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7 **SUPERIOR COURT OF WASHINGTON, COUNTY OF SAN JUAN**

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

12 v.

13 MOUNT DALLAS ASSOCIATION, a
14 Washington non-profit corporation; et al.,
Defendants.

NO. 15-2-05069-0

**DECLARATION OF L. CURTIS
WIDDOES, JR.**

15 I, L. CURTIS WIDDOES, JR., state as follows:
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- 17 1. I am over the age of 18 and I am competent to be a witness in this lawsuit. I make the
18 following statements based upon my personal knowledge.
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- 20 2. Since 2001, I have owned real property on San Juan Island consisting of four tax parcels,
21 all of which I access via Mount Dallas Road.
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- 23 3. I hold a B.S. in Engineering and Applied Science from Caltech and a PhD in Computer
24 Science from Stanford University. I have had substantial training in mathematics,
25 physics, engineering, and computer science. I hold 17 U.S patents in the area of
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1 Electronic Design Automation (EDA). Over a period of 25 years, from 1981 to 2006, I
2 founded and managed three successful EDA companies.
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5 4. I believe that the Mount Dallas Association has done an excellent job in managing the
6 maintenance of the Mount Dallas Road, including the initial paving, subsequent
7 resurfacings, and other general maintenance. I have timely paid all assessments made by
8 the Association for my four parcels. I contributed a substantial amount to finance the
9 initial paving of the road. I have donated to the Association additional amounts that were
10 not assessed, partly to cover assessments left unpaid by other property owners. I strongly
11 prefer that the Association continue to manage maintenance of the road.
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14 5. I have carefully studied the Road Maintenance Agreement for Mount Dallas Road that
15 was created by the Board of the Mount Dallas Association (herein, "MDA") and was
16 recorded in San Juan County on March 3, 2016, as AFN 2016-0302026 (herein, "MDA
17 RMA"). In order to fully understand the MDA RMA, I studied the recorded document,
18 discussed the agreement with various MDA Board Members, checked the mathematics of
19 the cost-allocation methods, checked the integrity of the MDA cost-allocation
20 spreadsheet, and consulted with two qualified attorneys about the proper legal
21 interpretation of the agreement. During this process, I determined to my satisfaction that
22 the agreement is clear, complete, unambiguous, fair, equitable, and enforceable. After
23 making that determination, I signed and delivered to the MDA joinders to the agreement
24 for all four of my parcels.
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1 6. The entire MDA RMA is only eleven pages long, four pages of which consist of exhibits.
2 The agreement is well written and easy to understand. I believe that any Mount Dallas
3 property owner would be able understand the agreement simply by reading it, discussing
4 it with MDA Board members, and possibly consulting with an attorney. I would have
5 expected Abigail Welker, who is a plaintiff in this lawsuit, to have carefully studied the
6 MDA RMA and to have double-checked with others to make sure that she fully
7 understood the agreement before she wrote her declaration dated March 31, 2016, and
8 signed it under penalty of perjury.
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12 7. Nevertheless, as evidenced by her declaration, Abigail Welker misunderstands the MDA
13 RMA. Her declaration substantially misrepresents the cost-allocation methods of the
14 agreement. Her misrepresentations are material because they imply that the MDA RMA
15 is not fair and equitable and that another agreement would be preferable. The following
16 paragraphs explain some of the misrepresentations contained in Abigail Welker's
17 declaration.
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21 8. Section 12(D) of the MDA RMA specifies a method for allocating the cost of a reserve
22 fund for routine general maintenance and periodic resurfacing of the road. In part, this
23 section states: "This fee shall be prorated, based on the area of the Main Road actually
24 traversed in accessing each Property Owner's Parcel via the Furthest Access Point for
25 such Parcel, and whether the Parcel is developed or undeveloped." The section goes on
26 to reference Exhibit B, which specifies a precise mathematical procedure for calculating
27 the assessment for each parcel. This mathematical procedure results in assessments for
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1 developed parcels that are proportional to the road areas actually traversed in accessing
2 the parcels. For each undeveloped parcel, the procedure calculates an assessment in the
3 same way as if the parcel were developed, except that the area parameter used for the
4 parcel is reduced to 25% of the road area actually traversed.
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7 9. The method for allocating the cost of a reserve fund specified by the MDA RMA is fair
8 and equitable because it allocates costs to the various developed parcels in proportion to
9 the road areas actually traversed in accessing the parcels, *and those areas are in turn*
10 *proportional to the amounts of wear-and-tear on the road that would be typically be*
11 *caused by vehicles accessing the parcels.* The same reasoning applies to undeveloped
12 parcels, except that vehicles typically access undeveloped parcels much less frequently,
13 therefore causing much less wear-and-tear on the road.
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17 10. The method for allocating the cost of a reserve fund specified by the MDA RMA is fair
18 and equitable for another very important reason as well: Each parcel benefits from the
19 availability of a well-maintained, paved road. The amount of this benefit is proportional
20 to the area of the road used in accessing the parcel, with the exception that undeveloped
21 parcels make less use of the road and therefore accrue less benefit than developed
22 parcels.
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25 11. Section 3.3 of Abigail Welker's declaration completely misstates the method of the MDA
26 RMA for proportionally allocating the cost of a reserve fund for routine general
27 maintenance and periodic resurfacing. Every sentence in Section 3.3 is either incorrect or
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1 nonsensical. The first sentence states that the Association AUM (i.e., the MDA RMA)
2 “assumes that Mt. Dallas Road is a contiguous non-exclusive easement where all
3 properties have rights to use all portions of the road.” This is simply not true. Instead,
4 the MDA RMA assumes that each parcel has the right to use the road only up to the
5 Furthest Point of Access for the parcel, and, for each parcel, calculates an assessment for
6 the reserve fund that is proportional to the area of the road actually traversed in accessing
7 the parcel via its Furthest Access Point. The next sentence in Section 3.3 states that “they
8 [the MDA] allocate all road costs over the entire length of the road and only a portion is
9 based on the square footage of the road to a Benefitted Owner’s access point as compared
10 to the total square footage of the road.” This is also simply not true: No costs are
11 allocated as described by Abigail Welker in this sentence. As described above,
12 assessments for the reserve fund are calculated so that such assessments are proportional
13 to the road areas used. Certain other costs are allocated equally among all parcels. Still
14 other costs are allocated among only certain benefited parcels. Still other costs are
15 allocated to individual property owners who damage the road. The next sentence in
16 Section 3.3 states that “they [the MDA] do not then reduce the obligation once the
17 particular owner’s share is determined, but continue to allocate costs because they do not
18 reduce the obligation as the road continues up.” This sentence is not even wrong – it
19 makes no sense at all!

