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Skagit County Auditor

\$96.00

8/25/2016 Page

1 of

24 3:33PM

SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

When recorded return to:
The San Juan Preservation Trust
Box 759
Friday Harbor WA 98250

AUG 25 2016

Amount Paid \$
Skagit Co. Treasurer
By *men* Deputy

DOCUMENT TITLE: **AMENDED AND RESTATED GRANT DEED OF CONSERVATION EASEMENT**

GRANTOR: **BRIAN ARBOGAST AND VALERIE TARICO, HUSBAND & WIFE**

GRANTEE: **THE SAN JUAN PRESERVATION TRUST**

ABBREVIATED LEGAL DESCRIPTION: **PTN OF SE ¼, SEC 9 T36N R1E W.M.**

FULL LEGAL DESCRIPTION: **EXHIBIT A, PAGE # 22**

ASSESSOR'S TAX PARCEL NUMBERS:

P126069 / 360109-4-004-0100; P123517 / 360109-4-003-0300

RELATED DOCUMENT: **200612270204** **GUARDIAN NORTHWEST TITLE CO.**

No MONETARY CONSIDERATION

109368

AMENDED AND RESTATED GRANT DEED OF CONSERVATION EASEMENT

This Amended and Restated Grant Deed of Conservation Easement (hereinafter, the "Conservation Easement"), by and between **BRIAN ARBOGAST** and **VALERIE TARICO**, husband and wife (hereinafter referred to as "Grantor"), and **THE SAN JUAN PRESERVATION TRUST**, a Washington non-profit corporation (hereinafter referred to as "Grantee"), amends and restates the following Conservation Easement in its entirety: Grant Deed of Conservation Easement, recorded December 27, 2006 under Skagit County Auditor's File Number 200612270204 ("2006 Conservation Easement").

By this Conservation Easement, Grantor and Grantee add over 20 additional contiguous acres to the Conservation Easement protected area previously donated by Joost A. Businger, and update provisions in the Conservation Easement, where appropriate, to reflect current policies of Grantee pertaining to conservation easements.

1 RECITALS.

1.1 Owner. Grantor is the owner in fee of that certain real property (hereinafter the "Property") inclusive of all standing and downed timber, situated on Sinclair Island in Skagit County, State of Washington, more particularly described in Exhibit "A" and partially shown on Exhibit "B" and entirely

shown on Exhibit "C", all of which are attached hereto and made a part hereof by this reference. The Property includes all of parcel P126069 (360109-4-004-0100) permanently protected under the 2006 Conservation Easement ("2006 Protected Property") and all of parcel P123517 (360109-4-003-0300), legally described as Lot 3, Skagit County Short Plat No. PL04-0915, recorded October 18, 2005, under Auditor's File No. 200510180053, records of Skagit County, Washington, except for a 5-acre excluded residential tract ("Excluded Property") legally described in Exhibit "A" and shown on Exhibit "B" (the "2015 Protected Property").

- 1.2 **Protected Property.** The Property is part of a significant coastal ecosystem, the San Juan Islands, which is relatively intact and undeveloped. The Property is in a natural condition and consists of approximately 40 inland acres of woodland habitat possessing ecological, scenic, forest, and open-space value on Sinclair Island.
- 1.3 **Conservation Values.** The Property's open-space and natural values are of major importance to Grantor, Grantee, and the people of Sinclair Island, Skagit County, and the State of Washington. The Property enhances the wooded greenbelt, rural character and wildlife habitat on Sinclair Island. Sinclair Island is among the few remaining undeveloped islands in the San Juan archipelago, and as such, provides important habitat for a wide variety of birds (including eagles and other protected species), mammals, and plants.
- 1.4 **County Conservation Intent.** The Property is within the watershed of Rosario Strait, a part of Puget Sound. The Washington State legislature in the Revised Code of Washington (hereinafter "RCW") 90.71.005 has recognized "that Puget Sound and related inland marine waterways of Washington State represent a unique and unparalleled resource. A rich and varied range of marine organisms, comprising an interdependent, sensitive communal ecosystem reside in these sheltered waters." The legislature has further recognized that residents of this region enjoy a way of life centered around the waters of Puget Sound which depends upon a clean and healthy marine resource. Restrictions on the uses of the Property will benefit Rosario Strait and Puget Sound by decreasing soil erosion and contamination associated with logging, development and construction.
- 1.5 **State Conservation Intent.** The legislatively declared policies of the State of Washington, in Chapter 84.34 RCW, provide that it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in

existence, adequate open-space lands 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 Conservation Threat.** The Property would also be desirable property for further residential and other development because of its location and orientation. In the absence of this Grant Deed of Conservation Easement, the Property could be developed in the future for residential and other uses in a manner which would destroy the forest, open-space, and natural character of the Property and its ecological value.
- 1.7 Grantor Conservation Intent.** Grantor, as the owner of the Property, possesses the affirmative right to identify, preserve, and protect in perpetuity the natural elements and processes and the ecological, forest, open-space, and natural values of the Property, and desires to transfer such rights to the Grantee.
- 1.8 Qualified Conservation Organization.** 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”), and Grantee is authorized to accept the Conservation Easement.
- 1.9 Recitals Incorporated By Reference.** The above Recitals are incorporated into this Conservation Easement by this reference.

