major public importance,
22 a justiciable controversy must exist before a court's jurisdiction may be invoked under the
23 [UDJA]”).

24 As used in the context of declaratory judgments, a justiciable controversy contains four
25 elements:

26 ¹⁰ In the event the parties are unable to reach an agreement on the sharing of road maintenance costs after the Court rules on this Motion, the Welkers anticipate asking the Court to exercise its power to impose an equitable road maintenance obligation on all owners of the Benefitted Properties.

- (1) an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement,
- (2) between parties having genuine and opposing interests,
- (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and
- (4) a judicial determination of which will be final and conclusive.

Id. (citing *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973)).

Here, all four elements are present. First, an actual dispute exists between the Welkers and the Association: the Association has claimed that it has legal authority to impose road maintenance assessments and threatened to sue the Welkers (and the other Benefitted Owners) if they do not pay. *See* Welker Decl. ¶ 9, Ex. A. The Welkers dispute the Association’s legal authority to collect those assessments.

Second and third, the genuine and opposing interests of the Welkers and the Association are directly between the parties and involve a substantial amount of money: the Association claims it has the authority to require the Welkers and the other Benefitted Owners to pay maintenance assessments for a two-mile-long private road in perpetuity. In contrast, the Welkers—though they do not dispute that the Benefitted Owners should pay their respective fair shares of road maintenance costs—assert that the Association currently lacks the authority to unilaterally determine and impose those substantial costs far into the future.

Finally, this Court possesses the authority to finally and conclusively determine this preliminary dispute and, ultimately, to impose reasonable road maintenance obligations absent an agreement between the parties. Indeed, in *Buck Mountain*, the court noted that courts may exercise their “equity power to impose reasonable road maintenance obligations where no agreement exists.” *Buck Mountain*, 174 Wn. App. at 716-17 (citations omitted). And the *Buck Mountain* court, facing the absence of an agreement to allocate and assess road maintenance

1 costs, did exactly that. *Id.* That situation is identical to the situation in this case, except that the
2 Buck Mountain Owners' Association was created by recorded covenant binding upon all
3 properties entitled to use the Buck Mountain road—and membership in the association was not
4 voluntary.¹¹ *Id.*

5 There is simply no dispute that the Association lacks that legal authority: the recorded
6 Road Easements benefit only the Benefitted Properties, not the Association; there are no
7 recorded covenants, deeds, or other agreements running with or binding upon the Benefitted
8 Properties that relate, in any way, to the Association or provide it with any authority
9 whatsoever; and membership in the association is strictly voluntary and members can come and
10 go at any time. Even the “petitions” recently sent out by the Association do not actually address
11 the ultimate problem: that it lacks legal authority, running with and binding upon the Benefitted
12 Properties, to manage the Road and require the Benefitted Owners to pay road maintenance
13 assessments. Those petitions simply add to the Association’s growing stack of paperwork that
14 attempts to create *ad hoc* authority. They wholly fail to provide the Association with any
15 binding legal authority whatsoever.

16 Indeed, when courts in Washington uphold the legal authority of a homeowner’s
17 association to act, they do so when the association in question was formed by the proper
18 recordation of restrictive covenants that run with the affected properties. *See, e.g. Casey v.*
19 *Sudden Valley Cmty. Ass'n*, 182 Wn. App. 315, 319-20, 329 P.3d 919 (2014) *review denied*,
20 182 Wn. 2d 1007, 344 P.3d 688 (2015) (upholding association’s authority to act when it was
21 formed by recorded restrictive covenants and governed by articles of incorporation and
22 bylaws); *Greenbank Beach & Boat Club, Inc. v. Bunney*, 168 Wn. App. 517, 520, 280 P.3d
23 1133 (2012) (upholding association’s authority when it was formed under restrictive covenants
24 that applied to all properties within the plat); *Ebel v. Fairwood Park II Homeowners' Ass'n*, 136

25 _____
26 ¹¹ Thus, even if the Court must ultimately exercise its equity power to impose reasonable road maintenance obligations on the parties, the Association will still lack the actual authority that the Buck Mountain Owners' Association had to assess and collect those obligations.

1 Wn. App. 787, 790, 150 P.3d 1163 (2007) (noting that recorded amendment to restrictive
2 covenants provided authority to act).

3 The Association here is not, by any stretch of the definition, a “homeowners’
4 association.” It was formed without basis in any recorded instrument, deed, or restrictive
5 covenant and appears to have been done on the whim of a small number of Benefitted Owners
6 more than 25 years ago. Clearly, a binding, recorded agreement between *all* Benefitted Owners
7 to equitably share in road maintenance costs is needed. However, the Association’s past and
8 current course of action will not solve this problem: preservation of the status quo, even with
9 signed “petitions” and the like, will result only in an Association that continues to lack any
10 actual legal authority to manage the Road on behalf of all of the Benefitted Properties.

11 **VI. CONCLUSION**

12 The Welkers agree that all of Benefitted Owners must equitably share in the
13 maintenance costs of the Road. However, that is not the issue before the Court on this Motion.
14 This Motion exclusively focuses upon the Association’s lack of authority to manage the Road,
15 or to make or collect assessments related to the maintenance of the Road.

16 The Welkers respectfully move the Court for summary declaratory judgment that the
17 Association (1) has no legal rights or interests in the Road, whether established by the Road
18 Easements or otherwise; (2) lacks any legal authority to manage the Road on behalf of all of the
19 Benefitted Properties; (3) lacks any authority to enter into contracts related to the management
20 or maintenance of the Road; and (4) lacks any legal authority to establish, assess, or collect
21 Road maintenance expenses against all of the Benefitted Properties.

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1 DATED this 29th of September, 2015.

2 TOUSLEY BRAIN STEPHENS PLLC



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