

12/23/2009 10:44:30 AM

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Recording Fee \$108.00 Page 1 of 48
Easement
Island County Washington



WHEN RECORDED RETURN TO:

Whidbey Camano Land Trust
765 Wonn Road #C201
Greenbank, WA 98253

ISLAND COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

DEC 23 2009

AMOUNT PAID \$ 13243.20

LINDA E. RIFE
ISLAND COUNTY TREASURER

E11644
LT-95151

GRANT DEED OF CONSERVATION EASEMENT

\$109-

Grantor: Dugwalla Community Incorporated

Grantee: Whidbey Camano Land Trust

Abbreviated legal description: Ptn GL 4, Sec 16-33-2 EWM and Ptn GL 1, Sec 27-33-2 EWM, Lots 46A, 47A, and 49A, Dugwalla Bay Hts Div. 7, Lots 79-82, Dugwalla Bay Hts. Div. 8, Lot D, Dugwalla Bay Hts Div. 8.

Additional legal description is on page: 37

Assessor's Tax Parcel Number(s): S6515-07-00047, 00049 and 00046; S66515-08-00079, 00080, 00081, and 00082; R23317-326-4720; R23316-298-0570; and S6515-08-0000D.

THIS GRANT DEED OF CONSERVATION EASEMENT is made this 15 day of December 2009, by DUGWALLA COMMUNITY, INC., a Washington corporation having an address of PO Box 1368, Oak Harbor, WA 98277 ("Grantor"), in favor of WHIDBEY CAMANO LAND TRUST, a Washington nonprofit corporation, having an address at 765 Wonn Road C201, Greenbank, WA 98253 ("Grantee") (collectively "Parties").

1. RECITALS

- 1.1. Grantor is the sole owner in fee simple of that certain real property, inclusive of all standing and down timber, in Island County, Washington, more particularly described in Exhibit "A" (legal description) and shown on Exhibit "B" (site plan), which are attached to this instrument and incorporated here by this reference ("Protected Property"). The Protected Property is approximately 29 acres.
- 1.2. The Protected Property possesses fish and wildlife habitat, relatively natural ecosystem, water quality, scenic, educational, scientific, and open space values (collectively "Conservation Values") of great importance to Grantor, the people of Island County, and



the people of the State of Washington.

- 1.3. In furtherance of Section 170(h) of the Internal Revenue Code of 1986, as amended (“Code”), the conservation purposes of this Easement are as follows:
 - 1.3.1. The protection of relatively natural habitat of fish, wildlife, plants, and ecosystems;
 - 1.3.2. The preservation of land areas for the education of the general public;
 - 1.3.3. The preservation of open space for the scenic enjoyment of the general public so as to yield a significant public benefit; and
 - 1.3.4. The preservation of open space pursuant to clearly delineated governmental conservation policies so as to yield a significant public benefit.
- 1.4. The Protected Property consists of three zones: Zones A, B and C. Zone B is divided into four separate areas and Zone C is divided into two separate areas. The zones and areas are more fully described below and on Exhibit B. In any conflict or inconsistency between the terms of this Easement set forth in the enumerated sections and in Exhibit B, the terms set forth in the enumerated sections shall prevail.

Drainage Facilities. Zones A and C contain certain drainage facilities, which include a tidegate, tidegate outlet, culverts, ditches, pipelines, and other facilities originally designed to facilitate drainage. Such facilities have fallen into substantial disrepair and may no longer serve their original purpose. For the purposes of this Easement, the term “Existing Drainage Facilities” refers to those drainage facilities existing as of the effective date of this Easement. The term “New Drainage Facilities” refers to drainage facilities constructed or installed after the effective date hereof, and may include, but are not limited to, tidegates, tidegate outlets, culverts, ditches, pipelines, berms, tidal channels, dikes, log weirs, and other water control structures.

Zone A – Beach and Nearshore. Zone A consists of approximately 0.5 acres with 128 feet of frontage on Skagit Bay and is undeveloped except for Existing Drainage Facilities and an unimproved pedestrian trail to Skagit Bay. Zone A is undisturbed and retains its natural, native beach condition characterized by a large accumulation of driftwood and by native beach vegetation, which includes dunegrass, beach pea, sea plantain, *Artemesia suksdorfii*, and other native species. Existing use of Zone A is limited to pedestrian access to and from the beach.

Zone B – Community Areas. Zone B consists of four separate areas (Zones B1, B2, B3 and B4). Zone B1 consists of land that lies between the road ends of Bay Front Lane and Shorecrest Drive and has a mix of low-lying vegetation, including lawn. Zone B1 is undeveloped except for a picnic table and is used primarily for picnicking, non-motorized access between the two road ends, access to the beach, and other low-impact recreational uses. Zones B2 and B3 consist of small areas adjacent to Elkhorn Street and Dugualla Road, respectively, are undeveloped and consist of grasses and native trees and shrubs.



There is no existing use of Zones B2 and B3. Zone B4 consists of approximately 1.5 acres, is undeveloped, and consists primarily of tall grasses on the northerly half and mixed native trees and shrubs on the southerly half. There is no known use of Zone B4.

Zone C – Fish and Wildlife Refuge. Zone C consists of two separate areas (Zones C1 and C2). Zone C1 is located on the northerly side of Dugualla Road and consists of approximately 23 acres. It includes about five to six (5-6) acres of open water that was part of a former pocket estuary and that, because of significant alteration, is now of mostly freshwater origin with some saltwater input from Skagit Bay. Zone C1 is undeveloped except for Drainage Facilities, wire fencing, and gates. Vegetation on Zone C1 includes grass, emergent wetland vegetation, shrubs, trees, and other herbaceous plants. Plant species include bulrush, a variety of grasses and sedges, willow, big-leaf maple, snowberry, Nootka rose, Himalayan blackberry, salmonberry, scattered Douglas fir, and occasional western red cedar. A portion of Zone C1 has been used to graze cattle. Zone C2 is located on the southerly side of Dugualla Road and consists of approximately 3 acres of mixed native forest. Vegetation in the forest includes mature Douglas fir, western hemlock, western red cedar, swordfern, salmonberry, salal, and other native understory species. There is a small, perennial stream that flows through the forest. The riparian vegetation adjacent to the stream includes western red cedar, alder, western skunk cabbage, salmonberry, and other typical, moist-forest species.

- 1.5. The Protected Property is likely used by wetland-dependant species, such as Pacific chorus frogs and other amphibians. Wading birds, such as herons and snipe, use the open water, marshy wetlands, and upland fields for feeding. The open water area is protected from storms and is used by wintering birds, including large concentrations of ducks. The Protected Property is used for feeding and resting by Northern Harriers, Bald Eagles, and Red-tailed Hawks, as well as other species.
- 1.6. The convergence of the Protected Property's forest, open water, wetlands, and shoreline provides excellent edge habitat. The presence of forest edge habitat near open areas has been demonstrated to increase diversity of birds and mammals inhabiting an area.
- 1.7. The Protected Property provides habitat for the Pileated Woodpecker, a species considered at-risk by the Washington Department of Fish and Wildlife and found on the State Candidate's list for endangered species.
- 1.8. The Protected Property includes 128 feet of shoreline along Skagit Bay, forests, wetlands, a perennial stream, and open space, and a former pocket estuary that was dredged and altered to create a meandering lake-like feature.
- 1.9. As of the effective date of this Easement, the only improvements on the Protected Property are a picnic table, unimproved trails, wire fencing, gates, and the Existing Drainage Facilities.
- 1.10. The Protected Property is located adjacent to the northwest portion of Dugualla Bay State Park ("State Park"). The State Park consists of 586 acres, and includes mature forest



cover, wetlands, and over a mile of shoreline on Skagit Bay. The principal mandate for the State Park is for natural area protection that allows for low-impact and non-motorized recreation. Portions of the State Park drain into the stream on the Protected Property. The Protected Property provides essential habitat for wildlife that also use the State Park and is particularly important for its provision of edge habitats, which include open water and fields, wetlands, shrub cover, trees, and shoreline. There is a Great Blue Heronry on or near the State Park and the herons forage and rest on the Protected Property.

- 1.11. The Protected Property is located within the Saratoga Passage Marine Stewardship Area, designated by Island County. This sheltered passage contains many excellent spawning beaches for forage fish and nearly continuous eelgrass beds, which provide food and refuge for migrating salmon. The Protected Property's shoreline and adjacent off-shore bedlands are designated as a Marine Fish and Wildlife Habitat Critical Areas by Island County. Island County is subject to Washington State's Growth Management Act, which legislative goals include encouraging "the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and waters, and develop parks (RCW 36.70A.029(9)). Restrictions on uses of the Protected Property would benefit fish and wildlife habitat by protecting the connection to Dugwalla Bay State Park and allowing reestablishment of the tidal and hydrological connections between the former pocket estuary and Skagit Bay, thus benefiting salmon recovery efforts.
- 1.12. The Protected Property is located in Puget Sound and includes a historic pocket estuary that was an essential part of Puget Sound and, if restored, will benefit salmon recovery. The Washington State legislature in RCW 90.70.001 recognized "that Puget Sound and related inland marine waterways of Washington State represent a unique and unparalleled resource. A rich and varied range of marine organisms, composing an interdependent, sensitive communal ecosystem reside in these sheltered waters." In 2007, the Washington State legislature created the Puget Sound Partnership to reverse Puget Sound's decline and restore it to health by 2020. In 2008 and 2009, the Puget Sound Partnership passed the Puget Sound Action Agenda with its top two strategies being to: (a) protect the intact ecosystem processes, structures, and functions that sustain Puget Sound in order to avoid problems before they occur; and (b) restore the ecosystem processes, structures, and functions that sustain Puget Sound to undo past damage. Restrictions in this instrument will ensure that the Protected Property is not developed with homes or other uses that would adversely affect Puget Sound. Grantee's affirmative rights under this Easement are intended to facilitate the ecological restoration of the Protected Property.
- 1.13. The Protected Property is located in Water Resources Inventory Area 6 (WRIA 6) in the central portion of the Whidbey Basin whose nearshore is utilized by Puget Sound juvenile and adult salmon and trout populations. The Protected Property is adjacent to over 4,000 feet of county-owned tidelands that connect to over a mile of state-owned tidelands. The adjacent nearshore has continuous eelgrass beds that are important herring and surf smelt spawning areas.

- 1.14. The *Skagit Chinook Recovery Plan* (2005) lists the Protected Property as a high priority for protection and restoration, stating that, "This site has the highest landscape scale connectivity of any pocket estuary with restoration potential." The Protected Property is located within one ebb tide (a day's migration) from the Skagit River Delta and all six Skagit Chinook salmon stocks currently rear in the Skagit Delta and pocket estuary habitats.
- 1.15. The Protected Property is located within Geographic Area 1, identified and designated as the top priority for protection in the *Salmon Recovery Plan (SRP) for Island County* (2005). According to the SRP, Geographic Area 1 is utilized by the largest number of Chinook fry migrants from the Stillaguamish, Skagit, and Snohomish rivers during their first days of nearshore migration and is a primary pathway for bull trout migrating between these rivers. In addition, Geographic Area 1 is used heavily by juveniles and adults from the 47 salmon and trout stocks that originate in these rivers, which comprise over 20% of the stocks in Puget Sound.
- 1.16. The Protected Property is proposed to be restored to reestablish the tidal and hydrological connections between the historic pocket estuary and Skagit Bay, which will enhance fish and wildlife habitat, particularly recovery of depressed salmon stocks. Nearly 50% of the federally threatened Puget Sound Chinook spawn in the Skagit and Stillaguamish Rivers.
- 1.17. The Protected Property provides potential habitat for the Puget Sound Chinook salmon, a species classified as federally threatened and protected under the Endangered Species Act. Congress has found that encouraging conservation programs "...is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage of fish, wildlife, and plants." Protection and restoration of the tidal connection between Skagit Bay and the Protected Property's historic pocket estuary will provide additional refuge for juvenile Puget Sound Chinook salmon and help in recovery of the species, as further addressed in the salmon recovery plans for both Island and Skagit Counties.
- 1.18. Grantee intends, but is not obligated, to seek funding for a feasibility study, engineering, design, and construction relating to the restoration of the tidal connection between the historic pocket estuary and Skagit Bay. The Conservation Values will be enhanced and otherwise benefit from such restoration, but this Easement is not conditioned on or dependent on such restoration.
- 1.19. This Easement is not intended to remove the Grantor's responsibilities to operate, maintain and/or repair the Existing and/or New Drainage Facilities, such activities, however, shall be carried out in a manner consistent with the Purpose and terms of this Easement.
- 1.20. The legislatively declared policies of the State of Washington in the Washington State Open Space Tax Act, Chapter 84.34 RCW, provide "...that it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence adequate open space lands for the production of food, fiber and forest crop, and to assure the use and



enjoyment of natural resources and scenic beauty for the economic and social well being of the state and its citizens.” Under the Open Space Act, lands eligible for preferential real property tax treatment include lands such as the subject Protected Property where protection and restoration will conserve and enhance natural resources and promote the salmon recovery efforts in Puget Sound. Pursuant to this legislative directive, Island County has adopted the Island County Public Benefits Open Space Rating System, Chapter 3.40, Island County Code, that recognizes the importance of and provides preferential tax treatment for the following resources that occur on the Property: Rural forest lands and significant fish and wildlife habitat conservation areas.

