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EASE \$18.00

Whatcom County, WA

Request of: CHICAGO TITLE INSURANCE

AFTER RECORDING RETURN DOCUMENT TO:

City of Bellingham -Parks &amp; Recreation Department, Tim Wahl

3424 Meridian Street

Bellingham, WA 98225



154456

**DOCUMENT TITLE:** INTERURBAN WETLAND CONSERVATION EASEMENT**REFERENCE NUMBER OF RELATED DOCUMENTS:****GRANTOR:** THE CITY OF BELLINGHAM**GRANTEE:** WHATCOM LAND TRUST**ABBREVIATED LEGAL DESCRIPTION:** LOT A CHUCKANUT TRUST LLA AS REC. BOOK 36 SHORT PLATS PG. 18 AND 19. LOTS 1 & 2 BLOCK 8, CLARK'S ADD TO FAIRHAVEN AS REC. VOL. 2 PLATS PG. 71.**ADDITIONAL LEGAL DESCRIPTION ON Page 11, Exhibit A OF DOCUMENT.****ASSESSOR'S TAX/PARCEL NUMBER:** 370212 500214 0000

### INTERURBAN WETLAND CONSERVATION EASEMENT

**I. PARTIES:** This Grant of a Conservation Easement is made by the City of Bellingham, a municipal corporation, referred to hereafter as Grantor, to Whatcom Land Trust, a Washington nonprofit corporation, referred to hereafter as Grantee.

**II. FACTS AND OBJECTIVES:** Grantor owns real property in the City of Bellingham, Whatcom County, Washington, referred to hereafter as the Property, the legal description of which is attached as Exhibit "A".

The Grantee is a publicly supported, nonprofit corporation organized to preserve the ecological, wildlife habitat, scenic, agricultural, recreational and open space value of land. It qualifies under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt nonprofit organization.

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210 Lottie Street  
Bellingham, Washington 98225  
Telephone (360) 676-6903

The Property consists of approximately 16.5 acres on the south side of Bellingham adjacent to the Interurban Trail. Approximately 7.6 acres of the Property are wetlands, which border the Interurban Trail and contribute significantly to the natural, outdoor experience of the trail. The wetlands, which have been enhanced by a beaver dam, provide unusually rich urban wildlife habitat for waterfowl and aquatic related species. The upland portion of the Property is wooded with a mature coniferous and deciduous forest, which likewise contributes to the recreational value of the Interurban Trail. The forest also provides valuable urban wildlife habitat and is critically located to provide a link in the City's trail system.

The intent of the Grantor and Grantee, through this conservation easement, is to preserve the wildlife habitat and undeveloped, natural qualities of the Property and to enhance public recreation, education and research activities in a manner compatible with preservation and management of the Property as natural open space.

**III. GRANT OF CONSERVATION EASEMENT:** Grantor hereby conveys to Grantee, its successors and assigns, in perpetuity, a Conservation Easement pursuant to Revised Code of Washington RCW 84.34.210, over the Property. The Conservation Easement consists of mutual rights and obligations and is subject to the reservation of rights set forth below. Rights, obligations and reservations all operate as covenants running with the land in perpetuity.

**IV. PERMITTED USES, PRACTICES AND RIGHTS RESERVED BY GRANTOR:** With regard to the Property, Grantor reserves the following rights:

- A. The mutual right and obligation to enforce the covenants contained in this easement.
- B. Through the dry land portion of the Property: to construct, operate and maintain a trail system and furnishings, fixtures and landscape elements necessary for and appurtenant to said trail system.

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- C. Over the wetland portion of the Property and only with the consent of the Grantee: to provide, construct, operate and maintain amenities and features to enhance recreational and educational activities compatible with the wetland and the objectives of this easement, including public access features.
- D. Only with notice of Grantee: to selectively remove trees that create a significant safety hazard or to enhance wildlife habitat or wildland forest characteristics, on an ecologically-managed basis.
- E. To maintain and improve wildlife habitat.

