Instrument Number: 20181212000417 Document:D Rec: $130.00 Page-1 of
Record Date:12/12/2018 11:57 AM
King County, WA

CHICAGO TITLE NCS
REF# 1274855-06

WHEN RECORDED RETURN TO:

King County
Department of Natural Resources & Parks
Water and Land Resources Division
201 S. Jackson St., Suite 600
Seattle, WA 98104-3855

20181212000417
DEED Rec: $130.00
12/12/2018 11:57 AM
KING COUNTY, WA

E2965810
EXCISE TAX AFFIDAVITS
12/12/2018 11:57 AM KING COUNTY, WA
Selling Price:$2,969,929.00
Tax Amount:$52,869.74

DOCUMENT TITLE(S)

DEED OF CONSERVATION EASEMENT

REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:
☐ Additional numbers on page _____ of document

Unofficial Copy

GRANTOR(S):

FORTERRA NW, A WASHINGTON NON-PROFIT CORPORATION

GRANTEE(S):

KING COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF WASHINGTON

ABBREVIATED LEGAL DESCRIPTION

PORTION SECTION 18, TOWNSHIP 26 NORTH, RANGE 5 EAST, W.M.

ASSESSOR'S PROPERTY TAX PARCEL ACCOUNT NUMBER(S):

182605-9025

☐ *(Check if applicable and sign below)* I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature

This cover sheet is for the County Recorder's indexing purposes only. The Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

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Record Date:12/12/2018 11:57 AM King County, WA**

When Recorded Mail To:

King County
Department of Natural Resources & Parks
Water and Land Resources Division
201 S. Jackson St., Suite 600
Seattle, WA 98104-3855

DEED OF CONSERVATION EASEMENT

Grantor: FORTERRA NW, a Washington non-profit corporation
Grantee: King County, a political subdivision of the State of Washington.
Legal Description (abbreviated): Section 18; Township 26; Range 05 E. WM
Additional legals on Page 18
Assessor's Tax Parcel ID#: 182605-9025

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This Deed of Conservation Easement is granted on this 12th day of December 2018, by FORTERRA NW, a Washington non-profit corporation ("Grantor"), to King County, a political subdivision of the State of Washington, ("Grantee").

WHEREAS, Grantor and Grantee make the following recitals:

A. Grantor is the sole owner in fee simple of the real property ("Protected Property") legally described in Exhibit A, attached to and made a part of this Deed, which consists of approximately 5 acres of land located in King County, Washington. A map of the property is attached to, and made part of this Deed, as Exhibit B.

B. The Protected Property possesses natural, open space, ecological, scenic, recreational and educational values that are of great importance to Grantor, Grantee, the people of King County and the people of the State of Washington. These values are referred to herein as the "Conservation Values" of the Protected Property.

C. The specific Conservation Values of the Protected Property are further documented in an inventory of the relevant features, current use and state of improvement of the Protected Property, dated December 2018, attached hereto as Exhibit C, and incorporated herein by this reference ("Present Conditions Report"). The Present Conditions Report was prepared by Grantee with the cooperation of Grantor. Grantor and Grantee acknowledge and agree that to the best of their knowledge the Present Conditions Report includes a complete and accurate description of the Protected Property. Grantor and Grantee have been provided copies of the Present Conditions Report. The Present Conditions Report is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this Easement. Should Grantee or its assigns perform any restoration project on the Protected

Property as authorized by section 3(d) and section 7, Grantee may update the Present Conditions Report by attaching a description of the restoration project, including a map detailing the project, as an attachment.

D. The Grantor is conveying the property interest conveyed by this Deed for the purpose of ensuring that, under the Grantee's perpetual monitoring, the Conservation Values of the Protected Property will be conserved and maintained in perpetuity, and that uses of the Protected Property that are inconsistent with these Conservation Values will be prevented or corrected. The parties agree, however, that the current use of, and improvements to, the Protected Property are consistent with the conservation purposes of this Deed.

E. The Conservation Values protected by this Deed are recognized by, and the grant of this Deed will serve, the following clearly delineated governmental conservation policies:

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1. The King County Comprehensive Plan and the King County Open Space System plan recognize the importance of protecting open space to conserve King County's natural resources and environmental quality for the enjoyment and benefit of all.

2. R.C.W. 84.34.010, in which the Washington State Legislature has declared "that it is in the best interests of the state to maintain, preserve, conserve and otherwise continue in existence adequate open space lands for the production of food, fiber and forest crops, 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."

3. RCW 64.04.130 and RCW 84.34.210 grant counties the authority to acquire Easements to preserve, conserve and maintain open space, agricultural and timber lands, and RCW 36.70A.090 provides that counties should provide for innovative land use management techniques such as transfer of development rights programs.

F. The Grantee is a "qualified conservation organization," as defined by the Internal Revenue Code, and accepts the responsibility of enforcing the terms of this Deed and upholding its conservation purposes forever.

G. The Protected Property herein conveyed was purchased with King County Conservation Futures Tax Levy funds and is subject to open space use restrictions and restrictions on alienation as specified in RCW §84.34.200, et seq., and King County Code §26.12.005, et seq.

