Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-1 of 37
Excise Docs: 2994684 Tax Amount: $10.00 Record Date:6/20/2019 11:49 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

AMENDED AND RESTATED DEED OF CONSERVATION EASEMENT
amended and restated June 17, 2019

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Grantor: City of Bothell
Grantee: King County, a political subdivision of the State of Washington.
Legal Description (abbreviated): Section 07 and 18; Township 26; Range 05 E. WM
Additional legals on Pages 21-23
Assessor's Tax Parcel ID#: 072605-9364; 182605-9108; 182605-9095 and 569050-0295
Easement Reference # 20171227001740
This Deed of Conservation Easement is granted on this 17th day of June 2019, by City of Bothell, a political subdivision of the State of Washington ("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 31.38 acres of land located in King County, Washington. A map of the Protected Property is attached to, and made part of this Deed, as Exhibit B. Said map identifies the 10.83 acre Riparian and Wetland Protection Areas, the 2.5 acre Wetland Protection Areas and the 18.05 acre Upland Protection Area. Said map reflects the conservation areas and trail locations approved by Recreation & Conservation Office (RCO) Director under grant agreement #16-1956.

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 Protected Property consists of 31.38 acres of urban property along the Sammamish River, approximately 2.5 river miles upstream from Lake Washington. The Protected Property has 1000 linear feet of shoreline of the south bank of the river and 1,200 feet, both banks, of a tributary called Waynita Creek. Noted species potentially benefitted by the Protected Property include, but are not limited to: Chinook salmon, Lake Sammamish kokanee, Coho, and sockeye salmon. Floodplain and riparian

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-2 of 37
Record Date:6/20/2019 11:49 AM King County, WA

restoration of the Protected Property would improve juvenile salmon rearing conditions and adult salmon migration.

C. The Conservation Values are documented in an inventory of relevant features of the Protected Property on file at the offices of Grantor and Grantee, at locations noted in Section 18 of this Deed, and incorporated herein by this reference ("Baseline Documentation"). The Baseline Documentation consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time this Easement is conveyed and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. The Parties acknowledge that the Baseline Documentation is complete and accurate as of the date of this Easement. The Baseline Documentation may be used to establish that a change in the use or condition of the Protected Property has occurred, but its existence shall not preclude the use of other evidence to establish the condition of the Protected Property as of the date of this Easement. Grantee may use the Baseline Documentation in enforcing provisions of this Easement, but is not limited to the use of the Baseline Documentation to show a change in the use or condition of the Protected Property.

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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 passive recreation and improvements which include maintenance sheds located on, and depicted in Exhibit B, are eligible for use for Protected Property maintenance purposes until such time as the adjacent city-owned property (parcel 182605-9025) is developed and the maintenance sheds can be relocated to said parcel.

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:

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."

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-3 of 37
Record Date:6/20/2019 11:49 AM King County, WA

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.

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. This said Deed is acquired using multiple funding sources to support a multiple benefit project with goals of protecting the land from future development, allowing for future floodplain and shoreline habitat restoration, and allowing for passive recreation. This multiple benefit project includes creation and/or connection to a city park and natural area. Said Deed includes limited impervious surface allowances for trail development.

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The Protected Property herein conveyed was purchased with the following funding sources:

King County Conservation Futures Tax Levy funding ($155,000) which protects and preserves resource lands such as forests, shorelines, farmlands, greenways and provides for trails . The funds are 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.

King County Parks Expansion Levy funding ($1,125,000) protects and provides for parks, trails, recreation, and open space protection. Said funding is authorized by King County Ordinance 17568 and was approved by voters in August 2013. The County covenants that the property interest will be used for the purposes contemplated by Ordinance 17568, that the property interest shall not be transferred or conveyed except by deed providing that the property interest shall continue to be used for the purposes contemplated by Ordinance 17568, and that the property interest shall not be converted to a different use unless other equivalent property interest within the County shall be received in exchange therefore.

Washington State Salmon Recovery funding ($500,000) which protects and restores salmon habitat to achieve overall salmon recovery, including habitat projects and other activities that result in sustainable and measurable benefits for salmon and other fish species.

Washington State Puget Sound Acquisition and Restoration (PSAR) ($1,075,400) funding which protects existing, high quality habitats for salmon, and restores degraded habitat to increase overall habitat health and biological productivity.

Aquatic Lands Enhancement Account (ALEA) funding ($1,000,000) which targets re-establishing the natural, self-sustaining ecological functions of the waterfront,

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-4 of 37
Record Date:6/20/2019 11:49 AM King County, WA

providing or restoring public access to the water, and increasing public awareness of aquatic lands as a finite natural resource and irreplaceable public heritage.

H. The Protected Property is subject to a River Protection Easement dated February 8, 1963, recording number 5552285. Said easement includes the right for Grantee to enter the premises to construct, reconstruct, maintain and repair a river bank protection and/or other flood control works or any enlargement thereof. Grantee was the acquisition sponsor for a federally funded project which was implemented by the Army Corps in 1965. The Army Corps project had a required Operation and Maintenance Manual that obligated Grantee to maintain the entire Sammamish River corridor dated March 18, 1965. The Operation and Maintenance Manual does not preclude King County the right to conduct salmon habitat restoration within the River Protection Easement area.

I. RCO Project Agreement 16-1956, Wayne Sammamish Riverfront: It is the Grantee's intent to conduct restoration to the Protected Property for salmon recovery purposes. Grantee agrees that only in the event of a natural disaster would Grantee repair the area subject to the River Protection Easement for public safety and infrastructure purposes. Prior to Grantee taking such action, Grantee is to provide advance notice to RCO so that RCO can ensure the work is done in a way to minimize impacts to the salmonid habitat and follows best practices to protect salmon habitat.

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J. The Grantor and Grantee originally entered into this Deed of Conservation Easement in 2017 under Recording No. 20171227001740 and now, the Grantor and Grantee have agreed to amend the Easement. Said amendments together with all other terms incorporated into this Amended and Restated Deed of Conservation Easement hereby replaces and supersedes in its entirety the all of the terms as contained within said original Deed of Conservation Easement as Recorded under Recording No. 20171227001740.

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*

For the reasons stated above, and in consideration of the above Recitals, the mutual covenants, terms, conditions, and restrictions contained in this Easement, and other good and valuable consideration, the receipt of which is hereby acknowledged, 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 not specifically reserved by Grantor 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.

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-5 of 37
Record Date:6/20/2019 11:49 AM King County, WA

2. *Purpose*

a. *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. This Purpose includes the protection of habitat as defined in Recital A. and as depicted in Exhibit B (Property Map) of this Easement and establishes the following riparian buffers:

Leftbank Sammamish River: 200 ft wide along the southern-most ~650 ft; and 150 ft. wide along northern-most ~350 ft.; and

Waynita Creek: 200 ft buffer along rightbank; and 125 ft along leftbank.

