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Skagit County Auditor

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When recorded return to:

Kirkpatrick & Lockhart Preston Gates Ellis LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104
Attn: Konrad J. Liegel

Grantor is receiving no monetary consideration
for the transfer of this Easement.

GRANT DEED OF CONSERVATION EASEMENT

Grantor: Nookachamps, LLC
Grantee: Cascade Land Conservancy
Legal Description

GUARDIAN NORTHWEST TITLE CO.
97233

A full legal description is included in Exhibit A.

Portions of Assessor's Tax Parcel Numbers: P23513, P112375, P23499, P23501, P23532, P112375, P24123, P24348, P24342, P24132, P24349, P24133, P24366, P24368, P24186, P112374, P24135, and P111844.

SEC 4, 5, 8 TSP 34 N R 4 E ETAL

THIS GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made by Nookachamps, LLC, a Delaware Limited Liability Company having an address at 1800 4th Street, Suite A, Marysville, WA 98270 ("Grantor"), in favor of Cascade Land Conservancy, a Washington nonprofit corporation, having an address at 615 Second Avenue, Suite 625, Seattle, WA 98104 ("Grantee") (collectively "Parties").

1. RECITALS

1.1. Grantor is the sole owner in fee simple of certain real property in Skagit County, Washington, portions of which are subject to and protected by the terms of this Easement ("Protected Property"). The Protected Property is more particularly described in Exhibit A (legal description) and shown on Exhibit B (site plan), which are attached and incorporated into this Easement by this reference.

1.2. The Protected Property possesses wetlands, riparian habitat, floodplains and other fish and wildlife habitat ("Conservation Values"). Wetlands, riparian habitat, floodplains, channels and other fish and wildlife habitat on the Protected Property that are restored, enhanced, or otherwise created after the effective date of this Easement shall also be considered Conservation Values.

1.3. The Conservation Values are a result of the Protected Property's inherent ecological potential and of the existing and/or anticipated restoration and enhancement of wetlands, riparian habitat, floodplains, channels and other habitats on the Protected Property by Nookachamps, LLC.

The foregoing restoration and enhancement is intended to qualify the Protected Property for inclusion by Grantor in a wetland mitigation bank and issuance of credits therefrom (“Nookachamps Wetland Mitigation Bank” or “Mitigation Bank”). Additional restoration and enhancement of the Protected Property may occur as identified and described in that certain Mitigation Banking Instrument for the Nookachamps Wetland Mitigation Bank, as may be amended from time to time (“Banking Instrument”), approved by the Washington Department of Ecology and U.S. Army Corps of Engineers (“Banking Agencies”).

1.4. The Nookachamps Wetland Mitigation Bank was established by Grantor in coordination with, and approved by, the Banking Agencies. This Easement is a condition of the operation of the Mitigation Bank.

1.5. Portions of the Protected Property were conveyed to Grantor subject to an easement for purposes of establishing and maintaining a primitive public trail (“Trail Easement”). The Trail Easement is recorded in the official records of Skagit County with an Auditor’s recording number of 200810310079. This Easement is granted subject to the provisions of the Trail Easement.

1.6. Grantor and Grantee intend that the Conservation Values be preserved and maintained in perpetuity by permitting only those land uses on the Protected Property that do not impair or interfere with the Conservation Values, which include, but are not limited to, such restoration, enhancement, agricultural and recreational uses as further provided in this Easement.

1.7. Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, and also qualified as a nonprofit nature conservancy corporation under RCW 64.04.130 and RCW 84.34.250, whose primary purpose is to promote the preservation of open space and critically important ecological systems in Snohomish, King, Skagit, Pierce, Kittitas Counties and surrounding counties in Washington State.

1.8. Grantee agrees, by accepting this Easement, to preserve and protect in perpetuity the Conservation Values and enforce the provisions hereof, unless this Easement is sooner extinguished or terminated as expressly provided for herein.

1.9. The Parties acknowledge that this Easement does not provide standards or criteria regarding the effectiveness of Grantor’s restoration or enhancement of the Protected Property and that this Easement is not intended to provide a basis for ensuring the effectiveness of such restoration and enhancement or to obligate Grantee to ensure such effectiveness. The Parties further acknowledge that such standards and criteria and the ability to ensure the effectiveness thereof are provided for in the Banking Instrument and related documents.



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2. CONVEYANCE AND CONSIDERATION

2.1. For the reasons stated above, and in consideration of the mutual covenants, terms, conditions, and restrictions contained in this Easement, and other good and valuable consideration provided by the Parties, Grantor hereby voluntarily grants, conveys, and quit claims to Grantee a conservation easement in perpetuity over the Protected Property, consisting of certain rights in the Protected Property, as set forth in this Easement, subject only to the restrictions contained in this Easement.

2.2. This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130 and RCW 84.34.210.

2.3. This grant shall be subject to easements, restrictions, interests, and water rights of record as of the effective date of this Easement, including, but not limited to, those set forth in Exhibit C, which is attached and incorporated into this Easement by this reference.

2.4. Grantor expressly intends that this Easement run with the land and that this Easement shall be binding upon Grantor's successors and assigns.

2.5. This Easement does not transfer any water or water rights. This Easement also does not transfer, or create any entitlement in, any credit from, or rights in the credits from, the Mitigation Bank, or any other environmental, habitat or other credits related to the Protected Property that may be developed or sold.

2.6. Notwithstanding any other provision of this Easement to the contrary, this Easement shall not be interpreted to preclude Grantor from using the acreage of the Protected Property for the purpose of calculating permissible lot yield or development density of any other property. Grantor may participate in City or County sponsored transfer of development rights programs.

3. PURPOSE

The purpose of this Easement is to assure that the Protected Property will be retained forever predominantly in its condition as wetland, riparian habitat, floodplain, channel and other aquatic and terrestrial habitat of fish, wildlife, and plants, providing the wetland, riparian, floodplain, channel and other aquatic and terrestrial habitat functions and values described in the Baseline Documentation (described below), and to prevent any use of, or activity on, the Protected Property that will impair or interfere with the Conservation Values (the "Purpose"). Grantor intends that this Easement will confine the use of, or activity on, the Protected Property to such uses and activities that are consistent with this Purpose. Although Grantor may provide access to the public, subject to the terms of this Easement and the Trail Easement, this Easement shall not be construed as affording to the general public physical access to any portion of the Protected Property.



4. RIGHTS CONVEYED TO GRANTEE

To accomplish the Purpose of this Easement, the following rights are conveyed to Grantee by this Easement:

4.1. Identification and Protection. To identify, preserve and protect in perpetuity, unless sooner extinguished or terminated as expressly provided under this Easement, and to restore or enhance by mutual agreement, the Conservation Values.

4.2. Access.

4.2.1. To enter the Protected Property annually, at a mutually agreeable time and upon prior written notice to Grantor, for the purpose of making a general inspection to monitor compliance with this Easement.

4.2.2. To enter the Protected Property at such other times as are necessary if Grantee reasonably believes that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of this Easement. Such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property.

4.2.3. To enter the Protected Property, at mutually agreeable times and upon prior written notice to Grantor, to exercise any other affirmative rights as expressly provided for herein.

4.3. Scientific/Educational Use. To allow persons or groups to enter the Protected Property for educational, scientific, and biological purposes to observe and study on the Protected Property; *provided* that any such persons or groups first are approved by Grantor, which approval shall not be unreasonably withheld, make prior arrangements with Grantor, agree to provide Grantor with copies of any data or reports resulting from such observation or study, and agree to abide by any reasonable restrictions on access set forth by Grantor. Grantor and Grantee agree that all persons or groups given permission to enter the Protected Property for such purposes (but not for the general purpose of using the Trail Easement) shall sign a waiver, substantially in the form attached to this Easement as Exhibit D, which is incorporated herein by this reference. This waiver is intended to release Grantor and Grantee from all liability to the extent allowed by law.

4.4. Injunction and Restoration. To enjoin any use of, or activity on, the Protected Property that is inconsistent with the Purpose of this Easement or the Trail Easement, including trespasses or unauthorized uses by members of the public, and to undertake the restoration of such areas or features of the Protected Property as may be damaged by uses or activities inconsistent with the provisions of this Easement, all in accordance with Section 9.



4.5. **Enforcement.** To enforce the terms of this Easement, consistent with Section 9.

4.6. **Assignment.** To assign, convey, or otherwise transfer Grantee's interest in the Protected Property in accordance with Section 13 and subject to Section 11.4.

4.7. **Maintenance of Protected Property.** To control non-native, noxious weeds and invasive weeds (collectively "**Weeds**"), the exercise of which shall be in Grantee's sole discretion, and acknowledging that Grantor is required to comply with all applicable state and local laws for controlling weeds on the Protected Property (see Section 5.13.1, below). Grantee shall provide Grantor 10 days' prior written notice of its intent to exercise this right to control Weeds on the Protected Property.

