

UNOFFICIAL

*original*

*20/22*

KATHY HILL  
SKAGIT COUNTY AUDITOR

When recorded return to:

'96 FEB 21 P3:35

RECORDED... FILED...

9602210085

SKAGIT COUNTY WASHINGTON  
Real Estate Excise Tax

The San Juan Preservation Trust  
Box 327  
Lopez, WA 98261

FEB 21 1996

Amount Paid \$  
By Skagit Co. Treasurer Deputy

*[Signature]*

**GRANT DEED OF CONSERVATION EASEMENT**

This Grant Deed of Conservation Easement, by and between ANN MAGNANO, a single woman, and SHERI BODDY, a single woman (hereinafter together referred to as "Grantor"), and THE SAN JUAN PRESERVATION TRUST, a Washington non-profit corporation (hereinafter referred to as "Grantee"), is made with reference to the following facts:

**1 RECITALS**

1.1 Grantor is the owner in fee of that certain real property (hereinafter the "Protected Property"), situated on Guemes Island in Skagit County, State of Washington, more particularly described in Exhibit "A" and shown on Exhibit "B", both of which are attached and made a part hereof by this reference.

1.2 The Protected Property is part of a significant coastal ecosystem, the San Juan Islands, which is relatively intact and undeveloped. The Protected Property includes approximately 20 acres and consists of a wooded area, open fields and gardens, and pond. The western portion of the Protected Property is an approximately 10-acre block of forested wildlife habitat. The southern border of the Protected Property adjoins

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## Magnano/Boddy Conservation Easement

garden and residential land protected by a conservation easement protecting similar values.

1.3 The Protected Property's natural and open-space values are of importance to Grantor, Grantee, and the people of Guemes Island, and the State of Washington. The Protected Property enhances the rural character of Guemes Island and provides an open garden meadow, woodlands, and wildlife habitat and adjoins the 120-acre forest conservation lands of the Washington State Department of Natural Resources.

1.4 The goals and policies of the Skagit County Zoning Ordinance provide for the conservation of natural resources and the value of property. The Skagit County Countywide Comprehensive Plan encourages the retention of open space and wildlife habitat by conservation easements.

1.5 The legislatively declared policies of the State of Washington, in the Revised Code of Washington (hereinafter "RCW") Chapter 84.34, provide that it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence, adequate open-space lands 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.

1.6 In the absence of this Grant Deed of Conservation Easement, the Protected Property could be developed in the future for residential and other uses in a manner which would destroy the open space, woodland, and natural character of the Protected Property and its ecological value.

1.7 Grantor, as the owner of the Protected Property, possesses the affirmative right to identify, preserve, and protect in perpetuity the natural elements and processes and the ecological, woodland, natural, and open space value of the Protected Property, and desires to transfer such rights to the Grantee.

1.8 Grantee is a "non-profit nature conservancy corporation" as defined by RCW 64.04.130 and RCW 84.34.250, and described in Section 170(b)(1)(A)(vi) of the Internal Revenue Code of 1986 (hereinafter "IRC").

## 2 CONVEYANCE AND CONSIDERATION

2.1 For the reasons stated above, and in consideration of the mutual covenants contained herein, the Grantor does hereby convey and warrant to Grantee a perpetual Conservation Easement, consisting of the rights in

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the Protected Property hereinafter enumerated, subject only to the restrictions set forth herein.

2.2 This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130, and is made as an absolute, unconditional, unqualified, and completed gift subject only to the mutual covenants and restrictions hereinafter set forth, and for no other consideration whatsoever.