- 1.21. Portions of the Protected Property are visible from several county roads providing scenic values to the people of Washington that use this area. Restrictions on uses of the Protected Property will benefit these scenic values because it will eliminate development and restore fish and wildlife habitats.
- 1.22. The Protected Property is located just north of Oak Harbor schools and will be available for educational programs that will provide for the enhancement of the public's appreciation and understanding of natural systems, salmon recovery, and ecosystem restoration.
- 1.23. The Protected Property is extremely desirable property for substantial residential development because of its outstanding views of small islands, Skagit Bay, and of Mount Baker. In the absence of a Grant Deed of Conservation Easement, the Protected Property could be developed with homes and/or in a manner that would destroy or significantly degrade the Conservation Values.
- 1.24. The Conservation Values are further described and documented in an inventory of relevant features of the Protected Property, dated December __, 2009, on file at the offices of Grantee and incorporated herein by this reference (“Baseline Documentation”), which consists of reports, maps, photographs, and other documentation that Grantor and Grantee agree provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective, although non-exclusive, information baseline for monitoring compliance with the terms of this grant. Notwithstanding the foregoing, the Parties shall not be foreclosed from utilizing any and all other relevant documents, surveys, or other evidence or information to assist in the resolution of any dispute under this instrument. Any characterization of the terms of this Easement contained in the Baseline Documentation shall not be interpreted so as to alter, amend, or otherwise modify this Easement. In any conflict or inconsistency between the terms of this Easement and the Baseline Documentation, the terms of this Easement shall prevail.
- 1.25. Grantor intends that the Conservation Values be preserved and maintained by only allowing the continuation of land uses on the Protected Property that do not significantly impair or interfere with those Conservation Values. Such uses existing at the time of this grant include low-impact recreational uses.



- 1.26. Grantor, owner in fee of the Protected Property, has the right to protect and preserve in perpetuity and restore and enhance the Conservation Values, and desires to transfer such rights to Grantee. This grant, however, shall not be interpreted to deprive Grantor of the ability to also protect, preserve, restore, and enhance such Conservation Values, subject to the terms and conditions provided below.
- 1.27. 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 ("Code"), and the regulations promulgated thereunder, and also qualified as a nonprofit nature conservancy corporation under RCW 64.04.130 and 84.34.250, whose primary purpose is the protect Whidbey and Camano Islands' most important natural habitats, scenic vistas and working farms and forests in partnership with landowners and our island communities.
- 1.28. Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values for the benefit of this generation and the generations to come. Grantee has the resources to enforce the restrictions set forth in this instrument.

2. CONVEYANCE AND CONSIDERATION

- 2.1. For the reasons stated above, in consideration of the mutual covenants, terms, conditions, and restrictions contained herein and as further described in Section 2.3 below, and pursuant to the laws of Washington and in particular RCW 64.04.130 and RCW 84.34.210, Grantor hereby voluntarily grants, conveys, and warrants to Grantee a conservation easement in perpetuity over the Protected Property, consisting of the rights in the Protected Property, hereinafter enumerated, subject only to the restrictions set forth herein ("Easement").
- 2.2. This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130.
- 2.3. The Parties acknowledge that an appraisal has been conducted for the Easement, said appraisal conforming to state appraisal requirements consistent with Grantee's state grant funding for the acquisition hereof. The Parties further acknowledge that said appraisal report stated that the fair market value of the Easement is \$744,000.00. Grantor has received cash payments for this Easement in the amount of \$617,000.00. Grantor intends that the difference between consideration received and said appraised value (or any other value as may be shown by an appraisal separately obtained by Grantor) shall be a charitable contribution to Grantee.
- 2.4. Grantor expressly intends that this Easement runs with the land and that this Easement shall be binding upon Grantor's personal representatives, heirs, successors, assigns, agents, employees, tenants, and occupants of the Protected Property.



- 2.5. The Parties expressly intend that this Easement shall not merge into the fee interest of the Protected Property if at any future date there is unity of title. Grantee agrees to take such reasonable actions as may be necessary to prevent any merger of this Easement with the fee interest in the Protected Property, so long as such actions are consistent with the Purpose of this Easement. The foregoing shall not be interpreted to require any particular action of the Grantee, including, but not limited to, the Grantee's conveyance of the fee interest in the Protected Property or this Easement to a third party, if other actions are sufficient to preclude such merger or if Grantee can otherwise effectively fulfill its obligations under this Easement if merger occurs.

3. PURPOSE

The Purpose of this Easement is to:

- 3.1 Protect, conserve, maintain, restore, and enhance the natural values of the Protected Property for salmon recovery, fish and wildlife habitat, water quality, scenic views, and healthy wetland, riparian, and forest systems. The purpose includes the protection of habitat as defined in Section 1. The estuarine and freshwater wetlands, forest, fish and wildlife habitat, and other Conservation Values being a condition in which the Protected Property remains largely free of structures and other improvements and, if feasible, is restored to reestablish the tidal and hydrological connections between the former pocket estuary and Skagit Bay.
- 3.2 Prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values, including impairing or interfering with the pocket estuary, wetlands, and fish and wildlife use of the Protected Property for feeding, refuge, breeding, and nesting;
- 3.3 Preserve the natural and open space value of the Protected Property. The natural and open space values being a condition in which the Protected Property remains largely free of structures and in which impervious surfaces cover less than two percent (2%) of the Protected Property;
- 3.4 Assure permanent protection of the Protected Property's educational and scientific values and features;
- 3.5 Confine the use of the Protected Property to activities that are consistent with the foregoing; and
- 3.6 Preclude the use of the Protected Property's development rights on any 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, Protection, Restoration and Enhancement.** To maintain, protect and preserve the Conservation Values in perpetuity; to restore and enhance the Conservation Values as provided herein; and to determine, in its sole discretion, the consistency of any activity or use for which no express provision is made herein with the Purpose of this Easement.
- 4.2. **Access - Generally.**
- 4.2.1 To enter upon the Protected Property annually, at a mutually agreeable time and upon prior written notice to the Grantor, for the purpose of making a general inspection to assure compliance with this Easement.
- 4.2.2 To enter upon the Protected Property at such other times as are necessary if there is reason to believe that a violation of the Easement is occurring, has occurred, or may occur, for the purposes of 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 Property.
- 4.2.3 To enter upon the Protected Property to exercise any other rights given to Grantee under this instrument.
- 4.3. **Markers and Signs.** To place and replace, during the inspections authorized above, markers to identify boundaries, corners, and other reference points on the Protected Property and to erect a sign(s) at appropriate location(s) identifying the property as protected by the Grantor and Grantee, *provided* that such signs are not erected in Zones A or B without approval of Grantor, which approval shall not be unreasonably withheld or delayed. Grantor shall not remove such markers or signs without notice to Grantee as provided in Section 7 below. Grantee may mark the boundaries of the Protected Property and the zone and area boundaries with monuments ("Boundary Monuments"). Notwithstanding the foregoing, Grantor shall not remove or alter any Boundary Monument.
- 4.4. **Scientific and Educational Use.**
- 4.4.1 To allow individuals or groups to enter the Protected Property for educational, scientific, and biological purposes; *provided* that any such individuals or groups are first approved by the Grantor, make prior arrangements with the Grantee, and agree to abide by any reasonable restrictions on access set forth by the Grantor. Unless otherwise permitted by Grantor, all communication between Grantor and such individuals or groups shall be through Grantee. Grantor's approval shall not be unreasonably withheld or delayed. In furtherance of the foregoing, Grantor consents to the limited removal of biological material from the Protected Property, such as the capture and retention of specimens or the establishment of test plots within which vegetation, soil, or water is altered or removed. Nothing in this Section 4.4.1 shall be interpreted to require Grantee to exercise the rights granted to it pursuant to this Section.



- 4.4.2 To allow Grantee's officers, directors, employees, members, and funders to enter the Protected Property for educational purposes; *provided* that Grantee provides prior notice.
- 4.4.3 All use of the Protected Property pursuant to this Section 4.4 shall be such that it does not cause more than a minimal impact to the Conservation Values.
- 4.4.4 Nothing in this Section 4.4 shall be interpreted to confer on the general public any right of access to the Protected Property. Grantee, in exercising its rights under this Section 4.4, shall not unreasonably interfere with Grantor's quiet enjoyment of the Protected Property.
- 4.5. **Restoration and Enhancement.**
- 4.5.1 Restoration and Enhancement. To restore and/or enhance and maintain the Protected Property to a more natural condition by reestablishing the tidal and hydrological connections between the former pocket estuary and Skagit Bay and restoring natural drainage patterns on, under, and across the Protected Property; by removing invasive, noxious, and/or exotic species (as defined in Section 5.4 below); and by planting native species and enhancing and/or restoring ecological systems to benefit fish and wildlife habitat, clean water and other Conservation Values; all pursuant to an Enhancement and Restoration Plan, as further described in Section 4.5.3 below ("Restoration Plan"). Notwithstanding the foregoing, Grantee shall have no obligation to restore or enhance the Protected Property; maintain features or improvements resulting from such activities; or to operate, maintain or repair the Existing and/or New Drainage Facilities. Furthermore, nothing in this Section 4.5 shall be interpreted to limit Grantor's obligations as set forth in Section 11.1 below.
- 4.5.2 Vegetation Height. Grantee shall, in exercising its rights under Section 4.5.1 above, select plants that generally will not exceed the maximum allowable height as set forth in the "View Corridor and Plant Cover Category Map," which is attached as Exhibit "C" to this instrument and incorporated here by this reference (hereafter "View Map"). The View Map was developed, in part, to allow Grantor to maintain existing views from adjacent properties, as further described in Section 5.6 below. Grantee shall have no obligation to otherwise prevent plants from exceeding the maximum allowable height described above or to remove, trim, or cut down plants that exceed said height. In any conflict or inconsistency between the terms of this Easement set forth in the enumerated sections and in Exhibit C, the terms set forth in the enumerated sections shall prevail.
- 4.5.3 Restoration Plan. The Restoration Plan, and any updates or amendments thereof, shall be developed by a qualified restoration or enhancement professional. Grantee shall provide a copy of the Restoration Plan, and any updates or amendments thereof, to Grantor following its completion. Grantee shall not undertake any such restoration or enhancement until after the Restoration Plan (and any updates or amendments thereof) has been approved by Grantor. Grantor shall grant or withhold its approval, in whole or



in part, within forty-five (45) days of Grantee's request for approval. Grantor's approval may be withheld only upon a reasonable determination that implementation of the Restoration Plan is inconsistent with the Purpose and terms of this Easement. Grantor's approval may include reasonable conditions that must be satisfied in implementation of the Restoration Plan. If Grantor does not grant or withhold its approval in the time period and manner set forth herein, Grantee may conclusively assume Grantor's approval of the Restoration Plan. Notwithstanding the foregoing, Grantee shall consult with Grantor in the development of the Restoration Plan, including any feasibility study and designs, to help ensure that Grantor's reserved rights hereunder are protected. Grantor acknowledges that Grantee intends to also consult with neighbors of the Protected Property, public agencies, natural resource and other experts, and additional interested parties in the development of the Restoration Plan. Upon approval of the Restoration Plan by the Grantor, the parties acknowledge that the View Corridor and Plant Cover Category Map may need to be amended.