Grantor intends that this Easement will confine the use of, or activity on, the Protected Property to such uses and activities as are consistent with the Purpose.

b. *Stewardship Plan* To further this Purpose, Grantee has developed a plan for stewardship of the Protected Property (the "Stewardship Plan") which is attached as Exhibit C and incorporated into this Easement by reference. The Stewardship Plan is intended to identify and describe, as appropriate, any plans to monitor, protect, maintain, restore or enhance the original and natural conditions of the Protected Property. The Stewardship Plan may be amended by mutual agreement as long as the Stewardship Plan aligns with the purpose of this Easement.

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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, in perpetuity, the Conservation Values of the Protected Property and to restore and enhance 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.

(d) To conduct, with reasonable prior notice to Grantor, survey, site preparation, removal of invasive non-native riparian vegetation, 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

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-6 of 37
Record Date:6/20/2019 11:49 AM King County, WA

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-Gillman and Sammamish River Trails in mutually agreed upon locations with Grantor. The riparian buffers described in 2(a), may include trails, as depicted on Exhibit B which reflects the Site Plan dated March 2018 that was approved by Recreation & Conservation Office (RCO) Director under grant agreement #16-1956. Consistent with RCO grant funding requirements for trails and/or pathways, such public trail and/or pathway will be designed in a manner that first avoids impacts to habitat conservation values and second, if such impacts cannot be reasonably avoided, mitigate such impacts to the extent practicable.

(h) To enforce the terms of this Easement, in accordance with Section 9.

(i) To assign, convey, or otherwise transfer Grantee's interest in the property in accordance with Section 26.

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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 4.7 acres (15% of the total surface area of the Protected Property) with impervious surfaces, but not within the Riparian and Wetland Protection Areas, 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. 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 for trailhead or trail amenities which are supported under the ALEA Grant, such as small picnic structures, restrooms or barbeque pads which are to be located outside of Riparian and Wetland Protection Areas. Impermanent structures including mobile homes, campers, other live-in vehicles, boats on trailers, horse trailers or other trailers are prohibited on the Protected Property

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-7 of 37
Record Date:6/20/2019 11:49 AM King County, WA

(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 5(b) 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.

(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.

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(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, except when determined by Grantee to be necessary for fish and wildlife habitat restoration. 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 necessary 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 necessary for habitat restoration.

(k) *Introduced Vegetation.* The planting or introduction of invasive 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.

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-8 of 37
Record Date:6/20/2019 11:49 AM King County, WA

(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.

(n) *Active Recreation.* Conducting or allowing activities, such as golf courses, ball fields, motocross, equestrian, camping, campgrounds or any other activity involving the public or private clubs or associations engaging in organized active recreation. Drop-in active recreation that are not organized by sports associations or Grantor are permissible. Grantor will not rent the open space for active recreation events nor allow permanent installation of sport amenities.

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(o) *Signs.* The placement of commercial signs, billboards, or other commercial advertising material on 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. Grantor shall provide the Grantee advance notice and opportunity to approve, deny or condition when exercising their reserved rights. Without limiting the generality of the foregoing, Grantor specifically reserves the following uses and activities:

(a) *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.

(b) *Recreational Use.* The right to allow passive recreational use and activities, provided that such passive recreational use does not interfere with

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-9 of 37
Record Date:6/20/2019 11:49 AM King County, WA

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.

(c) *Construction and Improvements.* The right to construct trailhead or trail amenities such as small picnic structures, restrooms or barbeque pads outside of Riparian and Wetland Protection Areas.

(d) *Paving and Trail Construction.* The right to pave or cover with concrete, asphalt, gravel, crushed rock, wood shavings or any other paving or surfacing material for trails for passive recreation as permitted by paragraph 5(b) of this Agreement. Such trails must be outside of Riparian and Wetland Protection Areas except as necessary for trail crossings.

6. *Responsibilities of Grantor Not Affected.*

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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 attorney's 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.

(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

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-10 of 37
Record Date:6/20/2019 11:49 AM King County, WA

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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(f) *Environmental Compliance*

1. To the best of Grantors knowledge, Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements, applicable to the Property and its use, including without limitation all federal, state, and local environmental laws, regulations, and requirements;

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

3. There is no pending or threatened litigation affecting the Property or any portion of the Property that will materially impair the

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-11 of 37
Record Date:6/20/2019 11:49 AM King County, WA

Conservation Values of the Conservation Zone. No civil or criminal proceedings have been instigated or are pending against Grantor or its predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and neither Grantor nor its predecessors in interest have received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.

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

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9. *Enforcement*

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

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-12 of 37
Record Date:6/20/2019 11:49 AM King County, WA

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 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.

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-13 of 37
Record Date:6/20/2019 11:49 AM King County, WA

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.

11. *Notice and Approval*

(a) *Notice.* Grantor is required to provide advance notice to Grantee if Grantor plans to undertake certain permitted actions that could be inconsistent with the Purposes of this Easement. Whenever notice is required under this Easement, the party required to give notice ("Notifying Party") shall give 60 days 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.

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(b) *Evaluation of Proposed Activities.* Grantee has right to approve, deny, or condition proposed actions of Grantor. 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. Notified party shall have up to 30 days to respond to either approve, deny or condition the proposed actions by Grantor.

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

Anytime 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 60 days prior to said transfer, 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*. This Easement may be terminated or extinguished, whether in whole or in part, only under one or more of the following circumstances:

(i) The parties jointly agree to extinguish this Easement, or release a portion of the Easement Area from the terms of this Easement, upon a determination by Grantee in its discretion that circumstances have rendered the Purpose of this Easement impractical to achieve. Grantee's determination shall be in accordance with the provisions of the Assignment of Rights referenced in Section 26.

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-14 of 37
Record Date:6/20/2019 11:49 AM King County, WA

(ii) 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.

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(c) *Proceeds*. If the Easement or a portion of the Easement is terminated and the Protected Property or a portion of the Protected Property is sold or taken by exercise of the power of eminent domain or acquired in lieu of condemnation, whether by public, corporate, or other authority (i.e. eminent domain), the Grantor and Grantee shall act jointly to recover the full value of the interest in the Protected Property subject to the taking or in lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount received. Grantor and Grantee agree that the proceeds to which Grantee shall be entitled, after satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subject to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with Section 13(d) of this Easement.

(d) *Easement Valuation* This Easement constitutes a real property interest immediately vested in Grantee, which, for the purpose of Section 13 of this Easement, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by this easement (minus any increase in the value after the effective date of this Easement attributable to improvements) as determined on the date of termination by 53.17% ,which is the ratio of the purchase price for this Easement to the fair market value of the Property, without deduction for the purchase price for the Easement, as of the effective date of this Easement, as these values. The Grantee shall use the proceeds consistently with the conservation purposes of this Easement.