2 CONVEYANCE AND CONSIDERATION.

- 2.1 Charitable Donation.** For the reasons stated above, and in consideration of the mutual covenants contained herein, the Grantor does hereby grant, convey, and warrant to Grantee, and Grantee hereby accepts, a perpetual Conservation Easement, consisting of the rights in the Property hereinafter enumerated, subject only to the restrictions set forth in this Conservation Easement.
- 2.2 Gift of Real Property.** 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 title matters of record as of the Effective Date, and for no other consideration whatsoever.
- 2.3 Water Rights.** This Conservation Easement does not transfer any water or water rights to Grantee.

2.4 **Grantor Intent.** Grantor expressly intends that this Conservation Easement runs with the land and that this Easement shall be binding upon Grantor's personal representatives, heirs, successors, and assigns.

3 **PURPOSE.**

3.1 **Conservation Purpose.** It is the exclusive purpose of this Conservation Easement to implement the mutual intentions of Grantor and Grantee as expressed in the above Recitals and in the provisions that follow, to preserve and protect the forested, open-space, scenic and natural condition of the Property (hereinafter the "Conservation Values"); to keep the land wild forever without any structures or improvements, except walking trails, benches, one gazebo type structure, and two wildlife ponds; and to preserve the land in perpetuity (the "Purpose").

Grantor intends that this Conservation Easement will confine the use of, or activity, on the Property to those uses and activities with the Purpose to assure, under IRC Section 170(h)(4)(A)(iii), the preservation of forested open space that yields a significant public benefit pursuant to a clearly delineated governmental conservation policy as provided for in RCW 84.34.210 and 64.03.130.

3.2 **Grantor Intent.** Grantor intends that the Property shall not be converted or directed to any uses other than those provided in this Conservation Easement.

3.3 **Baseline Data.** In furtherance of the foregoing Purpose, Grantor and Grantee agree that the baseline data consisting of maps, photographs, and other documentation on file at the offices of Grantee and provided to Grantee by Grantor (hereinafter the "Baseline Present Conditions Report") provide, collectively, an accurate representation of the Property at the time of this Grant and are hereby incorporated by this reference. Grantor and Grantee have acknowledged in a signed statement, a copy of which is attached to this Conservation Easement as Exhibit "D", that the Baseline Present Conditions Report accurately represents the currently available baseline data regarding the condition of the Property as of the Effective Date. The Baseline Present Conditions Report shall be relied upon by Grantor and Grantee as the descriptive base to establish the present condition and guide in the future uses of the Property.

3.4 **Public Access.** Nothing contained in this Conservation Easement shall be construed as affording to the general public access to any portion of the Property subject to this Conservation Easement.

3.5 **Visual Access.** Preservation of the Property will protect the general public's visual access to open space and forested habitat from Jackson Road.

4 **GRANTEE'S RIGHTS.** The rights conveyed to Grantee by this Conservation Easement are the following:

4.1 **Protection in Perpetuity.** The Grantee shall have the right to identify, preserve, and protect, in perpetuity, the Conservation Values of the Property for public benefit by the general public and for its open-space values.

4.2 **Grantee's Access.**

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

4.2.2 **Educational and Scientific Purposes.** The Grantee and other persons approved by the Grantor may enter upon the Property, upon prior arrangement with Grantor, for educational and scientific purposes to observe and study the Property, or for other purposes allowed by Grantor consistent with this Conservation Easement.

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

4.3 **Injunction and Restoration.** The Grantee shall have the right to enjoin any activity on, or use of, the Property that is inconsistent with this Conservation Easement, and undertake, cause to be undertaken, or enjoin the restoration of such areas or features of the Property as may be damaged by activities contrary to the provisions hereof all in accordance with Section 7 below.

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

4.5 **Advance Written Notice.** The Grantee shall be notified by Grantor, in accordance with the procedures of Section 17 below, before Grantor exercises any reserved right, the exercise of which may have an adverse impact on the Conservation Values of the Property.

4.6 Transfer of Easement. Grantee shall have the right to assign, convey or transfer Grantee's interest in the Property in accordance with Section 8 below.

4.7 Development Rights. The Grantor hereby grants to Grantee all development rights, that are now or hereafter allocated to, implied, reserved, or inherent in the Property (other than the single development right associated with the Excluded Property); and Grantor and Grantee agree that such development rights on the Property are terminated and extinguished, and may not be used on or transferred to any portion of the 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 Property or any other property (other than with respect to the single development right associated with the Excluded Property).

