JOINT USE AGREEMENT

THIS DECLARATION made and entered into this _____ day of _____ 2018 by and between David N. Dickhaus ET AL ("Dickhaus"), Warren R. and Nancy J. Appleton (Appleton"), DJ Roy & Jennifer I Robinson ("Robinson"), and Leonie Bradley Griswold TTEE ("Griswold"), owners of neighboring properties on San Juan Island in the Westcott Bay area, for the purpose of establishing the rights and responsibilities of a joint use of a dock, an existing buoy, and stairs accessed via the Dickhaus and Appleton properties and from the commonly owned beach . The term "Party or Parties" refers to the signatories and successors of this agreement. For purposes of establishing the rights and responsibilities of each concerning the joint use of a dock, a buoy, and beach access stairs located near the common property line shared by Appleton of the WESTCOTT SHORES LOT 1 SHORT PLAT - LT 1B TGW INT IN COMM TDS & 41010 Sec 23, T 36N, R 4W [Tax Parcel Number 462341009000], and Dickhaus LOT 2A - ALTERATION TO SHORT PLATS OF WESTCOTT SHORES 2 & WESTCOTT SHORES 3 TGW UND INT IN COMMON AREA 2 Sec 23, T 36N, R 4W [Tax Parcel Number 462341003000].

22. RECITALS

WHEREAS, Griswold is the owner of real property described as Tax Parcel Number 462341001000, San Juan County, Washington, legally described as WESCOTT SHORES LOT 1 SHORT PLAT - LOT 1A TGW INT IN COM TDS & 41010 Sec 23, T 36N, R 4W (hereinafter referred to as **Parcel A);** and

WHEREAS, Appleton is the owner of real property described as Tax Parcel number 462341009000, San Juan County, Washington, legally described as WESTCOTT SHORES LOT 1 SHORT PLAT - LT 1B TGW INT IN COMM TDS & 41010 Sec 23, T 36N, R 4W (hereinafter referred to as **Parcel B);** and

WHEREAS, Dickhaus is the owner of real property described as Tax Parcel number 462341003000, San Juan County, Washington, legally described as LOT 2A - ALTERATION TO SHORT PLATS OF WESTCOTT SHORES 2 & WESTCOTT SHORES 3 TGW UND INT IN COMMON AREA 2 Sec 23, T 36N, R 4W (hereinafter referred to as **Parcel C);** and

WHEREAS, Robinson is the owner of real property described as Tax Parcel number 462341007000, San Juan County, Washington, legally described as LT 1 - ALTERATION TO SHORT PLATS OF WESTCOTT SHORES 2 & WESTCOTT SHORES 3 TGW UND INT IN COMMON AREAS 1, 2 & 3 Sec 23, T 36N, R 4W (hereinafter referred to as **Parcel D)**; and

WHEREAS, Robinson is the owner of real property described as Tax Parcel number 462341011000, San Juan County, Washington, legally described as LOT 3B - ALTERATION TO SHORT PLATS OF WESTCOTT SHORES 2 & WESTCOTT SHORES 3 TGW UND INT IN COMMON AREAS 1 & 3 Sec 23, T 36N, R 4W (hereinafter referred to as **Parcel E).**

WHEREAS Wood Family Trust Harold & Scarlett D Wood TTEES are the owners of real property described as TPN 462341005000, San Juan County, Washington, legally described as Lot 4 WESTCOTT SHORES SHORT PLAT TGW 25% INT IN COMM TDS Sec 23, T 36N, R 4W. The Wood Family Trust has declined to be a participant in this joint use agreement. However, the parties to this agreement concur

that the existing or future owners of TPN 462341005000 shall have the right to share use of the Westcott Shores Plat dock as an owner or option user as outlined in this agreement subject to the availability of moorage, payment of reasonable costs for permitting, construction, and maintenance, and subject to revision of this joint use agreement.

The Parties are planning to construct a dock (which includes the dock portion affixed to land and the float portion) for joint use by the Parties.

The owner of parcel C owns a mooring buoy that will be jointly used by the Parties.

The Parties hereto wish to establish certain rights and responsibilities regarding the use, maintenance and operation of said dock and an existing mooring buoy associated with Parcel C.

THEREFORE, in consideration of the mutual benefits to be derived therefrom, the Parties agree as follows:

1. **Sole Dock for Parcels A, B, C, D, and E.** The Parties agree that the dock which is the subject of this agreement shall be the only dock system permitted to serve **Parcels A**, **B, C, D,** and **E**, and no additional overwater structures shall be constructed on the parcels, except for the maintenance or modification of the joint use structure. The terms and conditions of this Agreement shall be construed to be for the benefit of the Parties, and the same shall run with Parcel A, B, C, D, and E and shall enure to the benefit of the owners of such parcels, and their successors in interest in and to such parcels. This Agreement is binding upon the Parties and their respective heirs, successors and assigns.