4.8. **Baseline Documentation.**

4.8.1. Within sixty (60) days after the effective date of this Easement, and thereafter as provided in Section 4.8.2 below, Grantee shall document specifically the Conservation Values in an inventory of relevant features of the Protected Property, which Grantee shall maintain on file at its offices and which shall be incorporated into this Easement by this reference ("**Baseline Documentation**"). The Baseline Documentation shall consist of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property. The Baseline Documentation is intended to serve as an objective, although nonexclusive, information baseline for monitoring compliance with the terms and conditions of this Easement.

4.8.2. As previously noted, the additional restoration and enhancement work under the Banking Instrument that may occur on the Protected Property is likely to enhance significantly the Conservation Values. Grantee may from time-to-time and as necessary update the Baseline Documentation to reflect such work and to document the enhanced Conservation Values resulting therefrom for purposes of monitoring compliance with the terms and conditions of this Easement.

5. GRANTOR'S RESERVED RIGHTS AND OBLIGATIONS

5.1. **General.** Grantor reserves for itself and its successors and assigns all rights accruing from ownership of the Protected Property, including, but not limited to, the right to sell, lease, and devise the Protected Property and the right to engage in, or permit or invite others to engage in, any use of, or activity on, the Protected Property that is not inconsistent with the Purpose of the Easement and that is not prohibited by this Easement. Without limiting the generality of this Section 5.1, Grantor specifically reserves for itself and its successors and assigns, the following uses and activities:

5.2. **Agricultural Use.** Conducting agricultural activities, including, but not limited to, row-crop agriculture, *provided that* such activities are carried out in compliance with the Banking Instrument and with federal, state, and local regulations, and *further provided that* any portions of



the Protected Property, once restored or enhanced pursuant to the Banking Instrument, may no longer be used for agricultural activities.

5.3. Recreation. The undertaking of dispersed (*i.e.*, not occurring in a confined area) passive, non-motorized recreational activities, on a non-commercial basis, such as hiking, bird watching, horseback riding, fishing, and hunting; ***provided that*** such activities are conducted in a manner and intensity that does not cause more than a *de minimis* adverse impact on the Conservation Values; and ***provided further that*** general public use of the pedestrian trail provided for in Section 5.7 shall be limited to the areas and uses provided in the Trail Easement.

5.4. Road Maintenance. The use, maintenance, renovation, expansion, or replacement of existing roads necessary to maintain, restore, or enhance the Conservation Values or to facilitate access within the Protected Property necessary for uses and activities expressly allowed in this Section 5.

5.5. Fences. The construction and maintenance of fences within or around the Protected Property, if required.

5.6. Habitat Stewardship, Restoration, and Enhancement. Constructing, installing, planting, maintaining, and engaging in other activities to maintain or further restore or enhance the Conservation Values in accordance with the Banking Instrument and any final design, construction or management plans and bid specifications subsequently developed in conformance with the Banking Instrument ("**Mitigation Bank Plans and Specifications**"), which may include, but are not limited to: planting and irrigating plants; removing and controlling Weeds and rodents (including beavers); harvesting whips from existing native plants as a source of material for planting other areas within the Protected Property; altering or manipulating ponds and water courses; and creating new wetlands, water impoundments, channels or water courses. Grantor shall provide Grantee Mitigation Bank Plans and Specifications relating to: any proposed use of herbicides for Weed control; the removal of dikes or other water control structures; grading and excavation plans; the alteration or manipulation of natural water courses; or the creation of new wetlands, water impoundments, channels or water courses; and shall provide Grantee with prior written notice of any material deviation from such Plans and Specifications relating to such activities. If Grantor has conveyed or assigned its rights to engage in the activities described in this Section 5.6 to Grantee or third parties, Grantor covenants to not interfere with such restoration and/or enhancement, including, but not limited to, by the exercise of any rights reserved to Grantor under this Easement.

5.7 Floodplain Restoration Activities. Grantor may in the future perform other floodplain restoration activities on Nookachamps Creek, such as dike breaching or dike removal, and may use the bank site for flood storage purposes. Any such activity on the Mitigation Bank site must be approved by the Mitigation Bank Review Team co-chairs, be consistent with the Banking Instrument, and consistent with all applicable laws and regulations.



5.8. Pedestrian Trail. Construction and maintenance of a primitive public trail as provided in the Trail Easement that is generally six feet or less in its width, surfaced with mulch, crushed rock or other pervious surfaces, and located around the perimeter of the Mitigation Bank area and along the Skagit River, in the general location shown on Exhibit B, *provided that* the trail design, construction and maintenance shall be in accordance with the Mitigation Bank Plans and Specifications. Grantor shall provide Grantee prior written notice of the construction of the trail and of any proposed substantive amendments to the Trail Easement. Grantor shall confirm the specific location of the trail no later than 30 days after it is constructed, and will promptly provide Grantee with a copy of such location information for inclusion in the Baseline Documentation.

5.9. Vehicles. Motorized and mechanized vehicles may be used in furtherance of, and to facilitate, the foregoing activities, *provided that* any off-road use thereof other than as provided in the Mitigation Bank Plans and Specifications does not cause more than a *de minimis* adverse impact on the Conservation Values.

5.10. Signs. The installation and maintenance of signs, *provided that* such installation does not cause more than a *de minimis* adverse impact on the Conservation Values. Signs in excess of twenty-five (25) square feet in area need prior written approval by Grantee of sign location and design.

5.11. Protection of Health or Safety. The undertaking of other activities necessary to protect health or safety, or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity; *provided that* any such activity shall be conducted so that significant adverse impacts on the Conservation Values are avoided, or, if avoidance is not possible, minimized to the greatest extent possible under the circumstances.

5.12. Creation of Mortgage Liens. The creation of consensual liens, whether by mortgage, deed of trust, or otherwise, for the purpose of securing repayment of indebtedness of the Grantor, *provided that* such liens shall be subordinate to this Easement.

5.13. Grantor's Obligations.

5.13.1 Noxious Weed Control. Grantor shall comply with all state and local requirements for controlling noxious weeds within the Protected Property.

5.13.2 Structures, Facilities and Improvements. Grantor shall maintain all structures, facilities and improvements associated with the foregoing activities, including roads, trails and fences, that are within the Protected Property and are merely incidental to the functionality of the mitigation site, but that are necessary to the Mitigation Bank management and maintenance activities, for as long as necessary to serve the needs of long-term management and maintenance, as described in the Banking Instrument and related documents.



5.13.3 Access & Non-Interference. Grantor shall provide access for the purpose of implementing the long-term management and maintenance plan of the Mitigation Bank, as set forth in the Banking Instrument (“Plan”). Grantor, furthermore, shall refrain from impeding or otherwise interfering with implementation of the Plan. Activities in furtherance of the Plan are to be carried out by Grantor or its assignee as approved by the Banking Agencies. Such activities may include, but are not limited to, maintenance and repair of water control structures; maintenance, repair, removal, or abandonment of structural elements of the Mitigation Bank; and removal of invasive plant species.

6. USES AND ACTIVITIES INCONSISTENT WITH THE PURPOSE OF THE EASEMENT

6.1. General. Any use of, or activity on, the Protected Property inconsistent with the Purpose of this Easement is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in, or permit any such use or activity. Without limiting the generality of the foregoing, the following uses of, or activities on, the Protected Property, although not an exhaustive list of inconsistent uses or activities, are inconsistent with the Purpose of this Easement and shall be prohibited:

6.2. Subdivision. The legal or “de facto” division or subdivision of the Protected Property, which shall include, but not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Protected Property is divided into lots. This prohibition shall not be interpreted to preclude: any lot line adjustment that does not create a number of lots that is greater than the number of lots in existence on the effective date of this Easement; or any severance of water rights from the Protected Property.

6.3. Feedlots. The establishment and maintenance of a commercial feedlot. For the purposes of this Easement, a commercial feedlot is a confined area or facility within which the land is not grazed or cropped at least annually and that is used to receive livestock that have been raised off of the Protected Property for feeding and fattening for market.

6.4. Construction. The placement, installation, or construction of any buildings, structures, or other improvements of any kind, including, but not limited to, roads, railroads, utilities, cellular phone towers, septic systems, wells, recreational facilities, and parking lots, *except* as expressly provided in Section 5 above, including, specifically, those uses and activities described in the Mitigation Bank Plans and Specifications.

6.5. Alteration of Land. The alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or sod, *except* in conjunction with a use or activity expressly allowed in Section 5 above, including, specifically, those uses and activities described in the Mitigation Bank Plans and Specifications .



6.6. Erosion or Water Pollution. Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters. For the purposes of this Easement, the uses and activities expressly allowed under Section 5 above, including, specifically, those uses and activities described in the Mitigation Bank Plans and Specifications, shall be deemed not to violate this prohibition.