- 4.5.4 Enhancement and Restoration-Related Activities. Subject to the requirements set forth in this Section 4.5, Grantee's activities pursuant to Section 4.5.1 above may include, but are not limited to: planting and irrigating plants; removing and controlling weeds; upgrading, replacing, and/or decommissioning the Existing Drainage Facilities; constructing or installing New Drainage Facilities; diking wetland areas; altering or manipulating ponds and water courses; introducing large woody debris; and creating new wetlands, water impoundments, or water courses. Motorized and mechanized vehicles may be used in furtherance of, and to facilitate, the foregoing activities.
- 4.5.5 No Interference. Grantor shall not interfere with any of Grantee's activities pursuant to an approved Restoration Plan and shall not remove, modify, or otherwise change any plants, features, or improvements resulting from such activities, *except* as otherwise expressly provided herein. Grantor may, however, maintain any such plants, features, and improvements.
- 4.5.6 Access.
- 4.5.6.1 In furtherance of this Section 4.5, Grantor hereby grants to Grantee, its managers, employees, agents, and contractors, the right to enter the Protected Property for the development and implementation of the Restoration Plan, the View Map, and any updates or amendments thereof. Grantee's managers, employees, agents, and contractors may enter the Protected Property at reasonable times, without notice to Grantor, and at their own risk and expense (except as otherwise provided herein), to carry out the various actions and activities necessary to study, develop, and implement the Restoration Plan and View Map, and to monitor and maintain the resulting condition of, and improvements to, the Protected Property.
- 4.5.6.2 Prior to exercise of its rights under Section 4.5.6.1, Grantee shall provide evidence to Grantor that Grantee and/or its employees, agents, or contractors have in place general commercial liability insurance covering all such activities on the Protected Property. As a further condition, Grantee shall obtain full and irrevocable lien releases from all



contractors for work done or to be done on the Protected Property by Grantee, its employees, agents, or contractors, and to deliver such releases to Grantor promptly after completion of any work, and, from time to time, at Grantor's written request, to obtain further reasonable releases relating to work performed or to be performed on the Protected Property.

- 4.6. **Injunction and Restoration.** To prevent any use of, or activity on, the Protected Property that is inconsistent with this Easement, including trespasses by members of the public, and undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be damaged by uses or activities inconsistent with the provisions in this Easement, all in accordance with Section 9 below.
- 4.7. **Enforcement.** To enforce the terms of this Easement, in accordance with Section 9 below.
- 4.8. **Assignment.** To assign, convey, or otherwise transfer Grantee's interest in the Protected Property in accordance with Section 14 below.

5. PERMITTED USES AND ACTIVITIES

- 5.1. **General.** Grantor reserves for Grantor and Grantor's personal representatives, heirs, successors, and assigns, all customary rights and privileges of ownership of the Protected Property, including, but not limited to, the right to sell, lease, and devise the Protected Property, and any use of, or activity on, the Protected Property that is not inconsistent with the Purpose and terms of the Easement and that is not prohibited herein. Without limiting the generality of the foregoing, Grantor specifically reserves for Grantor and Grantor's personal representatives, heirs, successors, and assigns, the following uses and activities, *provided* that such uses and activities are done in a manner that is consistent with the Purpose of the Easement.
- 5.2. **Vegetation in Zone B.** Grantor may steward, manage, plant and/or mow, trim, cut, or otherwise remove any dead or live vegetation within Zone B, *provided* that such activities do not result in the introduction or proliferation of noxious, exotic, or invasive species (as defined in Section 5.4 below) within Zones A and C, *except* that trees that are 15 feet above ground level in Zones B2 and B3 that existed at the time of this Easement, as documented in the Baseline Documentation, shall not be cut, trimmed, removed or otherwise damaged in any way, without approval by Grantee, as further provided for in Section 5.5 below. Motorized equipment appropriate to achieve management of vegetation in Zone B is expressly permitted.
- 5.3. **Ecological Stewardship.** Grantor may engage in activities within Zones A and C on the Protected Property for the purpose of enhancing and/or restoring native ecological systems and native plant, fish and wildlife habitat, and/or otherwise providing stewardship of the Conservation Values, *provided* that such activities are consistent with the terms and Purpose of this Easement and are in compliance with a written stewardship plan approved by Grantee ("Stewardship Plan") and any approved Restoration Plan. The

Stewardship Plan may also include activities described in Sections 5.4, 5.5, 5.6 and 5.12 below.

- 5.4. **Removal of Noxious and/or Invasive Species.** Grantor shall endeavor, but is not obligated under this Easement, to remove invasive, noxious, and exotic plant species on the Protected Property, and may remove such species. In the event of disagreement over what constitutes an invasive, noxious, or exotic species, the Parties agree to consult a native plant expert at the University of Washington Center for Horticulture, or other mutually agreed upon expert, and abide by his/her decision. For the purpose of this Easement, "invasive species" are defined as any species whose introduction or proliferation is likely to cause environmental harm to a desired native ecosystem; "exotic species" are defined as any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to a particular ecosystem; and "noxious species" are any species defined as a noxious species by federal, state or local agencies with respect to the Protected Property. Removal of invasive, noxious, or exotic species shall be further subject to the following conditions:
- 5.4.1. Such activities shall not cause a material adverse impact to the Conservation Values.
 - 5.4.2. All debris from such activities shall be removed from the Protected Property for proper disposal, unless otherwise approved by Grantee.
 - 5.4.3. No herbicides shall be used for such purpose unless approved by Grantee.
 - 5.4.4. Periodic control of such plant species by the use of domestic animals, such as goats or cows, shall be allowed, *provided* that such use is for short durations and with approval by Grantee.
 - 5.4.5. Grantor agrees that, if efforts to remove such plant species should result in any material alteration of Zones A or C (other than the removal of such species), Grantor shall at its own expense restore Zones A and C as closely as possible to their prior condition promptly after the completion of such removal. In association with such removal and upon approval by the Grantee, Grantor may plant or seed such affected areas with native plant species.
- 5.5. **Removal of Hazardous Trees or Limbs in Zones A and C.** Grantor may remove hazardous trees or hazardous tree limbs from Zones A, B2, B3 and C, subject to approval by Grantee. Trees or limbs may not be removed for any purpose other than to eliminate such hazard, including, but not limited to, improving views, unless approved by Grantee in its sole and absolute discretion. In the event of disagreement over what constitutes a hazardous tree or hazardous tree limb, the Parties agree to consult a certified arborist and abide by his/her decision. Removal of hazardous trees or hazardous tree limbs shall be further subject to the following conditions:
- 5.5.1. No such trees or limbs may be removed from the Protected Property for any commercial

purpose.



- 5.5.2. No clearcut harvest methods may be used.
- 5.5.3. Heavy equipment, such as bulldozers, backhoes, power shovels, similar vehicles, or tracked vehicles of any type, shall not be used without approval by Grantee.
- 5.5.4. Grantor agrees that if efforts to remove hazardous trees or hazardous tree limbs should result in any alteration of the Protected Property (other than the removal of such trees or limbs), Grantor shall at its own expense restore the Protected Property as closely as possible to its prior condition promptly after completion of such removal.
- 5.6. **Mowing, Trimming, Cutting, and Removing Vegetation in Zones A and C.** The rights described in this Section 5.6 are for the purpose of allowing Grantor to maintain existing views of Mount Baker and Skagit Bay from homes adjacent to the Protected Property that are part of the Dugualla Community Association and the Dugualla Bay Heights subdivision, said views as described in the Baseline Documentation. In Zones A and C, and upon approval by Grantee, which approval shall not be unreasonably withheld, Grantor may trim or cut (but not cut down) vegetation so that it does not exceed the maximum allowable height, all as further set forth on the View Map. Such trimming or cutting shall be limited to that which is essential to maintaining such height limit and shall not otherwise impact such vegetation. In any conflict or inconsistency between the terms of this Easement set forth in the enumerated sections and on the View Map, the terms set forth in the enumerated sections shall prevail. Activities allowed under this Section 5.6 shall be further subject to the following conditions:
 - 5.6.1. They shall be conducted in a manner that does not adversely impact the Conservation Values.
 - 5.6.2. Heavy equipment, such as mowers, bulldozers, backhoes, power shovels, and motorized vehicles, including tracked vehicles of any type, shall not be used without approval by Grantee.
 - 5.6.3. Grantor agrees that, if activities allowed under this Section 5.6 result in any material alteration of the Protected Property (other than the trimming and cutting of such vegetation), Grantor shall at its own expense restore the Protected Property as closely as possible to its prior condition promptly after the completion of such trimming, cutting, or removal. In association with such activities and upon approval by the Grantee, Grantor may plant or seed such affected areas with native plant species.
 - 5.6.4. All debris from such activities shall be scattered and left on the Protected Property in a manner approved by Grantee, unless removal of such debris is required by Grantee.
- 5.7. **Recreational Activities.**
 - 5.7.1 Generally. Grantor may engage in, and may permit others to engage in, low-impact,



passive recreational activities, such as walking, bird watching, and picnicking on the Protected Property, *provided* that such activities are conducted in a manner and intensity that do not adversely impact the Conservation Values or intentionally disturb fish and wildlife. The gathering, picking, taking, or harvesting of edible fruits, such as blackberries, for noncommercial, personal use is permitted. Furthermore, such recreational activities shall occur only in those areas designated for such purposes on the Community Use Map. No motorized or mechanized vehicles or devices, or domestic and hoofed animals are allowed in association with such recreational activities, *except* as expressly provided for in Section 5.

- 5.7.2 Recreational Trails in Zone B. Grantor may construct, maintain, and use trails within Zone B for permitted recreational activities as set forth in Section 5.7.1. Grantor may allow the following uses on such recreational trails: (a) bicycles and other similar non-motorized devices, and (b) mechanical or other devices used by individuals whose mobility is restricted by a disability. Grantor shall make reasonable efforts to direct all recreational activities to Zone B and away from Zones A and C generally.
- 5.7.3 Recreational Trail in Zone A. Grantor may maintain and use the existing trail to the beach in Zone A, as shown on the Community Use Map ("Beach Trail"), for permitted recreational activities as set forth in Section 5.7.1. Grantor may allow mechanical or other devices to be used on the Beach Trail by individuals whose mobility is restricted by a disability. The Beach Trail shall only be a single line on the natural surface of the land with a maximum width of eight (8) feet. The Beach Trail shall not be improved by any building, construction, installation, or placement of any materials thereon, *except* for efforts minimally necessary to make it passable by pedestrians, which may include removing driftwood, filling in holes; applying gravel or woodchips to limited portions thereof that are persistently wet, particularly susceptible to erosion, or otherwise chronically impassible.
- 5.7.4 Recreational Trail in Zone C. No trails are permitted in Zone C, *except* as otherwise provided in this Section 5.7.4. Grantor may construct a trail in Zone C1 to view wildlife, *provided* that such a trail is consistent with the Purpose and terms of this Easement, enhances appropriate scientific and/or educational uses, and does not cause an adverse impact to the Conservation Values, as determined by Grantee in its sole and absolute discretion. Furthermore, Grantor shall, prior to constructing such a trail, submit a plan to Grantee for its approval which plan shall describe the location, width, construction material, maintenance, and all other relevant factors pertaining to such trail.
- 5.7.5 Grantee shall have no responsibility for the construction, maintenance, or operation of any trails. Grantor and Grantee shall communicate at least annually regarding the Grantor's maintenance and operation of the trails to determine measures to help eliminate conflicts with Grantee's rights in the Protected Property and to help ensure the compatibility of the trails with the terms and Purpose of this Easement.
- 5.8 **Dogs.** Dogs are not permitted on the Protected Property, *except* as otherwise expressly provided herein, or *except* as may be approved by Grantee, in its sole and absolute



discretion. To the extent dogs are so permitted, they shall be on a leash that is held by a person, *except* within Zone B4 and *except* as may be approved by Grantee, in its sole and absolute discretion. Grantor shall not allow the general public to bring dogs to the Protected Property.