2. **Proportionate Share of Ownership**. The owners of Parcels B (Appleton), C (Dickhaus), and D (Robinson) are causing to be constructed, at their sole expense, a dock for joint use by the owners of Parcels A (Griswold), B (Appleton), C (Dickhaus), D (Robinson), and E (Robinson) their heirs, successors or assigns.

3. **Management.** Routine management of the dock and buoy such as coordinating maintenance, repairs, governmental compliance and taxes, collecting insurance information, and creation and implementation of dock usage rules, will be assigned to Dickhaus, who will act as Manager and shall have the authority to sign all required permits for the joint use dock on behalf of the parties. These management duties may be reassigned at any time by agreement of the parties.

4. **Use of the pier, ramp, floats, and buoy.** The dock and buoy may be used jointly by the Parties and the members of their respective families who reside with them, in accordance with the following conditions:

   4.1 The owners of Parcels B, C, and D, their heirs, successors or assigns, shall have unlimited exclusive use of the floats as noted in **Exhibit "A"**, and the existing mooring buoy associated with Parcel C including all rights of ownership of the joint use dock facility and buoy, permanent year-around, 24 hours per day, moorage and use of the dock facility for

loading and unloading of one or more boats, including use of the float areas labeled "option user space" comprising of approximately 42' for guests and temporary moorage until such time that the owners of Parcels A & E exercise their option rights as noted in sections 4.3 and 4.4.

4.2 The owners of Parcels A and E, their heirs, successors or assigns shall have the right to use the float areas comprising approximately 42' depicted as "option user space" on **Exhibit "A"** for: (a) temporary moorage for a maximum of two (2) hours during any one 24 hour period; (b) loading and unloading of one boat; and (c) launching and recovering the parties' canoes and kayaks.

4.3 In addition, the owners of Parcels A and E, their heirs, successors or assigns shall have the option to purchase an undivided ownership interest in the joint use dock and buoy comprising either 18' or 24' depicted as "option user space" on **Exhibit "A"**. The option shall be exercisable at any time. If the owners of Parcels A and E exercise said option they shall be entitled to do so for a prorated purchase price equal to the sum of the following: (1) all the costs incurred by the owners of Parcels B, C, and D as indicated on **Exhibit "B"** to obtain all permits and prepare the site required for construction of said dock, and (2) all costs to construct said dock and related facilities, and adjusted to compensate the owners of Parcels B, C, and D for the effects of inflation from the date of this Agreement to and including the date of exercise of said option, by the consumer price index for all urban consumers published by the U..S. Department of Labor for the Seattle-Everett Metropolitan Area.

4.4 Unless or until such time as the owners of Parcels A and E shall exercise their respective option to purchase an undivided percentage interest in said dock facility and buoy as provided hereinabove, the owners of Parcels A and E shall be entitled, at their option, to moorage (including buoy), during periods when the floats are in place as indicated on **Exhibit "A"** for "option user space" users for a monthly moorage fee with a minimum term of twelve (12) months renewable on an annual basis, due and payable in advance on the first (1st) day of each month of such use, in an amount equal to the commercial moorage fee then charged by Roche Harbor Marina of said dock for each boat of the same length as the owners of Parcels A and E boat(s) to be moored at said dock facility.

4.5 If the owners of Parcels A and E shall exercise said option to purchase their respective undivided percentage interest in said dock facility and buoy, all parties shall thence each be entitled to share in reasonable manner as herein provided in the moorage space provided on the pier and float as indicated in **Exhibit "A".**

4.6 If the owners of parcels A and E shall exercise said option to purchase their respective undivided percent interest in said dock facility, from the date of exercise of said option, all parties shall share equal responsibility for payment of the costs to operate said dock facility and buoy.

4.7 If the owners of Parcels A and E shall exercise their said respective option to purchase an undivided percent interest in said dock facility and buoy, all appropriate expenses incurred in maintaining, repairing or replacing the dock and buoy shall thence be shared equally by all parties. These costs shall include, but not be limited to the following:

4.7.1 All real property taxes on tax parcel numbers 462341009000 and 462341003000 attributable to the pier and float unless the real property taxes equally distributed to all Parties.
4.7.2 All maintenance or repair costs;
4.7.3 Premiums for liability insurance;
4.7.4 Premiums for property insurance at replacement value;
4.7.5 Utilities costs; and
4.7.6 Removal, and off season storage costs of the float

4.8 No Party may use the dock or float in a manner that precludes the authorized use of the other Party. The Parties may use the float area assigned to the other user provided they have communicated with the affected user and obtained specific prior approval from the affected user.