**V. RESTRICTIONS ON USE:** Except as provided above, and as may be necessary to carry out those rights reserved and granted, the Grantor and Grantee shall not on the Property:

- A. Subdivide the Property in any manner.
- B. Erect or permit buildings, structures or improvements.
- C. Grant or allow road or utility construction and easements, except with the consent of the Grantee and except as may be required by reservations specified in Auditors Volume 534, page 421, File No. 961228146.
- D. Widen existing trails for bicycle use or encourage bicycle use except where part of and pursuant to an adopted area master plan which seeks to reduce the impacts of roadway construction and off-trail bicycling and to preserve the quieter, nonvehicular character of the majority of the Property.
- E. Remove trees.
- F. Excavate or grade the Property or otherwise materially alter the landscape or topography.

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- G. Explore for or extract minerals, hydrocarbons, soils or other materials.
- H. Permit hunting or trapping.
- I. Make commercial use of the Property.
- J. Store derelict vehicles or waste of any kind.
- K. Otherwise use the Property inconsistent with the reservation of rights and the purposes of this conservation easement.

**VI. RIGHTS AND RESPONSIBILITIES OF GRANTEE:** Grantor grants and Grantee accepts the right and shared responsibility to preserve and protect in perpetuity the aesthetic, habitat and ecological values of the Property consistent with the terms of this Easement. In connection with such rights and responsibilities:

- A. Grantor grants to Grantee the right to enter the Property, on reasonable notice, to observe and enforce compliance with the terms of this Conservation Easement.
- B. Should Grantor, its successors or assigns, undertake any activity in violation of this Easement, Grantee shall have the right to recover damages or to compel 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 damages or cost of restoration and Grantee's expenses and costs of suit, including attorneys' fees, shall be borne by Grantor or those of its successors or assigns against whom judgment is entered, or in the event that Grantee secures relief without a completed judicial proceeding, by Grantor or those of its successors or assigns who are otherwise determined to be responsible for the unauthorized activity.

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- C. Any forbearance by Grantee to exercise any rights under this Agreement in the event of a breach shall not be deemed to be a waiver of Grantee's rights under this Easement.

**VII. BASELINE DATA:** In order to establish the present condition of the Property's resources so as to be able to properly monitor future uses of the Property and assure compliance with the terms of this Agreement, Grantee and Grantor shall, at their earliest possible convenience, prepare or cause to be prepared and accepted an inventory of the Property's relevant features and conditions, known as baseline data, dated. The baseline data shall be used to establish the condition of the Property as of the date of this Easement.

**VIII. GRANTOR'S RESPONSIBILITIES:**

- A. Grantor agrees to bear all costs of operation, upkeep and maintenance of the Property and to indemnify the Grantee therefrom; in addition, Grantor agrees to pay all real property taxes and assessments levied on the Property, to the extent required by law.
- B. Grantor agrees to take reasonable steps to direct and confine public access to a defined and improved trail surface and to prevent damage to ground cover and understory vegetation and disturbance of wildlife.

**IX. ASSIGNMENT OF GRANTEE'S INTERESTS:** Grantee may assign its interests in this Easement to a "qualified" organization within the meaning of Section 170(h) of the Internal Revenue Code of 1954, as amended, so long as that organization has a concern for ecological and aesthetic considerations consistent with the terms of this Easement. Should the Grantee cease to exist, this Easement would be assigned to such an organization.

**X. GRANT IN PERPETUITY:** This Easement shall run with the Property in perpetuity and shall bind the Grantor, its successors and assigns forever.

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**XI. PROPERTY INTEREST:** Grantor and Grantee agree that this Conservation Easement gives rise to a property right immediately vested in the Grantee, which right has a fair market value that is at least equal to the proportionate value that the Conservation Easement bears to the value of the Property as a whole, upon the date of the execution of the Easement. Through this conservation easement, Grantor relinquishes all property rights other than the permitted uses listed in Section IV above.