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NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, Grantor and Grantee agree as follows:

1. *Grant of Easement*

Grantor voluntarily conveys and warrants to Grantee, its successors and assigns, and Grantee accepts, as permitted by R.C.W. 64.04.130 and R.C.W. ch. 84.34, a conservation easement (the "Easement") in perpetuity over the Protected Property, including all rights to environmental credits or offsets developed or created through the preservation or protection of the Conservation Values ("Preservation Credits"), which rights to Preservation Credits shall not affect Grantor's Reserved Rights set forth in Section 5 of this document, on the terms and conditions set forth herein exclusively for the purpose of conserving the Conservation Values of the Protected Property.

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2. *Purpose*

It is the purpose of this Easement to ensure that the Protected Property will be retained forever in a natural, open space and scenic condition and to prevent any use of the Protected Property that will impair or interfere with the Conservation Values of the Protected Property. An additional purpose of this easement is to allow the Grantee to develop, create, and dispose of Preservation Credits arising from the Protected Property. Grantors and Grantee intend that this Easement will confine the use of the Protected Property to such activities as are consistent with the purpose of this easement.

3. *Rights of Grantee*

To accomplish the purpose of this Easement the following rights are conveyed to Grantee, its successors and assigns, by this Easement:

(a) To preserve and protect the Conservation Values of the Protected Property.

(b) To enter upon the Protected Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement in accordance with Section 9; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation 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 quiet use and enjoyment of the Protected Property; if possible, Grantee shall provide two (2) business days' notice for Property entry when Grantor staff resources are needed.

(c) To allow persons or groups, including Grantee, to enter upon the Protected Property for scientific and educational purposes at mutually agreeable dates and times and upon not less than 10 days prior notice to grantor; and

(d) To conduct, with reasonable prior notice to Grantor, survey, site preparation, removal of invasive non-native riparian vegetation, streambank stabilization, installation of large woody debris and other activities associated with habitat restoration. Nothing herein shall be deemed to imply any obligation to perform such restoration activities.

(e) To prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features

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of the Protected Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in Section 9.

(f) To install informational signs for educational purposes, to give notice of the existence of recreational trails, if any, on the property, to inform the public of the sources of funding used to acquire this easement or to establish rules for use of the property, as mutually agreed by Grantor.

(g) To design, construct and maintain trail connections through the property such as to the Burke-Gilman and Sammamish River Trails in mutually agreed upon locations with Grantor.

(h) To accrue, count, develop, create, and sell or otherwise dispose of any Preservation Credits developed or created through the preservation or protection of the Conservation Values. Preservation Credits may include amounts of greenhouse gas emission mitigation, credits for storage of carbon dioxide, storm water run-off reductions, energy savings, fish habitat, and air quality benefits arising from the Conservation Values of the Protected Property and the continued existence and natural growth of these Conservation Values subsequent to the granting of this Easement (including but not limited to future storage of carbon dioxide in soils that remain undisturbed and in existing forest areas and individual trees that continue to grow). Any obligations or liabilities arising from this sub-section (h) shall remain with the Grantee, and this sub-section (h) shall not impose any further obligation on the Grantor beyond the other terms of this agreement.

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4. *Prohibited Uses*

Any activity on or use of the Protected Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, except as permitted in Sections 3 and 5, and with the general exception that Grantor may cover up to fifteen percent (15%) of the total surface area of the Protected Property with impervious surfaces for any purpose not explicitly prohibited by this Section 4:

(a) *Development Rights.* The use of development rights now or hereafter associated with the Protected Property, except those specifically reserved under this Easement. The parties agree that such rights are removed from the Protected Property and may not be used on or transferred to any other portion of the Protected Property as it now or hereafter may be bounded or described or used on or transferred to any other property.

(b) *Subdivision.* The legal or *de facto* division, subdivision, or partitioning of the Protected Property for any purpose, 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.

(c) *Construction and Improvements.* The placement or construction, of any buildings, structures, or other improvements of any kind, including, without limitation, communication lines, storage tanks and pipelines, except as permitted in Section 5,

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including but not limited to trailhead or trail amenities such as small picnic structures, restrooms or bar-b-que pads. Impermanent structures including mobile homes, campers, other live-in vehicles, boats on trailers, horse trailers or other trailers are prohibited on the Protected Property

(d) *Paving and Road Construction.* The paving or covering of any portion of the Protected Property with concrete, asphalt, gravel, crushed rock, wood shavings or any other paving or surfacing material for the construction of a road, except that trails may be constructed and maintained for passive recreation as permitted by paragraph 5c of this Agreement.

(e) *Commercial Development.* Any commercial or industrial use or activity on the Protected Property, including but not limited to commercial recreational activities involving active recreation.

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(f) *Surface Alteration.* Any alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or sod except as needed for river, salmon habitat or land restoration projects, and health and safety of the community such as to prevent landslides or hill collapse.

(g) *Soil Degradation and Water Pollution.* Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant depletion or pollution of surface or subsurface waters.

(h) *Wetlands.* Any activity on the Protected Property that changes, disturbs, alters or impairs the plant and animal habitat, ecological value or scenic qualities of a wetland or wetland buffer. These prohibited activities include without limitation artificially draining water into or out of a wetland; grading, filling or compacting wetland soils; conducting domestic animal grazing or agricultural activities of any kind; hunting or trapping; and application of biocides except when determined by the Grantee to be necessary for the eradication of invasive non-native plant species and such application is by the narrowest spectrum, least persistent material appropriate for the target species.

