

WHEN RECORDED RETURN TO:

Christopher S. Napier  
Foster Pepper PLLC  
1111 Third Avenue, Suite 3400  
Seattle, WA 98101



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Skagit County Auditor

7/1/2009 Page 1 of 8 12:49PM

LAND TITLE OF SKAGIT COUNTY  
133147-PE

ASSIGNMENT AND ASSUMPTION OF DNR LEASE

Grantor: LA CONNER PIER L.L.C.,  
a Washington limited liability company

Grantee: UPPER SKAGIT INDIAN TRIBE,  
a Federally-recognized Indian tribe

Legal Description: HARBOR AREAS IN FRONT OF TRACT 21 AND PTN OF  
TRACT 18, LA CONNER TIDE LANDS  
Complete Legal Description on Exhibit A

Assessor's Tax Parcel  
ID Numbers: N/A

Reference # (if applicable): 9201230066; 200003220019

## ASSIGNMENT AND ASSUMPTION OF DNR LEASE

THIS ASSIGNMENT AND ASSUMPTION OF DNR LEASE (this "Assignment") is made as of July 1, 2009 ("Closing Date"), between LA CONNER PIER L.L.C. ("Assignor") and UPPER SKAGIT INDIAN TRIBE, a Federally-recognized Indian tribe ("Assignee").

### RECITALS

A. Assignor is the lessee of certain property located in La Conner, Washington, legally described on Exhibit A attached hereto, under that certain Aquatic Lands Lieu Lease No. 22-002354, dated February 7, 1990 (term commencing October 1, 1989), as assigned by that certain Assignment and Assumption of Lease, dated January 22, 1992, recorded January 23, 1992, in Skagit County, Washington, under Auditor's File No. 9201230066, and Involuntary Assignment of Lease Notice of Consent to Assignment No. 22-002354, dated March 8, 2000, recorded March 22, 2000, in Skagit County, Washington, under Auditor's File No. 200003220019 (as amended and assigned, the "DNR Lease").

B. Assignor now desires to convey and assign to Assignee and Assignee desires to assume from Assignor all of Assignor's right, title, interest, and obligations under the DNR Lease.

### AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. DNR Consent. As a condition to obtaining the consent of Washington State Department of Natural Resources ("DNR") to the assignment and assumption of the DNR Lease, Assignor, Assignee and DNR have contemporaneously entered into and recorded that certain Notice of and Consent to Assignment of Lease (the "DNR Consent"). Assignor and Assignee agree that, as between Assignor and Assignee, and their respective successors and assigns, the terms of this Assignment shall control over any conflicting or inconsistent terms in the DNR Consent.

2. Assignment and Assumption. Assignor hereby assigns and transfers to Assignee all of the lessee's interest in, to and under the DNR Lease and Assignee hereby assumes all of Assignor's obligations under the DNR Lease and Assignee hereby agrees to indemnify, defend and hold Assignor harmless from and against any and all liabilities, claims, expenses, or costs arising under the DNR Lease (including, without limitation, under any future change, modification or amendment to the DNR Lease and as if Assignor was fully released by DNR from all obligations and liabilities under the DNR Lease) and the DNR Consent. Assignor makes no representations or warranties of any kind regarding the description of the property leased under the Lease.

3. Waiver of Sovereign Immunity. Assignee hereby expressly waives immunity from unconsented suit for the purpose of permitting Assignor to seek any actions, remedies or relief permitted under this Assignment including, without limitation, the enforcement of an award of actual damages against any assets or revenues of Assignee wherever located. Assignee and Assignor agree that any suit commenced related to or arising under this Assignment shall be



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brought in: (i) the United States District Court for the Western District of Washington (and appeals therefrom shall be brought in the United States Circuit Court of Appeals for the Ninth Circuit and the United States Supreme Court) or (ii) if none of the foregoing courts have jurisdiction, then in the courts of the State of Washington. Assignee hereby: (a) accepts the exclusive jurisdiction of the aforesaid courts, (b) irrevocably agrees to be bound by any final judgment of any such court, (c) irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceedings brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any suit, action or proceedings brought in any such court has been brought in any inconvenient forum, and (d) with respect to the enforcement of any remedies, awards or relief rendered, Assignee hereby irrevocably accepts and submits to the exclusive jurisdiction of such court with respect to any such action, suit or proceeding. Assignee expressly waives any requirement of exhaustion of tribal remedies, and agrees that Assignee will not present any affirmative defense based on any alleged failure to exhaust such remedies. Notwithstanding the foregoing, Assignor shall not be entitled to the execution of any judgment against any federal grant funds held by or administered by Assignee or any tax revenues received by Assignee from its component units.

