

## JOINT USE AGREEMENT

**THIS DECLARATION** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2019 by and between David N. Dickhaus ET AL (“Dickhaus”), Warren R. and Nancy J. Appleton (“Appleton”), DJ Roy & Jennifer I Robinson (“Robinson”), Wood Family Trust Harold & Scarlett D Wood TTEES (“Wood”), 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, two existing buoys, 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, the buoys, 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** is the owner 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 (hereinafter referred to as **Parcel F**).

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 owners of parcel B and C own mooring buoys 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 existing mooring buoys associated with Parcel B & 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, E and F.** 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, E & F** 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, E and F and shall ensure 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), E (Robinson), and F (Wood), and their heirs, successors or assigns.
3. **Management.** Routine management of the dock and buoys 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 buoys.** The dock and buoys 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 "A1"**, and the existing mooring buoys associated with Parcel B and C including all rights of ownership of the joint use dock facility and buoys, 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 "shared space" comprising of approximately 42' for guests and temporary moorage until such time that the owners of Parcels A, E and F exercise their option rights as noted in section 4.2 and 4.3.

- 4.2 The owners of Parcels A, E and F, their heirs, successors or assigns, shall have the right to use the float areas comprising approximately 42' depicted as "shared space" on **Exhibit "A1"** 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, E and F, their heirs, successors or assigns, shall have the option to purchase an ownership interest in the 24' "shared space" shown on **Exhibit "A1"**. Purchase of an interest in the joint use dock shall included all rights of ownership as noted in section 4.1. except as noted below. The option shall be exercisable at any time. Upon purchase of the 24' "shared space" by an option user, the remaining shared space shall be limited to the 18' "space located at the south end of the floats shown on **Exhibit "A2"**. Shares of the 24' space may be purchased by the remaining option users as noted in **Exhibit "B"**. If more than one option user exercises the right to purchase an ownership interest in the 24' space, the owners of the 24' space shall rotate moorage between the dock and buoys on a regular basis in order to enable equitable sharing of the 24' space and to ensure that no more than four (4) pleasure boats are moored at the dock at any one time as noted in section 4.6. If the owners of Parcels A E and F exercise said option they shall be entitled to do so for a prorated purchase price as noted in **Exhibit "B"**.
- 4.4 If the owners of Parcels A, E and F exercise their said respective option to purchase an undivided percent interest in said dock facility and buoys, all appropriate expenses incurred in maintaining, operating, repairing or replacing the dock and buoys shall thence be shared on a prorated basis by all parties as described in **Exhibit "B"**. These costs shall include, but not be limited to the following:
- 4.4.1 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.
  - 4.4.2 All maintenance or repair costs;
  - 4.4.3 Premiums for liability insurance;
  - 4.4.4 Premiums for property insurance at replacement value;
  - 4.4.5 Utilities costs; and
  - 4.4.6 Removal, and off season storage costs of the float
- 4.5 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.
- 4.6 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 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 buoys such as power and water utilities, repairs and maintenance, taxes and insurance, and other expenses relating to the dock and buoys 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 buoys can be dangerous and each Party hereby agrees that it shall use the dock and buoys 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 buoys at the invitation of the Party. Proof of insurance by each party shall be required prior to use of the dock or buoys. Joint users shall keep the dock and buoys 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 Buoys.** If the dock or buoys are damaged by the Parties, or by any person using the dock or buoys at the invitation of the respective Party, the Manager shall promptly arrange to cause the repair of the dock or buoys to the standard of the dock or buoys 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 buoys 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 buoys 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 buoys 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 buoys.

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 buoys 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. 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 buoys is for recreational purposes only. No commercial use shall be made of the dock or buoys, nor shall any commercial maintenance be performed on any vessel at the dock or buoys excepting emergency repairs.
15. **Exclusive Use and Benefit to the Parties to this Agreement.** The dock and buoys 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 buoys 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 buoys 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 buoys 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

**Wood Family Trust Harold & Scarlett D Wood TTEES**

207A NO CLOVERDALE BL #197  
CLOVERDALE, CA 95425-3318

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**

\_\_\_\_\_  
**Harold Wood**

\_\_\_\_\_  
**Scarlett Wood**

State of Alaska  
Judicial District or County of \_\_\_\_\_  
or Municipality of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 2019, 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.

