

RECORDING REQUESTED BY AND WHEN  
RECORDED MAIL TO:

Laura Minton Breckenridge  
P.O. Box 178  
Bow, WA 98232



200307080011

Skagit County Auditor

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LAND TITLE COMPANY OF SKAGIT COUNTY

THIS SPACE RESERVED FOR RECORDER'S USE

m13976

## EASEMENT AGREEMENT

The information contained in this boxed section is for recording purposes only pursuant to RCW 36.18 and RCW 65.04, and is not to be relied upon for any other purpose, and shall not affect the intent of or any warranty contained in the document itself.

**Grantor:** The Leatherwood Trust

**Grantee:** Padilla Bay, LLC

**Reference Number of Documents Assigned or Released:** N/A

**Abbreviated Legal Description:** NE 1/4, NE 1/4, S 19, T2N 35 N, R 3 E of W.M. and SE 1/4, SE 1/4 of S 18, T2N 35 N, R 3, E, W.M. and N 1/2, SE 1/4, NE 1/4, S 19, T2N 35 N 3 E and SW 1/4 SW 1/4 S 17 T2N 35 N, R 3 E, W.M. and NW 1/4 NW 1/4, S 20, T2N 35 N, R 3 E, W.M. and SW 1/4, SW 1/4, S 17, T2N 35 N, R 35 of W.M.

**Complete Legal Descriptions set forth in Exhibits A and B of Document.**

**Assessor's Parcel Numbers:** 350319-1-003-0000, 350318-4-005-0003 and 350317-3-005-0200, 350317-3-005-0006

THIS EASEMENT AGREEMENT ("Agreement") is entered into between THE LEATHERWOOD TRUST ("Leatherwood") and PADILLA BAY, LLC, a Washington limited liability company ("Padilla"), as of May 22, 2003 ("Effective Date").

### RECITALS

A. Leatherwood is the owner of real property more particularly described in **Exhibit A**, attached hereto and incorporated herein by reference ("Leatherwood Property"). Padilla is the owner of real property contiguous with the Leatherwood Property more particularly described in **Exhibit B**, attached hereto and incorporated herein by reference ("Padilla Property").

B. Padilla wishes to obtain from Leatherwood, and Leatherwood has agreed to grant to Padilla, an easement over and around the Leatherwood Property as described in **Exhibit A**, attached hereto and incorporated herein by reference (the "Easement Area"), together with an easement for ingress and egress to the Easement Area, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the parties agree as follows:

SKAGIT COUNTY WASHINGTON  
REAL ESTATE EXCISE TAX

JUL 03 2003

Amount Paid \$  
Skagit Co. Treasurer  
By *[Signature]* Deputy

## AGREEMENT

1. Grant of Easement. Leatherwood, on behalf of itself and its successors and assigns, hereby grants and conveys to Padilla, and its agents, tenants, successors and assigns, a non-exclusive easement over, under, across and through the Easement Area for the purpose of installing, constructing, operating, maintaining, repairing, adding to, altering or replacing, present or future irrigation equipment and systems, including but not limited to, pipe, electrical wiring, electrical control boxes, wells, well heads, pump heads, pump houses, valves, meters, connections, retention ponds and other appurtenant facilities, for the withdrawal, transmission and distribution of water, through, upon and across the Leatherwood Property (collectively, "Equipment"). Padilla, on behalf of itself and its agents, successors and assigns, shall also have the right of ingress and egress to the Easement Area.

2. Conditions of Easement. This easement is granted subject to and conditioned upon the following terms, conditions and covenants which Padilla, its agents, tenants, successors and assigns, promise to faithfully and fully observe and perform:

2.1 Rights of Easement. Padilla, its agents, tenants, successors and assigns, shall have the non-exclusive use of the Easement Area, and right of way to and from the Easement Area, for the purposes identified in paragraph 1 above, and shall have the right to use abutting land adjoining the Easement Area when necessary, provided, however, that the right to use abutting land shall be exercised only during periods of actual installation or maintenance, and then only to the minimum extent necessary for such installation and maintenance. Padilla, its agents, tenants, successors and assigns shall exercise their rights under this Agreement so as to minimize and avoid interference with Leatherwood and its use of the Leatherwood Property. Padilla shall also take care to minimize any negative impact, whether functional or aesthetic, on the Easement Area and the Leatherwood Property.