### **3 PURPOSE**

3.1 It is the exclusive purpose of this Conservation Easement to preserve and protect the open-space, open gardens, woodland and natural character of the Protected Property and limit any development on the Protected Property to one(1) single-family residence, one(1) guest house, and small outbuildings. To this end, Grantor and Grantee agree that the Baseline Data consisting of maps, photographs, and other documentation on file at the offices of Grantee and already provided to Grantee by Grantor provide, collectively, an accurate representation of the Protected Property at the time of this Grant and are hereby incorporated by this reference. Grantor and Grantee further agree that within twelve (12) months of the execution hereof, a collection of additional Baseline Data may be compiled by Grantee, attached hereto as an exhibit, and incorporated herein by this reference. The Baseline Data shall be relied upon by the Grantor and the Grantee as the descriptive base to establish the present condition and guide in the future uses of the Protected Property. Failure to timely compile the additional Baseline Data shall not affect the enforceability or validity of any other provision hereof.

3.2 Grantor intends that the Protected Property shall not be converted nor directed to any uses other than those provided herein.

### **4 GRANTEE'S RIGHTS**

4.1 The rights conveyed to Grantee by this Conservation Easement are the following:

4.1.1 The Grantee shall have the right to identify, to preserve and protect in perpetuity, and to maintain the open-meadow, open-space, wooded, and natural character of the Protected Property to benefit wildlife and its values for the general public and community.

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4.1.2 The Grantee shall have the right to enter upon the Protected Property annually, upon prior written notice to the Grantor, for the purpose of making a general inspection to assure compliance with this Conservation Easement.

4.1.3 The Grantee and other persons approved by the Grantor, may enter upon the Protected Property, upon prior arrangement with Grantor, for educational, scientific and biological purposes to observe and study the Protected Property, or for other purposes allowed by Grantor consistent with this Conservation Easement.

4.1.4 The Grantee shall have the right to enter upon the Protected Property, at such other times as are necessary if there is reason to believe that a violation of the Easement is occurring, for the purposes of enforcing the provisions of this Conservation Easement;

4.1.5 The Grantee shall have the right to enjoin any activity on, or use of, the Protected Property which is inconsistent with this Conservation Easement, and undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be damaged by activities contrary to the provisions hereof.

4.1.6 The Grantee shall have the right, during the annual inspection, to place and replace small markers to identify the boundaries and corners of the Protected Property.

4.1.7 The Grantee shall be notified by Grantor, in writing, before Grantor exercises any reserved right, the exercise of which may have an adverse impact on the conservation interests associated with the Protected Property.

4.1.8 The Grantor hereby grants to Grantee all development rights, except as reserved in Section 5 below, that are now or hereafter allocated to, implied, reserved, or inherent in the Protected Property; and Grantor and Grantee agree that such rights are terminated and extinguished, and may not be used on or transferred to any portion of the Protected Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield of the Protected Property or any other property.

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4.2 Enforcement of the terms and conditions of this Conservation Easement shall be at the discretion of the Grantee, in accordance with Section 7 below. Any forbearance on its behalf to exercise its rights hereunder in the event of any breach of this Conservation Easement by Grantor, its heirs, successors or assigns, or any other person or entity, shall not be deemed or construed to be a waiver of the Grantee's rights hereunder in the event of any subsequent breach.

5 **PERMITTED USES.** Grantor reserves the right to use the Protected Property for all uses which are consistent with the purposes of this Conservation Easement, including the following uses:

5.1 To construct, use, repair, remodel, or replace in kind, only one (1) year-round, single-family residence, one(1) guest house, and accessory structures on the east 391.69 feet of the Protected Property within the "Residential Zone" as shown on Exhibit "B" for reasonable use and enjoyment by the Grantor, provided that any residence and accessory structures and driveway be sited and constructed in a manner to preserve as much open-space, garden-meadow, woodland, and natural value as practicable and to minimize adverse environmental and aesthetic impacts upon the Protected Property.

5.2 To construct, maintain, and use one vehicle access driveway to serve the one residence in the "Residential Zone" pursuant to Section 5.1 above.

5.3 To construct, install, maintain, and use underground utility lines, water lines, septic systems, and other underground utility improvements necessary for reasonable use and enjoyment of the permitted residence and gardens.