- 5.9 **Fences.** Grantor may construct and maintain fences, provided that the design and location shall not interfere with the Conservation Values or Grantee's rights set forth in Section 4 above.
- 5.10 **Signs.** Grantor may place signs on the Protected Property to state the conditions of access to the Protected Property, provided that such signs are located to preserve, as much as possible, the Conservation Values. Signs in excess of four (4) square feet in area need approval by Grantee as to their location and design.
- 5.11 **Structures.** Grantor may construct two (2) pedestrian bridges on the Protected Property, which may be in Zone A or Zone B1 or within both Zone A and Zone B1, with approval of Grantee as to the location and design. A reasonable number of benches and picnic tables are allowed within Zone B. Observation blinds and similar structures to enhance educational and scientific uses may be allowed within Zone C with approval of Grantee, in its sole and absolute discretion. Grantor may construct or install minor improvements in Zone B2 solely to facilitate uses and activities otherwise permitted under this Easement, including, but not limited to, a shelter, *provided* that within Zone B2 the total amount of material that is substantially impermeable as to water and that in any way covers or is placed above the natural surface of the land does not exceed 250 square feet. No such structures within Zone B2, with the exception of a portapotty, shall be enclosed and no such structures shall be served by utilities.
- 5.12 **Drainage Facilities.**
- 5.12.1 Grantor may operate and maintain, and, with notice to Grantee, repair the Existing Drainage Facilities, *provided* that such activities are carried out in a manner consistent with the Purpose and terms of this Easement (including, but not limited to, Section 4.5.5 above) and as otherwise provided in this Section 5.12. Such maintenance may include, but is not limited to, dredging and cleaning the Existing Drainage Facilities, *provided* that all dredged materials are removed from the Protected Property unless otherwise approved by Grantee.
- 5.12.2 Grantor may operate the New Drainage Facilities and, *provided* that any such activities are pursuant to a plan approved by Grantee, maintain and repair the New Drainage Facilities.

If after a reasonable period following the effective date of this Easement (such period being not less than seven (7) years), Grantee is unable to secure funding as described in Section 1.18 above, Grantor may at its sole expense and with at least 180 days prior notice to Grantee, upgrade, improve, and/or replace the Existing Drainage Facilities, *provided* that any such activities are pursuant to a plan approved by Grantee and that any



such upgraded, improved, and/or replaced facilities are located in substantially the same location as the Existing Drainage Facilities and are of substantially the same scope and construction as the Existing Drainage Facilities were originally constructed.

- 5.13 **Emergencies.** Grantor may undertake 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 ("Emergency Action"), provided that any such activity shall be conducted so that interference with the Conservation Values is avoided to the greatest extent practicable.

6. PROHIBITED USES AND ACTIVITIES

- 6.1 **General.** Any use of, or activity on, the Protected Property inconsistent with the Purpose of the 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, *except* as expressly provided in Section 5 above. The provisions of this Section 6 do not apply to Grantee-related activities under Section 4 above.
- 6.2 **Subdivision.** This Easement prohibits 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 or in which title to different portions of the Protected Property are held by different owners. The Grantor shall also not indirectly subdivide all or any part of the Protected Property through the allocation of property rights among partners, shareholders, or members of an entity, the creation of a horizontal property regime, leasing, partitioning among tenants in common, or any other means. Grantee acknowledges that the Grantor as of the effective date of this Easement is a homeowners association, and said Grantor's relationship with its members shall not be interpreted as inconsistent with this Section 6.2.
- 6.3 **Agricultural Activities.** This Easement prohibits all "Agricultural Activities" on the Protected Property. As used herein, "Agricultural Activities" shall include, but not be limited to, the production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, beef cattle, or other animal products or the production of berries, grain, hay, straw, seed, or Christmas trees.
- 6.4 **Construction.** This Easement prohibits the placement, building, installation, or construction of any buildings, structures, or other improvements of any kind, including but not limited to, utilities, septic systems, cellular phone towers, storage tanks, billboards, signs, riprap, docks, roads, and parking lots, *except* as expressly provided in Section 5 above.
- 6.5 **Alteration of Land.** This Easement prohibits the alteration of the surface of the land,



including, without limitation, the removal of driftwood; excavation, fill, or removal of soil, sand, gravel, rock, stone, aggregate, peat, or sod, *except* as expressly provided in Section 5 above, *except* in furtherance of a use or activity expressly provided for in Section 5 above; and *except* as deemed necessary by Grantee to preserve, protect, restore, or enhance the Conservation Values. The exceptions listed in this Section 6.5 shall not be interpreted to permit any extraction or removal of surface materials inconsistent with Section 170(h)(5) of the Code and the applicable Treasury Regulations.

- 6.6. **Erosion or Water Pollution.** This Easement prohibits 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.
- 6.7. **Alteration of Water Courses.** This Easement prohibits the draining, filling, dredging, ditching, or diking of wetland areas, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses, *except* as expressly provided in Section 5 above.
- 6.8. **Removal of Trees and Other Vegetation.** This Easement prohibits the mowing, pruning, topping, cutting down, uprooting, girdling, or other destruction or removal of live and dead trees and other vegetation in Zones A and C, *except* as expressly provided in Section 5 above.
- 6.9. **Herbicides or Pesticides.** This Easement prohibits the use of any herbicides or pesticides, *except* as deemed necessary by Grantee to preserve, protect, restore, or enhance the Conservation Values.
- 6.10. **Waste Disposal.** This Easement prohibits the disposal, storage, or release (as defined in Section 11.4.3 below) of Hazardous Substances (as defined in Section 11.4.3 below), rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly or offensive waste or material on the Protected Property.
- 6.11. **Storage.** This Easement prohibits the storage or placement of any materials, vehicles, boats, or other items on the Protected Property, *except* as expressly provided for in Section 5 above, and *except* to the extent determined necessary by Grantee to preserve, enhance, restore or protect the Conservation Values.
- 6.12. **Hunting and Trapping.** This Easement prohibits hunting or trapping, *except* to the extent determined necessary by Grantee to preserve, enhance, or protect the Conservation Values.
- 6.13. **Mining.** This Easement prohibits (a) exploring for ("Explore") or (b) developing, extracting, removing, drilling for, storing, saving, transporting, treating, processing, marketing, or otherwise utilizing, by any means ("Mine" and "Mining"), oil, gas, coal, lignite, hydrocarbons, limestone, geothermal resources, fossils, metals, ores, sand, gravel, rock, stone, aggregate, peat, clays, marl, earth, soil, and other minerals ("Mineral Resources") on or below the surface of the Protected Property. The terms "Mine" and



"Mining" shall include the treatment, processing, storage, transport, and other handling of effluent, tailings, and other waste or byproducts created or produced during the Mining of Mineral Resources.

- 6.14. **Fish and Wildlife Disruption.** This Easement prohibits the disruption of fish and wildlife breeding, foraging, resting, refuge, and nesting activities, *except* if such disturbance occurs unavoidably in the course of a use or activity expressly provided for in Section 5 above.
- 6.15. **Domestic Animals.** This Easement prohibits all domestic animals on the Protected Property, *except* as expressly provided under Section 5 above.
- 6.16. **Introduced Non-Native Vegetation.** This Easement prohibits the intentional introduction of nonnative, invasive, or noxious plants' species on the Protected Property, *except* as expressly provided under Section 5 above.
- 6.17. **Introduced Native Vegetation in Zone C.** This Easement prohibits the planting of any vegetation in Zone C, *except* as approved by Grantee.
- 6.18. **Harvesting of Native Plants.** This Easement prohibits the cutting, gathering, picking, taking, or harvesting of native plants from the Protected Property, *except* as expressly provided under Section 5 above.
- 6.19. **Motorized and Mechanized Vehicles.** This Easement prohibits the operation of all mechanized and motorized vehicles on the Protected Property, including, but not limited to cars, trucks, motorcycles, all-terrain vehicles (ATVs), snowmobiles, bicycles, or any other type of motorized or mechanized vehicles, *except* as expressly provided under Section 5 above.
- 6.20. **Commercial Recreational Use.** This Easement prohibits all commercial recreational uses and activities. This provision shall be interpreted to comply with Code Section 2031(c)(8)(B)'s requirement to prohibit "more than a *de minimis* use for a commercial recreational activity."
- 6.21. **Transfer of Development Rights.** This Easement prohibits: (a) the transfer of any development right that is now or hereafter allocated to, implied, reserved, or inherent in the Protected Property ("Development Rights") to any other property not within the Protected Property; and (b) the use of the Protected Property or the Development Rights for the purpose of calculating the permissible lot yield of any property (i) that is not within the Protected Property or (ii) that includes property that is not within the Protected Property.
- 6.22. **Transfer of Water Rights.** This Easement prohibits the transfer of any water or water rights that are now or hereafter allocated to, implied, reserved, permitted, or inherent in the Protected Property to any other property not within the Protected Property.



- 6.23. **Commercial and Industrial Activities.** This Easement prohibits any commercial, manufacturing, or industrial trade, business, use, or activity, including, but not limited to, agricultural-related activities; forestry-related activities; warehouses or other facilities for shipping or storage; automobile or other vehicle sales or storage; airports; concrete batch plants; metal shops; processing or refining of sand, gravel, metals, chemicals, or any other materials; mills; slaughter houses or other facilities for processing livestock or other animals; fur farms; facilities for processing produce; kennels or other facilities for boarding animals; fish farms or other aquaculture facilities; hunting or fishing leases; picnic areas, campgrounds, race tracks, golf courses, sports fields or arenas, or any other facility for entertainment or recreational use or activity; and the retail sale of any item.
- 6.24. **"Commercial" Defined.** The term "commercial" for the purposes of this Easement shall mean any use or activity engaged in with the intent to obtain money and/or any other item of economic value in exchange for any product or service produced by such use or activity, or that results in the receipt of money and/or any other item of economic value from the exchange of any product or service produced by such use or activity, notwithstanding the absence of any profit from such use or activity.
7. **NOTICE AND APPROVAL**
- 7.1 **Grantor Notice.** Grantor shall notify Grantee prior to undertaking certain permitted activities as expressly provided above. The purpose of requiring Grantor to notify Grantee prior to undertaking such 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 and terms of this Easement. Whenever notice is required and except as may be otherwise expressly provided herein, Grantor shall notify Grantee in writing not less than forty-five (45) 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 activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose and terms of this Easement; such notice shall not be considered to have been given unless it contains the foregoing information.
- 7.2 **Grantee Approval.** Where Grantee's approval is expressly required above, Grantee shall grant or withhold its approval, which approval must be in writing, within thirty (30) days of receipt of Grantor's written request for approval. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the Purpose and terms of this Easement, unless otherwise expressly provided herein. Grantee's approval may include reasonable conditions that must be satisfied in undertaking the proposed use or activity.
- 7.3 **Grantee's Failure to Approve Within the Required Time.** When Grantee's approval is required, and when Grantee does not grant or withhold its approval in the time period and manner set forth herein, Grantor may conclusively assume Grantee's approval of the permitted use or activity in question, as described in Grantor's notice thereof.



7.4 Requirements for Notices.

- 7.4.1 Except as may be otherwise expressly provided for herein, any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be (a) in writing; (b) either (i) delivered in person, (ii) sent by certified United States mail (postage prepaid and with return receipt requested), or (iii) by Federal Express or other reputable "overnight" service, provided that the sender requests next-business-day delivery; and (c) addressed as follows:

To Grantor: Dugualla Community Inc.
Attn: President
PO Box 1368
Oak Harbor, WA 98277

To Grantee: Whidbey Camano Land Trust
Attn: Land Steward
765 Wonn Road C201
Oak Harbor, WA 98277

or to such other address as either party from time to time shall designate by written notices to the other.

- 7.4.2 Except as may be otherwise expressly provided for herein, (a) if such notice is delivered in person, it shall be deemed given immediately upon delivery or refusal of delivery or receipt; (b) if such notice is sent by certified mail, it shall be deemed given on the earlier of (i) the date of first attempted delivery; or (ii) the third day after being deposited in the mail; and (c) if such notice is sent by Federal Express or other reputable "overnight" service, it shall be deemed given on the next business day after being deposited with the delivery service.
- 7.4.3 Where notice to Grantor of entry upon the Protected Property by Grantee is required under this Easement, Grantee may notify any of the persons constituting Grantor or any appropriate agent of Grantor by telephone, mail, or in person prior to such entry.