(i) *Ponds, Watercourses and Wells.* The alteration or manipulation of the ponds, water courses, and wells located on the Protected Property, or the creation of new water impoundments, water courses or wells, for any purpose except as mutually determined by the Grantee and Grantor for water, land or habitat restoration

(j) *Alteration Surface Water, Subsurface Water or Channeling Water.* Any alteration of the surface water channels on the Protected Property including the removal of fallen trees, gravel or rocks from a water channel or the damming of the water channel, including the lining of the water channel with rocks, wood, trees, sand bags, or other materials except as mutually determined by the Grantee and Grantor for habitat restoration.

(k) *Introduced Vegetation.* The planting or introduction of nonnative species of plants.

(l) *Removal of Trees.* The pruning, cutting down, or other destruction or removal of trees located on the Protected Property, except as approved by King County, and/or as necessary to control or prevent hazard, disease or fire or to improve forest health.

(m) *Waste Disposal.* The disposal, storage, or release of hazardous substances, rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly or offensive waste or material on the Protected Property. The term "release" shall mean any release, generation, treatment disposal, storage, dumping, burying, abandonment, or migration from off-site. The term "hazardous substances" as used in this Easement shall mean any substances, materials, or wastes that are hazardous, toxic, dangerous, harmful or are designed as, or contain components that are, or 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.

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(n) *Active Recreation.* Conducting or allowing activities, such as golf courses, ball fields, motocross, campgrounds or any other activity involving the public or private clubs or associations engaging in organized active recreation. Drop-in active recreation uses are permissible such as recreational soccer, flag football or mountain biking that are not organized by sports associations or Grantor. Grantor will not rent the open space for such events nor allow permanent goals or other permanent sports paraphernalia.

(o) *Signs.* The placement of commercial signs, billboards, or other commercial advertising material on the Protected Property, except in connection with the sale or lease of the Protected Property.

(p) *Mineral Development.* The exploration for, or development and extraction of, any minerals or hydrocarbons.

(q) *Vehicles.* The operation of motorcycles, dune buggies, all-terrain vehicles, snow mobiles, or other types of off-road motorized vehicles or the operation of other sources of excessive noise pollution or which may cause resource degradation except as may be needed for park maintenance or public safety purposes.

5. *Reserved Rights*

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, any use of, or activity on, the Protected Property that is not inconsistent with the purpose of the Easement and that is not prohibited herein. Without limiting the generality of the foregoing, Grantor specifically reserves the following uses and activities:

(a) *Existing Structures.* The existing structures identified and described in Exhibit C may be retained on site for public use consistent with the provisions of this easement such as a welcome center, historical preservation, trailhead facilities with ancillary government offices, art gallery, community or education center, park maintenance facility or other similar use. Said structures may not be used for commercial or residential purposes.

(b) *Emergencies.* The right to undertake other activities necessary to protect public health, property improvements, or human safety, or which are actively required by and subject to compulsion of any governmental agency with authority to require such activity.

(c) *Recreational Use.* The right to allow passive recreational use and activities, provided that such passive recreational use does not interfere with the Conservation Values of the Protected Property, that such passive recreational use does not include any of the prohibited uses set forth in Section 4 of this Easement, and that such passive recreational use is otherwise consistent with the purpose and terms of this Easement.

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(d) *Other Credits.* To enhance the environmental benefits of the Conservation Values of the Protected Property above and beyond their current state and expected future natural growth as of the date this Easement and to engage in carbon or other environmental offset projects that are not inconsistent with other provisions of this Easement. Such offset projects shall not include production of Preservation Credits but may include accrual, counting, development, creation, and selling or otherwise disposing of other credits arising from conducting affirmative enhancement work that increases environmental benefits above and beyond those generated from the act of preservation (such as planting trees, conducting habitat restoration, or conducting other work that increases environmental benefits above and beyond those generated from the act of preservation). The rights to all credits developed or created through such affirmative enhancement work and associated offset projects performed by Grantor shall remain with the Grantor.

6. *Responsibilities of Grantor Not Affected.*

Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation of the Grantor as owner of the Protected Property. This shall apply to:

(a) *Taxes.* The Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Protected Property. Upon five days written notice to the Grantor, the Grantee shall have the right, but not the obligation, to pay any taxes or assessments levied against the Protected Property in accordance with any bill, statement or estimate procured from the appropriate authority. If the Grantee ever pays any taxes or assessments levied against the Protected Property, the Grantor shall reimburse the Grantee for the same, with interest until reimbursed at the lesser of ten percent or the maximum rate allowed by law. The Grantor shall reimburse the Grantee

for these sums plus any reasonable attorneys' fees and court costs incurred to collect such sums.

(b) *Upkeep and Maintenance, Costs, Legal Requirements, and Liabilities.* Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, 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 keep the Protected Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

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(c) *Remediation.* If, at any time there occurs, or has occurred, a release in, on, or about the Protected Property of any hazardous substances, Grantors agree 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 for such remediation. Should Grantor become aware of the release of any hazardous substances, Grantor shall make best efforts to inform Grantee of such release as soon as possible.

(d) *Control.* Nothing in this Easement shall be construed as giving rise 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").

(e) *Liability and Indemnification.* Grantor hereby agrees to release, hold harmless, indemnify, and defend Grantee, its officers, employees and agents from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorney's and consultant's fees, arising from or in any way connected with (1) injury to or 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 Property, regardless of cause, except to the extent caused solely by the negligent acts or omissions of Grantee, its officers, employees or agents; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation or requirement, including without limitation, CERCLA and MTCA, by any person other than Grantee, its officers, employees and agents; or (3) the presence or release in, on, from, or about the Protected Property, at any time, of any hazardous substances, unless caused solely by the Grantee.