2.2 Leatherwood's Rights. Leatherwood reserves the right to itself to make any use of the Easement Area that is not inconsistent with the rights conveyed to Padilla under this Agreement or that does not interfere with the use of the Easement Area by Padilla, including the construction and maintenance of roadways and fencing over the Easement Area. Padilla acknowledges Leatherwood has a residence, office, garage and other outbuildings on its property in addition to roadways, fencing, walls, trails and extensive landscaping and nothing in this Agreement shall prevent or preclude Leatherwood from its use, maintenance, repair or improvement of those existing improvements or undertaking any future improvements. Leatherwood shall not be liable to Padilla or to Padilla's agents, tenants, successors, assigns, contractors or users of the Equipment for loss or injury resulting from any damage or destruction of the Equipment, directly or indirectly caused by Leatherwood.

2.3 Permissible Use. Padilla agrees it will use the Easement Area only for permissible purposes consistent with the rights and usage set forth in this Agreement. Padilla, its agents, successors and assigns may not use or permit the use of the Easement Area for any purpose prohibited by any law, ordinance, regulation, covenant, condition or restriction.



2.4 As-Built Survey. Upon Leatherwood's request, Padilla shall, at its own expense, promptly provide Padilla with as-built drawings and surveys showing the location and depth of the Equipment ("Survey"). Upon completion of the Survey, at Leatherwood's option, this Agreement shall be amended to limit the Easement Area to those areas in which the Equipment is located, as depicted in the Survey.

2.5 Equipment and Activities. The following provisions shall apply with respect to the Equipment and Padilla's activities:

2.5.1 Ownership. The Equipment installed in the Easement Area shall be and remain the property of Padilla, its successors and assigns.

2.5.2 Maintenance. The expense of installation, construction, operation, maintenance, repair, replacement and use of the Equipment shall be paid entirely by Padilla.

2.5.3 Changes in Location of Equipment. Should Padilla's use of the Easement Area or the Equipment in any way interfere with Leatherwood's use or enjoyment of the Leatherwood Property, Leatherwood may, at its discretion, require Padilla to relocate, alter or make any changes to the Equipment, and its location, that Leatherwood shall deem necessary. In such case, Padilla shall promptly undertake the relocation or alteration at Padilla's sole cost and expense, including all direct and indirect cost of materials, labor and services.

2.5.4 Approval. From and after the Effective Date, prior to the construction or installation of any Equipment or any other substantial activity by Padilla, its agents, tenants, successors and assigns, on or around the Easement Area, Padilla shall submit to Leatherwood notice of the proposed activity, together with written plans for the activity and no such work shall be commenced without Leatherwood's prior written approval of the plans. Any changes or revisions in the plans shall also be subject to Leatherwood's prior written approval. Nothing in this Agreement shall be deemed to impose any duty or obligation on Leatherwood to determine the adequacy or sufficiency of Padilla's plans and designs, or to ascertain whether Padilla's work is in conformance with the plans and specifications approved by Leatherwood.

2.5.5 Work Standards. Padilla shall coordinate with Leatherwood the dates of installation, construction and major repair or maintenance of the Equipment, as well as other major activities. All work to be performed by Padilla in the Easement Area shall be completed in a careful and workmanlike manner, to Leatherwood's satisfaction, and free of claims and liens.

2.5.6 Restoration Obligation. Padilla shall have the right to trim, cut and remove trees, shrubbery, fences, or other facilities in or abutting the Easement Area if they interfere with the efficient installation, operation and maintenance of the Equipment. Padilla, however, shall, at its own expense, restore, as nearly as possibly, to their original condition, all land and facilities within the Easement Area or abutting the Easement Area that are disturbed in any manner by the installation, operation and maintenance of the Equipment. This restoration obligation shall extend to, but shall not be limited to, the backfilling of trenches, the replacement of fences, the reseeding or resodding of lawns or pasture areas, the replacement of shrubbery,



trees, and landscaping and the repair and replacement of drainage and roadways and other facilities located within the Easement Area.

2.6 Hazardous Substances and Waste. Both parties, and their successors and assigns, covenant and agree they will not use, store or dispose of any hazardous substances or waste in or around the Easement Area and further covenant and agree they shall strictly comply with any and all governmental laws, regulations and ordinances regarding the handling, transportation and storage of hazardous substances and hazardous wastes.