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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: \_\_\_\_\_, 2019

\_\_\_\_\_  
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: \_\_\_\_\_, 2019

\_\_\_\_\_  
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 \_\_\_\_\_, 2019, 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 \_\_\_\_\_, 2019, 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 \_\_\_\_\_ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Notary Public Signature

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

\_\_\_\_\_  
My appointment expires:

\_\_\_\_\_

State of California  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared **Harold Wood, Trustee of the Wood Family Trust** who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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

\_\_\_\_\_  
(Seal)

State of California  
County of \_\_\_\_\_)

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared **Scarlett Wood, Trustee of the Wood Family Trust** who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

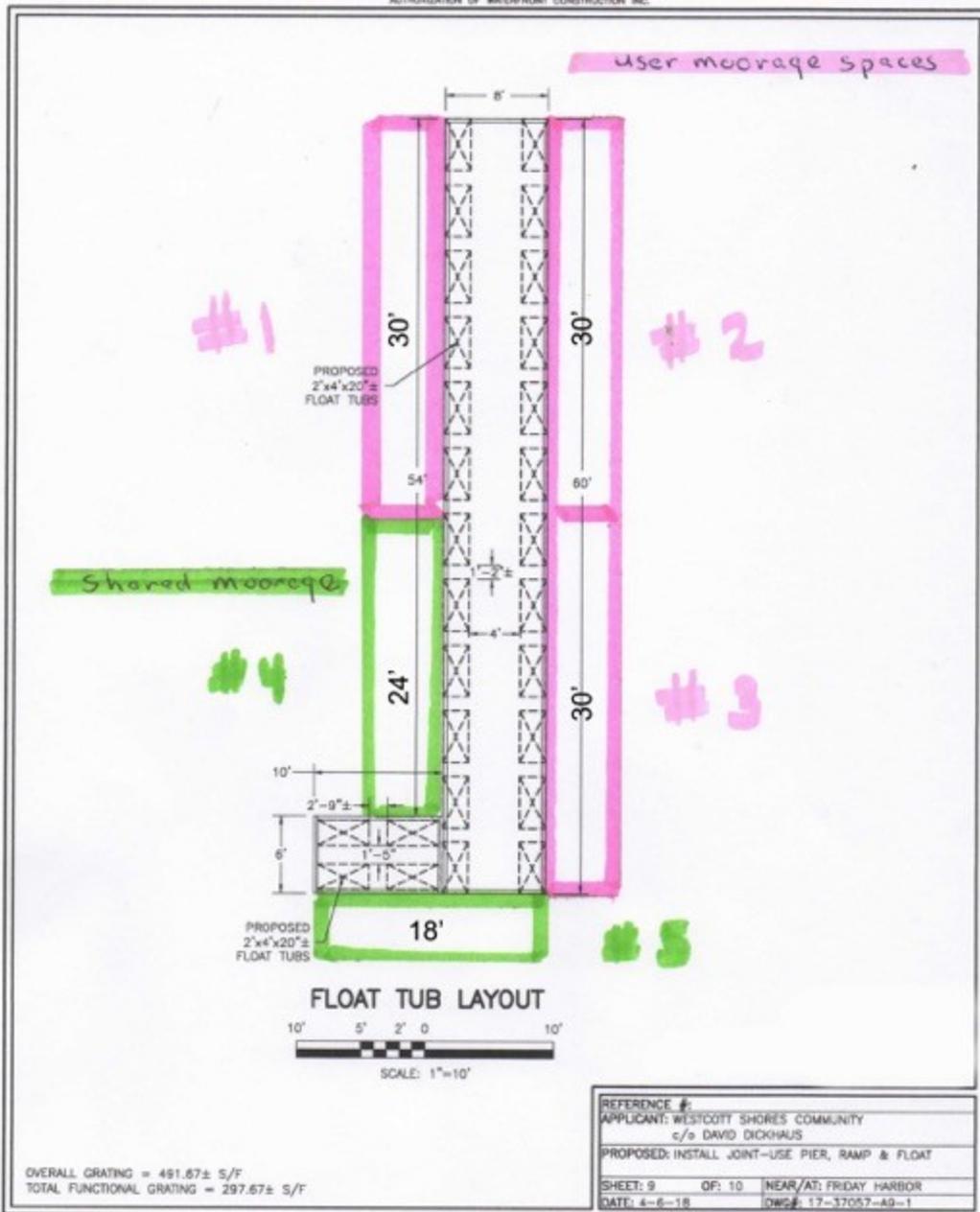
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.  
Signature