4.8 Enforcement. 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 the Grantee's part 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 AND RESERVED USES AND ACTIVITIES. Grantor reserves for itself and its personal representatives, heirs, successors, and assigns, all rights accruing from ownership of the Property, including the right to engage in, or permit or invite others to engage in, any use of, or activity on, the Property that is consistent with the Purpose of the Conservation Easement and that is not otherwise prohibited by this Conservation Easement. Without limiting the generality of this section, Grantor specifically reserves for itself and its personal representatives, heirs, successors, and assigns, the following uses and activities:

5.1 Trails/Paths/Structures. To create, walk on, and maintain walking trails and paths on the Property, including placement and use of benches for resting, wildlife viewing, and nature appreciation. Trail maintenance may include periodic mowing. To build one 20 foot x 20 foot, or less, gazebo type structure with at least one side open to the weather on tax parcel P123517.

5.2 Wildlife Ponds. To construct and maintain up to two wildlife ponds, at least one of which shall be located on the 2015 Protected Property, provided that their collective total area not exceed 0.5 acres, that any

construction occur within the months of July through September, and that any construction be completed within two calendar years. To construct and use a bird blind at the pond(s).

- 53 Forest Management- Noncommercial Purposes.** To manage forested land by allowing standing trees, alive or dead, to remain standing. To selectively thin, prune, and plant understory vegetation for noncommercial purposes only, which may include forest management for safety of users of the Property; for control of active fires, and prevention of fire and disease, including exotic intrusion; for restoration or enhancement of wildlife habitat; to create and maintain walking trails and paths on the Property; to maintain the existing driveway on the 2015 Protected Property; subject to the general maintenance of the high scenic character and healthy wildlife habitat of the Property. To allow, after notification of Grantee, harvest of fallen trees for personal use, provided they can be easily accessed from existing trails with minimal disturbance of vegetation and no off-trail use of motorized vehicles. Temporary lumber storage may be allowed in the lumber drying area shown in Exhibit "C".
- 54 Noxious Weeds/Introduced Species.** To remove noxious, invasive and introduced weeds and introduced animal species from the Property.
- 5.5 Public Health and Safety.** To undertake other activities necessary to protect public health or safety of the Property, or which are actively required by and subject to compulsion of any governmental agency with authority to require such activity, provided that any such activity shall be conducted so that interference with the Conservation Values of the Property is avoided to the greatest extent possible.
- 5.6 Existing Road on 2015 Protected Property.** To use, maintain, repair, reconstruct or replace existing access road on the 2015 Protected Property for access to utilities within 30-foot corridor as shown in Exhibit "C" and documented in the Baseline Present Conditions Report.
- 5.7 Existing Well and Water Lines.** To use, maintain, repair, reconstruct or replace existing wells and water lines on the 2015 Protected Property as shown on Short Plat No. PL04-0915, recorded in the records of Skagit County on October 18, 2005 under Auditor's File No. 200510180053 and documented in the Baseline Present Conditions Report.

PROHIBITED USES AND ACTIVITIES. Any use of or activity on, the Property inconsistent with the Purpose of this Conservation Easement is prohibited, and the Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity. The following uses and practices on the Property are inconsistent with the Purpose of this Conservation Easement and shall be prohibited; except to the extent a use or practice is specifically reserved in Section 4, Section 5 or this section; and provided that this is not an exhaustive recital of all of those uses and practices which are prohibited as inconsistent with the Purpose of the Conservation Easement:

- 6.1 **Structures.** The construction or placement of any buildings or structures, including docks and fences, on the Property.
- 6.2 **Subdivision.** The division, subdivision or de facto subdivision of the Property, which includes, but is not limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Property is divided into lots or which title to different portions of the Property are held by different owners.
- 6.3 **Alteration of Land.** Change in the topography of the land through the excavation or placing of soil, dredging spoils, or other material; pond construction; or archaeological excavation on the Property.
- 6.4 **Alteration of Wetlands/Watershed Resources.** The manipulation or alteration of any marshes, wetlands, or surface drainage patterns by filling or draining, or the pollution or degradation of surface or subsurface waters on or under the Property.
- 6.5 **Roads/Trails.** Construction of any roads, trails, or paths for vehicular use.
- 6.6 **Utilities.** The placement of new above-ground utility lines, pipes, or wires or new fuel tanks, whether above- or underground, on the Property.
- 6.7 **Mining.** The exploration for or extraction of minerals, hydrocarbons, soils, rock, gravel or other materials, except water for use on the Property, on or below the surface of the Property.
- 6.8 **Signs.** The construction or placement of commercial signs, billboards, or other commercial advertising material on the Property. This provision shall not be interpreted to prohibit Grantor from placing small signs that advise “no hunting”, “private” or other small signs indicating the protected conservation status of the Property; provided that such signs are designed and

located to avoid or minimize impact on the Conservation Values of the Property.