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26 12. Section 5 of Abigail Welker’s declaration, together with Exhibit F, attempts to compare
27 the method of the MDA RMA for proportionally allocating the cost of a reserve fund
28 with an alternative method proposed by the plaintiffs. However, the table in Exhibit F

1 devoted to illustrating the method of the MDA RMA does not, in fact, conform to the
2 method specified in the MDA RMA. Using the numbers shown in the column of the
3 table labeled "Amt due by each property owner," results in a total assessment of \$2000
4 $(4*\$100 + 3*\$200 + 2*\$300 + \$400)$, instead of the target total assessment of \$1,000.
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6 Similarly, the table in Exhibit F devoted to illustrating the alternative method obviously
7 contains errors, because using the numbers shown in the column of the table labeled
8 "Amt due by each property owner" results in a total assessment of \$1,749.98 $(4*\$62.50 +$
9 $3*\$145.83 + 2*\$270.83 + \$520.83)$ instead of the target total assessment of \$1,000.
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11 Given that the computations shown in the exhibit are internally inconsistent, it is not clear
12 how the proposed alternative method is actually intended to work.
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14 13. Notwithstanding the errors and inconsistencies in Section 5 and Exhibit F of Abigail

15 Welker's declaration, it is plausible that Abigail Welker seeks to describe an alternative
16 method that would distribute the cost of maintaining each section of road equally among
17 all the parcels that require use of the section for access. However, Exhibit 5 indicates that
18 she also intends to assume that the per-unit-area maintenance cost is the *same* for every
19 section of the road, regardless of the fact that heavier traffic on the lower sections causes
20 more wear-and-tear on those sections, actually resulting in higher per-unit-area
21 maintenance costs for those sections. Such higher maintenance costs may manifest in
22 various ways, possibly including more frequent routine maintenance, possibly including
23 more materials and labor required for resurfacing each unit area of the more heavily
24 trafficked lower sections, and possibly including more frequent resurfacing of the entire
25 road, driven by the needs of the more heavily trafficked lower sections. *Mathematically,*