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7. *Grantee's Right to Restore the Protected Property*

In the event that any of the Conservation Values of the Protected Property are impaired, the Grantee shall have the right, but not the obligation, to restore all or portions of the Protected Property.

8. *Access*

Access by the general public is conveyed by this Easement and will be developed by the Grantor in accordance with funding requirements, Grantor's policies and procedures for park land.

9. *Enforcement*

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Grantee shall have the right to prevent and correct violations of the terms of this Easement as set forth below.

(a) *Notice of Failure.* If Grantee determines that the Grantor is in violation of the terms 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.

(b) *Grantor's Failure to Respond.* Grantee may bring an action as provided for in Section 9(c) below if Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee; fails to begin curing such violation within the thirty (30) day period under circumstances where the violation cannot reasonably be cured within the thirty (30) day period; or fails to continue diligently to cure such violation until finally cured.

(c) *Grantee's Action.* Grantee may bring action at law or in equity 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.

(d) *Immediate Action Required.* If Grantee, in its sole and absolute discretion, determines that circumstances require immediate action to prevent or mitigate significant

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damage to the Conservation Values of the Protected Property, 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.

(e) *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.

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(f) *Costs of Enforcement*. All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorney's fees and reasonable consultant's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantors; provided, however, that if Grantors ultimately prevail in a judicial enforcement action each party shall bear is own costs.

(g) *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 terms 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.

(h) *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, and 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.

10. *Alternate Dispute Resolution*

If a dispute arises between the Parties concerning the consistency of any proposed use or activity with this Easement, the Parties shall attempt to resolve the dispute through informal discussion. The Parties may also agree to refer the dispute to mediation. Upon such agreement, the Parties shall select a single mediator to hear the matter. Each party shall bear its own costs, including attorney's fees, if mediation is pursued under this Section 10. The Parties shall share equally the fees and expenses of the mediator.

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11. *Notice and Approval*

(a) *Notice.* Whenever notice is required under this Easement, the party required to give notice ("Notifying Party") shall give reasonable notice prior to the date the Notifying Party 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 the other party to make an informed judgment as to its consistency with the purpose and terms of this Easement.

(b) *Evaluation of Proposed Activities.* The purpose of requiring the Notifying Party to notify the other party prior to undertaking certain permitted uses and activities is to afford the other party an 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.

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12. *Notice of Transfer of Protected Property by Grantor and Successor and Assigns*

Any time the Protected Property itself, or any interest in it is transferred by the Grantor to a third party, the Grantor, its successors and assigns, shall notify the Grantee in writing, and the document of conveyance shall expressly refer to this Deed of Conservation Easement.

13. *Termination of Easement*

(a) *Frustration of Purpose.* If a court of competent jurisdiction determines that conditions on or surrounding the Protected Property change so much that it becomes impossible to fulfill any of the conservation purposes of the Easement, the court may, at the joint request of both the Grantor and Grantee, terminate in whole or in part the Easement created by this Deed.

(b) *Economic Value.* The fact that any use of the protected Property that is expressly prohibited by this Easement, or any other use as determined to be inconsistent with the purpose of this Easement, may become greatly more economically valuable than permitted uses, or that neighboring properties may in the future be put entirely to uses that are not permitted thereunder, has been considered by the Grantor in granting this Easement. It is the intent of both Grantor and Grantee that any such changes shall not be assumed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this section.

(c) *Proceeds.* If the Easement is terminated and the Protected Property is sold or taken for public use, the Grantee shall be entitled to a percentage of the gross sale proceed of condemnation award equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property, as these values are determined on the date of termination. The Grantee shall use the proceeds consistently with the conservation purposes of this Easement.

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(d) *Relinquishment Option.* Throughout the duration of this Easement, Grantor shall have the option to cause Grantee to relinquish this Easement or a portion of this Easement and all of Grantee's associated rights and obligations (the "Relinquishment"), in order to convert all or a portion of the Protected Property to an active use area. Grantor shall exercise this option by providing written notice to Grantee consistent with Section 18 of this Easement. Within thirty (30) days of receipt of Grantor's notice, Grantor and Grantee shall work in good faith to select a mutually acceptable, independent, state-certified real estate appraiser (the "Appraiser") to establish the Consideration payable to Grantee for the Relinquishment. The "Consideration" shall be the fair market value of the fee interest in the Protected Property, based on its highest and best use as of the effective date of this Easement (which is single family residential currently zoned R-9600) irrespective of the restrictions imposed by this Easement, as established by the Appraiser. The Parties further agree the fair market value appraisal will be subject to an appraisal review (the "Appraisal Review") by a mutually acceptable state certified review appraiser who shall review the appraisal and confirm the Consideration prior to execution of a Relinquishment Agreement. Grantor shall be responsible for all of the Appraiser's fees Appraisal Review fees and costs associated with establishing the Consideration, but the Appraiser shall work at the direction of both Grantor and Grantee, and both parties shall enjoy equal access to the Appraiser's work product and the information considered by the Appraiser.

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Following the Appraiser's final determination of the Consideration, Grantor and Grantee shall, within a commercially reasonable timeframe, agree upon a mutually acceptable form of agreement to formalize the Relinquishment. Grantee's obligation to enter into the final binding Relinquishment agreement shall be contingent upon Grantee's compliance with all applicable laws governing Grantee's conveyance of a real property interest, which may include, if applicable at the time of Relinquishment, approval by the Metropolitan King County Council and Grantee's completion of a real property surplus process. Consistent with Section 14 of this Easement, Grantor shall record, at its own cost, the final Relinquishment in the real property records of King County.