- 6.9 Dumping.** The dumping or disposal of used vehicles, old machinery, rubbish, garbage, debris, hazardous materials or other unsightly or offensive material on the Property.
- 6.10 Tree Harvest or Vegetation Removal.** Removal or destruction of trees, including clear-cutting or any other form of commercial logging, or gathering of wood or other vegetation on the Property.
- 6.11 Introduced Vegetation.** The intentional introduction of invasive plant species on the Property.
- 6.12 Grazing.** The grazing, browsing or pasturing of domestic animals on the Property.
- 6.13 Development Rights.** The use or transfer of any development rights that are now or hereafter allocated to, implied, reserved, or inherent in the Property to any other property.
- 6.14 Commercial Recreation.** Other than de minimis use of the Property for commercial recreational activities, as such terms are defined by Section 2031(c)(8)(B) of the IRC and the applicable Treasury Regulations. By prohibiting more than a de minimis use of the Property for commercial outdoor recreational activities, it is the intent of the parties to prevent the Property from becoming the site of a commercial recreational enterprise, such as a commercial campground, a golf course, an exclusive hunting grounds or club, a commercial site for an all-terrain vehicle, motocross or other racetrack, a dressage field or other similar intensive or predominantly commercial use.
- 6.15 Industrial and Commercial Uses.** The use of the Property for any industrial or non-recreational commercial purpose.
- 6.16 Off-Road Vehicles and Excessive Noise.** The operation of motorcycles, ATV's, dune buggies, snowmobiles, or any other type of motorized recreational vehicles, or the operation of other sources of compaction or erosion that could adversely and materially impact the Conservation Values of the Property; except that motorized recreational vehicles are allowed on the access road located within the corridor shown on Exhibit "C" and documented in the Baseline Present Conditions Report.

6.17 Camping. Public or commercial camping on the Property or development of permanent campsites. This restriction does not prohibit temporary recreational camping by the Grantor and Grantor's guests.

6.18 Night Lighting. The use of any continuous type of night lighting. This restriction does not prohibit downward directed night illumination for safety.

7 REMEDIES.

7.1 Dispute Resolution. If a dispute arises between the Grantor and the Grantee concerning the consistency of any proposed action, activity, or use with the Purposes of this Conservation Easement or any circumstances not provided for in Subsection 7.2 below (other than extinguishment of this Conservation Easement which shall occur only in accordance with Section 10 below), the parties shall meet together to discuss the dispute and attempt resolution. Thereafter, the parties may mutually agree to refer the dispute to arbitration. Within thirty (30) days of mutual agreement to resolve said dispute by arbitration, 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 Skagit County Superior Court shall appoint one. The matter shall be settled in accordance with chapter 7.04 RCW 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 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, not including attorneys' fees, related to such arbitration which shall be determined by the arbitrator and any court of competent jurisdiction that may be called upon to enforce or review the award. Each party shall be responsible for its own legal fees. The parties agree not to proceed with the proposed action, activity, or use pending resolution of the dispute.

7.2 Grantee's Action.

7.2.1 Injunctive Relief. Irrespective of any other remedies provided for Grantee, Grantee may, following reasonable written notice to Grantor, institute suits or actions to enjoin any violation by Grantor of this Conservation Easement by injunction, including prohibitory and/or mandatory injunctive relief, and to require the restoration of the premises to the condition and appearance required under this Conservation Easement.

7.2.2 Restoration. Should any person or entity, including Grantor, its heirs, successors or assigns, undertake any activity in violation of the terms of this Conservation Easement, Grantee shall have the right to force the restoration of that portion of the 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 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.

7.2.3 Damages. Grantee shall be entitled to recover damages for violation of the terms of this Conservation Easement or injury to the Conservation Values, including, without limitation, damages for the loss of environmental, aesthetic or scenic values. Without limiting Grantor's liability in any way, Grantee, in its sole discretion, may apply any damages it recovers to the cost of undertaking corrective or restorative action on the Property.

7.2.4 Immediate Action Required. If Grantee, in its sole and absolute discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, Grantee may pursue its remedies under this Section 7 without prior notice to Grantor.

7.3 Acts Beyond Grantor's Control. Notwithstanding any other provisions in this Conservation Easement, nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct or restore any condition on the Property or to recover damages for any injury to or change in the Property resulting from causes beyond Grantor's control, including, but not limited to, fire, flood, storm, insect infestation, or earth movement; actions taken by third parties not connected to Grantor (such as trespassers); or from prudent actions taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

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

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by the Grantee (or successors) must require the transferee to carry out the Purpose 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 in this Conservation Easement 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) The Nature Conservancy, a District of Columbia non-profit corporation, having its principal office at 4245 North Fairfax Drive, Suite 100, Arlington, VA 22203;
- (2) Such other 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).

Provided that if such vesting in the entities named above is deemed to be void under the Rule against Perpetuities, then the rights and obligations under this Conservation Easement shall vest in such organization as a court of competent jurisdiction shall direct, pursuant to the applicable Washington law and the IRC (or corresponding provision of any future statute) and with due regard to the Purpose of this Conservation Easement, including, but not limited to, the Conservation Values of the Property.