\_\_\_\_\_  
(Seal)

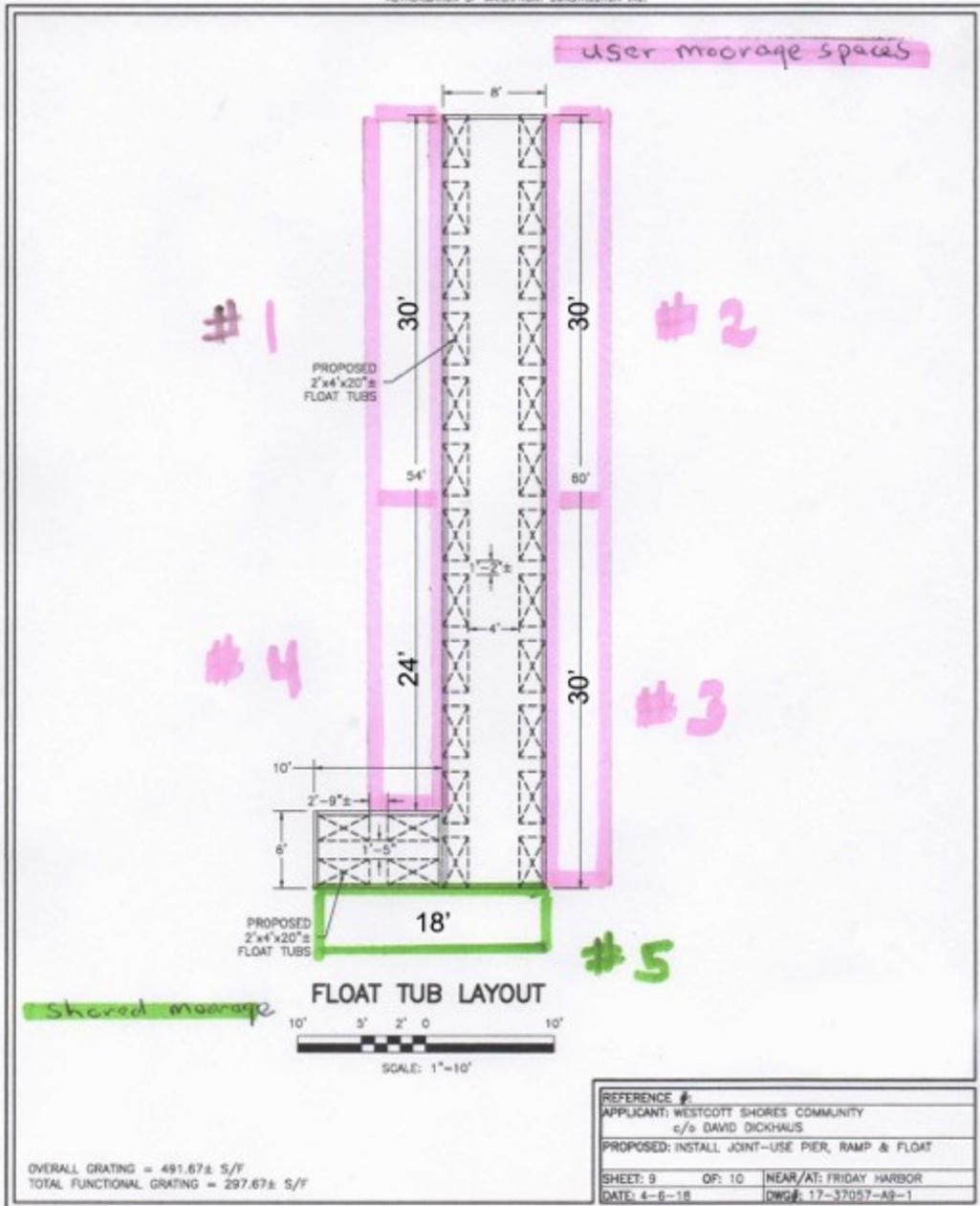
# EXHIBIT A1 - Moorage Space Prior to Option User Ownership

