



200302250096

Skagit County Auditor

2/25/2003 Page

1 of

8 2:53PM

**RETURN TO:**

Skagit Land Trust  
P.O. Box 1017  
Mount Vernon, WA 98273

Document Title: Right of First Refusal Agreement

Reference number of documents assigned or released:

Grantors: Skagit Land Trust

Grantee: Douwe Dykstra

Legal Description: (see full legal on attached agreement as Exhibit 1)

Ptns of 18-35-4 E W.

Assessor's Parcel/Tax I.D. Number: P36865;P36866;P36867;P36872;P36864

# RIGHT OF FIRST REFUSAL AGREEMENT

THIS RIGHT OF FIRST REFUSAL AGREEMENT (Agreement) is made as of this 21<sup>st</sup> day of February, 2003, between Skagit Land Trust, a not-for-profit corporation (Grantor) and Doune Dykstra (Grantee).

## RECITALS

A. Grantor is the owner of real property described in Exhibit 1, attached hereto and incorporated by reference ("Real Property") and the improvements constructed on this real property.

B. Grantor will attempt to sell the property via a sealed bid public auction. Grantor desires to grant to Grantee, and Grantee desires to obtain from Grantor, a right of first refusal to purchase the Real Property, if a bid equal to or greater than one hundred ninety-five thousand dollars (\$195,000) is received, and on the terms and conditions of this Agreement.

C. All bids solicited by Grantor are to be submitted on a form Purchase and Sale Agreement ("P&SA") attached hereto as Exhibit 2.

D. For good and valuable consideration the receipt and adequacy of which are acknowledged, the parties agree as follows:

## SECTION 1: Right of First Refusal

(a) Grantor shall not sell or agree to sell any or all of the Real Property described in Exhibit 1 without first offering any or all of the Real Property for sale to Grantee. The word "sell" shall include any transfer or conveyance of all or any portion of the Real Property or Grantor's interest in the Real Property, except for a conveyance or transfer by sale or gift of Conservation Easement(s), which 1) provide for continued agricultural uses and construction of farm buildings on the approximately 90 acres of farmland on the subject property; and 2) provide for wildlife habitat restoration and enhancement, and limit agriculture to those activities compatible with such restoration and enhancement on the approximately 50 acres of wetland on the subject property and except for conveyance or transfer by sale or gift or hypothecation, mortgage or pledge as security, or (ii) a lease for a term not to exceed one year; *provided*, that after such a conveyance or transfer by gift or sale, the right of first refusal granted in this Agreement shall remain in full force and effect against the person holding title or any interest in the Real Property.

(b) Prior to the occurrence of any of the events set forth in Section 1(a) above, Grantor shall provide to Grantee notice thereof together with a declaration or affidavit describing the event to establish that an exception contained in Section 1(a) applies. Such declaration or affidavit shall be delivered pursuant to Section 7 below and shall be deemed conclusive on their face for both parties. The Grantee shall be deemed to have conclusively agreed that an exception as set forth in Section 1(a) has been met unless it provides to Grantor within five (5) days of its receipt of the aforementioned declaration or affidavit its notice of the Grantee's position that the declaration or affidavit does not meet any of the exceptions set forth above.

(c) Before Grantor agrees to sell the Real Property for an amount equal to or more than one hundred ninety-five thousand dollars (\$195,000) based on a bid received, Grantor shall first offer to sell said Real Property to Grantee. Such offer shall be in writing and on terms and conditions substantially identical to those proposed for the sale of the Real Property to the third party.

(d) Upon receipt of a bona fide offer to purchase, including an option to purchase the Real Property from a third party, equal to or more than one hundred ninety-five thousand dollars (\$195,000), Grantor shall, within



seven (7) days forward to Grantee, via certified mail, return receipt requested, a written copy ("Notice of Offer") of the actual offer.

(e) The Notice of Offer shall, at a minimum, include the following information: (i) the purchase price proposed for the sale to the third party; (ii) the method of purchase price payment; (iii) the amount and terms of any proposed Grantor financing in connection with the proposed purchase; (iv) the amount of any earnest money deposit; (v) the time and location for the close of escrow; (vi) the name, telephone number and business address of the proposed purchaser; and (vii) any other material terms and conditions of the proposed sale of the Real Property. A copy of the third party purchase and sale agreement shall accompany the Notice of Offer.