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 effect its perpetual duration. Any such amendment shall be in accordance with the provisions of the Assignment of Rights referenced in Section 26. All modifications shall be in writing, signed by both parties and recorded in the real property records of King County.

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-15 of 37
Record Date:6/20/2019 11:49 AM King County, WA

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 effected 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.

Unofficial Copy

17. *Inaction*

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

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: City of Bothell
City Manager
18415 101st Ave NE
Bothell, WA 98011

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

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.

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-16 of 37
Record Date:6/20/2019 11:49 AM King County, WA

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.

Unofficial Copy

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.

24. *Subordination*

Grantor certifies that all mortgages and deeds of trust (collectively "Liens"), if any, affecting the Protected Property are subordinate to, or shall become subordinate to, the rights of Grantee under this Easement. Grantor has provided, or shall provide, a copy of this Easement to all mortgagees, and to all beneficiaries and/or trustees of deeds of trust (collectively "Lienholders"), already affecting the Protected Property or which will affect the protected Property prior to the recording of this Easement, and shall also provide notice to Grantee of all such Liens. Each of the Lienholders has subordinated, or shall subordinate prior to recordation, the Liens to this Easement either by signing a subordination agreement contained at the end of this Easement, which shall become a part of this Easement as Exhibit E and recorded with it, or by recording a separate subordination agreement pertaining to any such Lien which must meet the approval of Grantee.

25. *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.

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-17 of 37
Record Date:6/20/2019 11:49 AM King County, WA

26. Assignment

(a) *Assignment* This Easement is transferrable, but Grantee may assign its rights and obligations under this Easement only to an organization that is authorized to acquire and hold conservation easements under Chapter 64.04.130 or Chapter 84.34.250 Revised Code of Washington (or any successor provision(s) then applicable), and a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable) and the applicable regulations promulgated thereunder, and in accordance with the Assignment of Rights referenced in Section 26. As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. 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.

Unofficial Copy

(b) *Assignment of Rights* Grantor herby acknowledges its authorization and approval of the assignment of certain rights in this Easement to the State of Washington 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.

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-18 of 37
Record Date:6/20/2019 11:49 AM King County, WA

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

Grantor: City of Bothell

BY: _____
Jennifer Phillips, City Manager

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

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

Unofficial Copy

List of Exhibits:

A – Legal Description
B – Protected Property Map
C – Stewardship Plan
D – Permitted Exceptions
E – Assignment of Rights

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-19 of 37
Record Date:6/20/2019 11:49 AM King County, WA

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

Grantor: City of Bothell

BY: _____
Jennifer Phillips, City Manager

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

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

Unofficial Copy

List of Exhibits:

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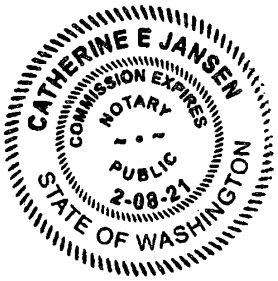
Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-20 of 37
Record Date:6/20/2019 11:49 AM King County, WA

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

I hereby certify that I know or have satisfactory evidence that Jennifer Phillips 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 City Manager of the City of Bothell to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: June 17, 2019



Catherine E. Jansen

Catherine E. Jansen
Printed signature

Notary Public in and for the State of Washington, residing at Bothell, WA
My appointment expires 2-8-21

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Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-21 of 37
Record Date:6/20/2019 11:49 AM King County, WA

STATE OF WASHINGTON)
)SS.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Bob Burns 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 Deputy Director of the Department of Natural Resources and Parks of King County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: June 17, 2019

REBECCA A PETERSEN
Commission Expires
NOTARY PUBLIC
04-15-2022
STATE OF WASHINGTON

Rebecca Petersen
Printed name

Notary Public in and for the
State of Washington residing at
Bellevue

My appointment expires 4·15·22

Unofficial Copy

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-22 of 37
Record Date:6/20/2019 11:49 AM King County, WA

DEED OF CONSERVATION EASEMENT

EXHIBIT A

LEGAL DESCRIPTION

PARCEL A - (Tax Parcel No. 072605-9364)

THAT PORTION OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 26 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SUBDIVISION;
THENCE NORTH 02°33'39" EAST ALONG THE EAST LINE OF SAID SUBDIVISION TO A POINT WHERE SAID EAST LINE INTERSECTS THE SOUTHERLY LINE OF THAT PORTION OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 7 CONVEYED TO THE CITY OF SEATTLE FOR WATER MAIN BY DEED RECORDED UNDER RECORDING NUMBER 5040174, AND THE NORTHERLY LINE OF THE TOLT RIVER PIPE LINE RIGHT OF WAY AS ESTABLISHED BY ORDINANCE NO. 86134 OF THE CITY OF SEATTLE;
THENCE NORTHWESTERLY ALONG SAID SOUTHERLY LINE TO THE CENTERLINE OF THE SAMMAMISH RIVER;
THENCE SOUTHWESTERLY ALONG SAID CENTERLINE OF THE SAMMAMISH RIVER TO THE EAST LINE OF THE BOTHELL-KIRKLAND ROAD (96TH AVENUE NORTHEAST);
THENCE SOUTHERLY ALONG SAID EAST LINE TO THE SOUTH LINE OF SAID SUBDIVISION;
THENCE EASTERLY ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING;

EXCEPT THAT PORTION CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NUMBER 514489 FOR THE TOLT RIVER PIPE LINE RIGHT OF WAY.

PARCEL B - (Tax Parcel Nos. 072605-9364 & 182605-9108)

THAT PORTION OF THE NORTH 425.54 FEET OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 26 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, LYING EASTERLY OF THE FOLLOWING DESCRIBED LINES:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 18;
THENCE NORTH 88°11'29" WEST ALONG THE NORTH LINE OF SAID SECTION A DISTANCE OF 1085.43 FEET TO THE POINT OF BEGINNING OF SAID LINES;

THENCE ALONG SAID LINES BY THE FOLLOWING COURSES AND DISTANCES:

SOUTH 10°54'23" EAST A DISTANCE OF 269.81 FEET;
SOUTH 46°10'16" EAST A DISTANCE OF 199.66 FEET;
SOUTH 39°56'27" WEST A DISTANCE OF 36.48 FEET TO THE SOUTH LINE OF

Unofficial Copy

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-23 of 37
Record Date:6/20/2019 11:49 AM King County, WA

THE NORTH 425.54 FEET OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER SAID SECTION 18 AND THE TERMINUS OF SAID LINES.