8 DISPUTE RESOLUTION

If a dispute arises between the Parties concerning the consistency of any proposed use or activity with the Purpose or terms of this Easement and if the party intending to engage in such use or activity agrees not to proceed with the use or activity pending resolution of the dispute, the Parties shall first meet together to discuss the dispute and attempt resolution. Thereafter, either party may refer the dispute to mediation or arbitration by request made in writing upon 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 the Washington State mediation or arbitration statute then in effect, and an arbitration award may be entered in any court having jurisdiction thereof. If arbitration is pursued, the substantially 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 of competent jurisdiction that may be called upon to enforce or review the award.

9 GRANTEE'S REMEDIES

- 9.1 **Notice of Violation, Corrective Action.** If Grantee determines that the Grantor is in violation of the terms and/or Purpose of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation 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 **Grantor's Failure to Respond.** Grantee may bring an action as provided in Section 9.3 below if Grantor:
- 9.2.1 Fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee;
- 9.2.2 Under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period; or
- 9.2.3 Fails to continue diligently to cure such violation until finally cured.
- 9.3 **Grantee's Action and Damages.** Grantee may bring action at law or in equity, or both, in a court of competent jurisdiction to enforce the terms of this Easement; to enjoin the violation, *ex parte* as necessary and as allowed under the applicable civil rules, by temporary or permanent injunction; to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any of the Conservation Values protected by this Easement, including damages for the loss of the Conservation Values; and to require the restoration of the Protected Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefore, Grantee, in its sole and absolute discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property. All such actions for injunctive relief may be taken without Grantee being required to post bond or provide other security.
- 9.4 **Immediate Action Required.** If Grantee, in its sole and absolute 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 **Nature of Remedy.** 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.

- 9.6 **Liquidated Damages.** Inasmuch as the actual damages to the Conservation Values of the Protected Property that could result from a breach of this Easement by Grantor would be impractical or extremely difficult to measure, the Parties agree that the money damages Grantee is entitled to recover shall be the following:
- 9.6.1 With respect to the construction of any improvement prohibited by this Easement, which is not subsequently removed and the Protected Property restored to its previous condition within a reasonable amount of time specified by Grantee, then damages shall be an amount equal to the greater of (a) the actual cost of such improvement, or (b) the increase in the fair market value of the Protected Property or of any other real property owned by Grantor attributable to such improvement; and
- 9.6.2 With respect to any use or activity prohibited by this Easement, whether or not involving the construction or maintenance of an improvement, an amount equal to any economic gain realized by the Grantor and/or any other party, commencing from the date of breach; provided, however, that if timber is harvested or logs are removed in violation of the terms of this Easement, the amount determined under this Section 9.6.2 shall be equal to three times the greater of (a) the actual sales price realized upon disposition of such harvested timber or logs, or (b) the current market price of such harvested timber or logs as of the date of breach; and
- 9.6.3 Any other damages allowable under Washington law, including, but not limited to, restoration of lost or damaged Conservation Values.
- 9.7 **Costs of Enforcement.** In the event Grantor or Grantee finds it necessary to bring an action at law or other proceeding against the other party to enforce or interpret any of the terms, covenants, or conditions of this Easement, the prevailing party in any such action or proceeding shall be paid all costs and reasonable attorneys' and consultants' fees (whether incurred at the trial, appellate, or administrative level) by the other party and all such costs and attorneys' and consultants' fees shall be included in any judgment secured by such prevailing party.
- 9.8 **Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of the Grantee, and any forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or 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 Grantors shall impair such right or remedy or be construed as a waiver.



- 9.9 **Assistance of Legal Counsel/Waiver.** Grantor acknowledges that Grantor has carefully reviewed this Easement and has consulted with and been advised by legal counsel of its terms and requirements. In full knowledge of the provisions of this Easement and in view of the facts that Grantee will not be continually present on the Protected Property, that the resources available to Grantee to monitor compliance with the terms of this Easement are limited, and that activities inconsistent with the Purpose and provisions of this Easement could take place without Grantee's immediate knowledge, Grantor hereby waives any claim or defense Grantor may have against Grantee under or pertaining to this Easement based upon adverse possession, prescription, laches, estoppel, or changed circumstances relating to the Protected Property or this Easement.
- 9.10 **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes, or from acts of trespassers that Grantor could not reasonably have anticipated or prevented. In the event the terms of this Easement are violated by acts of trespassers that Grantor could not reasonably have anticipated or prevented, Grantor agrees, at Grantee's option, to join in any suit, to assign Grantor's right of action to Grantee, or to appoint Grantee its attorney-in-fact, for the purpose of pursuing enforcement action against the responsible parties.
- 9.11 **Compliance Certificates.** Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate that certifies, to the best of Grantee's knowledge, Grantor's compliance or lack thereof with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as requested by Grantor. Such certification shall be limited to the condition of the Protected Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within thirty (30) days of receipt of Grantor's written request and payment therefore.
- 10 **ACCESS BY PUBLIC**
- Access by the general public to any portion of the Protected Property is only through special arrangement with the Grantee and the Grantor and only as otherwise expressly provided herein.
- 11 **COSTS, LIABILITIES, TAXES, AND ENVIRONMENTAL COMPLIANCE**
- 11.1 **Liabilities and Insurance.** 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 comprehensive general



liability insurance coverage. Such insurance shall include Grantee's interest and name Grantee as an additional insured and provide for at least thirty (30) days notice to Grantee before cancellation and that the act or omission of one insured will not invalidate the policy as to the other insured party. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement and undertaken by Grantor, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall cooperate with Grantee in Grantee's efforts to obtain any permits that may be required for any activity undertaken by Grantee pursuant to this Easement. Grantor shall keep the Protected Property free of any liens arising out of any work performed for, material furnished to, or obligations incurred by Grantor.

- 11.2 **Compliance with Applicable Laws.** Grantor shall comply with all statutes, laws, ordinances, rules, regulations, codes, orders, guidelines, or other restrictions, or requirements applicable to the Protected Property that have been enacted or otherwise promulgated by any federal, state, county, municipal, or other governmental or quasi-governmental agency, board, bureau, commission, court, department, panel, or other official body (whether legislative, administrative, or judicial), or by any competent official of any of the foregoing ("Applicable Law"), including, but not limited to, those relating to pollution or the protection of human health or the environment.
- 11.3 **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is authorized, but in no event obligated, to make or advance any payment of taxes, upon three (3) 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 created by such payment shall bear interest until paid by the Grantor at the maximum rate allowed by law.
- 11.4 **Environmental Representations and Warranties.** Grantor represents and warrants that, as of the effective date of this Easement, and to the best of Grantor's knowledge:
- 11.4.1 There are no apparent or latent defects in or on the Protected Property;
- 11.4.2 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, including without limitation all federal, state, and local environmental laws, regulations, and requirements;
- 11.4.3 There has been no release, generation, treatment, disposal, storage, dumping, burying, or abandonment ("Release") on the Protected Property of any substances, materials, or wastes that are hazardous, toxic, dangerous, harmful or are designated as, or contain



components that are designated as, hazardous, toxic, dangerous, or harmful and/or which 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 ("Hazardous Substances");

- 11.4.4 There are not now any underground storage tanks located on the Protected Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Protected Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;
- 11.4.5 Neither Grantor nor Grantor's predecessors in interest have Released any Hazardous Substances off-site, nor have they Released any substance at a site designated or proposed to be designated as a federal or state Superfund site;
- 11.4.6 There is no pending or threatened litigation affecting, involving, or relating to the Protected Property or any portion thereof; and
- 11.4.7 No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Protected Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.
- 11.5 **Remediation.** If, at any time, there occurs, or has occurred, a Release in, on, or about the Protected Property of a Hazardous Substance, 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 solely by Grantee, in which case Grantee shall be responsible remediation.
- 11.6 **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") or the Model Toxics Control Act, as amended ("MTCA").
- 11.7 **Grantor's Indemnification.** Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, contractors, and assigns (collectively "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:



- 11.7.1 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 action or omission of any of the Indemnified Parties on or about the Protected Property. The foregoing provisions of this Section 11.7 shall not apply to any circumstance relating to any inability or failure of Indemnified Parties to: (a) construct, install, maintain, or operate any Existing or New Drainage Facility; (b) conduct any restoration or enhancement of the Protected Property; and/or (c) maintain any feature or improvement done in furtherance of such restoration or enhancement.
- 11.7.2 Violations or alleged violations of, or other failure to comply with, and federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic, or dangerous substances or materials, including without limitation, CERCLA (42 U.S.C. 9601 et seq.) and MTCA (ch70.105D RCW), by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property, unless such violations or alleged violations are due to the acts or omissions of any of the Indemnified Parties on the Property;
- 11.7.3 The presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defines, 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 solely by any of the Indemnified Parties;
- 11.7.4 The obligations, covenants, representations and warranties specified in this Section.
- 11.8 **Grantee's Indemnification.** Grantee shall hold harmless, indemnify, and defend Grantor and Grantor's heirs, personal representatives, successors, and assigns (collectively "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. The foregoing provisions of this Section 11.8 shall not apply to any circumstance relating to any inability or failure of Grantee to: (a) construct, install, maintain, or operate any Existing or New Drainage Facility; (b) conduct any restoration or enhancement of the Protected Property; and/or (c) maintain any feature or improvement done in furtherance of such restoration or enhancement.

12 SUBSEQUENT TRANSFER OR EXTINGUISHMENT

- 12.1 **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 judicial proceedings in a court of competent

jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with Section 12.2 below. Grantee shall use all such proceeds in a manner consistent with the Purpose of this Easement. If this Easement is so terminated or extinguished, Grantee shall be entitled to receive compensation from Grantor in an amount determined as provided in Section 12.2 below. Said court may provide for such compensation to be paid to Grantee either at the time of the court proceedings or at the time of a subsequent sale, exchange, or involuntary conversion of the Protected Property. In either case, this Easement shall remain in full force and effect and shall not be terminated or extinguished until (a) the full compensation has been received by Grantee, (b) the court has entered a judgment against the Grantor in favor of Grantee in the amount of said compensations, which judgment has a lien priority that is as of the effective date of this Easement, or (c) Grantee has received a fully executed promissory note in the amount of said compensation, bearing interest at 2 points above prime, payable at the time of the next sale, exchange, or involuntary conversion of the Protected Property, which promissory note is secured by a mortgage or deed of trust on the Protected Property, for Grantee's benefit, and with a lien priority that is as of the effective date of this Easement. Under no circumstance shall the Purpose of this Easement be deemed impossible to accomplish by virtue of any condition, degree of functionality, or existence of any Existing or New Drainage Facility.

- 12.2 **Valuation.** This Easement constitutes a real property interest immediately vested in Grantee, which, for the purpose of Section 12.1 above, the Parties stipulate to have a fair market value determined by multiplying (1) the fair market value of the Protected Property unencumbered by the Easement (minus any increase in the value after the date of this grant attributable to improvements) by (2) the ratio of the value of the Easement at the time of this grant to the value of the Protected Property, without deduction for the value of the Easement, at the time of this grant. For the purposes of this Section 12.2, the ratio of the value of the Easement to the value of the Protected Property unencumbered by the Easement shall be 80% and shall remain constant.
- 12.3 **Condemnation.** If the Easement is taken, in whole or in part, by the exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law. If all or part of the Protected Property is taken by the exercise of the power of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Easement, Grantor and Grantee shall cooperate in appropriate action(s) at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, it being expressly agreed that the Easement constitutes a compensable property right. The reasonable expenses of each party incurred in connection with such action(s) shall first be deducted from the total proceeds, and the remaining proceeds shall be divided consistent with the provisions of this Easement, based on the respective values of the interests of Grantor and Grantee, calculated in accordance with the valuation provisions.

- 12.4 **Subsequent Transfers.** Grantor agrees (1) to incorporate by express reference the terms of this Easement 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, and (2) to describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property. Grantor further agrees to give written notice to the Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or such transferee's representative. The failure of the Grantor to perform any act required by this Section 12.4 shall not impair the validity of this Easement or limit its enforceability in any way.