Grantor covenants that if it exercises the Relinquishment Option, any use(s) by Grantor or its successors in interest on the Protected Property shall: (i) ensure the Protected Property remains available to the general public; (ii) be intended to complement and activate the Protected Property; and (iii) not compromise the natural, scenic, open space, water resources, or recreation values of the Protected Property (collectively the "Active Use Area Principles"). The following activities are expressly prohibited, in perpetuity, as not satisfying the Active Use Area Principles: residential uses; manufacturing or other industrial uses; office uses and storage uses other than incidental office spaces and incidental storage areas that are ancillary to a permitted use of the Protected Property; and uses that restrict public access by imposing membership or similar requirements that serve to prevent public access (collectively, the "Incompatible Uses"). As part of the Relinquishment, Grantor and Grantee shall agree upon mutually acceptable covenants to accomplish the Active Use Area Principles and prevent the Incompatible Uses, which covenants shall be recorded simultaneous with the Relinquishment.

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Due to Grantee's acquisition of this Easement with King County Conservation Futures Tax Levy funds, execution of the binding Relinquishment agreement shall constitute a conversion of the Protected Property pursuant to King County Code 26.12.010 or its successor, and Grantee shall pursue the prescribed conversion mitigation requirements consistent with applicable laws at the time of Relinquishment.

Grantor shall be solely responsible for any unforeseen costs or expenses associated with its decision to exercise the Relinquishment Option. Further, Grantor hereby agrees to release, hold harmless, indemnify, and defend Grantee, its officers, employees and agents from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorney's and consultant's fees, arising from or in any way connected with Grantor's decision to exercise the Relinquishment Option.

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14. *Modification*

This Deed may be modified by agreement of the parties, provided that any such amendment shall be consistent with the purpose of the Easement and shall not affect its perpetual duration. All modifications shall be in writing, signed by both parties and recorded in the real property records of King County.

15. *Interpretation*

This Deed shall be interpreted under the laws of Washington, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

16. *Perpetual Duration*

This Easement created by this Deed shall be a binding servitude running with the land in perpetuity, and no merger of title, estate or interest shall be deemed affected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Protected Property, or any portion thereof, to Grantee, it being the express intent of the parties that this Easement not be extinguished by, or merged into, any other interest or estate in the Protected Property now or hereafter held by Grantee. Every provision of this Deed that applies to the Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear.

17. *Inaction*

Inaction or inactivity on the part of Grantee with respect to the Easement shall not constitute abandonment of the Easement.

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18. *Notices*

Any notices required by this Deed shall be in writing and shall be personally delivered or sent by first class mail to Grantor and Grantee respectively at the following addresses, unless a party has been notified by the other of a change of address.

To Grantor: Forterra NW
910 Fifth Ave Suite 2200
Seattle, WA 98164
Attn: Michelle Connor

To Grantee: King County Department of Natural Resources & Parks
Water and Land Resources Division
201 South Jackson Street, Suite 600
Seattle, WA 98104

Unofficial Copy

19. *Grantor's Title Warranty*

The Grantor warrants that it has good and sufficient title to the Property, free from all encumbrances except those set forth in Exhibit D attached to and made a part of this Deed, and hereby promise to defend the same against all claims that may be made against it.

20. *Severability*

If any provision of this Deed is found to be invalid, illegal or unenforceable, that finding shall not affect the validity, legality or enforceability of the remaining provisions.

21. *Acceptance*

The Grantee hereby accepts this Grant of Deed of Conservation Easement.

22. *Entire Agreement*

This instrument sets forth the entire agreement of the parties with respect to the terms of this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the terms of this Easement, all of which merge herein.

23. *Waiver of Defenses*

Grantor hereby waives any defense of laches, estoppel or prescription and acknowledges and agrees that the ten-year statute of limitations provided in RCW 4.16.020 does not apply to this Easement, and Grantor waives any rights of Grantor pursuant to such statute.

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24. *Counterparts*

This Conservation Easement may be executed in one or more counterparts, each of which shall be deemed an original. The signatures to this Conservation Easement may be executed and notarized on separate pages and when attached to this document shall constitute one complete document.

In Witness Whereof, the Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

Grantor: FORTERRA NW

Unofficial Copy

BY: _____
Michelle Connor, President

Grantee King County, a political subdivision of the State of Washington:

BY: _____
Christie True, Director
Department of Natural Resources & Parks

Instrument Number: 20181212000417 Document:D Rec: $130.00 Page-17 (
Record Date:12/12/2018 11:57 AM King County, WA

24. *Counterparts*

This Conservation Easement may be executed in one or more counterparts, each of which shall be deemed an original. The signatures to this Conservation Easement may be executed and notarized on separate pages and when attached to this document shall constitute one complete document.