[PARCEL C – INTENTIONALLY OMITTED]

PARCEL D - (Tax Parcel No. 182605-9095)

THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 26 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING ON THE EASTERLY LINE OF THE BOTHELL-KIRKLAND HIGHWAY AT A POINT 436 FEET NORTHERLY, MEASURED ALONG A LINE PARALLEL WITH THE EASTERLY LINE OF SAID SUBDIVISION, OF THE SOUTHERLY LINE OF SAID SUBDIVISION;
THENCE NORTHEASTERLY TO A POINT ON THE EASTERLY LINE OF SAID SUBDIVISION A DISTANCE OF 586 FEET NORTHERLY OF THE SOUTHEAST CORNER THEREOF;
THENCE NORTHERLY ALONG SAID EASTERLY LINE 319.99 FEET;
THENCE WESTERLY PARALLEL WITH THE SOUTHERLY LINE OF SAID SUBDIVISION A DISTANCE OF 1333.51 FEET TO A STONE MONUMENT ON THE EASTERLY LINE OF SAID HIGHWAY;
THENCE SOUTHERLY ALONG SAID EASTERLY LINE TO THE POINT OF BEGINNING;

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EXCEPT THAT PORTION OF SAID PREMISES DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF BEGINNING ABOVE DESCRIBED, WHICH IS THE SOUTHWEST CORNER OF THE ABOVE DESCRIBED TRACT;
THENCE NORTHEASTERLY ALONG THE SOUTHERLY LINE OF THE ABOVE DESCRIBED TRACT, A DISTANCE OF 234.00 FEET;
THENCE NORTHERLY AT RIGHT ANGLES TO SAID SOUTHERLY LINE A DISTANCE OF 183.00 FEET;
THENCE SOUTHWESTERLY A DISTANCE OF 332.00 FEET, MORE OR LESS, MEASURED ALONG A LINE PARALLEL WITH THE SOUTHERLY LINE OF THE ABOVE DESCRIBED PROPERTY, TO THE EASTERLY LINE OF THE BOTHELL-KIRKLAND HIGHWAY;
THENCE SOUTHEASTERLY ALONG SAID EASTERLY LINE OF THE BOTHELL-KIRKLAND HIGHWAY TO THE POINT OF BEGINNING.

AND EXCEPT THAT PORTION OF LAND LYING NORTHWESTERLY OF THE FOLLOWING DESCRIBED LINES;
COMMENCING AT THE NORTHEAST CORNER OF SECTION 18;
THENCE SOUTH 2°14'45" WEST ALONG THE WEST LINE OF SAID SECTION A DISTANCE OF 425.55 FEET TO THE SOUTH LINE OF THE NORTH 425.54 FEET OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 18;
THENCE NORTH 88°11'29" WEST ALONG SAID LINE A DISTANCE OF 896.99 FEET TO THE POINT OF BEGINNING OF SAID LINES;

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-24 of 37
Record Date:6/20/2019 11:49 AM King County, WA

THENCE SOUTH 39°56'27" WEST A DISTANCE OF 122.38 FEET;
THENCE SOUTH 80°58'32" WEST A DISTANCE OF 299.86 FEET TO THE EASTERLY MARGIN OF THE BOTHELL TO KIRKLAND HIGHWAY AND THE TERMINUS OF SAID LINES.

PARCEL E (Tax Parcel No. 569050-0295-07)

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 26 NORTH, RANGE 5 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SUBDIVISION;
THENCE SOUTH 00°07'40" EAST ALONG THE WEST LINE THEREOF A DISTANCE OF 641.04 FEET;
THENCE NORTH 89°14'50' EAST A DISTANCE OF 387.47 FEET;
THENCE NORTHEASTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 467.31 FEET, AN ARC DISTANCE OF 159.93 FEET TO A POINT OF REVERSE CURVE;
THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 230 FEET, AN ARC DISTANCE OF 300.93 FEET TO A POINT OF REVERSE CURVE;
THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 430 FEET, AN ARC DISTANCE OF 184.12 FEET, TO A POINT OF COMPOUND CURVE;
THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 50 FEET, AN ARC DISTANCE OF 78.10 FEET, TO A POINT OF TANGENCY;
THENCE NORTH 89°22'00" EAST A DISTANCE OF 69.56 FEET;
THENCE NORTH 00°38'00" WEST A DISTANCE OF 20 FEET, MORE OR LESS, TO THE NORTH LINE OF SAID SUBDIVISION;
THENCE SOUTH 89°22'00" WEST ALONG SAID NORTH LINE A DISTANCE OF 633.76 FEET, MORE OR LESS, TO THE POINT OF BEGINNING;

EXCEPT THAT PORTION CONVEYED TO THE CITY OF SEATTLE FOR WATER MAIN BY DEED RECORDED UNDER RECORDING NUMBER 5040174; ALSO

EXCEPT THAT PORTION CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NUMBER 514489 FOR THE TOLT RIVER PIPE LINE RIGHT OF WAY.

(ALSO KNOWN AS A PORTION OF LOT 1, BLOCK 6, MOTOR CREST VILLA TRACTS, ACCORDING TO THE UNRECORDED PLAT THEREOF.)