13 **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; provided that no amendment shall be allowed that shall affect the qualification of this Easement or the status of Grantee under any applicable laws, including RCW 64.04.130, Chapter 84.34 RCW, or Section 170(h) of the Code, and any amendment shall be consistent with the Purpose of this Easement, and shall not affect its perpetual duration, and shall be in accordance with the provisions of the Assignment of Rights referenced in Section 15. Any such amendment shall be recorded in the official records of Island County, Washington, and any other jurisdiction in which such recording is required.

14 **ASSIGNMENT**

- 14.1 **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Code (or any successor provision then applicable), the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under RCW 64.04.130 or RCW 84.34.250 (or any successor provision then applicable), and in accordance with the provisions of the Assignment of Rights referenced in Section 15. As a condition of such transfer, Grantee shall require that the Purpose of this Easement continues to be carried out by the transferee. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.
- 14.2 **Succession.** If at any time it becomes impossible for Grantee to ensure compliance with the covenants contained herein and Grantee has not named a successor organization, or the Grantee shall cease to exist, then its rights and duties hereunder shall become vested and fall upon such other entity, with purposes similar to the Whidbey Camano Land Trust, constituting a "qualified organization" within the meaning of the Code (or corresponding provision of any future statute); *provided* that if such vesting in the entities described above 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 of

competent jurisdiction shall direct, pursuant to the applicable Washington law and the Code (or corresponding provision of any future statute) and with due regard to the Purpose and terms of this Easement.

15 RIGHTS OF THE STATE OF WASHINGTON.

Grantor hereby acknowledges its authorization and approval of the assignment of certain rights in this Easement to the State of Washington through the Recreation and Conservation Office, which rights shall be co-held by Grantee and the State of Washington through the Recreation and conservation Office. This Assignment of Rights shall be substantially in the form attached to this Easement as Exhibit E.

16 RECORDATION

16.1 Grantee shall record this instrument in a timely fashion in the official records of Island 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.

16.2 Grantee is authorized to record or file from time-to-time any and all notices or instruments that may be appropriate to ensuring the perpetual enforceability of this Easement, and Grantor agrees to execute, acknowledge, and/or deliver (as applicable) any and all such notices or instruments upon reasonable request from Grantee to do so.

17 GENERAL PROVISIONS

17.1 **Effective Date.** The effective date of this Easement shall be the date on which this Easement is first recorded.

17.2 **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Washington.

17.3 **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 and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW. If any provision in this instrument 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.

17.4 Interpretation.

17.4.1 The Parties may mutually agree to an interpretation of any ambiguous term of this Easement or to a determination of whether a particular use or activity is consistent with the Purpose of this Easement. The Parties may, furthermore, memorialize such interpretation or determination in writing and shall then append such writing to Grantee's permanent records that pertain to this Easement. The Parties shall then have the right to rely on such interpretation or determination for all future conduct.



- 17.4.2 In this Easement, personal pronouns shall be construed as though of the gender and number required by the context, the singular including the plural, the plural including the singular, and each gender including other genders, all as may be required by the context and in a manner that provides the greatest protection for the Conservation Values. Wherever in this Easement the term "and/or" is used, it shall mean: "one or the other, both, any one or more, or all" of the things, events, persons or parties in connection with which the term is used.
- 17.4.3 The Parties agree that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Easement.
- 17.5 **Severability.** Except as further provided in this Section 16.5, if any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid or unenforceable by any court of competent jurisdiction, 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 or unenforceable, as the case may be, shall not be affected thereby. If a provision hereof is determined to be invalid or unenforceable by a court of competent jurisdiction and such provision was an essential part of this Easement, then this instrument shall be reformed by such court to ensure fulfillment of the Purpose and terms hereof and in a manner consistent with applicable law.
- 17.6 **Entire Agreement.** This instrument sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 13 above.
- 17.7 **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- 17.8 **"Grantor" - "Grantee".** The terms "Grantor" and "Grantee," wherever used in this instrument, and any pronouns used in the place thereof, shall be held to mean and include, respectively the above-named Grantor and Grantor's personal representatives, heirs, successors, and assigns, and the above-named Grantee and its successors and assigns.
- 17.9 **Benefited Parties.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the Parties and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property. 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.



- 17.10 **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.
- 17.11 **Captions.** The captions in this instrument have been inserted solely for convenience and ease of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- 17.12 **Counterparts.** The Parties may execute this instrument in two or more counterparts, which shall, in the aggregate, 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.
- 17.13 **Joint Obligation.** The obligations imposed by this Easement upon Grantor shall be joint and several.
- 17.14 **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.
- 17.15 **Subsequent Liens on Property.** No provision of this Easement is to be construed as impairing the ability of Grantor to use the Protected Property as collateral for any loan, provided that any lien created thereby shall be subordinate to this Easement.
- 17.16 **Recitals.** Each recital set forth above is fully incorporated into this Easement.

18 SCHEDULE OF EXHIBITS



Exhibit A. Legal Description of Property Subject to Easement.

Exhibit B. Site Map.

Exhibit C. View Corridor and Plant Cover Category Map.

Exhibit D. Community Use Map.

Exhibit E. Assignment of Rights

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

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 15 day of December 2009.

Dugualla Community Inc.

By [Signature]
12/17/2009, President

By [Signature]
_____, Board Member

Date: 12/17/2009

By [Signature]
Peter Hunt, Board Member

Date: 12/16/09

By [Signature]
_____, Board Member

Date: 12/16/09

By [Signature]
_____, Board Member

Date: 12/15/09

THE WHIDBEY CAMANO LAND TRUST does hereby accept the above Grant Deed of Conservation Easement.

Dated: _____

Grantee's Signature

By: Ivan Miller

Its: President

18 SCHEDULE OF EXHIBITS



- Exhibit A. Legal Description of Property Subject to Easement.
- Exhibit B. Site Map.
- Exhibit C. View Corridor and Plant Cover Category Map.
- Exhibit D. Community Use Map.
- Exhibit E. Assignment of Rights

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

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this ____ day of December 2009.

Dugualla Community Inc.

By _____
_____, President

By _____
_____, Board Member
Date: _____

By _____
_____, Board Member
Date: _____

By _____
_____, Board Member
Date: _____

By _____
_____, Board Member
Date: _____

THE WHIDBEY CAMANO LAND TRUST does hereby accept the above Grant Deed of Conservation Easement.

Dated: 12/15/09

Ivan D Miller
Grantee's Signature
By: Ivan Miller
Its: President

STATE OF WASHINGTON)

COUNTY OF Island)

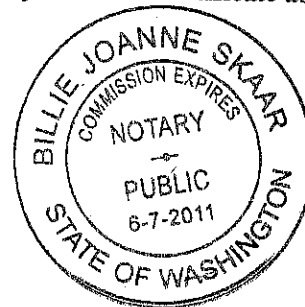
) ss.



On this 18th day of December 2009, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared Frederick E. Wilmut, known to me to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he signed the said instrument as his her free and voluntary act and deed for the uses and purposes therein mentioned.

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

Billie Joanne Skaar
NOTARY PUBLIC in and for the State of Wa
Washington, residing at Island Co.
Print Name: Billie Joanne Skaar
My commission expires 6/7/2011



STATE OF WASHINGTON)

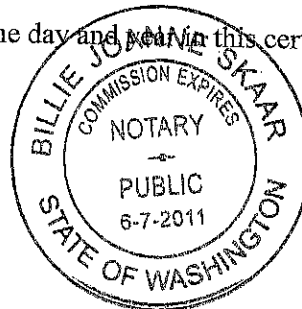
COUNTY OF Island)

) ss.

On this 18th day of December 2009, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared Ronald J. Van Oam, known to me to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he signed the said instrument as his her free and voluntary act and deed for the uses and purposes therein mentioned.

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

Billie Joanne Skaar
NOTARY PUBLIC in and for the State of Wa
Washington, residing at Island Co.
Print Name: Billie Joanne Skaar
My commission expires 6/7/2011



STATE OF WASHINGTON)

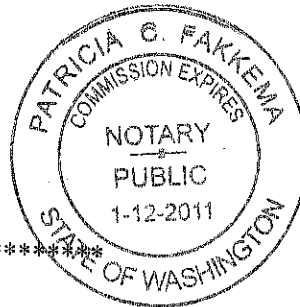
COUNTY OF Island) ss.



On this 16 day of December 2009, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared Peter Hunt, known to me to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he/she signed the said instrument as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

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

NOTARY PUBLIC in and for the State of
Washington, residing at Island County
Print Name: Patricia C. Fakkema
My commission expires 1/12/11



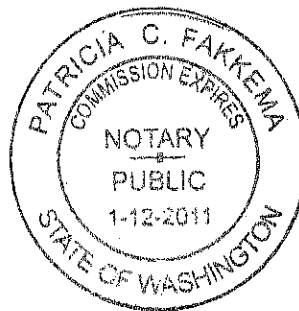
STATE OF WASHINGTON)

COUNTY OF Island) ss.

On this 16 day of Dec 2009, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared Dale Smith, known to me to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he/she signed the said instrument as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

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

NOTARY PUBLIC in and for the State of
Washington, residing at Island County
Print Name: Patricia C. Fakkema
My commission expires 1/12/11





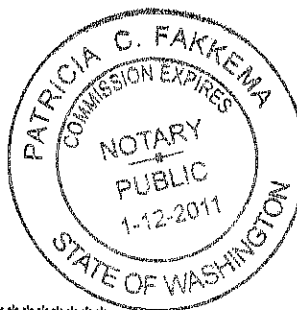
STATE OF WASHINGTON)

COUNTY OF Island) ss.

On this 15 day of December 2009, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared Roger A. Purvis, known to me to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he/she signed the said instrument as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

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

[Signature]
NOTARY PUBLIC in and for the State of
Washington, residing at Island County
Print Name: Patricia C. Fakkema
My commission expires 1/12/11



STATE OF WASHINGTON)

COUNTY OF Island) ss.

On this 15th day of December 2009, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally appeared IVAN MILLER, known to me to be the President of the Whidbey Camano Land Trust, who executed the foregoing instrument, and acknowledged to me that he signed the said instrument as his free and voluntary act and deed for the uses and purposes therein mentioned.

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

[Signature]
NOTARY PUBLIC in and for the State of
Washington, residing at Seattle, WA
Print Name: Christin Hilton
My commission expires 5/2/2010

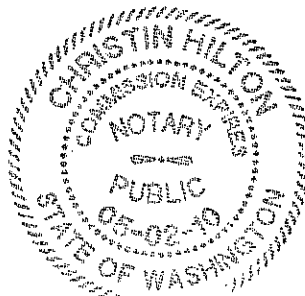




Exhibit A – Legal Description of Property Subject to Easement

Ducken Property:

PARCEL 1

ALL OF GOVERNMENT LOT 4 AND ADJACENT TIDELANDS IN SECTION 16, TOWNSHIP 33 NORTH, RANGE 2 EAST, W.M.;

EXCEPT ANY TIDELANDS OWNED BY ISLAND COUNTY;

ALSO EXCEPT ANY PORTION LYING WITHIN THE PLAT OF DUGUALLA BAY HEIGHTS, DIVISION NO. 4, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 8 OF PLATS, PAGE 48, RECORDS OF ISLAND COUNTY, WASHINGTON;

ALSO EXCEPT ANY PORTION LYING WITHIN THE PLAT OF DUGUALLA BAY HEIGHTS, DIVISION NO. 6, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 9 OF PLATS, PAGE 16, RECORDS OF ISLAND COUNTY, WASHINGTON;

ALSO EXCEPT ANY PORTION LYING WITHIN THE PLAT OF DUGUALLA BAY HEIGHTS, DIVISION NO. 7, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 9 OF PLATS, PAGE 69, RECORDS OF ISLAND COUNTY, WASHINGTON. SITUATE IN ISLAND COUNTY, WASHINGTON.