In Witness Whereof, the Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

Unofficial Copy

Grantor: FORTERRA NW

BY: _____
Michelle Connor, President

Grantee King County, a political subdivision of the State of Washington:

BY: _____
Christie True, Director
Department of Natural Resources & Parks

Instrument Number: 20181212000417 Document:D Rec: $130.00 Page-18 (
Record Date:12/12/2018 11:57 AM King County, WA

STATE OF WASHINGTON, }
}SS.
COUNTY OF KING)

I hereby certify that I know or have satisfactory evidence that Michelle Connor is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the President & CEO of Forterra NW to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: 12/6/18, 2018

DARCEY M HUGHES
Notary Public
State of Washington
My Appointment Expires
Jan 10, 2022

Darcey M Hughes

Darcey M. Hughes
Printed signature

Notary Public in and for the State of Washington, residing at Shoreline
My appointment expires 1/10/22

Unofficial Copy

Instrument Number: 20181212000417 Document:D Rec: $130.00 Page-19 (
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STATE OF WASHINGTON, }
}SS.
COUNTY OF KING)

I hereby certify that I know or have satisfactory evidence that Josh Baldi is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledged it as the Director, WLR Division of Forterra NW to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: Dec. 7th, 2018

JULIE REARDON
Commission Expires
NOTARY
PUBLIC
05-30-2021
STATE OF WASHINGTON

Julie Reardon
Printed signature

Notary Public in and for the State of Washington, residing at Federal Way
My appointment expires 5-30-2021

Unofficial Copy

Instrument Number: 20181212000417 Document:D Rec: $130.00 Page-20 (
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DEED OF CONSERVATION EASEMENT

EXHIBIT A

LEGAL DESCRIPTION

Parcel C of City of Bothell Boundary Line Revision No. BLA 2017-11375, recorded December 21, 2017 under King County Recording No. 20171221900001, records of King County, Washington,

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Instrument Number: 20181212000417 Document:D Rec: $130.00 Page-21 c
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EXHIBIT B

PROPERTY MAP

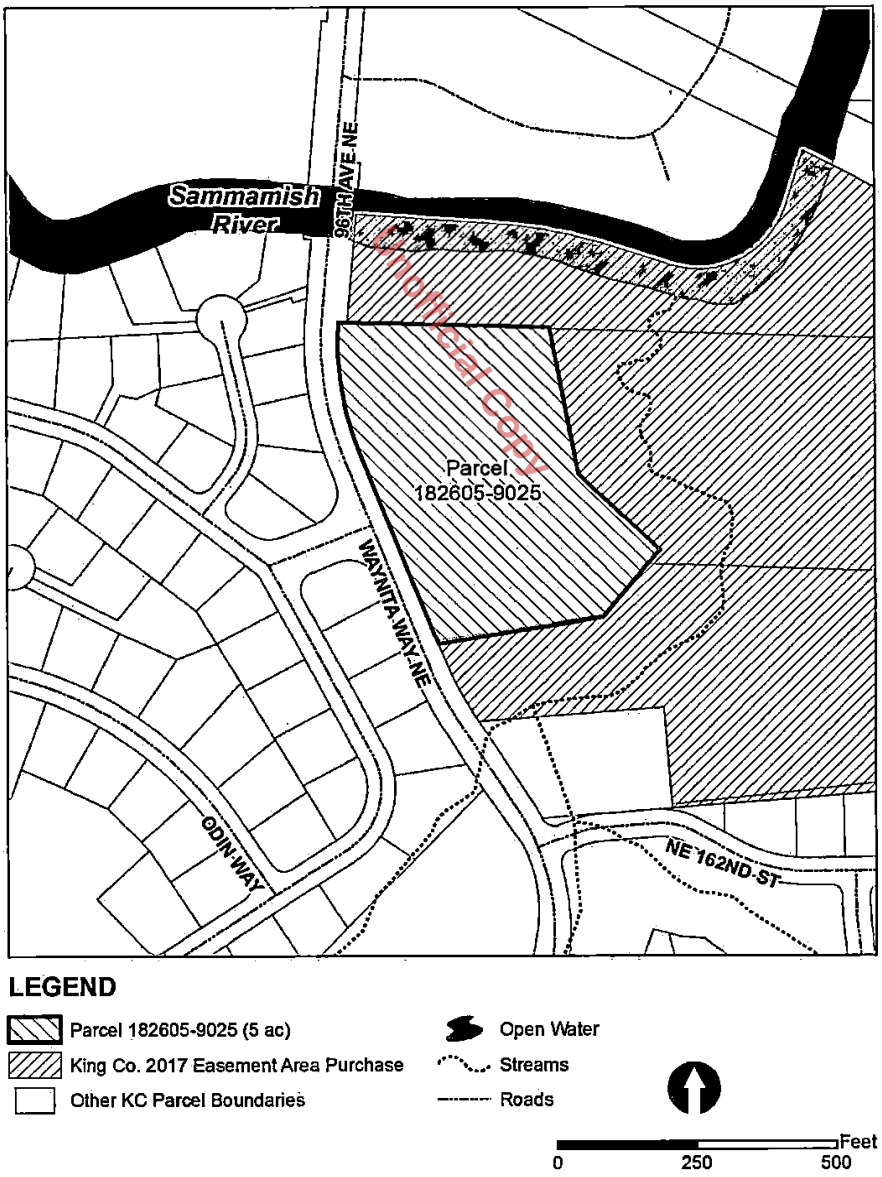

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EXHIBIT C

PRESENT CONDITIONS REPORT

Present Conditions Report

I. GENERAL INFORMATION:

Purpose: This Present Conditions Report is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of the Conservation Easement that will be placed on the Property by King County. The Grantor and Grantee acknowledge and agree that to the best of their knowledge this report includes a complete and accurate description of the Protected Property. Portions of this report are excerpts from a property appraisal completed in September, 2016 by Anthony Gibbons, MAI, CRE of ReSolve.