6.7. Removal of Trees and Other Vegetation. The pruning, topping, cutting down, uprooting, girdling, or other destruction or removal of live and dead trees and other vegetation, *except* as expressly provided in Section 5 above or in conjunction with a use or activity expressly allowed in Section 5 above.

6.8. Waste Disposal. The disposal, storage, or Release of Hazardous Substances, rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other offensive waste or material. The term “**Release**” shall mean release, generation, treatment, disposal, storage, dumping, burying, or abandonment. The term “**Hazardous Substances**” shall mean any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful, or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful, and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance, including, but not limited to, petroleum or any petroleum product.

6.9. Mining. The exploration for, or development and extraction of, oil, gas, coal, limestone, fossils, metals, geothermal resources, sand, gravel, or rock of any type on or below the surface of the Protected Property.

6.10. Recreational Activities. The undertaking of recreational activities and the installation or construction of improvements in furtherance of the same, *except* as expressly provided in Section 5 above.

7. NOTICE AND APPROVAL

7.1. Notice.

7.1.1. **Grantor.** Certain provisions of this Easement require Grantor to notify Grantee and/or to receive Grantee’s written approval prior to undertaking certain permitted uses and activities (*e.g.*, Sections 5.6 [habitat stewardship – material deviations from Mitigation Bank Plans and Specifications], 5.7 [trail construction], 5.9 [signs], and 11.3 [subsequent transfers]). The purpose of requiring Grantor to notify Grantee prior to undertaking these permitted uses and activities is to afford Grantee an adequate opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the Purpose of this Easement. Whenever such notice is required, Grantor shall notify Grantee in writing not less than thirty (30) days prior to the date Grantor intends to undertake the use or activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or



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activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the terms of this Easement and the Purpose thereof.

7.1.2. **Grantee.** Certain provisions of this Easement require Grantee to give notice to Grantor prior to undertaking certain activities (e.g., Sections 4.2 [access], 4.3 [scientific/educational use], 4.7 [weed control] and 10.2 [taxes]). Whenever such notice is required, Grantee shall notify Grantor in writing not less than thirty (30) days prior to the date Grantee intends to undertake the use or activity in question, unless otherwise provided for by this Easement.

7.2. **Approval.** Where approval by one of the Parties is required under this Easement, such approval shall be granted or denied in writing within thirty (30) days of receipt of a written request for approval, and such approval shall not be unreasonably withheld. Such approval may include reasonable conditions consistent with the Banking Instrument that must be satisfied in undertaking the proposed use or activity. When approval is required under this Easement, and when such approval is not granted or denied within the time period and manner set forth in this Section 7.2, the non-approving party may conclusively assume the other party's approval of the use or activity in question.

7.3. **Optional Consultation.** If Grantor is unsure whether a proposed use or activity is prohibited by this Easement, Grantor may consult Grantee by providing Grantee a written notice describing the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose of this Easement and to provide comments thereon to Grantor. This Section 7.3 does not itself impose a requirement of prior approval of the activity described in any such notice; however, if Grantee does not provide written objections within thirty (30) days after receipt of Grantor's notice, Grantee shall be deemed to have approved of the proposed use or activity.

7.4. **Addresses.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class certified mail, postage prepaid, or by facsimile (if available) with original dispatched by certified mail, addressed as follows, or to such other address as either party from time to time shall designate by written notice to the other:

To Grantor: Sky Miller, P.E., Regional Manager
Nookachamps, LLC
1800 4th Street, Suite A
Marysville, WA 98270
(360) 658-4866, Ext. 1



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with a copy to: Wildlands, Inc.
3855 Atherton Road
Rocklin, California 95765
Attention: Mark Heintz, Vice President and General Counsel

To Grantee: Cascade Land Conservancy
615 Second Avenue, Suite 625
Seattle, WA 98104
Attn: Nick Harper

With a copy to: Kirkpatrick & Lockhart Preston Gates Ellis LLP
925 Fourth Avenue, Suite 2900
Seattle, WA 98104
Attn: Konrad J. Liegel

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

NOV 13 2009
RECEIVED
SKAGIT COUNTY CLERK
OFFICE
1000 1/2 AVENUE
SEATTLE WA 98104
PH: 206.461.2300
FAX: 206.461.2301
WWW.SKAGITCOUNTYWA.GOV

8. ALTERNATIVE DISPUTE RESOLUTION

8.1. Mediation/Arbitration. If a dispute arises between the Parties concerning the consistency of any present or proposed use or activity with the Purpose of this Easement, and if Grantor agrees not to continue or proceed with the use or activity pending resolution of the dispute, the Parties shall meet together to discuss the dispute and attempt resolution. If the dispute is not resolved through preventive discussions, either party may thereafter refer the dispute to mediation or arbitration by request made in writing to the other. Within thirty (30) days of the receipt of such a request, the Parties shall select a single mediator or arbitrator to hear the matter. The matter shall be settled in accordance with any Washington State mediation or arbitration statute then in effect, and an arbitration award may be entered in any court having jurisdiction. If arbitration is pursued, the prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for all its costs and expenses related to such arbitration, including, without limitation, the fees and expenses of the arbitrator and attorneys' fees, which shall be determined by the arbitrator or any court having jurisdiction that may be called upon to enforce or review the award.

8.2. Preventive Discussions. Grantor and Grantee will promptly give the other notice of problems or concerns arising in connection with the other's actions under the Easement or the use of or activities or conditions on the Protected Property, and will meet as needed, but no later than fifteen (15) days after receipt of a written request for a meeting, to minimize the same.

9. JUDICIAL RESOLUTION

9.1. Notice of Violation, Corrective Action. If either party determines that the other is in violation of the terms of this Easement or that a violation is threatened, they shall give written notice to the other of such violation and demand corrective action sufficient to cure the violation



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and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.

9.2. Failure to Respond. Either party may bring an action as provided in Section 9.3 below if the other party:

9.2.1. Fails to cure the violation within thirty (30) days after receipt of a notice of violation; or

9.2.2. Under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.

9.3. Action.

9.3.1. **Injunctive Relief.** Either party may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement:

9.3.1.1. To enjoin the violation, *ex parte* as necessary and as allowed under the applicable civil rules, by temporary or permanent injunction; and

9.3.1.2. To require the restoration of the Protected Property to the condition that existed prior to any such injury.

9.3.2. **Damages.** The prevailing party shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement. Without limiting Grantor's liability in any way, Grantee shall first apply any damages recovered to the cost of undertaking corrective or restoration action on the Protected Property.

9.4. Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, Grantee may pursue its remedies under this Section 9 without prior notice to Grantor or without waiting for the period provided for cure to expire.

9.5. Scope of Relief. Grantee's rights under this Section 9 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this Section 9, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section 9 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.



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9.6. Costs of Enforcement. Except as provided in Section 8.1 above, in the event a party to this Easement finds it necessary to bring an action at law or other proceeding against the other party to enforce any of the provisions of this Easement, or by reason of any breach or default under this Easement, the prevailing party in any such action or proceeding shall be paid all costs and reasonable attorneys' fees by the other party.

9.7. Discretion in Enforcement. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

9.8. Acts Beyond Party's Control. Neither Grantor nor Grantee shall be in default or violation as to any obligation created hereby and no condition precedent or subsequent shall be deemed to fail to occur if such party is prevented from fulfilling such obligation by, or such condition fails to occur due to:

9.8.1. Actions by trespasser upon the Protected Property;

9.8.2. Forces beyond such party's reasonable control, including without limitation, destruction or impairment of facilities resulting from breakdown not resulting from lack of ordinary care and maintenance, flood, earthquake, slide, storm, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, proceeding by court or public authority, or act or failure to act by court, public authority, or third party, which forces by exercise of due diligence and foresight such party could not reasonably have expected to avoid; or

9.8.3. Any action deemed reasonable by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

In the event the terms of this Easement are violated by acts of trespassers, Grantor agrees, at Grantee's option and expense, to join in any suit, to assign its right of action to Grantee, or to appoint Grantee its attorney in fact, for the purpose of pursuing enforcement action against the responsible parties.

9.9. Compliance Certificates. Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor, or to any party designated by Grantor, any document, including a letter of compliance, that certifies, to the best of Grantee's knowledge, the status of Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement



10. COSTS, LIABILITIES, TAXES, ENVIRONMENTAL COMPLIANCE, AND INDEMNIFICATION

10.1. Costs, Legal Requirements, Liabilities and Insurance.

10.1.1. Grantor's Responsibilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage. Grantor also warrants that it will comply with all applicable state and local laws.

10.1.2. Liability. By enhancing public access to the Protected Property for passive recreational purposes as provided in the Trail Easement, no party to this Easement shall be deemed to be liable for unintentional injuries to users of the Protected Property, as provided for in RCW 4.24.210 or successor provision.