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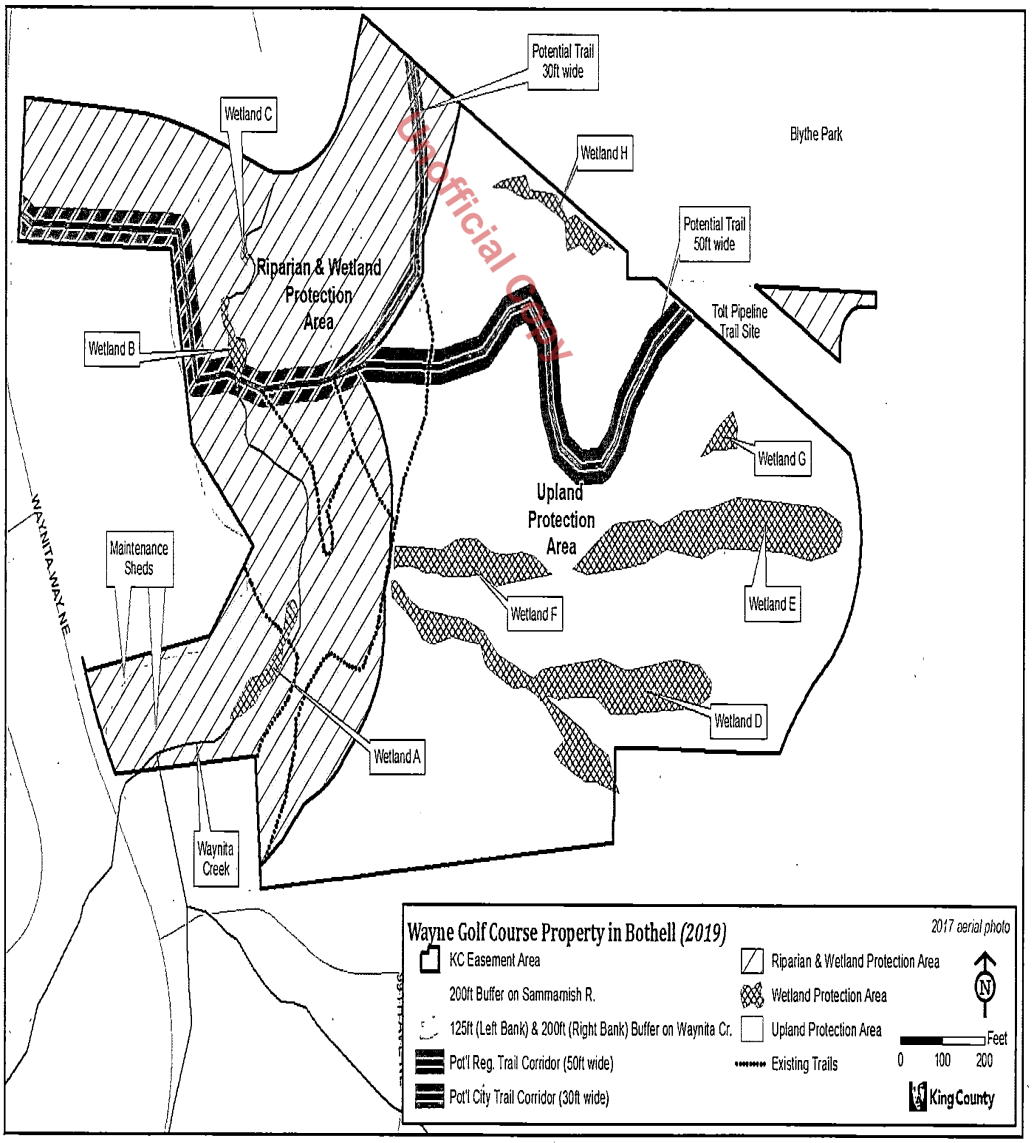
Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-25 of 37
Record Date:6/20/2019 11:49 AM King County, WA

EXHIBIT B
PROPERTY MAP



Unofficial Copy

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-26 of 37
Record Date:6/20/2019 11:49 AM King County, WA

EXHIBIT C

STEWARDSHIP PLAN

Project: Wayne Sammamish Riverfront

SRFB Project Number: #16-1956

BACKGROUND

The Back Nine of the Wayne Golf Course is comprised of approximately 36 acres of riparian, floodplain, wetlands, and upland habitat along the Sammamish River in the City of Bothell. The site is located 2.3 miles upstream of Lake Washington and was managed as a public golf course for many years. As a golf course, the site offers open space and land mostly free of impervious surfaces, but management of the site did not support habitat or water quality objectives. A small tributary stream, Waynita Creek, enters the Sammamish River on the property.

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PURPOSE

The purpose of the conservation easement is to protect 31.38 acres of the Wayne Golf Course Back Nine (four contiguous tax parcels) as open space in perpetuity and to offer future opportunities for ecological enhancement to benefit fish and wildlife species (specifically Chinook salmon listed as threatened under the Endangered Species Act). The Sammamish River is a high-priority, Tier 1 migratory corridor for Chinook and other salmon species moving to and from spawning streams farther upriver (primarily North Creek, Little Bear Creek, Bear Creek, Cottage Lake Creek, and Issaquah Creek).
Acquisition of this easement (and a corresponding fee acquisition completed by the City of Bothell) will enable future restoration of the property to support salmon habitat, consistent with and as called for by the WRIA 8 Chinook Salmon Conservation Plan. Adult and juvenile salmonid life history stages will benefit from protecting the property and from future restoration, specifically restoring riparian forest along the Sammamish and Waynita Creek, enhancing the mouth and lower segment of Waynita Creek as juvenile refuge habitat, and potentially restoring floodplain connectivity. Other human uses of the land (i.e., passive recreation, regional trails) will be supported on the site as well. This easement acquisition is supported by the City of Bothell, and the city will lead future restoration efforts.

CURRENT CONDITIONS

A. FISH USE AND HABITAT

The Sammamish River is a key migratory pathway for threatened Chinook salmon, as well as coho and sockeye salmon. Adult Chinook use the Sammamish River to transit along the property on their way to spawning streams farther upriver, and juvenile Chinook use the shoreline habitat along the property boundary for rearing and refuge from predators. The river is also used by cutthroat and rainbow trout and offers the potential for use by Lake Sammamish kokanee salmon and steelhead trout. In recent years, juvenile coho salmon, cutthroat trout, and sculpin have been documented in

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-27 of 37
Record Date:6/20/2019 11:49 AM King County, WA

Waynita Creek (City of Bothell, 2017). No known Cultural and Historic Resources are found on site.

B. SOILS & SOIL STABILITY

On-site soils are mapped as Kitsap silt loam with 15 to 30 percent slopes, Sultan silt loam, and Puget silty clay loam; these were also observed during the appraiser's investigation of the subject property.

C. WETLANDS

There are eight wetlands within the conservation easement area. Four of the identified wetlands are Class IV and four are Class III.

The eastern portion of the subject property falls largely within the FEMA designated 100-year floodplain, as well as within an erosion hazard area.

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D. HYDROLOGY

Waynita Creek is a tributary to the Sammamish River, with 1,200 feet of the creek flowing through the conservation easement area before it enters the river. This perennial stream is influenced by upstream development, and its banks are significantly incised and actively eroding during high flow events. Within the easement area, the upstream portion of the creek flows at moderate gradient (<2%) and then drops steeply (4-5%) to the Sammamish River in the lower 400 feet.

Water quality within the Sammamish River and Waynita Creek is generally in poor condition. Monitoring on Waynita Creek has shown high conductivity, a high percentage of fine sediments, and high water temperatures; the creek is considered in poor condition using a measure of stream benthic organisms (Benthic Index of Biotic Integrity, or B-IBI); and the creek sees low flows in the summer (City of Bothell, 2017). Dissolved oxygen levels are within state standards.

Water quality in the Sammamish River, especially in the summer months, is poor. Due to the invasive aquatic weed Brazilian Elodea, a general lack of shade throughout much of its length, and low flows during summer, the river experiences high water temperatures and low dissolved oxygen levels (Department of Ecology). The Department of Ecology is in the process of developing a temperature and dissolved oxygen Total Maximum Daily Load (TMDL) for the Sammamish River, which will identify measures to bring temperature and dissolved oxygen to within state standards.