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Date:	December 4, 2018
Current Property Owner:	Forterra NW
Contact Information:	Michelle Connor Address: 901 Fifth Ave Seattle, WA 98164 Phone: (206) 292-5907 Email: mconnor@forterra.org
Tax Parcel Numbers:	182605-9025
Address of Property:	16721 96th Ave NE, Bothell, WA 98011
Abbreviated Legal Description:	Parcel C of Bothell BLA # 2017-11375
Zoning:	R-9600
Acreage:	5 acres
Date of Title Review:	October 13, 2017

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II. PRESENT CONDITIONS

Location: The Property is located along the left bank of the Sammamish River (left when facing downstream) just upstream of where 96th Ave NE crosses the river. The Property is entirely within the incorporated City of Bothell at the northern edge of King County, in a suburban area which still retains some rural characteristics. The western boundary of the Property fronts Waynita Away NE, and the northern, eastern and southern boundaries abut the former Wayne Golf Course property.

See Attachment A: Locator Map

Physical Description: The Property consists of one tax parcel created through a Boundary Line Adjustment (BLA) in December 2017. The parcel is on the east side of Waynita Way NE about 200 feet south of the Sammamish River within the City of Bothell.

See Attachment B: Property Map

Unofficial Copy

Topography

The Property is generally level, but slopes gently down from the higher elevation in the southern portion of the Property toward the Sammamish River.

See Attachment C: Topography

Rivers, Streams, and Wetlands

King County GIS data do not show any mapped wetlands or streams on the property. Wetlands Resources, Inc. (WRI) is a firm with wetlands expertise that was hired to assess the developability of the larger Wayne Golf Course property, including the five acre parcel 182605-9025; WRI did not map any wetlands or streams on parcel 182605-9025.

Floodplain and Floodway

Parcel 182605-9025 is not within the mapped 100-year floodplain or floodway. The northeastern corner of the Property is approximately 100 feet from the floodplain of the Sammamish River.

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Surrounding Land Use

The subject property technically falls within the MLS area designated as 600 and called Juanita-Woodinville, just inside of the northern boundary of King County. MLS area 600 extends quite far eastward and includes a large number of inexpensive rural properties which are relatively distant from employment centers, as well as very up-market development in Redmond and Issaquah. However, a review of aerial imagery of the surrounding the area there are several residential subdivisions with approximately ¼ acre lots in the area and several more under construction (see Attachment B along NE 162nd St east of Waynita Way NE).

Existing Land Cover Conditions

The majority of the Property is vegetated, with a combination of turf grass, and sparse landscaping trees such as Leyland cypress, Italian cypress, and cherry plum.

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Existing Development on the Subject Property

Roads

The subject is accessed from Waynita Way NE, a north south arterial in the City of Bothell. There are no paved roads on the Property, but there is a u-shaped gravel driveway serving the residence and outbuildings, as well as a gravel golf cart path

See Attachment B: Property Map

Existing development

There are four structures on the Property, including a small older single family home and storage/garage facility.

See Attachment B: Property Map

The footprints of the structures are as follows:

Structure	Footprint size (approx. sq. ft.)	Notes
Residence	1,730	Includes deck and porch
Garage	400	
Storage shed #1	350	
Storage shed #2	300	
Total	**2,780 sf**	

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Per the terms of the easement, these Structure(s) "may be retained on site for public use consistent with the provisions of this easement such as a welcome center, historical preservation, trailhead facilities with ancillary government offices, art gallery, community or education center, park maintenance facility or other similar use. Said structures may not be used for commercial or residential purposes."

See Attachment B: Property Map

Water Rights

No water rights associated with the Property have been identified.

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Instrument Number: 20181212000417 Document:D Rec: $130.00 Page-26 (
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KING COUNTY
PRESENT CONDITIONS REPORT APPROVAL FORM

Current Property Owners: Forterra NW
Property Owner's Address:
Michelle Connor
Forterra NW
Address: 901 Fifth Ave
Seattle, WA 98164

Tax Parcel Numbers: 182605-9025
Address of Property: 16721 96th Ave NE, Bothell, WA 98011

Unofficial Copy

LANDOWNER SIGNATURE: I have read and understand the Present Conditions Report dated December 4, 2018. I agree the report reflects current conditions at the Property.

Michelle Connor — Date 12/6/18

KING COUNTY SIGNATURE: I have reviewed the Present Conditions Report. This report adequately describes the present conditions of the site.

Michael Murphy — Date

TRANSMITTED to the following Parties and Persons of Interest: See Attachment D.

ATTACHMENTS:

Attachment A – Property Location
Attachment B – Property Map
Attachment C – Topography
Attachment D – Parties and Persons of Interest

Instrument Number: 20181212000417 Document:D Rec: $130.00 Page-27 (
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KING COUNTY
PRESENT CONDITIONS REPORT APPROVAL FORM

Current Property Owners: Forterra NW
Property Owner's Address:
Michelle Connor
Forterra NW
Address: 901 Fifth Ave
Seattle, WA 98164

Tax Parcel Numbers: 182605-9025
Address of Property: 16721 96th Ave NE, Bothell, WA 98011

Unofficial Copy

LANDOWNER SIGNATURE: I have read and understand the Present Conditions Report dated December 4, 2018. I agree the report reflects current conditions at the Property.