10.2. Taxes and Other Costs. Grantor shall pay all taxes, fees and charges assessed against the Protected Property by governmental authority as they become due, including taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. To preserve its rights under this Easement, Grantee may, but is in no event obligated to, make payment of any taxes upon five (5) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement or estimate, and the obligation to Grantee created by such payment will bear interest until paid by Grantor at the same rate imposed by the relevant governmental authority for the late payment of the tax so paid by Grantee.

10.3. Representations and Warranties. Grantor represents and warrants that, to the best of Grantor's knowledge (which shall mean the current actual knowledge of Grantor, with no duty of any investigation or inquiry):

10.3.1. There are no apparent or latent defects in or on the Protected Property;

10.3.2. Grantor and the Protected Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Protected Property and its use;

10.3.3. There has been no release, dumping, burying, abandonment or migration from off-site on the Protected Property of any substances, materials, or wastes that are or are designated as, hazardous, toxic, dangerous, or harmful or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute, or ordinance;



10.3.4. Neither Grantor nor Grantor's predecessors in interest have disposed of any hazardous substances off-site, nor have they disposed of substances at sites designated or proposed to be designated as federal Superfund (42 U.S.C. § 9601 et seq.) or state Model Toxics Control Act (RCW 70.105D.010 et seq.) ("MTCA") sites; and

10.3.5. There is no pending or threatened litigation affecting the Protected Property or any portion of the Protected Property that will materially impair the Conservation Values of any portion of the Protected Property. No civil or criminal proceedings have been instigated or are pending against Grantor or its predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and neither Grantor nor its predecessors in interest have received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.

10.4. Remediation. If, at any time, there occurs, or has occurred, a release in, on, or about the Protected Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic or dangerous to the air, water or soil, or in any way harmful or threatening to human health or environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible for remediation in accordance with all applicable laws.

10.5. Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Grantor's activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"), and MTCA.

10.6 Grantor's Indemnification. Grantor hereby agrees to release and hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (collectively, the "Grantee Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' and consultants' fees, arising from or in any way connected with:

10.6.1 Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property that is not a consequence of any act or omission of any of the Grantee Indemnified Parties;

10.6.2 Violations or alleged violations of, or other failure to comply with, any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, including, without limitation, CERCLA and MTCA, by any



person other than any of the Grantee Indemnified Parties, in any way affecting, involving, or relating to the Protected Property, unless such violations or alleged violations are due to the acts or omissions of any of the Grantee Indemnified Parties on the Protected Property;

10.6.3. The presence or release in, on, from, or about the Protected Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement of hazardous, toxic or dangerous to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused by any act or omission of any of the Grantee Indemnified Parties;

10.6.4. The obligations, covenants, representations and warranties specified in Sections 10.3 and 10.4 above.

Nothing contained in the foregoing provisions shall in any way limit or modify the City of Mt. Vernon's obligations under the Trail Easement, including, without limitation, the City of Mt. Vernon's indemnity, defense and hold harmless obligations set forth in the Trail Easement.

10.7. Grantee's Indemnification. Grantee shall hold harmless, indemnify, and defend Grantor and Grantor's members, directors, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (collectively "**Grantor Indemnified Parties**") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' and consultants' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property that is a consequence of Grantee's actions or omissions or the actions or omissions of Grantee's members, directors, officers, employees, agents, or contractors on or about the Protected Property.

11. EXTINGUISHMENT, CONDEMNATION, AND SUBSEQUENT TRANSFER

11.1. Extinguishment. If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by the Parties' mutual agreement and with the written approval of the Banking Agencies, or by judicial proceedings of a court having jurisdiction. Unless otherwise agreed to by the Parties, Grantee shall have no compensable interest in this Easement under such circumstances and Grantee acknowledges that its compensation relating to its obligations under this Easement is provided for under separate agreement with Grantor. The immediately foregoing provision shall be limited solely to the circumstances described in this Section 11.1, and shall not be interpreted to have any application or inference to any other provision of, or circumstance under, this Easement, including, but not limited to, those provisions pertaining to Grantee's rights to enforce the terms of this Easement and Grantee's rights to damages to, or the cost of restoring, the Conservation Values.



11.2. Condemnation. If the Easement is taken, in the whole or in the part, by the exercise of the power of eminent domain, Grantee shall not be entitled to compensation and the entirety of any compensation award shall belong to Grantor. The immediately foregoing provision shall be limited solely to the circumstances described in this Section 11.2, and shall not be interpreted to have any application or inference to any other provision of, or circumstance under, this Easement, including, but not limited to, those provisions pertaining to Grantee's rights to enforce the terms of this Easement and Grantee's rights to damages to, or the cost of restoring, the Conservation Values.

11.3. Subsequent Transfers. Grantor agrees to:

11.3.1. Incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest;

11.3.2. Describe this Easement in and append it to any executory contract for the transfer of any interest in the Protected Property; and

11.3.3. Give written notice to Grantee of the transfer of any interest in all or a portion of the Protected Property prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the transferee or the transferee's representative.

The failure of Grantor to perform any act required by this Section 11.3 shall not impair the validity of this Easement or limit its enforceability in any way.

11.4. No Merger. In the event that Grantee acquires the fee title to the Protected Property, it is the Parties' intention that no merger of title shall take place that would merge the restrictions of this Easement with fee title to the Protected Property and thereby eliminate them, and that the restrictions on the use of the Protected Property, as embodied in this Easement, shall, in the event title becomes vested in Grantee, become and remain permanent and perpetual restrictions on the use of the Protected Property.

12. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement upon approval of such amendment or modification by the Banking Agencies. Any such amendment shall be recorded in the official records of Skagit County, Washington, and any other jurisdiction in which such recording is required.

13. ASSIGNMENT AND SUCCESSION

13.1. Assignment. With Grantor's written approval, which will not be unreasonably withheld, and the Banking Agencies' written approval, this Easement is transferable, but Grantee



may assign its rights and obligations under this Easement only to an organization that is authorized to acquire and hold conservation easements under RCW 64.04.130 or RCW 84.34.210 (or any successor provision(s) then applicable). As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement.

13.2. Succession. If at any time (a) it becomes impossible for Grantee to ensure compliance with the covenants, terms, conditions and restrictions contained in this Easement, (b) the Grantor and the Banking Agencies, or the Banking Agencies alone, determine that this Easement should be assigned due to any reasons of actual non performance by the Grantee, including, but not limited to, circumstances under which actual non performance occurs because Grantee is the holder of both the fee title to the Protected Property and this Easement, (c) Grantee ceases to exist or to be authorized to acquire and hold conservation easements under RCW 64.04.130 and 84.34.210 (or any successor provision(s) then applicable), or (d) Grantee is otherwise released from its liabilities and obligations under the Easement, then, if Grantee has been provided forty five (45) days prior notice and opportunity to cure any non performance or otherwise remedy any other circumstance forming the basis of any transfer under this Section 13.2, and subject to the Preventative Discussion provisions under Section 8.2 above if applicable, Grantee's rights and obligations under this Easement shall become vested and fall upon the Banking Agencies or such other entity, with purposes similar to Grantee's, that is authorized to acquire and hold conservation easements under RCW 64.04.130 or RCW 84.34.210 (or any successor provision(s) then applicable), to the extent that they shall accept this Easement; **provided that** if such vesting is deemed to be void under the Rule Against Perpetuities, the rights and obligations under this Easement shall vest in such organization as a court having jurisdiction shall direct, pursuant to the applicable Washington law and with due regard to the Purpose of this Easement.

14. RECORDATION

Grantee shall record this Easement in a timely fashion in the official records of Skagit County, Washington, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

15. GENERAL PROVISIONS

15.1. Controlling Law and Venue. The interpretation and performance of this Easement shall be governed by the laws of the State of Washington. Venue shall be in any court in Washington state with jurisdiction over the subject matter. Grantor expressly submits and consents to personal jurisdiction in such courts and waives the right to assert the defense of forum non conveniens.

15.2. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the Purpose of this Easement. If any provision in this Easement is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid



shall be favored over any interpretation that would render it invalid.

15.3. Severability. If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

15.4. Entire Agreement. Except as to any other written agreement between the Parties, all prior discussions, negotiations, understandings, communications, or oral agreements regarding this Easement have been superseded by, and are merged into, this Easement.

15.5. No Forfeiture. Nothing contained in this Easement will result in a forfeiture of Grantor's title in any respect.

15.6. "Grantor" - "Grantee". The terms "Grantor" and "Grantee," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include, respectively the above-named Grantor, and its successors and assigns, and the above-named Grantee, and its successors and assigns.

15.7. Successors and Assigns. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the Parties to this Easement and their respective successors and assigns, and shall continue as a servitude running in perpetuity with the Protected Property, unless sooner terminated as expressly provided for herein. No term or provision of this Easement is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation not a party to this Easement, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder, *except* as expressly provided in Section 13 above.