PARCEL 2

THAT PORTION OF GOVERNMENT LOT 1 OF SECTION 17, TOWNSHIP 33 NORTH, RANGE 2 EAST, W.M., LYING SOUTHERLY OF THE PLAT OF DUGUALLA BAY HEIGHTS DIVISION NO. 7, RECORDED IN VOLUME 9 OF PLATS, PAGE 69, RECORDS OF ISLAND COUNTY, WASHINGTON, AND SOUTHERLY AND EASTERLY OF THE PLAT OF DUGUALLA BAY HEIGHTS DIVISION NO. 8, RECORDED IN VOLUME 10 OF PLATS, PAGE 52, RECORDS OF ISLAND COUNTY, WASHINGTON, AND EASTERLY OF ELK HORN STREET, AS SHOWN ON THE ABOVE MENTIONED PLAT OF DUGUALLA BAY HEIGHTS DIVISION NO. 8;

EXCEPT THEREFROM THAT PORTION LYING WITHIN DUGUALLA ROAD AS SHOWN ON THE PLAT OF DUGUALLA BAY HEIGHTS DIVISION NO. 4, RECORDED IN VOLUME 8 OF PLATS, PAGE 48, RECORDS OF ISLAND COUNTY, WASHINGTON.

ALSO EXCEPT THE WEST 264.6 FEET OF GOVERNMENT LOT 1, SECTION 17, TOWNSHIP 33 NORTH, RANGE 2 EAST, W.M., LYING SOUTHERLY OF DUGUALLA ROAD; SITUATE IN ISLAND COUNTY, WASHINGTON.

PARCEL 3

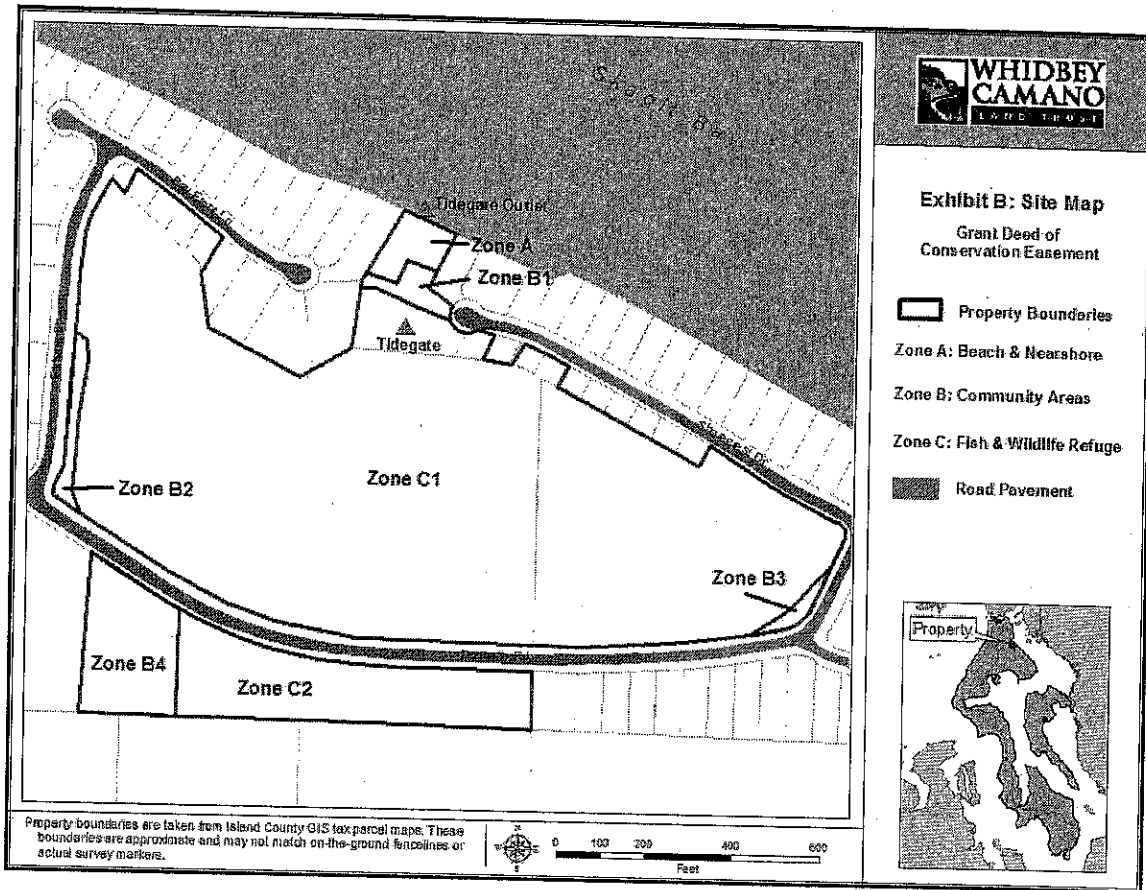
LOTS 46A, 47A AND 49A PLAT OF DUGUALLA BAY HEIGHTS, DIVISION NO. 7, AS PER PLAT RECORDED IN VOLUME 9 OF PLATS, PAGE 69, RECORDS OF ISLAND COUNTY, WASHINGTON. SITUATE IN ISLAND COUNTY, WASHINGTON.

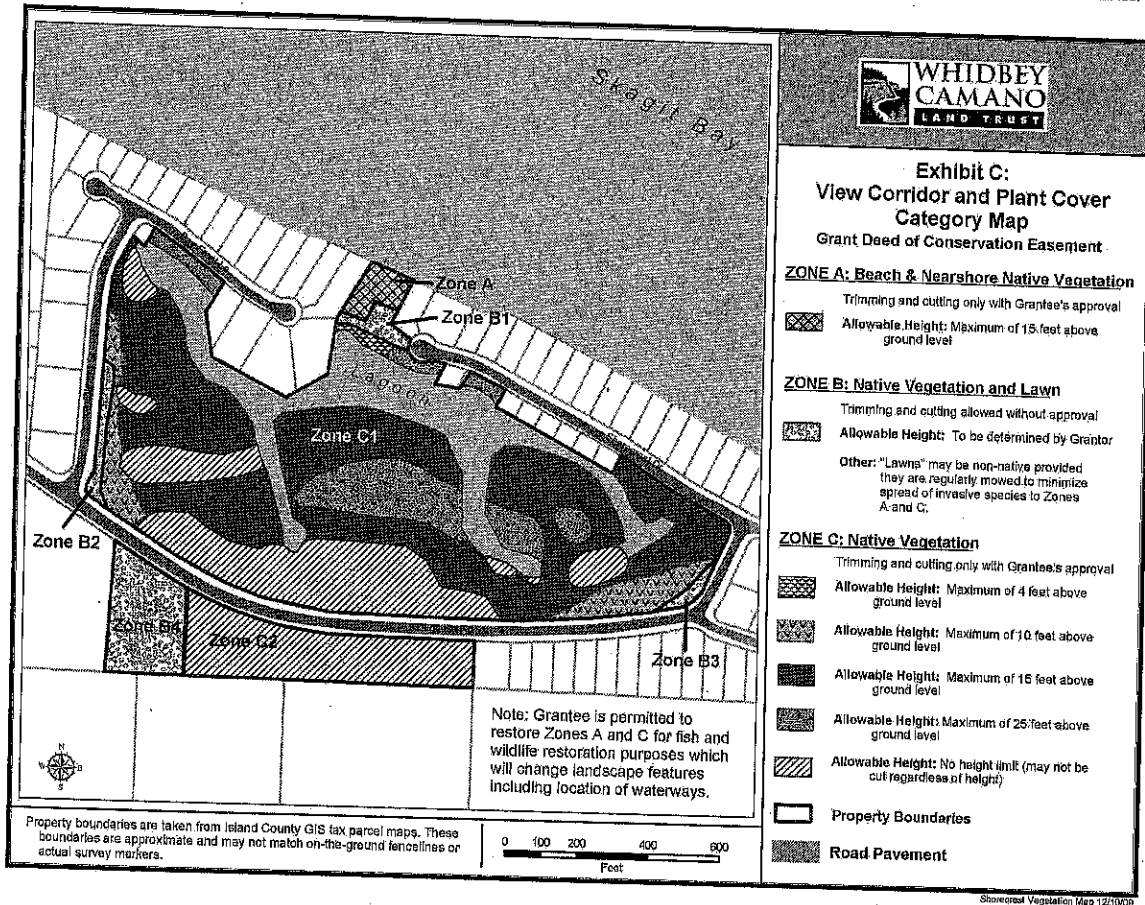
PARCEL 4

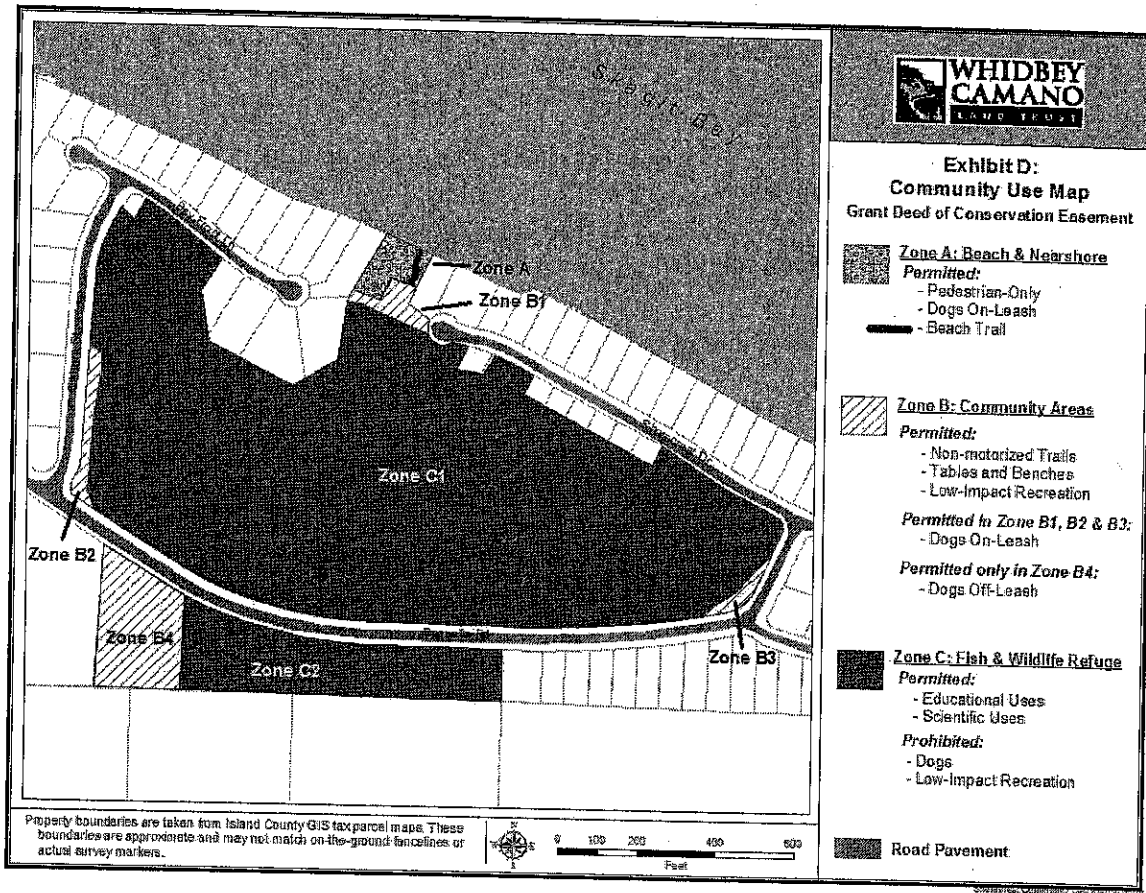
LOTS 79, 80, 81 AND 82 PLAT OF DUGUALLA BAY HEIGHTS, DIVISION NO. 8, AS PER PLAT RECORDED IN VOLUME 10 OF PLATS, PAGE 52, RECORDS OF ISLAND COUNTY, WASHINGTON. SITUATE IN ISLAND COUNTY, WASHINGTON.