(f) Grantee shall have seven (7) days ("Acceptance Period") from the date of receipt from Grantor of either the Notice of Offer or all of the required documentation, whichever occurs last, in which to accept Grantor's offer. Acceptance shall be made by delivering to Grantor a letter of acceptance in writing on or before 5:00 pm. on the last day of the Acceptance Period. Acceptance by Grantee shall be effective only if Grantee specifically agrees to pay the purchase price contained in the bona fide offer to purchase. The terms of the P&SA, except as to the purchase price, shall govern the purchase and sale transaction between Grantor and Grantee and shall be enforceable by its terms if Grantee properly accepts Grantor's offer. If Grantee fails to accept the offer on or before the last day of the Acceptance Period, the offer shall be deemed rejected and this agreement shall become immediately null and void and Grantee shall execute a Quit Claim Deed relinquishing any right to property by virtue of this agreement.

(g) During the Acceptance Period, Grantee may propose one or more counteroffers to the Grantor. None of these counteroffers shall terminate or shorten the Acceptance Period.

## **SECTION 2: Consideration**

The consideration for this Agreement are the mutual promises contained in this agreement and five hundred dollars (\$500) paid by Grantee the adequacy of which are acknowledged by Grantor and Grantee. The monetary consideration is non-refundable absent breach by Grantor and shall apply to any purchase price, or lease payment if the property is not sold, to be paid by Grantee.

## **SECTION 3: Term**

Grantee's right of first refusal shall begin with the date of this Agreement and continue for sixty (60) days.

## **SECTION 4: Termination**

This Agreement shall automatically terminate on the first of the following events to occur:

(a) Grantee rejects an offer and Grantor subsequently consummates a sale of the entire Real Property to a third party pursuant to the terms of the offer.

(b) The expiration of the term.

(c) The purchase of the Real Property by Grantee.

## **SECTION 5: Litigation, Costs**

If any legal action or any other proceeding, including an arbitration or action for declaratory relief, is brought for the enforcement of this Agreement or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs incurred in that action or proceeding, in addition to any other relief to which the prevailing party may be entitled. "Prevailing party" shall include without limitation: (i) a party dismissing an action in exchange for sums allegedly due; (ii) a party receiving performance from the other party of an alleged breach of covenant or a desired remedy where the performance is substantially equal to the relief sought in an action; or (iii) the prevailing party as determined by a court of law.



## SECTION 6: Successors and Assigns

This Agreement shall inure to the benefit of and be binding on the parties and their respective successors, heirs, assigns, mortgagee and/or beneficiaries. All references to "Grantor" and "Grantee" include respective successors, heirs, assigns, mortgagees and/or beneficiaries of each.

## SECTION 7: Notices

All notices required or permitted to be given under this Agreement shall be in writing and mailed, postage prepaid, by certified or registered mail, return receipt requested, or by personal delivery, to the addresses indicated below or at other places that Grantor or Grantee may, from time to time, designate by written notice given to the other.

Grantee's address shall be: Douwe Dykstra  
1900 Gear Rd  
Burlington WA 98233  
(360) 757-6376

Grantor's address shall be: Skagit Land Trust  
PO Box 1017  
Mount Vernon WA 98237  
(360) 428-7878

## SECTION 8: Time of Essence

Time is of the essence in this Agreement.

## SECTION 9: Recordation

This Agreement may be recorded at Grantee's option and expense.

## SECTION 10: Quitclaim Deed

Upon termination of this Agreement in accordance with its terms, Grantee shall deliver to Grantor a signed and acknowledged Quitclaim Deed in the form of attached Exhibit 2. Grantor may record the Quitclaim Deed following the termination of this Agreement.

## SECTION 11: Exhibits

All exhibits and any others referred to in this Agreement are incorporated in this Agreement by reference.

## SECTION 12: Captions

Captions and headings in this Agreement, including the title of this Agreement, are for convenience only and are not to be considered in construing this Agreement.

Right of First Refusal Agreement  
SKAGIT COUNTY WASHINGTON  
REAL ESTATE EXCISE TAX

FEB 25 2003

Amount Paid to  
Skagit Co. Treasurer  
By Grantor Deputy



200302250096

Skagit County Auditor

**SECTION 13: Entire Agreement**

This Agreement and the Exhibits contain the entire agreement of the parties and supersede any prior agreements or understanding of the parties, written or oral, regarding the subject matter of this Agreement. This Agreement, where more specific, supersedes any inconsistent portion of the general "Agreement" reached by the parties of even date.

**SECTION 14: Modification and Amendment**

This Agreement may not be modified or amended except in writing signed by Grantor and Grantee.

**SECTION 15: Governing Law**

This Agreement shall be governed by Washington law, venue for any action shall be Skagit County Superior Court.

**GRANTOR:**

Date: 2-21-03

Andrea Xavier  
Andrea Xavier, President

STATE OF WASHINGTON )

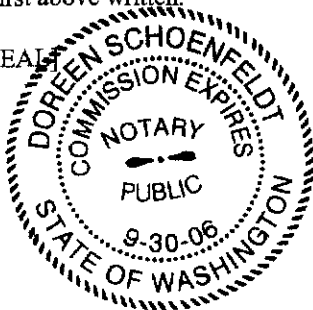
COUNTY OF SKAGIT )

) ss.