PROJECT DESIGNED BY:  
 Waterfront Construction Inc.  
 THIS DOCUMENT IS PROPRIETARY PROPERTY OF WATERFRONT  
 CONSTRUCTION INC. AND IS NOT TO BE USED, IN WHOLE OR IN  
 PART, FOR ANY OTHER PROJECT WITHOUT THE WRITTEN  
 AUTHORIZATION OF WATERFRONT CONSTRUCTION INC.



# EXHIBIT A2 - Moorage Space After Option User Ownership

PROJECT DESIGNED BY:  
 Waterfront Construction Inc.  
 THIS DOCUMENT IS PROPRIETARY PROPERTY OF WATERFRONT  
 CONSTRUCTION INC. AND IS NOT TO BE USED, IN WHOLE OR IN  
 PART, FOR ANY OTHER PROJECT WITHOUT THE WRITTEN  
 AUTHORIZATION OF WATERFRONT CONSTRUCTION INC.



## EXHIBIT B COST SHARING

Each Party desiring an ownership interest in the joint use dock and buoys shall pay the following amount for their share of the project. These costs are currently estimated at \$400,000.00 and reflect the anticipated expense for the complete project, including but not limited to Permit, Float, Ramp, Pier, Stairs, Buoys, Upland work, required Mitigation, Utilities costs and any other cost not specifically mentioned here that are a result of this Project. As mentioned above, these are estimated costs, upon completion of project construction, the costs will be totaled and this amount shared with all subdivision owners and become the actual cost basis used.

The owners of parcels B (Appleton), C (Dickhaus) and D (Robinson) shall initially split the cost (estimated at \$133,333.00 each) for the construction of the project. Each of these three parties (B, C & D) will receive usage rights to a 30' float moorage space shown on Exhibit A. (Space #1, 2 & 3) In addition, these three parties will have mutually agreed upon shared use of the remaining 42' of dock float moorage space (space #4 & 5) along with the two buoys.