9 TAXES AND EXPENSES.

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

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

10 PROPORTIONATE VALUE; EMINENT DOMAIN.

10.1 Valuation. The Grantor and the Grantee agree that the donation of the Conservation Easement gives rise, for purposes of this Section 10, 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 Easement, determined as of the Effective Date, bears to the value of the Property (excluding the value of buildings and other improvements) at that time. The proportionate value of Grantee's property rights shall remain constant. If the Grantor obtains an appraisal for federal income or other tax purposes, Grantor shall provide the Grantee with a copy of that appraisal. If a change in conditions surrounding the Property makes impossible or impracticable the continued use of the 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 Property, shall 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 Purposes set forth in this Conservation Easement or for the "protection of a relatively natural habitat of fish, wildlife, or plants or similar ecosystem," or the "preservation of open space" as those phrases are used in IRC Section 170(h)(4)(a), as amended, and in regulations promulgated thereunder.

10.2 Eminent Domain. If ever all or part of the 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 reasonably incurred by the Grantor and the Grantee in this action shall be paid out of the recovered proceeds and the proceeds remaining after the payment of such expenses shall be allocated in accordance with section 10.1 above.

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 Property, regardless of cause, except to the extent caused by the willful or negligent acts of any of the Indemnified Parties; (2) the obligations specified in paragraphs 9.1 and 9.2; (3) the violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation or requirement, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USCA §§9601 *et seq.*)

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“CERCLA”), the Washington State Model Toxics Control Act, chapter 70.105D RCW (“MTCA”) or any successor or related law, by any person other than any of the Indemnified Parties; (4) the presence or release in, on, or from the Property, at any time, of any substance now or hereafter defined, listed or otherwise classified pursuant to any federal, state or local law, regulation or requirement as hazardous, toxic or polluting to the air, water or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; and (5) the existence or administration of this Conservation Easement.

- 12 **ENVIRONMENTAL LIABILITY.** Grantor is solely responsible and Grantee has no responsibility whatsoever for the operation of the Property or the monitoring of hazardous and other conditions thereon. Notwithstanding any other provision of this Conservation Easement to the contrary, the parties do not intend, and this Conservation Easement shall not be construed, such that: (1) it creates in the Grantee the obligations or liabilities of an “owner” or “operator” as those words are defined and used in the environmental laws, including without limitations the CERCLA, MTCA or any successor or related law; or (2) it creates in the Grantee obligations or liabilities of a person described in 42 U.S. Code §9607(a)(3), RCW 70.105D.040 or any successor or related law. The term “environmental laws” includes, without limitation, any federal, state, local, or administrative agency statute, regulation, rule, ordinance, order, or requirement relating to environmental conditions or hazardous substances.
- 13 **COVENANTS.** It is the express intent of the Grantor and Grantee that the provisions of this Conservation Easement shall run with the land and burden title to the 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 in this Conservation Easement, 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; NO MERGER.**

16.1 Binding Effect. Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including without limitation, a leasehold interest, and shall notify Grantee in writing of any transfer within five business days after closing. Grantor agrees to pay a transfer fee of \$100 to Grantee to be used for purposes consistent with Grantee's mission. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

16.2 Merger of Title. In the event that Grantee acquires the fee title to the real estate covered by this Conservation Easement, it is the intent of the parties, both Grantor and Grantee, that no merger of title shall take place which would merge the restrictions of the Conservation Easement with fee title to the Property and thereby eliminate them, as the parties intend that no such merger take place and that the restrictions on the use of the real estate, as embodied in this Conservation Easement shall, in the event title becomes vested in Grantee, become and remain permanent and perpetual restrictions on the use of the Property and that merger, which would eliminate such restrictions, shall not take place.

17 NOTICES.

17.1 Means of Notice. All notices required or permitted to be given under the terms of this Conservation Easement shall be in writing, sent as registered or certified mail or other courier providing reliable proof of delivery, and addressed as set forth below:

To Grantor:

Brian Arbogast and Valerie Tarico
1220 10th Ave. E.
Seattle, WA 98102

To the Grantee:

The San Juan Preservation Trust
Box 759
Friday Harbor WA 98250

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 17.

17.2 Prior Notice and Approval. The purpose of notice and approval is to afford Grantee an opportunity to ensure that the activities or uses in question are designed and carried out in a manner consistent with the Purposes and terms of this Conservation Easement. Where notice to Grantee is required, Grantor shall describe in such notice the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the terms of this Conservation Easement and the Purpose thereof. Where Grantee's approval is required as provided in Section 5 above, Grantee shall have twenty (20) days from receipt of the notice to request additional information to evaluate the proposed activity. Where no additional information is requested, Grantee shall grant or withhold its approval in writing within forty-five (45) days of receipt of Grantor's written request for approval. Where additional information is requested, Grantee shall grant or withhold its approval in writing within thirty (30) days from receipt of the additional information. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the Purpose and terms of this Conservation Easement. If Grantee determines that the activity or use as contemplated by Grantor in its notice is not consistent with the Purposes and/or terms of the Conservation Easement, Grantee shall inform Grantor in writing of its determination and of any reasonable conditions that would make the activity or use in question consistent with the Purpose and terms of this Conservation Easement. When Grantee's approval is required, and when Grantee does not grant or withhold its approval in the time period and manner set forth herein, Grantor shall resubmit its notice. If Grantee fails thereafter to act on Grantor's request within thirty (30) days after receipt of the resubmitted notice, Grantor may conclusively assume Grantee's approval of the permitted use or activity in question, as described in Grantor's notice thereof.