5.4 To practice small-scale farming and gardening, mow the open meadows, construct non-residential buildings used solely for farming purposes, and remove trees and noxious weeds in the "Residential Zone" and on the west 570.6 feet of the east 962.29 feet of the Protected Property in the "Farm/Garden Zone" as shown on Exhibit "B".

5.5 To walk on and maintain walking trails and paths and provide for paths for garden vehicles in the "Farm Zone" of the Protected Property.

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5.6 To establish a grove of old-growth trees of 100 years of age or more in west 489.53 of the Protected Property in the "Forest Zone" as shown on Exhibit "B" and to maintain the "Forest Zone" as habitat for native wildlife. Wildlife ponds are also permitted in the "Forest Zone."

5.7 To walk on and maintain trails and paths and provide paths for vehicles to collect firewood and maintain ponds in the "Forest Zone" of the Protected Property.

5.8 To remove fallen or dangerous trees on the Protected Property for Grantor's domestic use for firewood and to remove windthrown trees.

5.9 To maintain ponds on the Protected Property.

5.10 To make a boundary-line modification to hold the Protected Property in one undivided piece to help maintain the open-space and wildlife-habitat value of the Protected Property.

6 **PROHIBITED USES.** The following uses and practices on the Protected Property are inconsistent with the purposes of this Conservation Easement and shall be prohibited; however, this is not an exhaustive recital of all of those uses and practices which are prohibited as inconsistent with the purposes of the Conservation Easement:

6.1 The construction or placement of more than one (1) single-family residence and its accessory structures on the Protected Property.

6.2 The construction or placement of any residential structures or non-farm/garden-related structures in the "Farm Garden Zone" of the Protected Property as shown on Exhibit "B".

6.3 The construction or placement of structures of any kind in the "Forest Zone" on the Protected Property as shown on Exhibit "B".

6.4 The further division, subdivision or de facto subdivision of the Protected Property, except that a boundary line modification to consolidate the Protected Property into one tax parcel is permitted.

6.5 Filling, dredging, mining, drilling, or removal of topsoil, sand, gravel, rock, minerals or other materials, except for water supply or as provided in Section 5 above, on the Protected Property.

6.6 The construction or placement of commercial signs, billboards, or other commercial advertising material on the Protected Property.

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6.7 The dumping of used vehicles, old machinery, or other unsightly or offensive material on the Protected Property.

6.8 Overnight commercial or public camping on the Protected Property.

6.9 The removal or destruction of trees or other vegetation in the "Forest Zone", except as provided in Section 5 above, including clearcutting, "selective" cutting, or any other form of logging or gathering of wood.

6.10 The cutting of snags and over-mature trees in the "Forest Zone", unless dangerously close to paths, except as provided in Section 5 above.

## 7 REMEDIES

7.1 If a dispute arises between the Grantor and the Grantee concerning either the consistency of any proposed action, activity, or use with the purpose of this Conservation Easement or any other circumstances not provided for in Section 7.2 below, the parties shall meet together to discuss the dispute and attempt resolution. Thereafter, either party may refer the dispute to arbitration by request made in writing upon the other. Within thirty(30) days of receipt of such a request, the parties shall select a single arbitrator to hear the matter. If the parties are unable to agree on the selection of the arbitrator, then the presiding judge of San Juan County Superior Court shall appoint one. The matter shall be settled in accordance with RCW 7.04 or the state arbitration statute then in effect, and a judgment on the arbitration award may be entered in any court having jurisdiction thereof. The substantially prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for all its costs and expenses related to such arbitration, including, without limitation, the fees and expenses of the arbitrator and attorneys' fees, which shall be determined by the arbitrator and any court of competent jurisdiction that may be called upon to enforce or review the award. The parties agree not to proceed with the proposed action, activity, or use pending resolution of the dispute.