15.8. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

15.9. Counterparts. The Parties may execute this Easement in two or more counterparts, which shall be signed by both Parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

15.10. Recitals. Each recital set forth above is fully incorporated into this Easement.

15.11. Effective Date. The effective date of this Easement is the date of recording of this Easement.



15.12. Authority. The individuals signing below, if signing on behalf of any entity, represent and warrant that they have the requisite authority to bind the entity on whose behalf they are signing.

15.13. Captions. The captions in this Easement have been inserted solely for convenience and ease of reference and are not a part of this Easement and shall have no effect upon construction or interpretation.

16. SUBORDINATION

At the time of the conveyance of this Easement, a portion of the Protected Property is subject to a deed of trust dated April 23, 2004 and recorded at Auditor's File number 200404300195, records of Skagit County ("Deed of Trust"). The beneficiary of the Deed of Trust has agreed by separate instrument to subordinate its rights in the Protected Property to this Easement to permit Grantee to enforce this Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the beneficiary under the deed of trust ("Subordination Instrument"). The form of the Subordination Instrument (without its Exhibit B) is attached as Exhibit E to this Easement, and is incorporated herein by this reference, and will be recorded concurrently with this Easement.



17. SCHEDULE OF EXHIBITS

- 17.1. Exhibit A -- Legal Description.
- 17.2. Exhibit B -- Site Map.
- 17.3. Exhibit C -- Permitted Exceptions.
- 17.4. Exhibit D -- Agreement For Release From Liability.
- 17.5. Exhibit E -- Form of Subordination Instrument (without its Exhibit B).

TO HAVE AND TO HOLD unto Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the undersigned Grantor has executed this Easement this 18th day of June, 2009.

NOOKACHAMPS, LLC, Grantor

By [Signature]

Name Mark B. Heintz

Title COO + General Counsel

The CASCADE LAND CONSERVANCY does hereby accept the above Grant Deed of Conservation Easement.

Dated: _____

CASCADE LAND CONSERVANCY, Grantee

By GENE DUVERNOY
PRESIDENT



200906300133
Skagit County Auditor

ACKNOWLEDGMENT

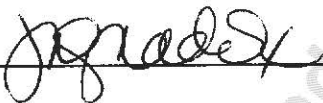
State of California
County of Placer

On June 18, 2009 before me, Julie D. Maddox, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature  (Seal)



200906300133
Skagit County Auditor

17. SCHEDULE OF EXHIBITS

- 17.1. Exhibit A -- Legal Description.
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- 17.4. Exhibit D -- Agreement For Release From Liability.
- 17.5. Exhibit E -- Form of Subordination Instrument (without its Exhibit B).

TO HAVE AND TO HOLD unto Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the undersigned Grantor has executed this Easement this ____ day of _____, 2009.

NOOKACHAMPS, LLC, Grantor

By _____
 Name _____
 Title _____

The CASCADE LAND CONSERVANCY does hereby accept the above Grant Deed of Conservation Easement.

Dated: 6-18-09

CASCADE LAND CONSERVANCY, Grantee

By Gene Duvernoy
 PRESIDENT



200906300133
Skagit County Auditor

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

On this _____ day of _____ 2009, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of NOOKACHAMPS, LLC, the Washington limited liability company that executed the within and foregoing Easement, and acknowledged the said Easement to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said Easement.

WITNESS my hand and official seal hereto affixed the deal and year in this certificate above written.

NOTARY PUBLIC in and for the State of
Washington, residing at _____

Print Name: _____
My commission expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 18 day of June 2009, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared GENE DUVERNOY to me known to be the PRESIDENT of CASCADE LAND CONSERVANCY, the Washington nonprofit corporation that executed the within and foregoing Easement, and acknowledged the said Easement to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said Easement.

WITNESS my hand and official seal hereto affixed the deal and year in this certificate above written.

Katharine A. Barrett
NOTARY PUBLIC in and for the State of
Washington, residing at Seattle

Print Name: Katharine A. Barrett
My commission expires 4.9.13



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08/21/08.V5



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EXHIBIT A
Legal Description

UNOFFICIAL DOCUMENT
RES-Domain Data Recm/28:07:2020 17:03
mittell.rand@rholdings.com



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EXHIBIT A

Legal Description

LEGAL DESCRIPTION FOR: Nookachamps Wetland Bank – Conservation Easement Area (“Protected Property”)

That portion of Sections 4, 5, 8 and 9 of Township 34 North, Range 4 East, W.M., described as follows:

Commencing at the Southwest corner of Section 9, Township 34 North, Range 4 East, W.M.; thence North 0° 11' 15" East along the West line of said Section 9, a distance of 1528.65 feet to a point which lies 25 feet when measured at a right angle on the northerly side of the existing Dike District 20 ditch and the TRUE POINT OF BEGINNING; thence North 72° 28' 31" East, parallel and 25 feet distance from the centerline of the existing drainage ditch a distance of 345.15 feet to the East line of the West Half of the Southwest Quarter of the Northwest Quarter of the Southwest Quarter of said Section 9; thence North 0° 11' 54" East, along said line, 298.78 feet to the North line of the Southwest Quarter of the Northwest Quarter of the Southwest Quarter of said Section 9; thence South 89° 09' 04" East, along said line 1.15 feet to the Southeast corner of the West 330.00 feet of the North Half of the Northwest Quarter of the Southwest Quarter of said Section 9; thence North 0° 11' 15" East, along said line, 646.85 feet to the North line of the Southwest Quarter of said Section 9; thence North 89° 24' 04" West along said line 330.01 feet to the Northwest corner of the Southwest Quarter of said Section 9; thence North 0° 05' 40" East, along the West line of the Northwest Quarter of said Section 9, a distance of 660.61 feet to the Southwest corner of the North Half of the South Half of the Northwest Quarter of said Section 9, said point also being the Southwest corner of Lot 1 of Skagit County Short Plat Number PL03-0689, approved February 3, 2004 and recorded February 10, 2004, under Auditor's File No. 200402100118, records of Skagit County; thence South 89° 27' 41" East, along the South line of said Lot 1, a distance of 1316.88 feet; thence continuing South 89° 27' 41" East, along said line 191.37 feet to a point which lies 25 feet from the centerline of the existing Dike District 20 drainage ditch; thence the following courses along a line 25 feet from the centerline of said drainage ditch; thence North 26° 34' 46" East, 46.67 feet; thence North 66° 19' 52" East, 91.37 feet; thence North 10° 55' 42" East, 874.47 feet; thence North 61° 43' 44" East 11.54 feet to a point on the East line of said Lot 1 of Skagit County Short Plat Number PL03-0689; thence North 0° 42' 15" West, 21.25 feet along said East line; thence North 7° 04' 50" East, 361.04 feet to the Northeast corner of said Lot 1, said point being on the South line of the North Half of the Northeast Quarter of the Northwest Quarter of said Section 9; thence South 89° 34' 55" East, along said South line 347.70 feet to a point which lies 25 feet from the centerline of the existing drainage ditch to Dike District 20; thence paralleling said ditch and a distance of 25 feet therefrom, North 34° 24' 45" East 12.20 feet; thence North 84° 59' 00" East, 4.28 feet to the West line of the East 448.00 feet of the North Half of the Northeast Quarter of the Northwest Quarter of said Section 9; thence North 0° 15' 45" East, along said West line 636.37 feet to the South right-of-way line of Lindegren Road as said right-of-way was conveyed by deed recorded under Auditor's File No. 157534,