2.7 Indemnification

2.7.1 Right to Indemnification. The parties shall defend, indemnify and hold one another harmless from and against liabilities, claims, actions, damages, demands, costs and expenses of any kind or nature, including but not limited to legal fees and costs and other professional expenses, arising out of or in connection with the other party's acts or omissions. The indemnification rights set forth in this Agreement shall survive the termination date of this Agreement and the termination date of the easement.

2.7.2 Procedure Regarding Indemnification Rights. In the event either party receives notice of a claim or demand against which it is entitled to indemnification pursuant to this paragraph, it shall immediately give written notice of the claim to the other party. The party obligated to indemnify shall immediately take such measures as may be reasonably required to properly and effectively defend against the claim, and may defend the claim with counsel of its own choosing, approved by the other party provided such approval is not unreasonably withheld or delayed. In the event the party obligated to indemnify fails to properly and effectively defend the claim, then the party entitled to indemnification may defend the claim with counsel of its own choosing at the expense of the party obligated to provide a defense.

2.8 Insurance. The parties shall each obtain, at their own expense, commercial general liability insurance with liability limits of at least Two Million Dollars (\$2,000,000) for any one occurrence. At the request of the other party, each party shall be obligated to: (a) name the requesting party as a named insured under the other party's commercial general liability insurance policy; and/or (b) provide the other with a certificate of insurance, fifteen (15) days from the date of request, reflecting that such insurance is in place.

2.9 Termination. In the event Padilla, its agents, tenants, successors or assigns, fails to cure a breach or default under this Agreement within twenty (20) days of Leatherwood giving Padilla written notice of the breach or default, Leatherwood may terminate Padilla's rights under this Agreement in addition to any other remedy. In the event Padilla ceases to use the Equipment for a period of five (5) successive years, this Agreement, and Padilla's rights under this Agreement, shall terminate and revert to Leatherwood. Upon termination of this Agreement, Padilla shall, at the option of Leatherwood, remove the Equipment and restore the ground to its prior conditions, or, in the alternative, restore the Leatherwood Property or take such other mutually agreed upon measures to minimize the impact of the Equipment. This work shall be done at the sole cost and expense of Padilla and in a



manner satisfactory to Leatherwood. In case of Padilla's failure to remove the Equipment or take such other mutually agreed upon measures, Leatherwood may, after reasonable notice to Padilla, remove the Equipment, restore the ground or take other measures at Padilla's expense.

2.10 Third Party Rights. Leatherwood reserves all rights with respect to the Leatherwood Property, including, without limitation, the right to grant easements, licenses and permits to others subject to the rights granted in this Agreement.

2.11 Assignment and Successors. Padilla shall not assign any rights under this Agreement without the prior written consent of Leatherwood. Any assignment without the prior written consent of Leatherwood shall be invalid. Subject to the preceding, the rights and obligations of the parties shown inure to the benefit of and be binding upon their respective successors and assigns.

3. General Provisions. The following general provisions shall apply with respect to this Agreement:

3.1 Successors and Assigns. The rights and obligations created pursuant to this Agreement shall bind all subsequent owners of the Leatherwood Property, as described in **Exhibit A**, as well as subsequent owners of the Padilla Property, as described in **Exhibit B**.

3.2 Running Covenants. This Agreement is, and in all events shall be, understood to relate to the properties described in **Exhibit A** and **Exhibit B** and shall be deemed to be covenants running with the land and shall inure to and be binding upon successors, assigns, heirs and personal representatives of the parties.

3.3 Entire Agreement; Modifications. This Agreement is the entire understanding between the parties with respect to the transactions contemplated herein and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement. Neither this Agreement nor any provision in this Agreement may be waived, modified, amended, discharged or terminated, except by an instrument in writing signed by both parties and then, only to the extent set forth in such instrument.

3.4 Notices. Any notice required or permitted to be delivered under this Agreement shall be in writing and shall be validly given and made to another party if delivered either personally or by Federal Express or other overnight delivery service of recognized standing. If such notice is personally delivered, it shall be deemed given and received at the time of such delivery. If such notice is delivered by Federal Express, or other overnight delivery service of recognized standing, it shall be deemed given one (1) business day after the deposit with such delivery service. Each such notice shall be deemed given only if properly addressed to the party to whom such notice is given, as follows:



If to Leatherwood Trust:

Leatherwood Trust  
12708 Leatherwood Lane  
P.O. Box 178  
Bow, WA 98232

If to Padilla:

Padilla Bay, LLC  
12708 Leatherwood Lane  
P.O. Box 178  
Bow, WA 98232  
Attention: Thomas J. Paulus

3.5 Attorney's Fees. Should either party employ an attorney or attorneys to enforce any of the provisions in this Agreement or to protect its interest in any manner arising under this Agreement, or to recover damages for any breach under this Agreement, the breaching party agrees to pay the non-breaching party its reasonable costs, damages, and expenses, including attorneys' fees incurred.