17.3 Optional Notice and Consultation. If Grantor is unsure whether a proposed use or activity is prohibited by this Conservation Easement, Grantor may consult Grantee by providing Grantee a written notice describing the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose and to provide comments thereon to Grantor. This subsection does not itself impose a requirement of prior approval of the activity described in any such notice.

however, if Grantee does not provide written objections within forty-five (45) days after receipt of Grantor's notice, and Grantor resubmits its notice, and Grantee thereafter does not provide written objections within thirty (30) days after receipt of Grantor's resubmission notice, Grantee will be deemed to have approved of the proposed use or activity.

- 18 **LIBERAL CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of the grant to effect the Purposes of this Conservation Easement and the policy and purpose of RCW 64.04.130 and chapter 84.34 RCW. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 19 **AMENDMENTS.** Grantor and Grantee recognize that circumstances could arise that justify amendment of certain of the terms, covenants, or restrictions contained in this Conservation Easement, and that some activities may require the discretionary consent of the Grantee. To this end, the Grantor and Grantee have the right to agree to amendments and discretionary consents to this Conservation Easement without prior notice to any other party, provided that in the sole and exclusive judgment of the Grantee, such amendment or discretionary consent furthers or is not inconsistent with the Purpose of this Conservation Easement. This Conservation Easement shall not be amended, modified, or terminated except in writing in a document signed by the Grantor and Grantee. No amendment shall be allowed that would adversely affect the qualifications of this Conservation Easement as a charitable gift or the status of the Grantee under any applicable laws. Any such amendment shall be consistent with the Purpose of this Conservation Easement, shall not affect its perpetual duration, shall not permit additional development other than development permitted by this Conservation Easement on its Effective Date and shall not permit any impairment of the significant Conservation Values of the Property. Any amendment shall be consistent with the Grantee's Conservation Easement Amendment Policy. Any such amendment shall be recorded in the land records of Skagit County of Washington. Nothing in this section shall require Grantor or Grantee to agree to any amendment.
- 20 **RECORDATION.** Grantee shall record this instrument in a timely fashion, in the Official Records of Skagit County, Washington, and other appropriate jurisdictions, and Grantee may re-record it at any time as may be required to preserve its rights in this Conservation Easement.
- 21 **GOVERNING LAW.** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Washington.

- 22 **NO FORFEITURE.** Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect.
- 23 **ENTIRE AGREEMENT.** This instrument sets forth the entire agreement of the parties with respect to the Property and supersedes all prior discussions, negotiations, understandings or agreements relating to the Property, all of which are merged into this Conservation Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 19 above.
- 24 **TERMINATION OF RIGHTS AND OBLIGATIONS.** Notwithstanding anything contained in this Conservation Easement to the contrary, upon transfer of a party's interest in all or a portion of the Property, that party's rights and obligations under this Conservation Easement terminate to the portion transferred, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- 25 **COUNTERPARTS.** This instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same document, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- 26 **CAPTIONS.** The captions in this instrument have been inserted solely for convenience of reference and are not part of this instrument and shall have no effect upon construction or interpretation.
- 27 **EFFECTIVE DATE.** This Conservation Easement shall be effective as of the date of recording ("Effective Date").

{Signature Pages Follow}

UNOFFICIAL DOCUMENT

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 5th day of August, 2016.

Valerie Tarico
 VALERIE TARICO

Brian Arbogast
 BRIAN ARBOGAST

State of Washington)
) SS
 County of King)

On this day, personally appeared before me BRIAN ARBOGAST and VALERIE TARICO 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 under my hand and official seal this 5th day of August, 2016.

MARIO DESTEFANO
 Notary Public
 State of Washington
 Commission Expires November 23, 2019

[Signature]
 Notary Public in and for said state,
 residing at Seattle, WA
 My commission expires: 11/23/2019

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

THE SAN JUAN PRESERVATION TRUST

By *[Signature]*
Its Executive Director

State of Washington)
) ss
County of SAN JUAN)

I certify that I know or have satisfactory evidence that TIMOTHY SEIFERT is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the EXECUTIVE DIRECTOR of The San Juan Preservation Trust to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Given under my hand and official seal this 9TH day of AUGUST, 2016.



Laurie Naylor
Notary Public in and for said state,
residing at LOPEZ ISLAND
My commission expires: Nov 16, 2017

EXHIBIT "A"

Legal Description of the Property

Parcel P126069 / 360109-4-004-0100 (Parcel "A")

That portion of the Southeast 1/4 of the Southeast 1/4 of Section 9, Township 36 North, Range 1 East, W.M. lying West of the West line of the following described tract, said West line running parallel with the West line of said subdivision:

The East 660 feet of that portion of said Southeast 1/4 of the Southeast 1/4 lying both Northerly of the right-of-way commonly known as the Jackson Road along the south line of said subdivision and lying Westerly of the right-of-way known both as the Jackson Road and the Munnings Road along the East line of said subdivision.