1 *if one distributes the cost of maintaining each section of road equally among all the*
2 *parcels that require use of the section for access, and if one also assumes that per-unit-*
3 *area maintenance costs are proportional to the number of users of the section, then one*
4 *obtains exactly the allocation method that is specified in Section 12(D) and Exhibit B of*
5 *the MDA RMA.*
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8 14. Also notwithstanding the errors and inconsistencies in Section 5 and Exhibit F of Abigail
9 Welker's declaration, it is worthwhile to further examine her comparison of cost-
10 allocation methods. In Section 5 of her declaration, she implies that an alternative method
11 is more fair and more equitable than the method of the MDA RMA. Specifically, she
12 claims that "The effect of the [MDA RMA method] is to place a higher burden of the
13 maintenance costs on the users of the lower portions of Mt. Dallas Road." But the
14 resulting burden is not necessarily less fair or less equitable. As explained above, the
15 method of the MDA RMA allocates maintenance costs in proportion to the wear-and-tear
16 caused by typical traffic to the various parcels, and also in proportion to the benefit that
17 the road provides to the various parcels. Any alternative allocation method that deviates
18 from the proportionality formula of the MDA RMA would *not* allocate maintenance costs
19 in proportion to the wear-and-tear caused by typical traffic to the various parcels, and
20 would *not* allocate maintenance costs in proportion to the benefit that the road provides to
21 the various parcels. Such a method would *not* be more fair and equitable – it would only
22 be different.
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28 15. Section 6(iii) of Abigail Welker's declaration explains that, if a parcel's access point