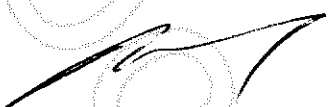
3.6 Severability. If one or more of the provisions of this Agreement, or its application, is determined to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions or any other application shall in no way be affected or impaired.


3.7 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

PADILLA BAY, LLC,  
a Washington limited liability company

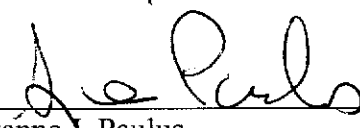
THE LEATHERWOOD TRUST

By: Thomas J. Paulus and Suzanne J. Paulus,  
husband and wife, Manager

By:   
Thomas J. Paulus, Co-Trustee

By:   
Thomas J. Paulus

By:   
Laura Minton Breckenridge, Co-Trustee

By:   
Suzanne J. Paulus



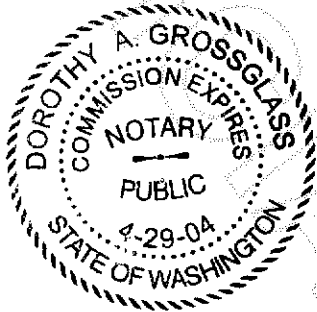
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STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT )

I certify that I know or have satisfactory evidence that Thomas J. Paulus 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 Manager of Padilla Bay, LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 23<sup>rd</sup> day of May, 2003.

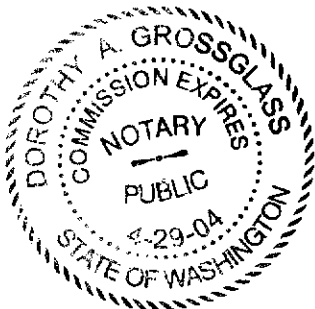


Dorothy A. Grossglass  
Dorothy A. Grossglass  
Notary Public, State of Washington  
Residing in Skagit County  
My Commission Expires: 4/29/2004

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT )

I certify that I know or have satisfactory evidence that Susanne J. Paulus is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Manager of Padilla Bay, LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 25<sup>th</sup> day of May, 2003.



Dorothy A. Grossglass  
Dorothy A. Grossglass  
Notary Public, State of Washington  
Residing in Skagit County  
My Commission Expires: 4/29/2004

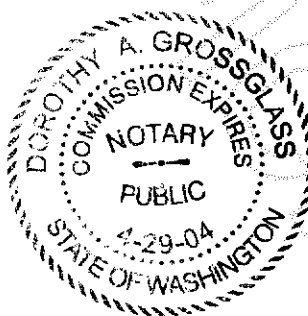


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Skagit County Auditor

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT )

I certify that I know or have satisfactory evidence that Thomas J. Paulus 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 Co-Trustee of the Leatherwood Trust to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 23<sup>rd</sup> day of May, 2003.

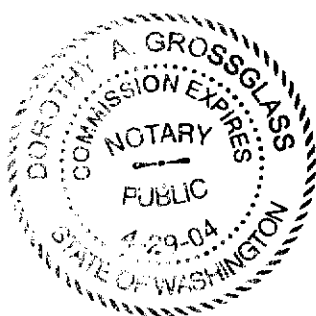


Dorothy A. Grossglass  
Dorothy A. Grossglass  
Notary Public, State of Washington  
Residing in Skagit County  
My Commission Expires: 4/29/2004

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF SKAGIT )

I certify that I know or have satisfactory evidence that Laura Minton Breckenridge is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Co-Trustee of the Leatherwood Trust to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 27<sup>th</sup> day of May, 2003.