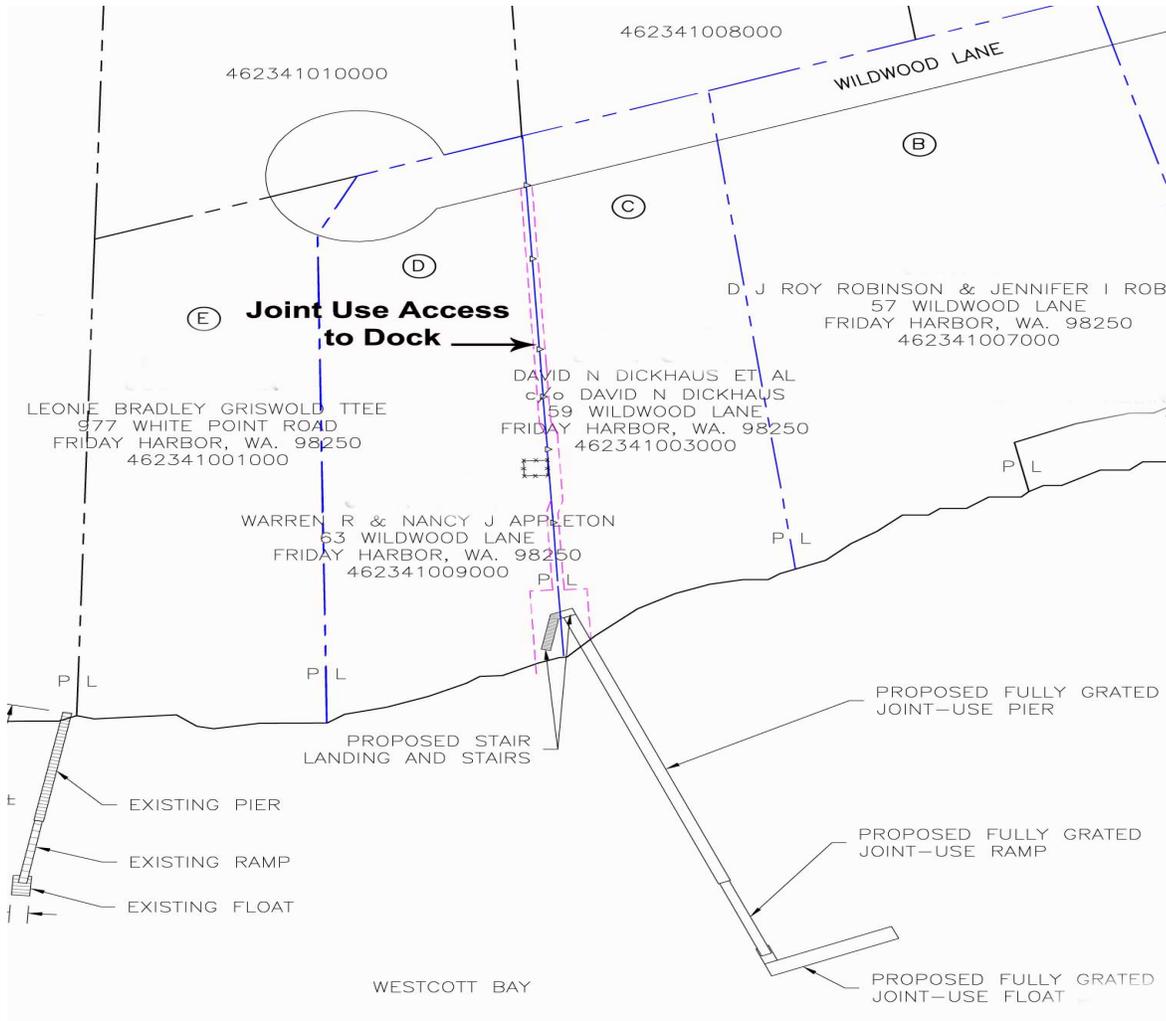
If and when an "option" is exercised, this "option" user will acquire the usage rights to the 24' space shown on Exhibit A, (Space #4) along with the shared usage rights for the remaining 18' of float moorage (space #5) and the two buoys. The cost for this "option" (based upon the estimated \$400,000.00) is \$84,210.52. This amount represents a prorated share of the dock space that is not designated for shared use. ( $24'/114' * \$400,000.00 = \$84,210.52$ ). If and when an "option" party exercises their option, the proceeds (\$84,210.52) shall be split and shared equally by the 3 existing owners. (B, C & D)