4.9 To ensure compliance with WAC 332-30-144 regarding exclusion of a tideland lease for private recreation docks, no more than four (4) pleasure boats shall be moored at the dock at any one time.

5. **Access to Dock**. Access to the dock by the Parties shall be by along the commonly owned beach and along a pedestrian access easement from Wildwood Ln. south along the Parcel B and C common property line as shown and described in **Exhibit "C".** No mechanized transportation over the easement will be allowed without specific permission from the owners of Parcels B and C. The Parties agree to use their best efforts to minimize any interference or impact on Parcels B and C while accessing the dock.

5.1 The Parties shall agree to hold the owners of Parcels B and C harmless for any injury that may occur to any person, family, guests, lessees, or friend while using the access to the dock.

6. **Operating Costs and Expenses**. Operating costs and expenses for the dock and buoy such as power and water utilities, repairs and maintenance, taxes and insurance, and other expenses relating to the dock and buoy shall be paid by the Manager and reimbursed as designated in paragraph 4. The Manager will keep accurate accounting records of the ongoing operating costs and make the accounting records available upon request of any Party.

7. **Indemnity**. The Parties acknowledge that use of a dock and buoy can be dangerous and each Party hereby agrees that it shall use the dock and buoy entirely at its own risk. The Parties hereby indemnify and hold each other harmless from any loss , damage, injury, cause of action or claim resulting from any and all acts or omission of a Party, their agents, guests, or other

person using the dock, float, or buoy at the invitation of the Party. Joint users shall keep the dock and buoy in good order and repair. Any damage occasioned by the users' acts or omissions shall be repaired at the sole expense of the party causing the damage to the extent that said repair is not subject to reimbursement by insurance.

8. **Damages to Dock** and Buoy If the dock or buoy are damaged by the Parties, or by any person using the dock or buoy at the invitation of the respective Party, the Manager shall promptly arrange to cause the repair of the dock or buoy to the standard of the dock or buoy prior to the damage and the Party responsible for the damage will be invoiced for any costs with request for payment within 30 days. In the event the Party responsible for the cause of damage does not pay for such repair costs when due and payable, use of the dock, float, or buoy by the responsible Party may be temporarily suspended until such costs are paid pursuant to paragraph 17 of this Agreement.

9. **Nuisance.** The Parties will not engage in, or allow to be engaged in, any activity at or about the easement, dock, float, or buoy in contravention of law or that reasonably may be deemed a nuisance. Nuisance shall include, but is not limited to, any loud or boisterous activity that would disturb the natural peace and tranquility of the area.

10. **No Overnight Accommodations**. Boats moored at the dock or buoy shall not be used for overnight accommodations, other than for occasional use by the Parties and their guests. Except as otherwise provided for herein, no transient or overnight moorage shall be permissible at the dock or buoy.

11. **Parties Responsible for their own Boats**. Except as otherwise provided herein, the Parties shall be solely responsible for their boats moored at the float or buoy and shall bear no responsibility or liability for loss or damage of boats they do not own. Boats will be kept in neat, clean and seaworthy condition at all times and each Party shall be responsible for the relocation of their boat when weather or tidal conditions so require.

12. **Noise.** Best efforts shall be made to keep the dock quiet after 9:00 PM and before 9:00 AM ("After Hours") to minimize the impact of noise, lights, etc. on the shore properties. It is understood that the Parties can use the dock After Hours; however, the Parties shall be particularly careful to minimize noise, lights or any disruption during After Hours usage.

13. **Dock Cleanliness and Appearance**. The dock shall be kept clear except for no more than one communal container for storage of maintenance and safety equipment. The dock shall be kept clean, orderly and free from all hazards and flammable substances. The Parties shall agree on rules for good and safe usage of the dock consistent with this Agreement. Any disputes shall be resolved as stated in section 20 of this agreement.

14. **Recreational Use Only.** The use of the dock and buoy is for recreational purposes only. No commercial use shall be made of the dock or buoy, nor shall any commercial maintenance be performed on any vessel at the dock or buoy excepting emergency repairs.

15. **Exclusive Use and Benefit to the Parties to this Agreement**. The dock and buoy are for the exclusive and sole use and benefit of the Parties. Notwithstanding any other term in this declaration, no Party shall grant rights of any kind whatsoever concerning the use and benefit of the dock or buoy to any third party without the prior written consent of the Parties, however, the Parties may permit guests, invitees and contractors to use their portion of the float or buoy when visiting and no consent shall be required.