7.2 Irrespective of any other remedies provided for Grantee, Grantee may, following reasonable written notice to Grantor, institute suits or actions to enjoin any violation of this agreement by injunction, including

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prohibitory and/or mandatory injunctive relief, and to require the restoration of the premises to the condition and appearance required under this Conservation Easement. Further, as permitted by law, representatives of Grantee may, following reasonable notice to Grantor, enter upon the Protected Property and correct any violations and hold Grantor, its successors and assigns, responsible for the cost thereof.

7.3 Should any person or entity, including the Grantor, its heirs, successors or assigns, undertake any activity in violation of the terms of this Conservation Easement, the Grantee shall have the right to force the restoration of that portion of the Protected Property affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the costs of such restoration and the Grantee's expenses, including Grantee's attorneys' fees, shall be borne by Grantor or those of its heirs, successors, or assigns against whom a judgment is entered, or, in the event that the Grantee secures redress without initiating or completing a judicial proceeding, by Grantor or those of its heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized activity.

7.4 Should the ownership of the Protected Property become vested in more than one heir, successor or assign of the Grantor, and should one or more heir, successor, or assign undertake any activity in violation of the terms of this Conservation Easement, the Grantor or any other heir, successor or assign shall have the right to force the restoration of that portion of the Protected Property affected by such undertaking to the condition that existed prior to the undertaking of such unauthorized activity, in the event the Grantee elects not to exercise the remedy provided for in Sections 7.2 and 7.3. In such case, the costs of such restoration and the expenses, including attorneys' fees, of the Grantor or the heir, successor or assign that forces the restoration shall be borne by those such heirs, successors or assigns against whom a judgment is entered, or, in the event that the heir, successor or assign forcing the restoration secures redress without initiating or completing a judicial proceeding, by those heirs, successors or assigns who are otherwise determined to be responsible for the unauthorized activity.



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8 **SUCCESSION.** The benefits of this Conservation Easement shall be assignable but only to a qualified organization within the meaning of Section 170(h)(3) of the IRC which is organized or operated primarily or substantially for one of the conservation purposes specified in Section 170(h)(4)(A) of the IRC. Any assignment of benefits by the Grantee (or successors) must require the transferee to carry out the purposes of this Conservation Easement. The Grantee shall notify the Grantor, in writing, at the Grantor's last known address, in advance of such assignment. If at any time it becomes impossible for the Grantee to ensure compliance with the covenants contained herein and the Grantee has not named a successor or successor organization, or the Grantee shall cease to exist, then its rights and duties hereunder shall become vested in and fall upon the following-named entities provided that such entities accept this Conservation Easement and are then organizations meeting the requirements of Section 170(h)(3) of the IRC (or its successor statute), in the following order:

- (1) Skagit Land Trust, P.O. Box 1017, Mount Vernon WA 98273;
- (2) The Nature Conservancy, a District of Columbia non-profit corporation, having its principal office at 1815 North Lynn Street, Arlington, VA 22209;
- (3) Such other non-governmental entity as may have been formed for purposes similar to The San Juan Preservation Trust, constituting a "qualified organization" within the meaning of the Internal Revenue Code of 1986 (or its successor provision).

## 9 **TAXES AND EXPENSES**

9.1 Grantor agrees to pay any and all real property taxes and/or assessments levied by competent authority on the Protected Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Protected Property, Grantor shall reimburse Grantee for the same.

9.2 Grantor shall bear all the costs of maintenance of the Protected Property, and does hereby indemnify the Grantee therefrom.

## 10 **PROPORTIONATE VALUE; EMINENT DOMAIN**

10.1 The Grantor and the Grantee agree that the donation of the Conservation Easement gives rise, for purposes of this paragraph, to a property right immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that the Conservation

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Easement, determined at the time of the gift, bears to the value of the Protected Property at that time as determined by the appraisal used by Grantor for federal income tax purposes, or, if there is no appraisal, then the parties shall designate such proportionate value by exhibit to this easement prior to execution. <sup>(see "Exhibit C")</sup> That proportionate value of the Grantee's property rights shall remain constant. If a change in conditions surrounding the Protected Property makes impossible or impracticable the continued use of the Protected Property for conservation purposes, and gives rise to extinguishment of this Conservation Easement by judicial proceedings, the Grantee, on a subsequent sale, exchange or involuntary conversion of the Protected Property, must be entitled to a portion of the proceeds at least equal to that proportionate value of the Conservation Easement. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.