On this 21<sup>ST</sup> day of February, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared Andrea Xavier known or identified to me as the President of Skagit Land Trust, the non-profit corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said non-profit corporation for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument on behalf of said non-profit corporation.

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

[SEAL]



Doreen Schoenfeldt  
Notary Public in and for the state of  
Washington; residing at Sedro Woolley

My commission expires: 09/30/06  
Doreen Schoenfeldt  
(Print Name)



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GRANTEE(S):

Date: 2-21-03

Date: \_\_\_\_\_

[Signature]

\_\_\_\_\_

STATE OF WASHINGTON )

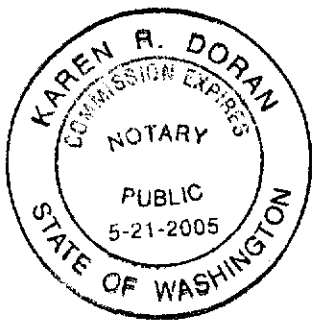
)

) SS.

COUNTY OF SKAGIT )

On this day personally appeared before me Doune Dykstra and he, to me known to be the individual(s) described in and who executed the within and foregoing instrument, and acknowledge that he/they signed the same as his/her/their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 21<sup>st</sup> day of February 2003.



Karen R. Doran

Notary Public in and for the state of Washington; residing at Mt Vernon, Wa.

My commission expires 5-21-2005

Karen R. Doran  
(Print Name)



200302250096  
Skagit County Auditor

## EXHIBIT 1

### Legal Description

#### Parcel "A"

The East 5.5 acres of the West  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of Section 18, Township 35 North, Range 4 East of W.M., EXCEPT the South 25 feet thereof as conveyed to Skagit County for road purposes by Deed dated June 11, 1892, and recorded July 16, 1892, under Auditor's File No. 9037, in Volume 23 of Deeds, Page 436, records of Skagit County, Washington.

#### Parcel "B"

The East  $\frac{1}{2}$  of the Southeast  $\frac{1}{4}$  of Section 18, Township 35 North, Range 4 East of W.M., EXCEPT that certain 100 foot wide strip of land conveyed to the State of Washington for State Road No. 1, by Deed dated May 2, 1935, and recorded August 7, 1935, under Auditor's File No. 271688, in Volume 167 of Deeds, Page 567, records of Skagit County, Washington, EXCEPT the South 25 feet thereof as conveyed to Skagit County for road purposes by Deed dated June 11, 1892, and recorded July 16, 1892, under Auditor's File No. 9037, in Volume 23 of Deeds, Page 436, records of Skagit County, Washington.

ALSO EXCEPT that portion thereof lying within the existing as-built County Road right-of-way known as the Green Road, AND ALSO EXCEPT the two following described portions thereof:

- 1) Beginning at the intersection of the South line of the Southeast  $\frac{1}{4}$  with the Westerly line of the County Road known as the Green Road running along the East line of said Southeast  $\frac{1}{4}$ ; thence Northerly along the West line of said road, 374.56 feet to the true point of beginning; thence Westerly at right angles to said road, 200 feet; thence Northerly parallel with the West line of said road, 518.6 feet; thence Easterly 200 feet to the West line of said road; thence Southerly along said road, 518.6 feet to the true point of beginning.
- 2) Beginning at the intersection of the South line of said subdivision with the Westerly line of the County Road known as Green Road running along the East line thereof; thence Northerly along the West line of said road, 592.36 feet; thence Westerly at right angles to said road, 200 feet to the true point of beginning; thence continuing Westerly at right angles to said road, 30 feet; thence Northerly parallel with the West line of said road, 300.8 feet; thence Easterly 30 feet to a point 200 feet West of, when measured at right angles, to said County Road; thence Southerly, 300.8 feet, more or less, to the true point of beginning.



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**Parcel "C"**

The West ½ of the Southeast ¼ of Section 18, Township 35 North, Range 4 East of W.M., EXCEPT the East 5 ½ acres thereof, EXCEPT County Road commonly known as the Dahlstedt Road along the South line thereof, ALSO EXCEPT that portion thereof lying within that certain tract condemned by the State of Washington for Primary State Highway No. 1 by Decree entered January 24, 1963, in Skagit County Superior Court Cause No. 26648.

ALSO EXCEPT those portions lying within and Southwesterly of the right-of-way of the Seattle and Montana Railway Company as created by Deed recorded on November 30, 1901, in Volume 43 of Deeds, Page 508.

TOGETHER WITH AND SUBJECT TO easements, reservations, covenants, restrictions, and other instruments of record.

Situate in the County of Skagit, State of Washington.



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