SUBJECT TO easements and restrictions of record.

Parcel P123517 / 360109-4-003-0300 (Parcel "B")

Lot 3, Skagit County Short Plat No. PL04-0915, recorded October 18, 2005, under Auditor's File No. 200510180053, records of Skagit County, Washington, and being located in the Southeast Quarter of Section 9, Township 36 North, Range 1 East, W.M. and in Government Lot 1 in Section 16, Township 36 North, Range 1 East, W.M., EXCEPT that portion more particularly described as follows:

Commencing at the Southwesterly corner of said Lot 3; thence South 56 Degrees 26'23" East along the southerly line of said Lot 3 a distance of 41.24 feet; thence South 78 Degrees 04'34" East continuing along the South line of said Lot 3, a distance of 67.35 feet to the TRUE POINT OF BEGINNING; thence North 0 Degrees 24'26" West parallel to the West line of said Lot 3 a distance of 391.11 feet; thence North 89 Degrees 35'34" East, a distance of 500.00 feet; thence South 0 Degrees 24'26" East a distance of 459.49 feet to the South line of said Lot 3; thence North 87 Degrees 19'46" West along the South line of said Lot 3 a distance of 248.63 feet; thence North 78 Degrees 04'34" West, continuing along the South line of said Lot 3, a distance of 257.67 feet to the TRUE POINT OF BEGINNING. Containing 20.76 acres, more or less.

SUBJECT TO easements and restrictions of record.