10.2 If ever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking; all expenses incurred by the Grantor and the Grantee in this action shall be paid out of the recovered proceeds.

- 11 **HOLD HARMLESS.** Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' 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 Protected Property, regardless of cause, unless due to the negligence of any of the Indemnified Parties; and (2) the obligations specified in paragraphs 9.1 and 9.2; and (3) the existence or administration of this Conservation Easement.

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- 12 **WARRANTY AGAINST TOXIC SUBSTANCES.** Grantor hereby represents and warrants to Grantee that Grantor has never caused or placed toxic substances on or under the Protected Property in violation of any federal or state law or regulation, and will, in accordance with Section 11 above, hold Grantee harmless from any such matters.
- 13 **COVENANTS.** It is the express intent of the Grantor and Grantee that the provisions of this Conservation Easement shall run with and burden title to the Protected Property in perpetuity, and shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the parties hereto.
- 14 **"GRANTOR" - "GRANTEE".** The terms "Grantor" and "Grantee", wherever used herein, and any pronouns used in place thereof, shall be held to mean and to include, respectively the above-named Grantor, and heirs, successors, personal representatives, and assignees of said Grantor, and each of them, and the above-named Grantee, its successors and assigns.
- 15 **SEVERABILITY.** In the event that any provision of this grant or the application thereof to any person or circumstance shall be determined to be invalid or unenforceable, the remainder of the provisions hereof, and the application of such provisions to persons or circumstances other than those as to which it is determined to be invalid, shall not be affected thereby.
- 16 **SUBSEQUENT TRANSFERS.** Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Protected Property, including without limitation, a leasehold interest, and shall notify Grantee in writing of any transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

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17 **NOTICES.** All notices required or permitted to be given under the terms of this Conservation Easement shall be in writing and addressed as set forth below:

17.1 All notices to be given to Grantor shall be addressed as follows:

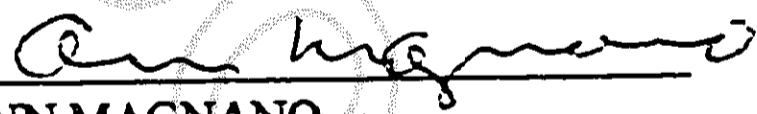
Ann Magnano and Sheri Boddy  
323 Solstice Lane  
Seattle WA 98119


17.2 All notices to be given to the Grantee shall be addressed as follows:

The San Juan Preservation Trust  
Box 327  
Lopez, WA 98261

Either Grantor or Grantee may, by proper notice to the other, designate another address for the giving of notices. All notices shall be deemed given on the third day following the day the notice is mailed in accordance with this Section 16.

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 13 day of Feb, 1996

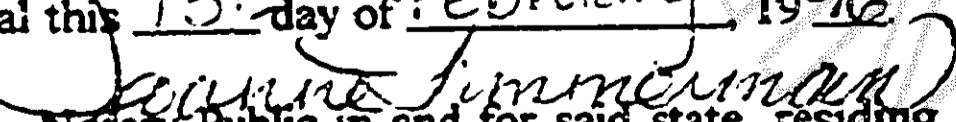
  
ANN MAGNANO

  
SHERI BODDY

State of Washington )  
County of Skagit ) ss.

On this day, personally appeared before me ANN MAGNANO and SHERI BODDY, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.



Given in my hand and official seal this 13<sup>th</sup> day of February, 1996  
  
Notary Public in and for said state, residing  
at Anacortes  
Joanne Timmerman  
My commission expires: May 19, 1999

**Magnano/Boddy Conservation Easement**

THE SAN JUAN PRESERVATION TRUST does hereby accept the above Conservation Easement.