E. VEGETATION

The great majority of the property is vegetated, with a combination of turf grass, tree canopy, and forest understory shrub and herbaceous vegetation. There is land cover in three classes: impervious surface, vegetation less than 5ft tall, and vegetation equal to or more than 5ft tall (primarily tree canopy).
Riparian: The conservation easement area has 1,000 linear feet of riparian shoreline on the south bank of the Sammamish River, as well as both banks along the lowermost 1,200 feet of Waynita Creek. In the future, regional trail connections will pass through some of the riparian buffer areas, connecting the Sammamish River Trail to the Tolt

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-28 of 37
Record Date:6/20/2019 11:49 AM King County, WA

Pipeline Trail. In adjacent public spaces with regional trails, a high riparian forest canopy provides shade to the river, and that is a reasonable expectation here as well.

Upland Forest: The eastern and most of the southern portion of the property is heavily forested with mature trees and native undergrowth. The trees include big leaf maple, Douglas fir, red alder, Western red cedar, beaked hazelnut. The undergrowth consists of western sword fern, English holly, red elderberry, and trailing blackberry.

In addition to these native plant species, the banks of the Sammamish and Waynita Creek are thickly covered with invasive Himalayan blackberry.

F. PUBLIC USE

The property is located in the midst of an urbanized area and provides a valuable opportunity for residents to access public open space. The public use was as a golf course prior to the acquisition. Golfing activities are no longer taking place, and the public use is currently of a passive nature—walking, birding, etc. An informal trail network currently exists in the forested uplands.

G. CULTURAL & HISTORIC RESOURCES

There are no known cultural or historic resources on the property.

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DESIRED FUTURE CONDITIONS

A. FISH USE AND HABITAT

Permanently protecting this property provides a number of restoration opportunities to benefit salmonids. Of primary importance is the potential to significantly enhance adult migratory and juvenile rearing habitat for ESA-listed Chinook salmon and other fish species (including sockeye, coho, and kokanee salmon, as well as cutthroat, rainbow, and steelhead trout). Primary factors limiting to salmonid health on the Sammamish River include elevated water temperatures, a lack of floodplain connectivity, and significantly degraded riparian conditions. Acquisition of the property will allow opportunities to address these limiting factors over time. Future restoration plans will be led by the City of Bothell—who will own and manage the properties—and restoration options will be developed in partnership with the local community, the WRIA 8 Lead Entity, King County, and other stakeholders with an interest in the property.

Fish use the Waynita Creek and Sammamish River in its current condition, but instream enhancements could provide additional channel complexity and make the lower channel more hospitable to fish. Future instream restoration opportunities will be developed as the overall site restoration plan comes together.

B. SOILS & SOIL STABILITY

Active erosion in Waynita Creek and sedimentation will be addressed through a combination of instream and riparian enhancements, to be determined through the restoration planning process.

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-29 of 37
Record Date:6/20/2019 11:49 AM King County, WA

C. WETLANDS

Partners working together on the acquisition of this property have identified possibilities for floodplain and wetland restoration to support salmon recovery. Exact details will be developed through a restoration planning process led by the City of Bothell—who will own and manage the properties—and options will be developed in partnership with the local community, the WRIA 8 Lead Entity, King County, and other stakeholders with an interest in the property.

D. VEGETATION

Riparian: Riparian conditions will be significantly enhanced by removing invasive Himalayan blackberry and replanting native trees and shrubs to provide shade and cover. Buffer enhancements will extend 200 feet from the Sammamish River, 125 feet along the left bank of Waynita Creek, and 200 feet along the right bank of Waynita Creek. King County intends to conduct initial riparian restoration within the buffer area along the Sammamish River by 2021 or sooner if able.
In the future, regional trail connections will pass through some of the riparian buffer areas, connecting the Sammamish River Trail to the Tolt Pipeline Trail. In adjacent public spaces with regional trails, a high riparian forest canopy provides shade to the river, and that is a reasonable expectation here as well.
Upland Forest: The majority of the upland areas are forested with native trees. The objective will be to maintain this existing forest cover and support passive recreation opportunities (i.e., walking and biking trails). As with the riparian areas, a regional trail connection will pass through the upland area to access the Tolt Pipeline Trail.

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E. PUBLIC USE

The current public use of the Back Nine is passive use, and this will remain the case into the future. King County Parks intends to work with the City of Bothell to develop regional trail connections through the property that will support additional access opportunities for biking, walking, and jogging. Other than these trail connections, the only other recreational activities envisioned on site are passive use and enjoyment of this natural open space.
There are also maintenance sheds currently on the property that were used for the previous golfing operation. These will remain on site until such time that the City of Bothell develops more active use facilities outside of the easement area.

MAINTENANCE AND MONITORING SCHEDULE

A. PLANNED ACTIVITIES

As mentioned previously, King County intends to conduct some initial riparian restoration activities in the near-term. This work will involve clearing invasive blackberry (likely through some combination of methods) and replanting native vegetation appropriate for the site. For a period of time following the initial control work, blackberry will need to continue to be monitored and removed as needed. Plant survival will be monitored, and additional planting needs will be identified if significant mortality occurs.
Additional restoration activities are in the earliest planning stages, with the City of Bothell likely to initiate restoration design work in 2020. Monitoring and maintenance needs will

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-30 of 37
Record Date:6/20/2019 11:49 AM King County, WA

be identified through that process, determined by the restoration treatments that are ultimately implemented.

EFFECTIVENESS REVIEW

WRIA 8 has a significant interest in restoration at this site due to the salmon habitat potential, and WRIA 8 staff will work with the City of Bothell to identify appropriate effectiveness monitoring needs and ensure those are incorporated into future restoration project implementation plans.

ADAPTIVE MANAGEMENT PLAN

As a full site restoration is developed, adaptive management needs and triggers will be identified. These will be developed in partnership with the City of Bothell and WRIA 8.

ROLES, RESPONSIBILITIES, AND FUNDING

King County Water and Land Resources will hold this conservation easement, and the City of Bothell owns the underlying fee. King County and Bothell are partners on this acquisition effort, and the city will be the lead agency on the future restoration of the property and will oversee site management. King County Parks will be the lead on developing regional trail connections through the property, and that work will occur in partnership with the city. Funding for the acquisition was a collaborative effort involving King County, Bothell, and Forterra. In addition, local community groups were very active in raising the visibility of this project and will be important stakeholders in developing future restoration plans.

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CONSTRAINTS AND UNCERTAINTIES

Scope of Future Restoration: Uncertainty exists around the exact nature of future restoration activities. There are a number of options available here, all of which will provide improvement over the existing condition. How exactly that takes shape is yet to be determined, but planning will involve a number of partners and will be targeted at providing the best possible habitat enhancements at a reasonable cost while maintaining opportunities for the local community to recreate on the site and experience urban open space. There will be regional trail connections through the property, and these will be designed and sited to be compatible with future restoration activities.