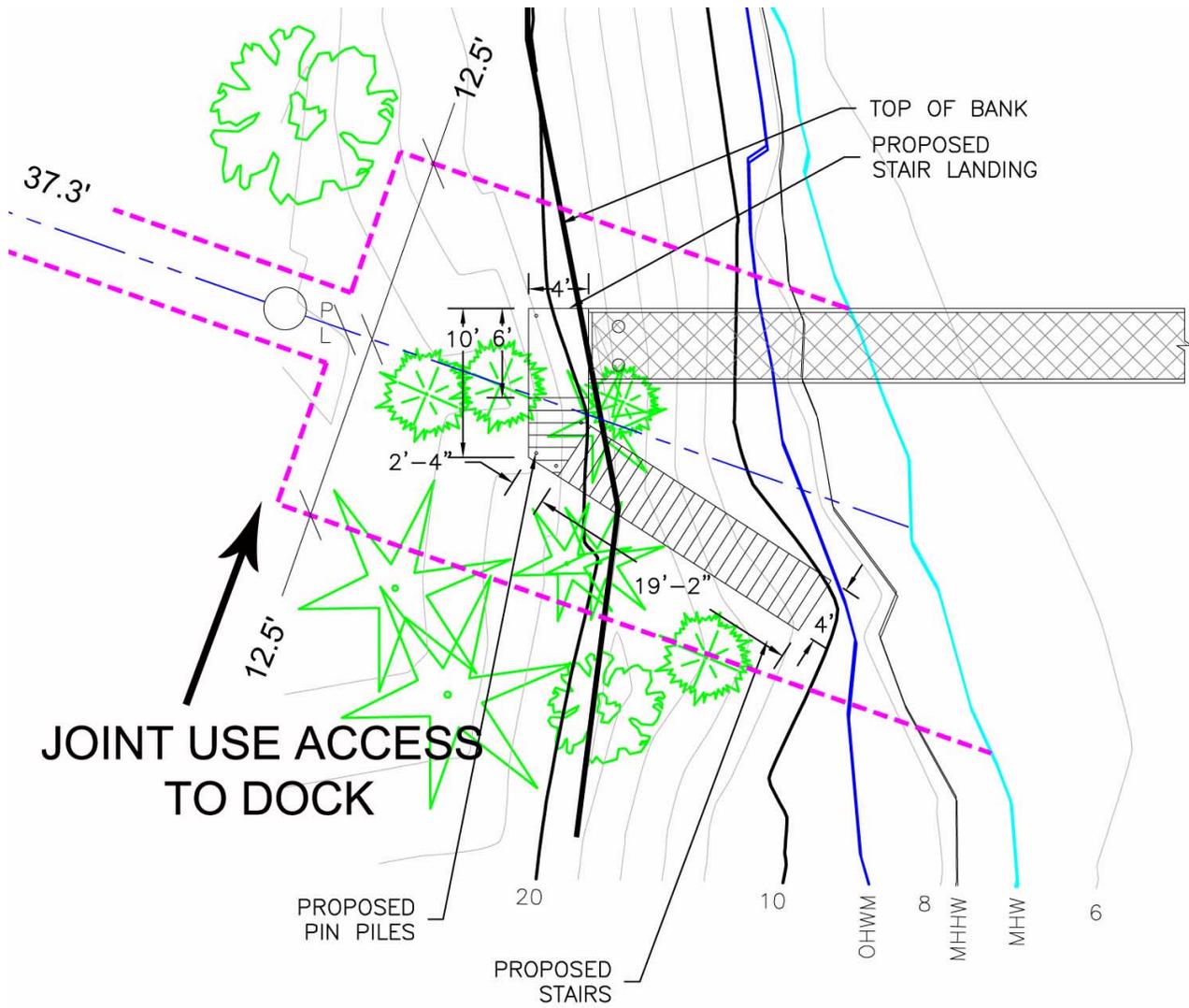
Since we are bound to a maximum of 4 "pleasure" boat moored at the dock at one time, if a 2<sup>nd</sup> option is exercised, they will acquire the "shared" usage rights to the 24' float moorage space, (space #4) along with shared use of the 18' of shared float space (space #5) and the 2 buoys. This would require these two parties to alternate monthly use of the float 24' dock moorage space (space #4) and a buoy for their moorage needs. The cost for this second option would be \$42,105.25. ( $\$84,210.52 / 2 = \$42,105.26$ ) The proceeds from this option would go to the 1<sup>st</sup> "option" user.

If a third option is exercised, this party would acquire the "shared" usage rights of the 24' float moorage space (space #4), along with use of the 18' of shared float space (space #5) and the 2 buoys. This would require these three parties to alternate usage of the float 24' dock moorage space (space #5) and the 2 buoys for their moorage needs. The cost for the final option would be \$28,070.17. ( $\$84,210.52 / 3 = \$28,070.17$ ) The proceeds from this option would be split and shared equally by the 1<sup>st</sup> & 2<sup>nd</sup> option owners.

## EXHIBIT C ACCESS TO DOCK AND BEACH

Access to the dock will be provided via the stairs from the commonly owned beach, and along a five-foot wide easement extending from Wildwood Ln. south to the head of the pier for the joint use dock. The easement will increase in width to twenty-five feet from the head of the dock southward to the mean higher high water (MHHW) as shown on the below drawings to encompass the stairs to the commonly owned beach and the north end of the pier.





STAIR DETAIL