EXHIBIT "B"
2015 Protected Property

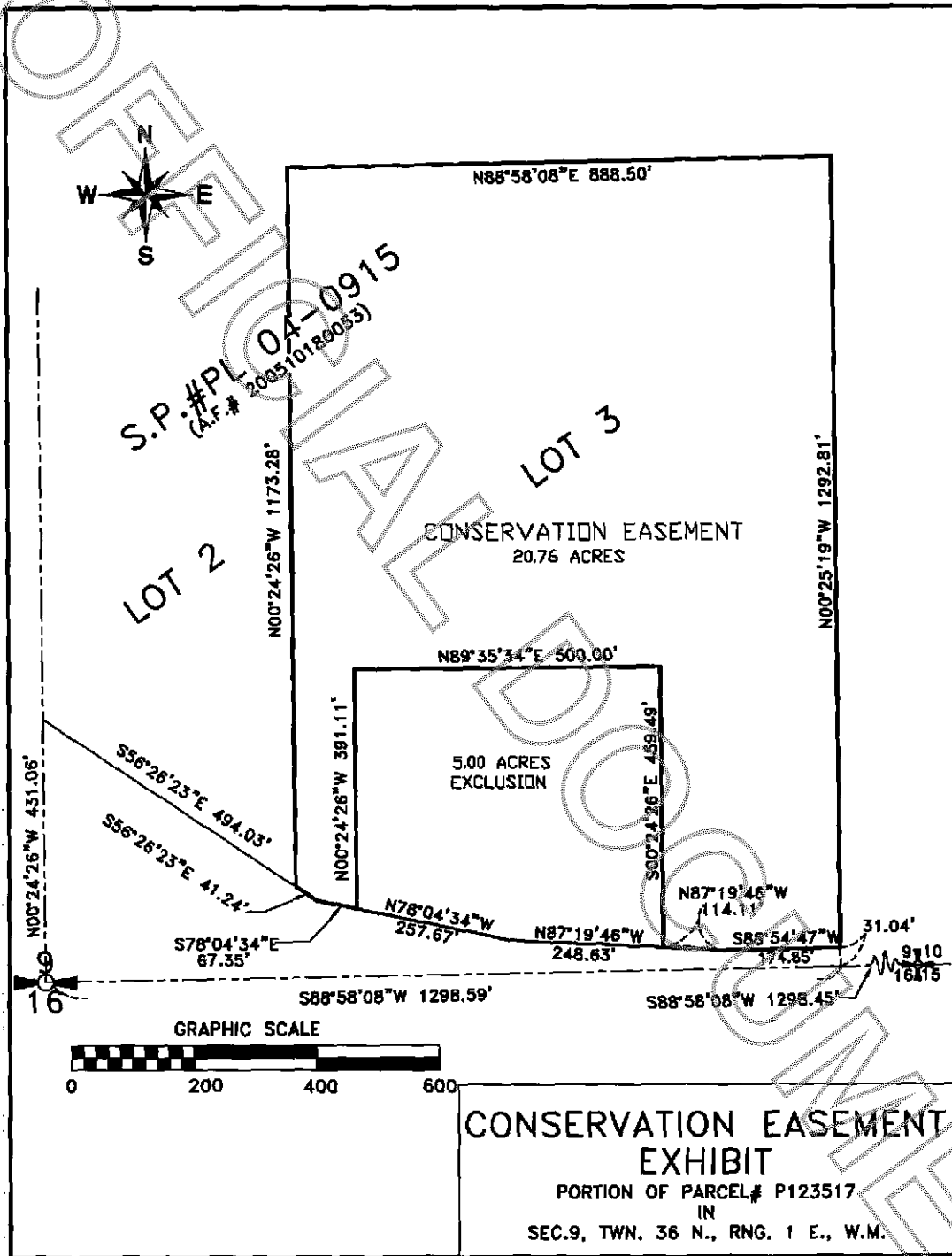


EXHIBIT "C"
Aerial Photo of the Property Protected by the Conservation Easement

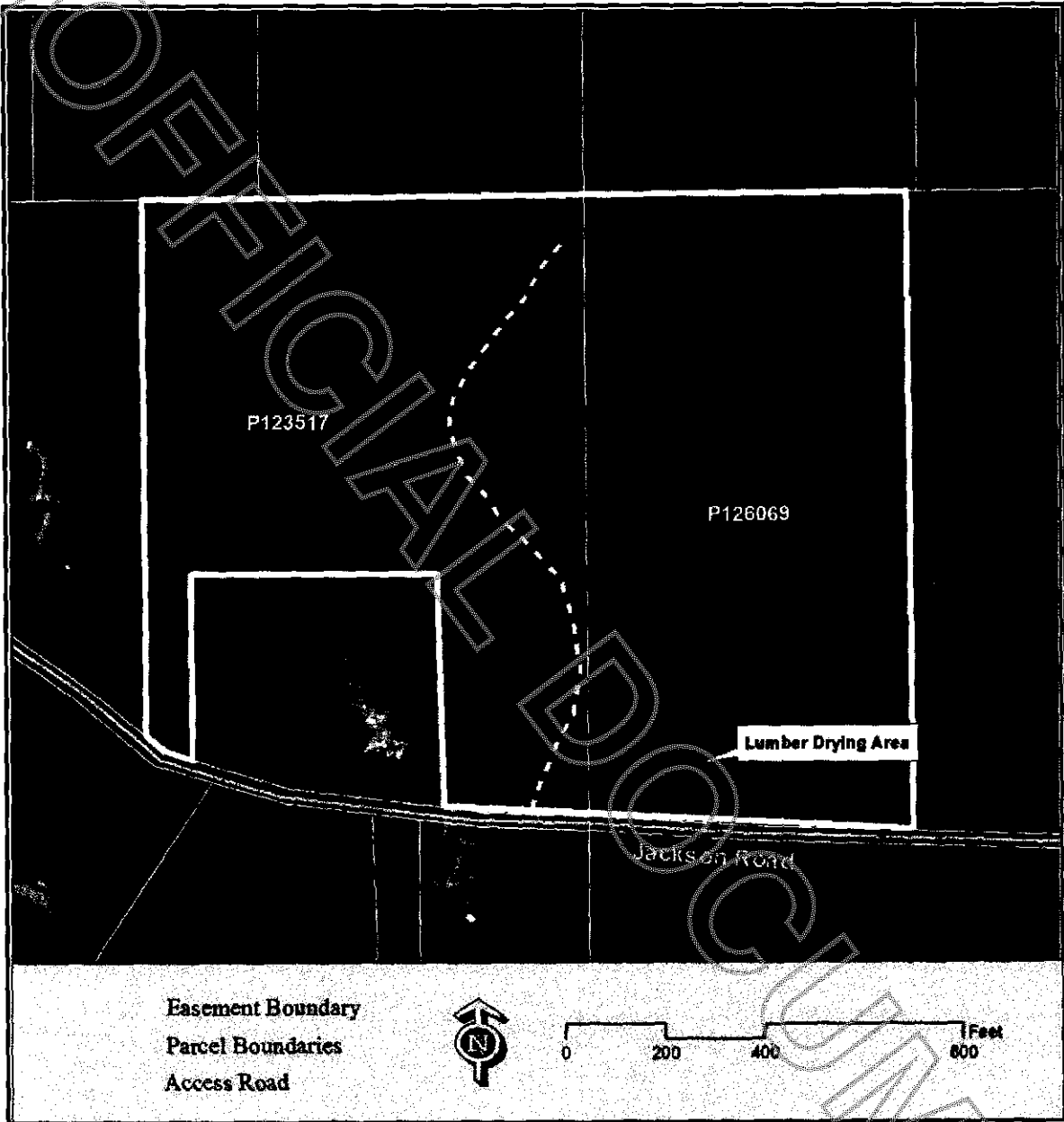


EXHIBIT "D"

Acknowledgement of Baseline Present Conditions Report

Grantor and Grantee acknowledge that each has read the Baseline Present Conditions Report, dated Aug 5, 2016, and that the report accurately reflects the currently available baseline data regarding the condition of the Property subject to the Conservation Easement as of the Effective Date of the Conservation Easement.

VALERIE TARICO BRIAN ARBOGAST <u>Valerie Tarico</u> <u>Brian Arbogast</u> Date: <u>8/5/16</u>	THE SAN JUAN PRESERVATION TRUST By: <u>[Signature]</u> Its <u>Executive Director</u> Date: <u>August 9, 2016</u>
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