Balancing Restoration with Passive Recreation at Public Park: As restoration plans are developed for the property, there is a need to incorporate opportunities for passive public recreation, specifically the regional trail connections mentioned elsewhere in this document and public access to the river. The trails are intended to provide opportunities for the public to enjoy this open space and connect to other trail networks, and this also provides public education opportunities to highlight the importance of habitat restoration. The City of Bothell has recent experience with balancing restoration and public use at the nearby Sammamish River Side Channel project site, which can provide a good model for this project to follow. Ultimately, the partners involved have a strong interest in providing meaningful salmon habitat enhancement, and plans will be designed with that as a primary objective.

River Protection Easement: The Sammamish River is considered a flood control facility under an agreement between King County and the U.S. Army Corps of Engineers, developed in the 1960s. The banks of the Sammamish are under a river protection easement that allows

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-31 of 37
Record Date:6/20/2019 11:49 AM King County, WA

King County, as the local sponsor of the Army Corps project, to perform activities to ensure the flood performance of the facility. Activities implemented along the Sammamish also must demonstrate they will not adversely affect the performance of this facility. Even with this being the case, several entities (King County, City of Bothell, City of Redmond) have successfully implemented restoration activities over the past 15 years along the Sammamish River, and it is expected restoration at this site will be able to successfully demonstrate compliance with flood conveyance requirements.

This stewardship plan will be updated periodically as restoration and park enhancements are designed and implemented.

PHOTOS:
Photos on file with both Grantor and Grantee in locations identified in Section 18 of said Deed. Photos are also included in the Baseline Documentation referenced in Recital C of said Deed.

PROXIMITY MAP:

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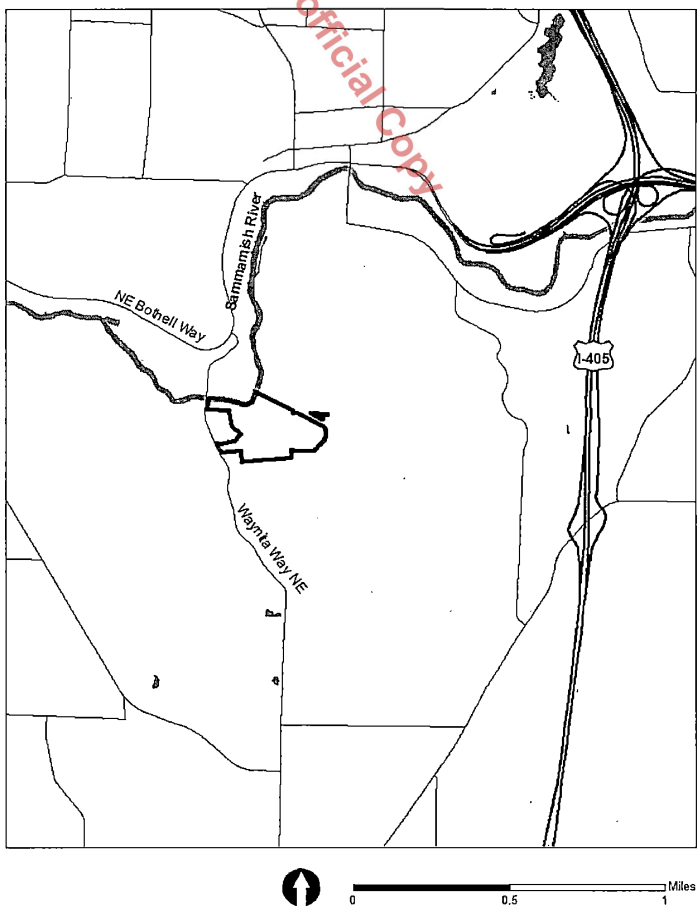

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-32 of 37
Record Date:6/20/2019 11:49 AM King County, WA

EXHIBIT D

PERMITTED EXCEPTIONS

1. Rights of the public in and to the Easterly portion of Parcel E for road as implied in the unrecorded plat of Motor Crest Villa Tracts, and as delineated upon the King County Assessor's Maps.

2. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to:	Puget Sound Power & Light Company
Purpose:	Electric transmission and/or distribution line with necessary rights and appurtenances related thereto
Recording Date:	July 29, 1913
Recording No.:	879410
Affects:	Portion of Parcel A as described in said instrument

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3. Release of Damage Agreement and the terms and conditions thereof:

Executed by:	Joseph Blyth and Matilda Blyth; King County
Recording Date:	March 6, 1963
Recording No.:	5552286

Releasing King County from all future claims for damages resulting from disposal of excess material from improvement work on the Sammamish River

Affects: Parcel A

4. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to:	King County
Purpose:	River bank protection and other flood control works
Recording Date:	March 6, 1963
Recording No.:	5552285
Affects:	Parcel A and other property

5. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to:	City of Bothell
Purpose:	Roadway
Recording Date:	October 21, 1988

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-33 of 37
Record Date:6/20/2019 11:49 AM King County, WA

Recording No.: 8810210087
Affects: Westerly portion of Parcel D

6. Notice of Water and Sewer Connection Charge:

   Executed by: City of Bothell
   Recording Date: January 21, 1988
   Recording No.: 8801210544

7. Terms and conditions of notices of charges by water, sewer, and/or storm and surface water utilities, recorded under recording numbers 8801210540 and 9207300895.

8. Any question that may arise due to shifting and changing in the course or boundaries of Sammamish River.

9. Rights of the State of Washington in and to that portion, if any, of the Land which lies below the line of ordinary high water of Sammamish River.

10. Any prohibition or limitation of use, occupancy or improvement of the Land resulting from the rights of the public or riparian owners to use any portion which is now or was formerly covered by water.

11. Paramount rights and easements in favor of the United States for commerce, navigation, fisheries and the production of power.

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Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-34 of 37
Record Date:6/20/2019 11:49 AM King County, WA

EXHIBIT E

ASSIGNMENT OF RIGHTS TEMPLATE

ASSIGNMENT OF RIGHTS
WASHINGTON STATE RECREATION AND CONSERVATION OFFICE
_____ Property

This ASSIGNMENT OF RIGHTS (this "Assignment") is executed as of the _____ day of _____, 20__, by _____, a _____ ("Assignor [name]"), to and in favor of THE STATE OF WASHINGTON through the Recreation and Conservation Office ("Assignee State"), including any successor agencies.

RECITALS

A. Assignor has entered into [*insert full title of easement or lease, e.g., Conservation Easement, Easement for Ingress, Egress and Public Access, or Trail Easement or Lease Agreement, etc.*} ("Easement or Lease") with [a] certain property owner[s] (collectively "Owner") in _____*[insert county name]*, Washington. The name[s] and address[es] of the Owner and the recording number of the *Easement or Lease* are set forth in Exhibit 1 attached hereto and incorporated herein. The legal description of the Property subject to the
Easement or Lease is set forth in Exhibit 2 attached hereto and incorporated herein.