If all the conservation purposes of this Easement become impossible to accomplish because of a change of circumstances, this Easement can be extinguished only by judicial proceedings, and on subsequent disposal of the Property the Grantee is entitled to a portion of the proceeds at least equal to the proportionate value of the conservation easement. The Grantee must use the proceeds consistent with the conservation purposes of this easement. In the event of condemnation of the Property in whole or in part, Grantee shall be entitled to compensation proportionate to the loss of conservation values caused by the condemnation. If by eminent domain or otherwise, any governmental entity takes or exercises property rights inconsistent with this conservation easement, the property rights of the Grantee are diminished by the entire value of those rights taken or exercised and all compensation will be payable to the Grantee.

**XII. MISCELLANEOUS:**

- A. The terms Grantor and Grantee, wherever used in this Easement, shall include the above-named Grantor and its successors and assigns, and the above-named Grantee and its successors and assigns.
- B. In the event that any of the provisions contained in this Easement are declared invalid or unenforceable in the future, all remaining provisions shall remain in effect.
- C. Notice to Grantee shall be to the registered agent of Grantee, who until further notice shall be:

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J. Bruce Smith  
Brett & Dugert  
300 North Commercial  
P.O. Box 5008  
Bellingham, WA 98227-5008

IN WITNESS WHEREOF, Grantor has executed this Conservation Easement this \_\_\_\_ day  
of \_\_\_\_\_, 2001.


**GRANTOR:**

CITY OF BELLINGHAM

  
Mark Asmundson, Mayor NOV 19 2001

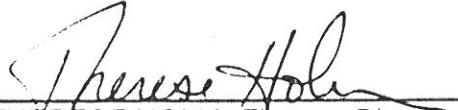
**GRANTEE:**

WHATCOM LAND TRUST


By: 

Its: 

**ATTEST:**

  
THERESE HOLM, Finance Director

**APPROVED AS TO FORM:**

  
DANA DAVID, Office of the City Attorney

**DEPARTMENTAL APPROVAL:**

  
PAUL LEUTHOLD, Director of Parks & Recreation

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STATE OF WASHINGTON )  
COUNTY OF WHATCOM ) ss

I CERTIFY that I know or have satisfactory evidence that Sharon Becky is the person who appeared before me, and acknowledged that he/she signed this instrument and on oath stated that he/she was authorized to execute the instrument and acknowledged it to be his/her free and voluntary act, for the uses and purposes mentioned in the instrument.

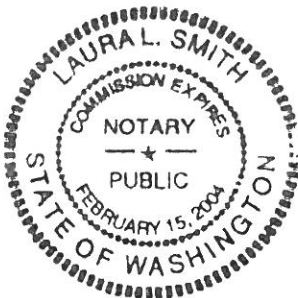
October 8, 2001  
DATED

Laura L. Smith  
SIGNATURE OF NOTARY PUBLIC

LAURA L. SMITH  
Name Printed

Notary Public  
TITLE

3-15-01  
MY APPOINTMENT EXPIRES





STATE OF WASHINGTON )  
COUNTY OF WHATCOM )ss

I CERTIFY that I know or have satisfactory evidence that **MARK ASMUNDSON** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the **Mayor** of the **CITY OF BELLINGHAM** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



NOV 19 2003

DATED

SIGNATURE OF NOTARY PUBLIC

Name Printed

TITLE

MY APPOINTMENT EXPIRES

STATE OF WASHINGTON )  
COUNTY OF WHATCOM )ss

I CERTIFY that I know or have satisfactory evidence that **THERESE HOLM** is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the **Finance Director** of the **CITY OF BELLINGHAM** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



20 November 2001

DATED

Martha L. Hagen  
SIGNATURE OF NOTARY PUBLIC

MARtha L. HAGEN  
Name Printed

Notary Public  
TITLE

30 March 2003  
MY APPOINTMENT EXPIRES

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EXHIBIT "A"

LOT A OF THE CHUCKANUT TRUST LOT LINE ADJUSTMENT, AS RECORDED IN BOOK 36 OF SHORT PLATS, PAGES 18 & 19, RECORDS OF WHATCOM COUNTY, WASHINGTON, TOWNSHIP 37 NORTH, RANGE 2 EAST, SECTION 12, SITUATE WITHIN THE CITY OF BELLINGHAM, WHATCOM COUNTY, STATE OF WASHINGTON.

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