1 were to change, then the calculation for allocating maintenance costs would need to be
2 updated, and that the update would involve some effort and expense. The amount of
3 effort involved in making a single new measurement and entering a single number in the
4 MDA allocation spreadsheet is trivial and not material. Notwithstanding that, if a parcel's
5 access point were to change, then the amount of road used in accessing the parcel would
6 change, the amount of wear-and-tear on the road due to traffic serving the parcel would
7 change, and the amount of benefit provided to the parcel would change. *Clearly, any*
8 *fair-and-equitable allocation formula must change the allocations when the access points*
9 *change.* The "Legal Use Method" outlined in Section 6 does *not* change the allocations
10 when the access points change. It follows that the "Legal Use Method" must not be fair
11 and equitable.
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16 16. In addition to the method for proportionally allocating the cost of a reserve fund, the
17 MDA RMA specifies certain other methods for fairly and equitably allocating other costs
18 associated with maintaining the road. For example, Section 12(F) specifies the method
19 for allocating the cost of repairing major, abnormal damage to the road, such as the
20 damage caused by a landslide. This section states that "This fee shall be prorated, based
21 on the area of the repairs actually traversed in accessing the benefited Parcel via the
22 Furthest Access Point for the Parcel, and whether the Parcel is developed or
23 undeveloped." The section goes on to reference Exhibit C, which specifies the precise
24 mathematical procedure for calculating the assessment for each parcel. This
25 mathematical procedure results in assessments for developed parcels that are proportional
26 to the area of the repairs actually traversed in accessing the parcels. For each
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1 undeveloped parcel, the procedure calculates an assessment in the same way as if the
2 parcel were developed, except that the area parameter used for the parcel is reduced to
3 25% of the area of the repairs actually traversed.
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6 17. The method for allocating the cost for repair of major, abnormal damage that is specified
7 in Section 12(F) and Exhibit C of the MDA RMA is fair and equitable because it
8 allocates costs to the various parcels in proportion to the benefit that the repairs provide
9 to the parcels. Developed parcels that are accessed by traversing the entire repaired area
10 benefit equally and pay equally. Developed parcels that are accessed by traversing only
11 part of the repaired area pay only in proportion to the area of the repairs traversed.
12 Undeveloped parcels benefit less and pay less. Parcels that are accessed without
13 traversing the repaired area at all are assessed nothing for the repairs.
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17 18. Section 7 of Abigail Welker's declaration completely misrepresents the method of the
18 MDA RMA for allocating the cost for repair of major, abnormal damage. In this section,
19 Abigail Welker's declaration claims that parcels with no right to cross the repaired area
20 would still be responsible for paying for the repairs. This is simply not true. Exhibit C of
21 the MDA RMA clearly allocates all of the cost of the repairs only to parcels that are
22 accessed by actually traversing the repaired area. Specifically, Exhibit C states "the
23 Parcel Numerator shall be equal to the total area of the ... repairs actually traversed ... in
24 accessing the Parcel via the Furthest Access Point for the Parcel, starting from West Side
25 Road" and that "the amount assessed for a given Parcel shall be equal to the total annual
26 fee times the fraction X/Y , where X is the Parcel Numerator for said Parcel, and Y is the
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1 sum of the Parcel Numerators for all Parcels.” Obviously, a parcel with no right to cross
2 the repaired area would never be accessed by traversing the repaired area, so the total
3 area of the repairs actually traversed in accessing such a parcel must be zero, the Parcel
4 Numerator for the parcel must be zero, and the parcel would pay nothing for the repairs.
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7 19. The MDA RMA also precisely specifies other methods for fairly and equitably allocating
8 other costs associated with maintaining the road. Section 12(A) allocates liability
9 insurance costs equally among all parcels owned by property owners who are covered by
10 the insurance. Property owners who are not covered by the insurance, if any, pay nothing.
11 Section 12(B) and 12(C) allocate administrative expenses and fire-prevention expenses
12 equally among all parcels, because all parcels benefit equally from the activities enabled
13 by such spending. Section 12(E), together with Exhibit C, allocates costs of major
14 improvements (e.g., widening of the road or construction of a turn-out), in a manner
15 similar to repair of major, abnormal damage, so that the entire cost of such improvements
16 is paid only by those parcels that are accessed by actually traversing the improvements.
17 Sections 12(G) and 12(H) ensure that the costs of repairing damage caused by individual
18 property owners are fully paid by the property owners responsible for the damage.
19 Indeed, *all the methods specified in the MDA RMA for allocating road maintenance costs*
20 *and all other costs are meticulously fair and equitable.*
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25 20. Sections 3.3, 5, 6(iii) and 7, together with Exhibit F of Abigail Welker’s declaration
26 substantially misrepresent the methods of the MDA RMA for allocating maintenance
27 costs. These misrepresentations are a matter of fact. The misrepresentations imply that
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1 the MDA RMA is not fair and equitable and that therefore an alternative set of methods
2 selected by the plaintiffs should be preferred. In fact, as explained above, the methods of
3 the MDA RMA for allocating costs are meticulously fair and equitable. Given the
4 enormous cost of this litigation, *it is completely inexcusable for the plaintiffs to fail to put*
5 *forth the effort to fully understand the MDA RMA, as recorded, and it is completely*
6 *inexcusable to misrepresent the recorded MDA RMA in a signed declaration.*
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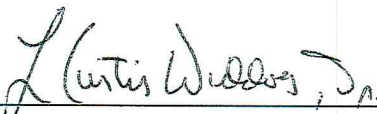
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10 21. Judging from the enormity of misunderstanding of the MDA RMA evidenced by Abigail
11 Welker's declaration, I believe it is likely that the second plaintiff, Clare Welker, as well
12 as the attorneys for the plaintiffs, are all similarly confused. I simply do not have the time
13 or resources required to QA the plaintiffs' constant and voluminous declarations and
14 pleadings in this case and to write responsive declarations explaining all their errors. *I*
15 *sincerely hope that the Court will carefully examine all of the other declarations and*
16 *pleadings made by the plaintiffs and their representatives in light of the explanations that*
17 *I have provided in this declaration.*
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20 22. The MDA Board has informed me that joinders to the MDA RMA representing a
21 substantial majority of Mount Dallas parcels have already been signed and delivered to
22 the MDA, as my four joinders have been. Clearly, by joining their parcels to the MDA
23 RMA, the owners of those parcels have indicated that they consider the MDA RMA to be
24 fair and equitable and that they prefer to have the road managed by the MDA as specified
25 in the MDA RMA.
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1 23. This litigation was initiated on the whim of a single property owner who owns only one
2 parcel (at that time, I believe, two parcels) out of a community of more than 60 property
3 owners who collectively own more than 80 parcels. The litigation was frivolous when it
4 was initiated, and is completely pointless now. Owners of a substantial majority of
5 parcels have already signed joinders binding their parcels to a fair and equitable
6 agreement for managing the road. As is obvious by reading Abigail Welker's
7 declaration, *the plaintiffs have not even taken the effort to understand the road*
8 *management agreement that has been adopted by a majority of owners.* Instead, the
9 plaintiffs are attempting to force their own arbitrary preferences on the rest of the Mount
10 Dallas community. The alternative methods for allocating costs that are being proposed
11 by the plaintiffs are *not* more fair or more equitable than the methods of the MDA RMA,
12 they are simply different. This litigation is costing the Court and the defendants dearly in
13 time, energy and money that could be much better spent for other purposes. The whole
14 process is ridiculous. *I strongly request that the Court dismiss this suit and dismiss all*
15 *related suits filed by these plaintiffs. Please stop the waste.*
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21 I declare under penalty of perjury under the laws of the State of Washington that the foregoing is
22 true and correct.
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24 Signed at Friday Harbor, Washington on APRIL 11, 2016.

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27 _____
28 L. Curtis Widdoes, Jr.