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B. The purpose of the *Easement or Lease* is described in the *Easement or Lease*. That purpose is also described in the Project Agreement entered into between the recipient of RCO funds ("Sponsor") and the Assignee through the RCO entitled _____ Project Number _____ dated _____, 20__ and the supporting materials which are on file with the Assignee in connection with the Project Agreement, which Project Agreement is incorporated herein by this reference. That purpose includes *[protection] [and restoration] [and enhancement] [restoration and enhancement] of habitat [public access] [trail, etc.]*, as defined in the *Easement or Lease*.

C. Owner has authorized Assignor to assign to the Assignee certain rights for access to and stewardship of the property covered by the *Easement or Lease*. Assignment of such rights is a necessary condition to receipt of grant funding under the Project Agreement and the policies of the [*Recreation and Conservation Funding Board or Salmon Recovery Funding Board]* administered by the Assignee. Such rights are valuable to the Assignee in connection with ensuring [*protection of habitat] [protection of public rights]* under the terms of the *Easement or Lease*. The assignment of such rights to the Assignee State, however, does not in any way relieve the Assignor *[name]* of such duties to enforce the *Conservation Easement or Lease* as may be imposed on it under the *Conservation Easement or Lease* and the Project Agreement.

D. These recitals are incorporated herein by this reference.

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

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-35 of 37
Record Date:6/20/2019 11:49 AM King County, WA

AGREEMENT

1. **Assignment**. For and in consideration of monies coming in whole or in part from the _____ *[insert funding source]* and in fulfillment of terms of the Project Agreement identified herein, Assignor does hereby assign, transfer, set over, convey and deliver to the Assignee individually, and as the representative of all the people of the State, the following joint rights (collectively referred to as " joint rights") under the *Easement or Lease,* the recording number of which is listed in *Exhibit 1* attached hereto and incorporated herein by this reference and as described in *Exhibit 2* attached hereto. The term "joint right" means a right that both the Assignor and Assignee may independently enforce under the *Conservation Easement or Lease*. The grant of these joint rights does not in any way relieve the Assignor of its duties to enforce the terms of the *Conservation Agreement or Lease* or the Project Agreement.

a. **Access**. A right to enter the [*Conservation Zone, as defined in the Conservation Easement, through the Property subject to the Conservation Easement[[the Property subject to the Easement or Lease]* at a reasonable time and upon prior arrangement with Assignor and Owner, in order to monitor and evaluate performance, compliance, and/or quality assurance under the Project Agreement.

b. **Enforcement**. A right to enforce the terms and conditions of the *Conservation Easement and/or Lease* and to seek injunctive relief, including restoration, and/or damages for any breach thereof.

c. **Amendments**. A right to review and approve any proposed amendments to the *Easement or Lease*. Review and approval by RCO's Director will be for compliance with the terms of the Project Agreement.

d. **Termination For Reasons of Impracticability**. A right to review and approve any proposed agreements to terminate the *Easement or Lease*, or release a portion of the *[Conservation Zone] [Property]* from the terms of the *Easement or Lease*, before expiration of the term of the *Easement or Lease* for the reason that circumstances have rendered the conservation purpose of the *Easement or Lease* impractical to achieve. Absent approval of the Assignee acting through the RCO or entry of an order of the Superior Court in which the property subject to the *Easement or Lease* is located, the Assignor shall not enter into any termination or release agreement.

e. **Stewardship and Management Plans**. A right to review any Stewardship and/or Management Plans, *[including habitat restoration and enhancement plans],* as defined in the *Easement or Lease*. Review by RCO's Director will be for compliance with the terms of the Project Agreement.

To the extent the rights assigned herein overlap with the rights granted to the Assignor under the *Easement or Lease*, the rights assigned herein shall not be construed to displace those rights. These Rights shall be held in common with Assignor or Assignor's successors and assigns.

2. **Assignee's Exercise of Rights**. The Assignee hereby represents and warrants that its exercise of rights under this Assignment will be consistent with the [*conservation] [recreation*] purpose defined in the *Easement or Lease* and the Project Agreement.

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Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-36 of 37
Record Date:6/20/2019 11:49 AM King County, WA

3. **Representations and Warranties of Assignor.** Assignor hereby represents and warrants to the Assignee that:

a. Owner, identified in *Exhibit 1* attached hereto and incorporated herein, has authorized and approved this Assignment.

b. Assignor shall enforce the terms of the *Easement or Lease* as provided in the *Easement or Lease*.

c. Assignor shall comply with, and the Assignee shall not be responsible for determining compliance with, all applicable federal, state, and local laws, regulations, and policies in its administration of the *Easement or Lease* or the undertaking of any of its rights under the *Easement or Lease*.

d. Neither Assignor nor Owner has any claims or causes of action, at law or in equity, with respect to the *Easement or Lease* as of the date provided above.

4. **Obligations.** It is expressly understood and agreed that, by the acceptance of this Assignment, the Assignee has not assumed, and shall not become obligated to keep, fulfill, observe, perform or discharge any duty or obligation of Assignor under the *Easement or Lease.*

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5. **Indemnity**. Assignor shall defend, protect and hold harmless the Assignee, or any officers or employees thereof, from and against any and all costs, claims, fees and expenses arising out of in part or whole the acts or omissions of Assignor and/or its employees, relating to the *Easement or Lease* or in any way relating to Assignor's representations and warranties under this Assignment.

6. **Replacement Property.** The *Easement or Lease* may be extinguished in whole or in part before expiration of its term (if any) under certain circumstances identified in the *Easement or Lease*. 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 RCO in the selection of any replacement property and to assign to the Assignee 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 *Easement or Lease* or the performance of any obligations to the Assignee under the *Easement or Lease*, without the express written consent of the RCO's Director, which shall not unreasonably be withheld.

8. **Assignment Term.** The term of this Assignment shall be the same as the term of the *Easement or Lease*, and shall expire upon the expiration date of the *Easement or Lease* (if any).

9. **Disputes.** Any disputes between Assignor and the Assignee 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 Assignee involving this Assignment, venue shall be proper 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 provision of any document incorporated by reference herein shall be held invalid, such invalidity shall not

Instrument Number: 20190620000398 Document:EAS Rec: $135.00 Page-37 of 37
Record Date:6/20/2019 11:49 AM King County, WA

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.

12. **SCHEDULE OF EXHIBITS:**

Exhibit 1 - Owner and *Easement or Lease* Recording Number
Exhibit 2- Legal Description of Property Subject to *Easement or Lease*

REMAINDER OF PAGE IS INTENTIONALLY BLANK: SIGNATURE PAGES, NOTARIES, EXHIBITS TO FOLLOW

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