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records of Skagit County; thence North 89° 38' 31" West, along said right-of-way line 871.75 feet to the East line of the Northwest Quarter of the Northwest Quarter of said Section 9; thence continue North 89° 38' 31" West, 16.00 feet to the Southwest corner of said deed as recorded under Auditor's File No. 157534; thence North 0° 10' 43" East, along the West line thereof 16.00 feet to the North line of said Section 9; thence North 89° 38' 31" West, along said Section line, 1303.77 feet to the Northwest corner of said Section 9; thence North 0° 11' 39" East, along the West line of Section 4, Township 34 North, Range 4 East, a distance of 24.00 feet to the Northwest corner of right-of-way deed recorded under Auditor's File No. 157533; thence South 89° 38' 31" East, along the North line thereof, 568.25 feet; thence leaving said right-of-way North 0° 00' 00" East, 113.14 feet; thence North 90° 00' 00" East, 195.88 feet; thence South 0° 00' 00" East, 114.37 feet to the North line of said right-of-way deed recorded under Auditor's File No. 157533; thence South 89° 38' 31" East, along said line 555.64 feet to the East line of Government Lot 9 of said Section 4; thence North 0° 29' 59" East, along said East line, a distance of 20.06 feet to a point on the westerly line of dike district right-of-way as described under Auditor's File No. 140934; thence North 14° 00' 01" West along the West line of said right-of-way a distance of 120.86 feet; thence continue along said West line of said right-of-way North 10° 44' 59" East a distance of 170.06 feet to a point on the East line of said Government Lot 9; thence North 0° 29' 59" East along said East line of said Government Lot 9 to the Northeast corner of said Government Lot 9; thence westerly along the North line of said Government Lot 9 to the line of ordinary high water of the Skagit River; thence Southerly along said line of ordinary high water to a point which lies 25 feet from the centerline of the existing drainage ditch to Dike District 20, said point being in the Southeast Quarter of said Section 8; thence the following courses along said line being 25 feet from the centerline of the drainage ditch; thence South 66° 59' 17" East, 25.18 feet; thence South 66° 59' 17" East, 178.01 feet; thence South 35° 05' 06" East, 121.50 feet; thence South 60° 16' 23" East, 89.89 feet; thence South 85° 41' 12" East, 29.28 feet; thence North 77° 34' 48" East, 342.89 feet; thence North 55° 30' 30" East, 82.78 feet; thence leaving said line being 25 feet from the centerline of the drainage ditch along the following courses being 15 feet from the toe of an existing dike through the following courses; thence North 17° 01' 59" West, 120.25 feet; thence North 12° 13' 20" West, 40.73 feet; thence North 9° 33' 16" East, 46.09 feet; thence North 31° 47' 34" East, 92.02 feet; thence North 28° 39' 07" East, 103.61 feet; thence North 23° 50' 21" East, 176.83 feet; thence North 17° 30' 50" East, 144.57 feet; thence North 6° 10' 25" East, 36.10 feet; thence North 22° 29' 30" West, 94.53 feet; thence North 28° 03' 08" West, 188.35 feet; thence North 12° 54' 46" West, 54.91 feet; thence North 3° 24' 40" West, 88.41 feet; thence North 4° 46' 03" West, 232.47 feet; thence North 1° 54' 39" West, 122.80 feet; thence North 1° 00' 11" East, 150.33 feet; thence North 12° 35' 06" East, 71.44 feet; thence North 36° 14' 51" East, 58.21 feet; thence North 49° 12' 02" East, 106.91 feet; thence North 28° 56' 25" East, 36.82 feet; thence North 23° 23' 18" West, 120.82 feet; thence North 1° 37' 42" West, 72.17 feet; thence North 34° 30' 37" East, 186.81 feet; thence South 61° 24' 10" East, 57.22 feet; thence South 31° 32' 05" West, 155.79 feet; thence South 1° 06' 32" West, 51.19 feet; thence South 19° 59' 15" East, 165.14 feet; thence South 44° 01' 04" West, 157.51 feet; thence South 24° 57' 46" West, 82.29 feet; thence South 12° 03' 26" East, 63.70 feet; thence South 2° 59' 08" East, 65.26 feet; thence South 3° 13' 39" East, 171.55 feet; thence South 3° 29' 39" East, 223.63 feet; thence South 17° 25' 52" East, 165.54 feet; thence South 27° 14' 17" East, 115.95 feet; thence leaving the toe of said existing dike the following courses;



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thence North 89° 13' 50" East, 192.27 feet; thence South 7° 55' 05" East, 225.48 feet; thence South 10° 29' 52" West, 232.66 feet; thence South 18° 51' 33" West, 214.41 feet; thence South 33° 15' 56" West, 115.93 feet to a point which lies 25 feet when measured at a right angle from the centerline of the existing drainage ditch to Dike District 20; thence along a line 25 feet from the centerline of said ditch; thence North 89° 58' 14" East 66.82 feet; thence North 76° 20' 13" East, 156.23 feet; thence North 46° 23' 01" East, 100.56 feet; thence leaving said drainage ditch the following courses; thence North 44° 01' 19" West, 94.20 feet; thence North 11° 31' 34" East, 198.79 feet; thence North 31° 17' 51" East, 75.12 feet; thence North 4° 19' 04" East, 308.71 feet; thence North 55° 03' 08" East, 54.30 feet; thence South 87° 58' 58" East, 145.58 feet; thence South 82° 38' 09" East, 171.30 feet; thence North 24° 55' 37" East, 24.66 feet; thence North 50° 13' 23" East, 58.94 feet; thence North 87° 08' 26" East, 64.79 feet; thence North 79° 27' 54" East, 57.56 feet to the TRUE POINT OF BEGINNING.

EXCEPT FOR that portion of the above described as follows:

A 6.00 foot strip of land being 3 feet on both sides of the following described centerline:

Commencing at the Southeast corner of Section 8, Township 34 North, Range 4 East, W.M.; thence North 87° 57' 29" West, along the South line of said Section 8, a distance of 1588.44 feet; thence North 2° 02' 31" East, 460.26 feet to a point being 25 feet, when measured at a right angle, from the centerline of the existing drainage ditch to Dike District 20 and the TRUE POINT OF BEGINNING of said centerline description; thence the following courses, along the centerline of said description; thence North 2° 49' 04" East, 177.34 feet; thence North 0° 00' 00" East, 58.20 feet; thence North 8° 49' 10" West, 87.71 feet; thence North 0° 00' 00" East, 46.31 feet; thence North 22° 28' 29" East, 148.50 feet; thence North 11° 19' 09" East, 38.11 feet; thence North 11° 19' 09" West, 30.45 feet; thence North 49° 06' 35" West, 29.65 feet; thence North 15° 32' 12" West, 27.89 feet; thence North 6° 20' 44" East, 40.56 feet; thence North 19° 08' 29" East, 173.47 feet; thence North 33° 08' 01" East, 41.00 feet; thence North 22° 15' 58" East, 35.45 feet; thence North 5° 49' 21" East, 88.64 feet; thence North 16° 31' 12" East, 84.01 feet; thence North 21° 03' 17" East, 104.00 feet; thence North 8° 22' 22" East, 51.34 feet; thence North 1° 00' 39" West, 85.12 feet; thence North 7° 42' 39" East, 100.41 feet; thence North 17° 12' 31" East, 65.74 feet; thence North 5° 11' 56" East, 32.96 feet; thence North 10° 12' 42" West, 75.85 feet; thence North 2° 04' 18" East, 30.44 feet; thence North 15° 16' 03" East, 46.81 feet; thence North 5° 57' 07" East, 66.04 feet; thence North 1° 21' 54" West, 57.47 feet; thence North 9° 05' 08" West, 268.92 feet; thence North 5° 13' 53" West, 149.45 feet; thence North 9° 15' 14" West, 69.31 feet; thence North 16° 09' 50" West, 80.43 feet; thence North 23° 43' 14" West, 71.23 feet; thence North 7° 15' 33" West, 88.16 feet; thence North 3° 49' 11" West, 167.45 feet; thence North 15° 26' 40" West, 131.48 feet; thence North 7° 16' 52" West, 75.37 feet; thence North 6° 50' 55" East, 80.10 feet; thence North 14° 21' 40" East, 70.60 feet; thence North 5° 02' 48" East, 54.29 feet; thence North 3° 10' 57" West, 86.03 feet; thence North 1° 11' 40" East, 76.44 feet; thence North 12° 28' 45" East, 169.39 feet; thence North 34° 24' 56" East, 132.47 feet; thence North 25° 28' 56" East, 74.10 feet; thence North 11° 26' 33" East, 144.43 feet; thence North 22° 51' 04" East, 65.55 feet; thence North 31° 37' 12" East, 121.44 feet; thence North 12° 25' 59" East, 130.81 feet; thence North 20° 41' 55" East, 154.74 feet; thence North 37° 35' 31" East, 72.82 feet; thence North 42° 58' 44" East, 58.61 feet; thence North 35° 23' 54"



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East, 57.60 feet; thence North 23° 12' 58" East, 45.05 feet; thence North 31° 10' 51" East, 74.32 feet; thence North 40° 27' 00" East, 52.47 feet; thence North 47° 39' 04" East, 114.13 feet; thence North 38° 41' 01" East, 66.27 feet; thence North 26° 12' 06" East, 97.28 feet; thence North 35° 57' 55" East, 73.04 feet; thence North 46° 29' 35" East, 40.81 feet; thence North 75° 32' 29" East, 47.46 feet; thence South 89° 25' 13" East, 146.35 feet; thence South 76° 24' 41" East, 188.88 feet; thence South 80° 44' 06" East, 73.46 feet; thence North 88° 36' 14" East, 60.64 feet; thence North 74° 17' 33" East, 109.27 feet; thence North 82° 01' 38" East, 24.31 feet; thence North 89° 22' 41" East, 70.38 feet, more or less, to a point which lies 3 feet North and on the section line, from the Section corner common to Sections 4, 5, 8 & 9 and the terminus of said centerline description.

The sidelines of said Easement shall be extended or trimmed so as to form a continuous line across the grantors ownership.