Dugualla Property:

Lot D, Plat of Dugualla Bay Heights, Division No. 8, as per plat recorded in Volume 10 of Plats, page 52, records of Island County, Washington. Situate in the County of Island, State of Washington







**EXHIBIT E
ASSIGNMENT OF RIGHTS**

WHEN RECORDED RETURN TO:

Whidbey Camano Land Trust
765 Wonn Road #C201
Greenbank, WA 98253

**ASSIGNMENT OF RIGHTS
SALMON RECOVERY FUNDING BOARD**

Assignor: Whidbey Camano Land Trust
Assignee: State of Washington

Legal Description

Abbreviated form: Ptn GL 4, Sec 16-33-2 EWM and Ptn GL 1, Sec 27-33-2 EWM, Lots 46A, 47A, and 49A, Dugualla Bay Hts Div. 7, Lots 79-82, Dugualla Bay Hts. Div. 8, Lot D, Dugualla Bay Hts Div. 8.

Additional legal on Exhibit B.

Assessor's Tax Parcel Numbers: S6515-07-00047, 00049 and 00046; S66515-08-00079, 00080, 00081, and 00082; R23317-326-4720; R23316-298-0570; and S6515-08-0000D.

This ASSIGNMENT OF RIGHTS ("Assignment") is executed as of the ____ day of December, 2009 by Whidbey Camano Land Trust, a non profit organization ("Assignor"), to and in favor of The State of Washington ("State"), through the Salmon Recovery Funding Board ("SRFB"), administered by the Recreation and Conservation Office ("RCO").

RECITALS

- A. Assignor has entered into a conservation easement ("Conservation Easement") with a certain property owner ("Owner") within the Shorecrest Lagoon area of Island County, Washington (W.R.I.A. #6 under WAC 173-500-040). The name and address of the Owner and the recording number of the Conservation Easement is set forth in Exhibit A attached hereto and incorporated herein. The legal description of the Property subject to the Conservation Easement is set forth in Exhibit B attached hereto and incorporated herein.
- B. The conservation purpose of the Conservation Easement is described in the Conservation Easement. That purpose is also described in the Project Agreement entered into between





the recipient of SRFB funds ("Sponsor") and the State through the SRFB entitled Shorecrest Lagoon Protection Project Number 07-1591 dated December 13, 2007, and the application and supporting materials which are on file with the State in connection with the Project Agreement, which Project Agreement is hereby incorporated herein by reference. That purpose includes the protection of habitat as defined in the Conservation Easement.

- C. Owner has authorized Assignor to assign to the State certain rights for access to and stewardship of the property covered by the Conservation Easement. Assignment of such rights is a necessary condition to receipt of grant funding under the Project Agreement and the policies of the Salmon Recovery Funding Board administered by the RCO. Such rights are valuable to the State in connection with ensuring protection of habitat under the terms of the Conservation Easement, and are particularly valuable because Assignor and Owner have agreed that Assignor will retain all responsibility for obligations of the Assignor under the Conservation Easement.
- D. These recitals are incorporated herein by this reference.

Now, therefore, Assignor and the State agree as follows:

AGREEMENT

1. **Assignment.** For and in consideration of monies coming in whole or in part from the State of Washington and in fulfillment of terms of the Project Agreement identified herein, Assignor does hereby assign, transfer, set over, convey and deliver to the State individually, and as representatives of the people of the State, the following rights (collectively referred to as "Rights") under the Conservation Easement the recording number of which is listed in Exhibit A attached hereto and incorporated herein by this reference:
 - a. **Access.** To enter the Property subject to the Conservation Easement at a reasonable time and upon prior arrangement with Assignor and Owner, in order to monitor and evaluate the performance, compliance, and/or quality assurance under the Project Agreement.
 - b. **Injunction and Restoration.** In the event of the failure of Assignor to undertake such injunction and restoration, to enjoin any use of, or activity on, the Property which is inconsistent with the terms of the Conservation Easement, including trespass by members of the public, and undertake or cause to be undertaken the restoration of such areas or features of the Property as may be damaged by uses or activities contrary to the provisions of the Conservation Easement.
 - c. **Enforcement.** In the event of the failure of Assignor to undertake such enforcement, to enforce the terms of the Conservation Easement, and thereby assume the Assignor's remedies under the Conservation Easement.



- d. **Amendments.** To review and approve any proposed amendments to the Conservation Easement. Review and approval by RCO's Director will be for compliance with the terms of the Project Agreement.
- e. **Stewardship and Restoration Plans.** To review any Stewardship or Restoration Plans, including habitat restoration and enhancement plans, as defined in the Conservation Easement. Review by RCO's Director will be for compliance with the terms of the Project Agreement.

These Rights shall be held in common with Assignor or Assignor's successors and assigns.

- 2. **State's Exercise of Rights.** The State hereby represents and warrants that its exercise of rights under this Assignment will be consistent with the conservation purpose defined in the Conservation Easement and the Project Agreement.
- 3. **Representations and Warranties of Assignor.** Assignor hereby represents and warrants to the State that:
 - a. Owner, identified in Exhibit A attached hereto and incorporated herein, has authorized and approved this Assignment.
 - b. Assignor shall enforce the terms of the Conservation Easement as provided in the Conservation Easement.
 - c. Assignor shall comply with, and the SRFB and RCO shall not be responsible for determining compliance with, all applicable federal, state, and local laws, regulations, and policies in its administration of the Conservation Easement or the undertaking of any of its rights under the Conservation Easement.
 - d. Neither Assignor nor Owner has any claims or causes of action, at law or in equity, with respect to any Conservation Easement as of the date provided above.
- 4. **Obligations.** It is expressly understood and agreed that, by the acceptance of this Assignment, the State has not assumed, and shall not become obligated to keep, fulfill, observe, perform or discharge, any duty or obligation of Assignor under the Conservation Easement.
- 5. **Indemnity.** Assignor shall defend, protect and hold harmless the State, the SRFB, the RCO, or any employees thereof, from and against any and all costs, claims, fees and expenses arising out of or in any way relating to Assignor's representations and warranties under this Assignment, Assignor's obligations under the Conservation Easement, or the acts by or omissions of Assignor or Owner.
- 6. **Replacement Property.** The Conservation Easement may be extinguished under certain circumstances identified in the Conservation Easement. Assignor may be entitled to compensation in such event. Assignor shall use all such proceeds for acquisition, restoration and/or enhancement of substantially equivalent property or property interests. Assignor hereby agrees to consult with, and receive the approval of,

the SRFB and the RCO in the selection of any replacement property and to assign to the State the same or substantially equivalent rights for access to and stewardship of the replacement property as provided for in this Assignment.

7. **Restriction on Assignment.** Assignor shall not assign the Conservation Easement, or the performance of any obligations to the State under the Conservation Easement without the express written consent of the RCO's Director.
8. **Assignment Term.** The term of this Assignment shall be the same as the term of the Conservation Easement.
9. **Disputes.** Any disputes between Assignor and the State under this Assignment shall be governed by the terms of the Project Agreement.
10. **Governing Law/Venue.** This Assignment shall be governed by the laws of the State of Washington. In the event of a lawsuit between Assignor and the State involving this Assignment, venue shall be property only in Thurston County. Assignor, by executing this Assignment, acknowledges the jurisdiction of the courts of the State of Washington in this matter.
11. **Severability.** If any provision of this Assignment or any provisions of any document incorporated by reference herein shall be held invalid, such invalidity shall not affect the other provisions of this Assignment which can be given effect without the invalid provision and to this end the provisions of this Assignment are declared to be severable.

Exhibit A. OWNER AND CONSERVATION EASEMENT RECORDING NUMBER

Exhibit B. Legal Description of Property Subject to Easement.

ASSIGNOR:

Whidbey Camano Land Trust

By:

Ivan D Miller

Ivan Miller

Its

President

STATE:

THE STATE OF WASHINGTON, through
Its Salmon Recovery Funding Board,
Administered by the RCO

By: _____

Its

Director

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)



I certify that I know or have satisfactory evidence that Ivan Miller is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the President of Whidbey Camano Land Trust to be the free and voluntary act of such party for the uses and purposed mentioned in the instrument.

Dated: _____

Printed Name: _____
Notary Public in and for the State of Washington,
residing at - _____

My Commission Expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Director of the Salmon Recovery Funding Board, administered by the RCO of the State of Washington to be the free and voluntary act of such party for the uses and purposed mentioned in the instrument.

Dated: _____

Printed Name: _____
Notary Public in and for the State of Washington,
residing at - _____

My Commission Expires _____

12/23/2009 10:44:30

Recording Fee \$108.00 Page 27 of 48

Easement
Island County Washington

4265859



EXHIBIT A
OWNER AND CONSERVATION EASEMENT RECORDING NUMBER

Name: Dugalla Community, Inc.
Address: PO Box 1638
Oak Harbor, WA 98277
Recording No: _____, Records of Island County, WA



EXHIBIT B

LEGAL DESCRIPTION OF PROPERTY SUBJECT TO CONSERVATION EASEMENT

Ducken Property:

PARCEL 1

ALL OF GOVERNMENT LOT 4 AND ADJACENT TIDELANDS IN SECTION 16, TOWNSHIP 33 NORTH, RANGE 2 EAST, W.M.;

EXCEPT ANY TIDELANDS OWNED BY ISLAND COUNTY;

ALSO EXCEPT ANY PORTION LYING WITHIN THE PLAT OF DUGUALLA BAY HEIGHTS, DIVISION NO. 4, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 8 OF PLATS, PAGE 48, RECORDS OF ISLAND COUNTY, WASHINGTON;

ALSO EXCEPT ANY PORTION LYING WITHIN THE PLAT OF DUGUALLA BAY HEIGHTS, DIVISION NO. 6, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 9 OF PLATS, PAGE 16, RECORDS OF ISLAND COUNTY, WASHINGTON;

ALSO EXCEPT ANY PORTION LYING WITHIN THE PLAT OF DUGUALLA BAY HEIGHTS, DIVISION NO. 7, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 9 OF PLATS, PAGE 69, RECORDS OF ISLAND COUNTY, WASHINGTON. SITUATE IN ISLAND COUNTY, WASHINGTON.

PARCEL 2

THAT PORTION OF GOVERNMENT LOT 1 OF SECTION 17, TOWNSHIP 33 NORTH, RANGE 2 EAST, W.M., LYING SOUTHERLY OF THE PLAT OF DUGUALLA BAY HEIGHTS DIVISION NO. 7, RECORDED IN VOLUME 9 OF PLATS, PAGE 69, RECORDS OF ISLAND COUNTY, WASHINGTON, AND SOUTHERLY AND EASTERLY OF THE PLAT OF DUGUALLA BAY HEIGHTS DIVISION NO. 8, RECORDED IN VOLUME 10 OF PLATS, PAGE 52, RECORDS OF ISLAND COUNTY, WASHINGTON, AND EASTERLY OF ELK HORN STREET, AS SHOWN ON THE ABOVE MENTIONED PLAT OF DUGUALLA BAY HEIGHTS DIVISION NO. 8;

EXCEPT THEREFROM THAT PORTION LYING WITHIN DUGUALLA ROAD AS SHOWN ON THE PLAT OF DUGUALLA BAY HEIGHTS DIVISION NO. 4, RECORDED IN VOLUME 8 OF PLATS, PAGE 48, RECORDS OF ISLAND COUNTY, WASHINGTON.

ALSO EXCEPT THE WEST 264.6 FEET OF GOVERNMENT LOT 1, SECTION 17, TOWNSHIP 33 NORTH, RANGE 2 EAST, W.M., LYING SOUTHERLY OF DUGUALLA ROAD; SITUATE IN ISLAND COUNTY, WASHINGTON.

PARCEL 3

LOTS 46A, 47A AND 49A PLAT OF DUGUALLA BAY HEIGHTS, DIVISION NO. 7, AS PER PLAT RECORDED IN VOLUME 9 OF PLATS, PAGE 69, RECORDS OF ISLAND COUNTY, WASHINGTON. SITUATE IN ISLAND COUNTY, WASHINGTON.

PARCEL 4

LOTS 79, 80, 81 AND 82 PLAT OF DUGUALLA BAY HEIGHTS, DIVISION NO. 8, AS PER PLAT RECORDED IN VOLUME 10 OF PLATS, PAGE 52, RECORDS OF ISLAND COUNTY, WASHINGTON. SITUATE IN ISLAND COUNTY, WASHINGTON.

Dugualla Property:

Lot D, Plat of Dugualla Bay Heights, Division No. 8, as per plat recorded in Volume 10 of Plats, page 52, records of Island County, Washington. Situate in the County of Island, State of Washington