16. **Expansion**. All Parties who have an ownership interest in the dock must approve any proposed changes to the dock and all required federal, state, and local permits must be obtained prior to beginning construction. The costs of any future expansion or enhancement of the dock will be allocated according to each Party's pro-rata share of ownership, unless a proposed expansion is requested by a single Party for that Party's exclusive use, then only that Party shall bare the responsibility of the cost.

17. **Temporary Suspension**. Use of the Dock or buoy may be temporarily suspended at any time for failure of either Party to comply with any of the terms and conditions of this Agreement, including failure to pay operating costs and expenses. Such revocation shall continue for the period of time of noncompliance. If the revocation was for failure to pay operating costs and expenses, the revocation period will continue until all unpaid expenses that occurred during the non-compliance period are paid in full.

18. **Terms and Conditions of Agreement are Enforceable**. The terms and conditions of joint use as set forth herein are expressly conditioned upon compliance by each joint user with all requirements set forth herein. Any Party with an ownership interest in the dock is empowered to enforce the terms, conditions and requirements of this agreement. Failure to abide by the terms, conditions and requirements may result in loss of dock use privilege.

19. **Dispute Resolution.** In the event of a dispute, the Parties shall first seek resolution through arbitration in accordance with the provisions in RCW Chapter 7.04.010. If legal action, arbitration, or mediation is necessary to enforce or determine any term or condition of this Agreement, the prevailing party shall be entitled to all costs associated with its action, including reasonable attorneys' fees.

20. **Entire Agreement.** This is the entire agreement between the Parties. There are no other understandings, verbal or written concerning the subject matter of this declaration. This agreement may be amended only by written agreement signed by the Parties.

21. **Notices.** All Notices which any Party desires to give hereunder shall be in writing and will be sufficiently given if delivered by personal delivery, by nationally recognized overnight courier service or by certified mail, postage prepaid, addressed to the Party to whom directed at the

applicable address set forth below (unless changed by similar notice in writing given by the particular Party whose address is to be changed).

David N Dickhaus
11401 Discovery Heights Circle
Anchorage, Ak.. 99515-2721

Warren R & Nancy J Appleton
PO Box 1532
Mercer Island, Wa. 98040-1532

DJ Roy & Jennifer I Robinson
57 Wildwood Lane
Friday Harbor, Wa. 98250-8169

Leonie Bradley Griswold TTEE
977 White Point Road
Friday Harbor, Wa. 98250-9184

22. **Washington Law**. This Agreement shall be governed by the laws of the State of Washington.

23. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same original.

IN WITNESS WHEREOF the Parties hereto have set their hands and seals as follows:

_____	_____
David N Dickhaus	**Leonie Bradley Griswold TTEE**
_____	_____
Nancy J Appleton	**Warren R Appleton**
_____	_____
DJ Roy Robinson	**Jennifer I Robinson**

State of Alaska
Judicial District or County of _____
or Municipality of _____

On this _____ day of _____in the year 2018, before me, the undersigned notary public, personally appeared **David N Dickhaus** known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

_____
Signature of Person Taking
Acknowledgment
Title or Rank, if any

My Commission Expires:_____

STATE OF WASHINGTON :
: ss
COUNTY OF _____:

I certify that I know or have satisfactory evidence that **Nancy J Appleton** is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated:_____, 2018

_____
Notary Public Signature

_____
Print Name
Notary public in and for the state of
Washington, residing at _____
My appointment expires: _____

STATE OF WASHINGTON :
: ss
COUNTY OF _____:

I certify that I know or have satisfactory evidence that **Warren R Appleton** is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated:_____, 2018

_____
Notary Public Signature

_____
Print Name
Notary public in and for the state of
Washington, residing at _____
My appointment expires: _____

State of Arizona
County of _____

On this _____ day of _____, 2018, before me personally appeared **DJ Roy Robinson**, whose identity was proven to me on the basis of satisfactory evidence to be the person who she claims to be, and acknowledged that she signed the above document.

_____
Notary Public

_____
Print name

_____
My commission expires

State of Arizona
County of _____

On this _____ day of _____, 2018, before me personally appeared **Jennifer I Robinson**, whose identity was proven to me on the basis of satisfactory evidence to be the person who she claims to be, and acknowledged that she signed the above document.

_____
Notary Public Signature

_____
Print name

_____
My commission expires

STATE OF WASHINGTON :
: ss
COUNTY OF _____:

I certify that I know or have satisfactory evidence that **Leonie Bradley Griswold** is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Trustee of (name of party on behalf of whom instrument was executed) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated:_____, 2018

_____
Notary Public Signature

_____
Print Name
Notary public in and for the state of Washington, residing at:

_____
My appointment expires:

_____