THE SAN JUAN PRESERVATION TRUST

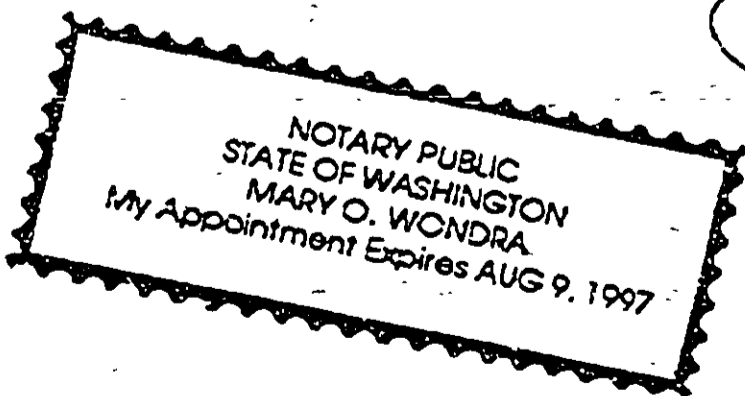
By Mary O. Wondra  
Its Treasurer

Dated: 2/20/96

State of Washington )  
County of Sauquan ) ss.

On this 20<sup>th</sup> day of February, 1996, before me, personally appeared Mary O. Wondra to me known to be the (president, vice president, secretary, treasurer or other authorized officer or agent, as the case may be) of the corporation that executed the within and foregoing instrument, and acknowledged that said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that she was/were authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Mary O. Wondra  
Notary Public in and for said state, residing  
at Lopez  
My commission expires: 8-9-97

February 09, 1996  
magnano/boddy

Init: [Signature]

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**EXHIBIT "A"**

**Legal Description of the Protected Property**

**PARCELA**

Commencing at the Northeast corner of the Northwest Quarter of Section 1, Township 35 North, Range 1 East of the Willamette Meridian; thence North  $87^{\circ}15'05''$  West along the North line of said Northwest Quarter for 1216.35 feet to the true point of beginning; thence South  $01^{\circ}25'51''$  West parallel with the East line of said Northwest Quarter for 594.04; thence North  $88^{\circ}02'33''$  West for 83.66 feet; thence North  $67^{\circ}52'10''$  West for 938.99 feet to a point on the Easterly line of Parcel C of Schmid 5 Acre Tracts Division No. 1, as recorded in Volume 7 of Short Plats, page 49, a distance of 283.5 feet South of the Northeastly corner thereof; thence North  $1^{\circ}25'51''$  East along the East line of said Parcel C for 283.5 feet; thence South  $87^{\circ}15'05''$  East along the North line of the Northwest Quarter of said Section 1 for 962.29 feet to the point of beginning.

**Parcel B**

All that portion of Tract 4, Skagit County Short Plat No. 92-027, approved December 14, 1992, and recorded December 15, 1992, in Volume 10 of Short Plats, page 155, under Auditor's File No. 9212150027, records of Skagit County, Washington, described as follows:

Beginning at the Northeast corner of said Tract 4;  
thence South  $01^{\circ}25'51''$  West for 901.5 feet to the point of beginning;  
thence North  $87^{\circ}15'05''$  West for 486.8 feet to an intersection with the West line of said Tract 4;  
thence North  $01^{\circ}15'24''$  East 901.6 feet to the Northwest corner of Tract 4;  
thence South  $87^{\circ}15'05''$  East along the North line thereof for 489.53 feet to the point of beginning.

All situate in Skagit County, Washington.

- END OF EXHIBIT "A" -

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Exhibit C

PROPORTIONATE VALUE

For the purpose of Section 10 above, grantor and grantee hereby agree that the proportionate value of the protected property vested in the grantee is 60 percent of the unrestricted fair market value of the protected property, and that percentage should remain constant.

  
grantor