Dorothy A. Grossglass  
Dorothy A. Grossglass  
Notary Public, State of Washington  
Residing in Skagit County  
My Commission Expires: 4/29/2004



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Skagit County Auditor



**EXHIBIT A**

**LEATHERWOOD PROPERTY**

**PARCEL A:**

That portion of the Northeast Quarter of the Northeast Quarter of Section 19, Township 35 North, Range 3 East of the Willamette Meridian, lying Southerly of the Joe Leary Slough;

EXCEPT that tract conveyed to William Esary by Deed dated January 21, 1909, and recorded January 21, 1909, under Auditor's File No. 71571, records of Skagit County, Washington, described as follows:

Commencing at the Southwest corner of the Northeast Quarter of the Northeast Quarter of Section 19, Township 35 North, Range 3 East of the Willamette Meridian; thence running East on the South line of said Forty, 12 rods; thence North, parallel with the West line of said Forty, to the South bank of said Joe Leary Slough; thence in a Northwesterly direction following along said slough, to the West line of said above described Forty; thence South along the West line of said Forty to the point of beginning;

(Said tract of land being 12 rods in width and extending from the South line of said Forty North to said Joe Leary Slough).

**PARCEL B:**

That portion of the Southeast Quarter of the Southeast Quarter of Section 18, Township 35 North, Range 3 East of the Willamette Meridian, lying and being South of the Joe Leary Slough.

**PARCEL E:**

Easement for road purposes over the following described tract:

Commencing at the 1/16 section corner of the 1/16 section line at the Southeast corner of the Southwest Quarter of the Southeast Quarter of Section 18, Township 35 North, Range 3 East of the Willamette Meridian; thence North to Joe Leary's Slough; thence Northwesterly along Joe Leary's Slough until it intersects the County road; thence Southwesterly along the East margin line of the County road, as existed on August 19, 1910, 100 feet; thence South to section line; thence East to point of beginning, all in the Southwest Quarter of the Southeast Quarter of Section 18, Township 35 North, Range 3 East of the Willamette Meridian.



PARCEL F:

An easement for road purposes over the following described tract:

Commencing at the Southwest corner of the Northeast Quarter of the Northeast Quarter of Section 19, Township 35 North, Range 3 East of the Willamette Meridian; thence running East on the South line of said Forty, 12 rods; thence running North parallel with the West line of said Forty, to the South bank of Joe Leary's Slough; thence in a Westerly and Northerly direction following along the said slough to the West line of above described Forty; then South following along the West line of said Forty to point of beginning. Said tract of land being 12 rods in width and extending from the South line of said Forty to Joe Leary's Slough.

PARCEL G:

That portion of the North Half of the Southeast Quarter of the Northeast Quarter, Section 19, Township 35 North, Range 3 East of the Willamette Meridian.

All situated in Skagit County, Washington.



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Skagit County Auditor

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## EXHIBIT B

### PADILLA PROPERTY

#### Parcel A

That portion of the Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 17, Township 35 North, Range 3 East, W.M., and that portion of the Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 20, Township 35 North, Range 3 East, W.M., described as follows:

Beginning at the Northwest corner of said Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 20 (Northwest Section corner); thence South  $0^{\circ}22'15''$  West 1,330.49 feet along the West line of said Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  to the Southwest corner thereof (1/16 corner); thence North  $89^{\circ}04'38''$  East 150.00 feet along the South line of said Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$ ; thence North  $0^{\circ}22'15''$  West 537.78 feet parallel with said West line of the Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  to the centerline of an existing field ditch; thence along said field ditch South  $81^{\circ}49'43''$  East 313.96 feet; then South  $85^{\circ}17'10''$  East 350.28 feet; thence leaving said field ditch, North  $0^{\circ}22'15''$  West 2,210.67 feet, more or less, parallel with said West line of the Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 20 to the North line of the Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 17, Township 35 North, Range 3 East, W.M.; thence South  $88^{\circ}56'49''$  West 798.46 feet, more or less, along said North line of the Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  to the Northwest corner thereof; thence South  $0^{\circ}06'06''$  West 1,332.26 feet along the West line of said Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  to the Southwest corner of said subdivision (Southwest Section corner) and being the point of beginning.

EXCEPT that portion of the Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 17, Township 35 North, Range 3 East, W.M., lying Northwesterly of the centerline of Joe Leary Slough;

AND EXCEPT D'Arcy Road right-of-way;

Situated in the County of Skagit, State of Washington.

#### Parcel B

That portion of the Southwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 17, Township 35 North, Range 3 East, W.M., lying Northwesterly of the centerline of Joe Leary Slough, EXCEPT D'Arcy Road.

Situated in the County of Skagit, State of Washington.