ALSO EXCEPT that portion, if any, lying within the following described parcel:

That portion of the Southeast Quarter of Section 8, township 34 North, Range 4 East, W.M., described as follows:

Commencing at the Southeast corner of said Section 8, as shown on Short Plat No. MV-8-94, as approved July 1, 1997, and recorded July 1, 1997 in Book 13 of Short Plats, pages 17 and 18, records of Skagit County, Washington, under Auditor's File No. 9707010107; thence North 87° 57' 29" West, along the South line of said Southeast Quarter, a distance of 1,322.53 feet to the Southwest corner of Government Lot 7 of said Section 8; thence North 0° 02' 33" East, along the West line of said Government Lot 7 and the West line of Lot 4 of said Short Plat, 1,000.09 feet to the Northwest corner of said Lot 4; thence South 87° 57' 29" East, along the North line of said Lot 4, a distance of 324.21 feet to the TRUE POINT OF BEGINNING; thence North 24° 05' 32" East, 151.98 feet; thence North 14° 49' 23" East, 189.98 feet; thence North 23° 35' 36" West, 135.80 feet; thence South 87° 57' 29" East, 232.92 feet; thence South 11° 36' 48" East, 138.24 feet; thence South 15° 38' 36" West, 670.35 feet to the intersection with the North margin of a 20-foot wide right-of-way for Diking District No. 20 as established under Auditor's File No. 140940, and as shown on said Short Plat; thence South 89° 49' 53" West, along said North margin and it's Westerly projection, 175.10 feet; thence North 68° 32' 55" West, 54.39 feet; thence North 37° 55' 33" West, 48.49 feet; thence North 3° 37' 44" East, 58.60 feet; thence North 28° 07' 50" East, 187.91 feet to a point which lies South 24° 05' 32" West from the TRUE POINT OF BEGINNING; thence North 24° 05' 32" East, 66.35 feet to the TRUE POINT OF BEGINNING.

Situate in the County of Skagit, State of Washington.

ALSO EXCEPT that portion, if any, lying within the following described parcel:

That portion of the Southeast Quarter (SE ¼) of Section Eight (8), Township Thirty-four (34) North, Range Four (4) East, W.M, described as follows:

Commencing at the Southeast Corner (SE ¼) of said Section Eight (8), as shown on Short Plat No. MV-8-94, as approved July 1, 1997, and recorded on July 1, 1997 in Book 13 of



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Short Plats, pages 17 and 18, records of Skagit County, Washington, under Auditor's File No. 9707010107; thence North 87° 57' 29" West, along the South line of said Southeast Quarter (SE ¼), a distance of 1,322.53 feet to the Southwest corner of Government Lot Seven (7) of said Section Eight (8); thence North 0° 02' 33" East, along the West line of said Government Lot Seven (7) and the West line of Lot 4 of said Short Plat, a distance of 1,000.09 feet to the Northwest corner of said Lot 4; thence South 87° 57' 29" East, along the North line of said Lot 4, a distance of 776.42 feet to the TRUE POINT OF BEGINNING; thence North 1° 32' 09" East, a distance of 448.59 feet; thence South 87° 57' 29" East, a distance of 448.38 feet; thence South 23°26'19" West, a distance of 481.78 feet to the Northeast corner of Lot 3 of said Short Plat; thence North 87° 57' 29" West, along the North line of said Lots 3 and 4 of said Short Plat, a distance of 74.41 feet to the intersection with the West margin of a 20-foot wide right-of-way for Diking District No. 20 as established under Auditor's File No. 140940, and as shown on said Short Plat; thence Southerly along said right-of-way line along the following courses and distances: South 21° 12' 42" West, a distance of 68.06 feet; South 54° 05' 18" West, a distance of 182.65 feet; South 46° 51' 12" West, a distance of 37.00 feet to a point on said right-of-way line which bears South 1° 32' 09" West, a distance of 202.87 feet from the TRUE POINT OF BEGINNING; thence North 1° 32' 09" East, a distance of 202.87 feet to the TRUE POINT OF BEGINNING. EXCEPT that portion conveyed to Diking District Number 20 by instrument recorded April 5, 1920, under Auditor's File No. 140940, records of Skagit County, Washington.

All situate in the County of Skagit, State of Washington.

Subject to Easements, Reservations and Restrictions of record.

Situate in the County of Skagit, State of Washington



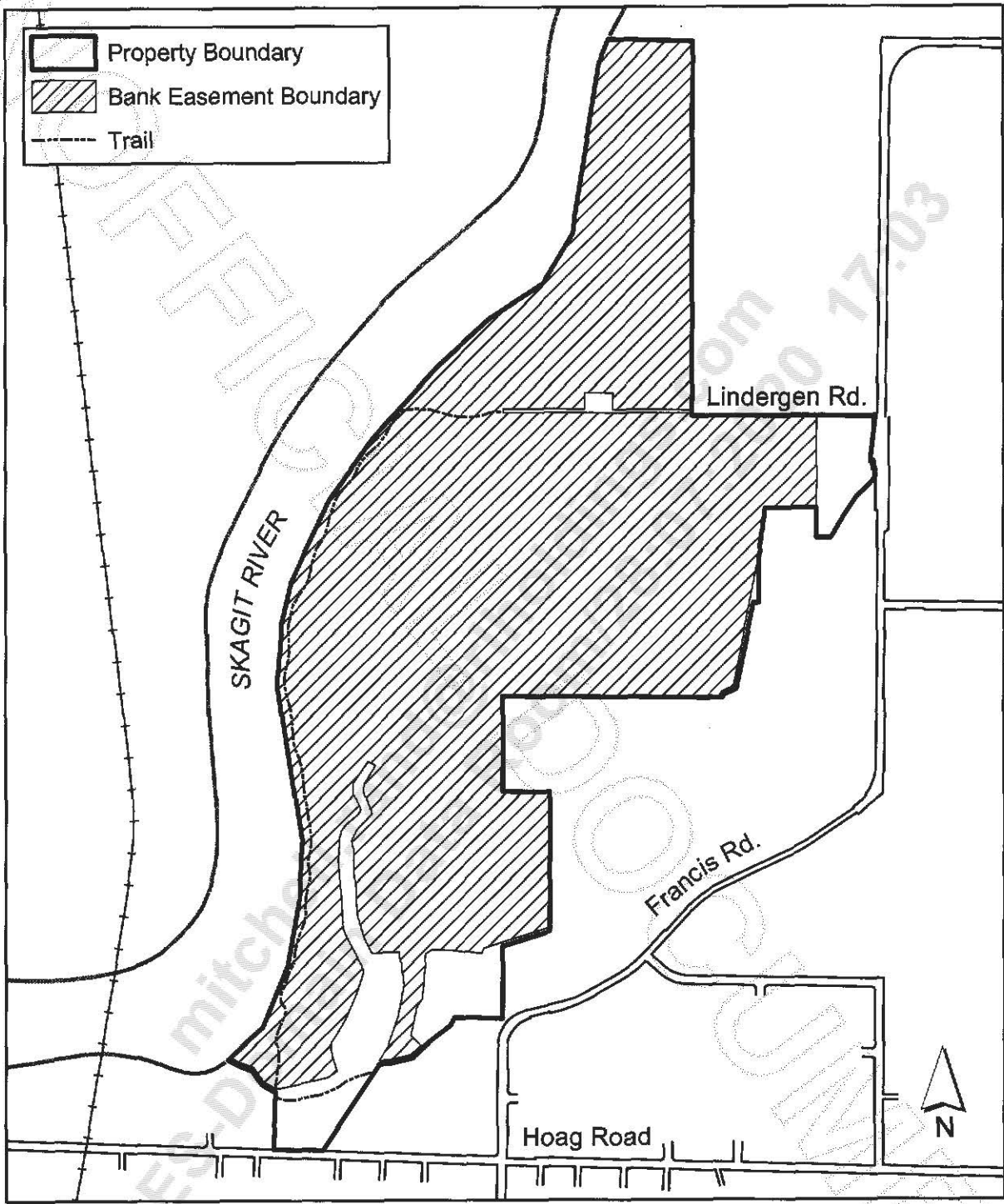
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EXHIBIT B
Site Map

UNOFFICIAL
RES-Domain Data Reem/28:07:2020 17:03
UNOFFICIAL DOCUMENT



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Nookachamps Mitigation Bank
Easement Boundary



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EXHIBIT C
Permitted Exceptions

The following sets forth the "Permitted Exceptions," which consist of liens for non-delinquent real property taxes and assessments and the following list of exceptions taken from that certain Commitment for Title Insurance dated as of December 4, 2008, issued by Guardian Northwest Title & Escrow Company (Order Number 96014).