Michelle Connor Date

KING COUNTY SIGNATURE: I have reviewed the Present Conditions Report. This report adequately describes the present conditions of the site.

12/5/2018

Michael Murphy Date

TRANSMITTED to the following Parties and Persons of Interest: See Attachment D.

ATTACHMENTS:

Attachment A – Property Location
Attachment B – Property Map
Attachment C – Topography
Attachment D – Parties and Persons of Interest

Instrument Number: 20181212000417 Document:D Rec: $130.00 Page-28 (
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ATTACHMENT A : PROPERTY LOCATION MAP

On file with Grantor, Grantee & City of Bothell – not attached for recording purposes

Unofficial Copy

Instrument Number: 20181212000417 Document:D Rec: $130.00 Page-29 (
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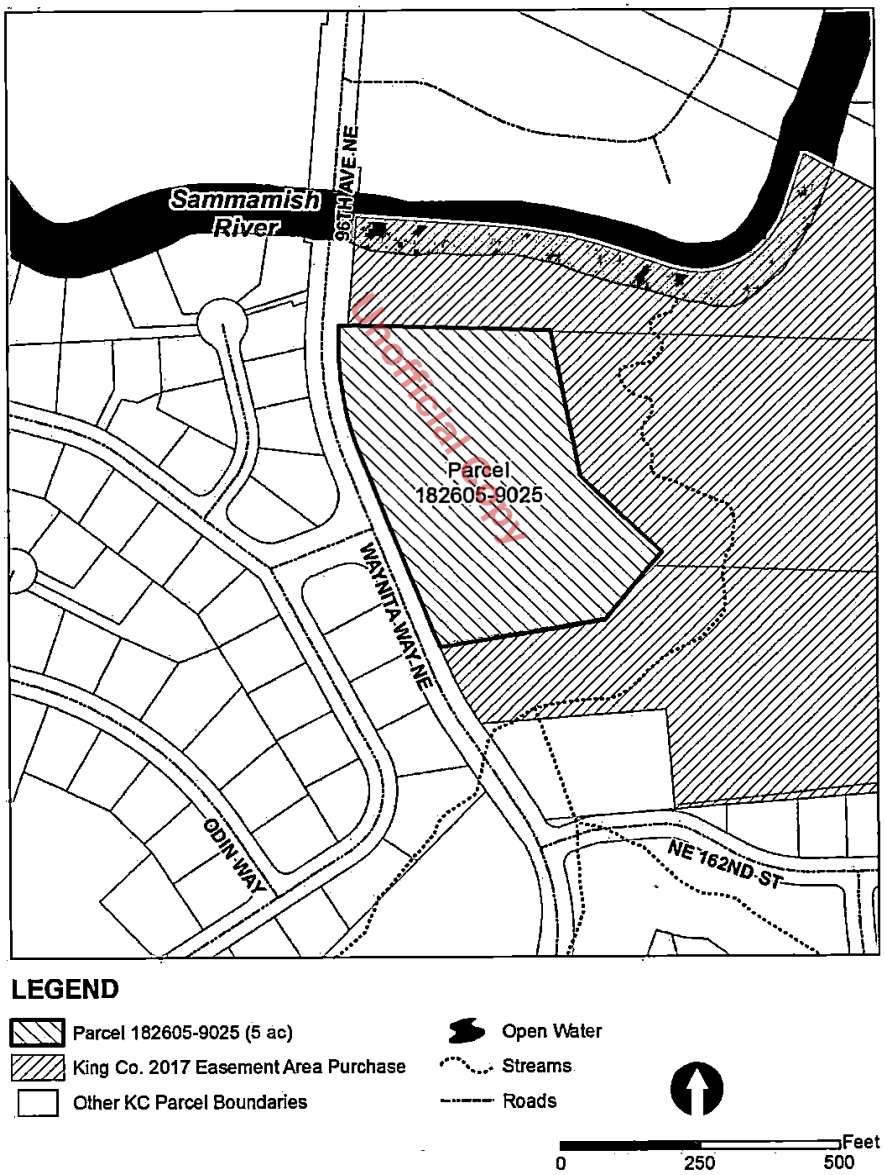
ATTACHMENT B : PROPERTY MAP



Instrument Number: 20181212000417 Document:D Rec: $130.00 Page-30 (
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ATTACHMENT C : TOPOGRAPHY MAP

On file with Grantor, Grantee & City of Bothell – not attached for recording purposes

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**Instrument Number: 20181212000417 Document:D Rec: $130.00 Page-31 (
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ATTACHMENT D: PERSONS OF INTEREST AND PARTIES

Property Owners and Applicants:
Current Property Owner: Forterra
Attn: Michelle Connor
Email: mconnor@forterra.org

Contact Information: Phone: (206) 292-5907
Address: 901 Fifth Ave
Seattle, WA 98164

Unofficial Copy

Persons of Interest:

Becky Petersen, Project Manager, Water and Land Resources Division
Linda Holecek, Acquisition Supervisor, Water and Land Resources Division
Nik Stroup, Parks & Recreation Director, City of Bothell
Jennifer Phillips, City Manager, City of Bothell

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EXHIBIT D

PERMITTED EXCEPTIONS

Those special exceptions listed on Chicago Title Company Title Report #0137485-06 (Second Commitment) dated November 30, 2018, and any supplements thereto (which Title Report and Supplements are incorporated into this Agreement by this reference) numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 (Paid Current) and 17.

Attachments A, B, C removed for recording purposes

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