| Schedule-Exception Number | Date of Document | Description of Document | Recording Information |
|---|------------------|--|--|
| Schedule B Section 2 Exception 7 | | "Open Space Taxation Agreement" between Robert G. Thompson and Patricia Thompson and Skagit County | November 19, 1971 Auditor No. 760873 |
| | | "Notice of Continuance" | August 11, 2005 Auditor's No. 200508110043 |
| Schedule B Section 2 Exception 8 | January 22, 2008 | "Deed of Trust" Grantor: Dan R. Mitzel and Patricia Burklund Trustee: Guardian Northwest Title & Escrow Beneficiary: Business Bank Amount: \$250,000.00, plus interest | April 25, 2008 Auditor's No. 200804250118 |
| Schedule B Section 2 Exception 9 | | "Application for Classification as Farm and Agricultural Land for Current Use Assessment Under RCW 84.34" | February 16, 1978 Auditor's No. 873920 |
| | | "Notice of Continuance" | July 29, 2005 Auditor's No. 200507290008 |
| Schedule B Section 2 Exception 10 | | "Application for Classification as Farm and Agricultural Land for Current Use Assessment Under RCW 84.34" | Auditor's Nos. 750940, 761276, 775571, 800178, 806807 and 807134 |
| | | "Open Space Taxation Agreement" Notice of Continuance | April 27, 2004 Auditor's No. 200404270010 |



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|--|-------------------|--|--|
| Schedule B-1 Section 2 Exception H | April 23, 2004 | Deed of Trust Grantor: Nookachamps, LLC Trustee: First American Title Company of Skagit County Beneficiary: Whidbey Island Bank Amount: \$350,000 plus interest | April 30, 2004 Auditor's No. 200404300195 |
| Schedule B-1 Exception A | | Matters of record disclosed by Survey (MV-8-94) | July 1, 1997 Volume 13 of Short Plats, Pages 17 and 18 Auditor's No. 9707010107 |
| Schedule B-1 Exception B | May 9, 1997 | "Letter of Agreement" between City of Mount Vernon and Salem Lutheran Church regarding formation of L.I.D. | May 15, 1997 Auditor's No. 9705150052 |
| Schedule B-1 Exception C | February 16, 1993 | "Concomitant Agreement" between City of Mount Vernon and Salem Lutheran Church | March 9, 1993 Auditor's No. 9303090013 |
| Schedule B-1 Exception D | March 14, 1997 | "Power of Attorney and Agreement Regarding Formation of Local Improvement District" between City of Mount Vernon and Salem Lutheran Church | July 1, 1997 Auditor's No. 9707010108 |
| Schedule B-1 Exception E | April 6, 1978 | "Easement" executed by Edith M. Hoag in favor of District Improvement No. 20 | April 12, 1978 Auditor's No. 877358 |
| Schedule B-1 Exception F | June 30, 1982 | "Easement" executed by Edith M. Hoag in favor of Puget Sound Power & Light Company | July 13, 1982 Auditor's No. 8207130027 |
| Schedule B-1 Exception G | | Matters disclosed and/or delineated on the face of Short Plat No. MV-11- 91 | December 5, 1991 Auditor's No. 9112050009 |
| Schedule B-1 Exception H | | Reservation in Deed executed by State of Washington in favor of Jessie Lindquist | Unrecorded, but filed September 19, 1953 Volume 21 of State Deeds, Page 803 |
| Schedule B-1 Exception I | | "Quitclaim Deed and Reservation of Trail Easement" executed by City of Mount Vernon and Nookachamps, LLC | October 31, 2008 Auditor's No. 200810310079 |



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|-----------------------------|--------------------|--|--|
| Schedule B-1 Exception J | October 22, 1948 | "Easement - Electric Line" executed by John T. Swanson in favor of Puget Sound Power & Light Company | October 26, 1948 Auditor's No. 424261 |
| Schedule B-1 Exception K | December 15, 1919 | "Easement" executed by Albert Gunderson in favor of Dyking District No. 20 | April 5, 1920 Auditor's No. 140939 |
| Schedule B-1 Exception L | | Matters disclosed and/or delineated on the fact of Short Plat No. PL03-0689 | February 20, 2004 Auditor's No. 200402100118 |
| Schedule B-1 Exception M | September 29, 1999 | "Wetland Mitigation Easement" executed by Evangelical Salem Lutheran Church (which acquired title as Salem Lutheran Church) in favor of the City of Mount Vernon | October 28, 1999 Auditor No. 199910280079 |
| Schedule B-1 Exception N | April 20, 1931 | "Easement" executed by Charles Sterner and Anna Sterner in favor of Puget Sound Power & Light Company | April 20, 1931 Auditor's No. 242696 |
| Schedule B-1 Exception O | April 5, 1920 | Easement executed by Charles Sterner and Anna Sterner in favor of Diking District No. 20 of Skagit County | April 5, 1920 Auditor's No. 140941 |
| Schedule B-1 Exception P | | Matters disclosed and/or delineated on face of Survey | July 6, 2005 Auditor's No. 200507060131 |
| Schedule B-1 Exception Q | | "Lot of Record Certification" | July 6, 2005 Auditor's Nos. 200507060129 and 200507060130 |



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EXHIBIT D
Agreement for Release from Liability

In consideration for permission to enter certain property, the NOOKACHAMPS WETLAND MITIGATION BANK, near Mount Vernon, Washington, owned by NOOKACHAMPS, LLC (hereafter the "Protected Property") to observe and study the ecology of the Protected Property, I hereby acknowledge and agree to the following:

1. My activities in the Protected Property involve many risks, including, but not limited to, risks of bodily injury/illness or death resulting from accident, poisonous plants or animals;
2. I am entering the Protected Property at my own risk and I assume full responsibility for the risk of bodily injury or death, whether foreseen or unforeseen, in connection with my activities in the Protected Property;
3. I HEREBY RELEASE, WAIVE AND DISCHARGE NOOKACHAMPS, LLC and its personal representatives, heirs, successors, and assigns, and the CASCADE LAND CONSERVANCY and its personal representatives, successors, and assigns from any liability for harm or loss suffered by me in connection with my activities in the Protected Property, WHETHER BY NEGLIGENCE OR NOT, and I FURTHER SAVE AND HOLD HARMLESS NOOKACHAMPS, LLC, and its personal representatives, heirs, successors or assigns, and the CASCADE LAND CONSERVANCY, and its personal representatives, successors, and assigns, from any and all liability, actions, causes of action, claims, demands of every kind and nature whatsoever by me or my family, estate, heirs, executors, administrators, legal representatives, successors or assigns arising out my activities in the Protected Property;
4. I hereby expressly agree that this "AGREEMENT FOR RELEASE FROM LIABILITY" is intended to be as broad and inclusive as permitted by the laws of the State of Washington, and if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full force and effect; and
5. This "AGREEMENT FOR RELEASE FROM LIABILITY" contains the entire agreement between the parties hereto and that the terms of this Agreement are contractual in nature and not a mere recital; I understand all of the terms; and I am of lawful age and legally competent to sign this Agreement.

** I HAVE FULLY INFORMED MYSELF OF THE CONTENT OF THIS "AGREEMENT FOR RELEASE FROM LIABILITY" BY READING IT CAREFULLY BEFORE SIGNING IT.

Name (print)

Signature

Date

City/County/State



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EXHIBIT E
Form of Subordination Instrument

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

Space Above This Line For Recorder's Use

SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF A LATER RECORDED CONSERVATION EASEMENT INSTRUMENT.

THIS AGREEMENT, made this ___ day of _____, 20___, by Nookachamps, LLC, owner of the land described in Exhibit A attached hereto and incorporated herein (hereinafter "**OWNER**"), and _____ ("**LENDER**"), trustee and beneficiary under that certain deed of trust ("**Deed of Trust**") dated _____, and recorded _____ as Instrument No. _____ of the official records of the County Recorder of Skagit County, State of Washington. The land described in Exhibit A shall be referred to as "**Property**".

WHEREAS, **OWNER** has granted, or is about to grant, to _____, across a portion of the Property described in the Deed of Trust, a conservation easement to protect the habitat, agricultural and open space values as set forth in that certain Conservation Easement Deed dated and recorded concurrently herewith in the official records of the County Recorder, Skagit County, State of Washington (the "**Easement**").

WHEREAS, **LENDER** is agreeing to subordinate the Deed of Trust to the Easement only on the basis that **LENDER**'s rights to enforce its lien interest and acquire the Property under the terms of the Deed of Trust, whether by foreclosure, deed-in-lieu or any other means, and any subsequent sale or transfer of the Property by **LENDER** shall not be affected so long as any acquisition, transfer or sale of the Property is made subject to the terms of the Easement.

NOW, THEREFORE, in consideration of the above recitals, **LENDER** hereby subordinates the Deed of Trust, consents to the execution of the grant of said Easement, and agrees that any acquisition, transfer or sale of the Property made under the provisions of the Deed of Trust, whether by foreclosure, deed-in-lieu or other means, shall be subject to the Easement.

Dated: _____

LENDER

By: _____

Its: _____



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