3. Miscellaneous.

3.1 Entire Agreement; Binding. This Assignment contains the entire agreement and understanding between Assignee and Assignor concerning the subject matter of this Assignment and supersede all prior agreements, terms, understandings, conditions, representations and warranties, whether written or oral, made by Assignee or Assignor concerning the matters which are the subject of this Assignment. This Assignment has been drafted through a joint effort of the parties and, therefore, shall not be construed in favor of or against either of the parties. This Assignment shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

3.2 Invalidity of Provision. If any provision of this Assignment as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the provision shall remain fully enforceable (to the maximum extent permissible by law) in circumstances different from those adjudicated by the court, and the validity or enforceability of this Assignment as a whole shall not be affected.

3.3 Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Washington.

3.4 Attorneys' Fees. In the event of any legal or equitable proceeding to enforce any of the terms or conditions of this Assignment, or any alleged disputes, breaches, defaults or misrepresentations in connection with any provision of this Assignment, the prevailing party in such proceeding shall be entitled to recover its reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and costs of defense paid or incurred in good faith.

3.5 Counterparts. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single, copy of this Assignment to physically form one document.



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IN WITNESS WHEREOF, this Assignment and Assumption of DNR Lease has been  
executed effective as of the Closing Date.

ASSIGNOR:

LA CONNER PIER L.L.C.,  
a Washington limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

*[Signature]*  
CURTIS W DORSEY  
MANAGER

ASSIGNEE:

UPPER SKAGIT INDIAN TRIBE,  
a Federally-recognized Indian tribe

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

[acknowledgements on following pages]

SKAGIT COUNTY WASHINGTON  
REAL ESTATE EXCISE TAX

JUL 01 2009

Amount Paid \$ 0  
Skagit Co. Treasurer  
By [Signature] Deputy



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ACKNOWLEDGEMENT  
TO  
ASSIGNMENT AND ASSUMPTION OF DNR LEASE

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Skagit )

On this 1st day of July, 2009, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared Craig Dorsey, known to me to be the Manager of LA CONNER PIER L.L.C., the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.



Karen Ashley  
Signature

Karen Ashley  
Print Name  
NOTARY PUBLIC in and for the State of Washington,  
Residing at Sedro-Woolley  
My commission expires 9/11/2010



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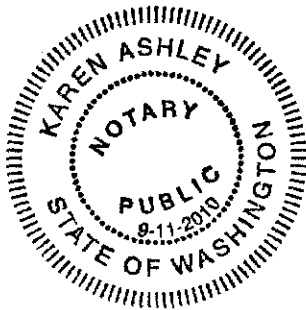
ACKNOWLEDGEMENT  
TO  
ASSIGNMENT AND ASSUMPTION OF DNR LEASE

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Skagit )

On this 30<sup>th</sup> day of June, 2009, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared Tennish Washington, known to me to be the Chairman of UPPER SKAGIT INDIAN TRIBE, the party that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said party, for the purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal hereto affixed the day and year in the certificate above written.



Karen Ashley  
Signature

Karen Ashley

Print Name

NOTARY PUBLIC in and for the State of Washington,

Residing at Sedro-Woolley

My commission expires 9/11/2010



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EXHIBIT A  
TO  
ASSIGNMENT AND ASSUMPTION OF DNR LEASE

PARCEL "C":

A leasehold interest in the following described tract:

The harbor area in front of Tract 21 and the Southwesterly 188 feet of Tract 18 as measured along the Southeasterly line thereof, Corrected Plate #18, La Conner Tide Lands, forming a tract bounded by the inner and outer harbor lines, and the Southwesterly line of said Tract 21 produced Northwesterly and a line which is parallel to and 188 feet Northeasterly from the Southwesterly line of said Tract 18 produced Northwesterly, as shown on the official maps of La Conner Tide Lands on file in the office of the Commissioner of Public Lands at Olympia, Washington.

Situate in the County of Skagit, State of Washington.

PARCEL "D":

A leasehold interest in the following described tract:

That portion of the harbor area lying in front of the Northeasterly 125 feet of Tract #18, La Conner Tide Lands, and bounded by the inner and outer harbor lines, the produced Southerly line of Caledonia Street, and the produced Southerly line of said portion of Tract 18, as shown on Corrected Plate #18, La Conner Tide Lands on file in the office of the Commissioner of Public Lands at Olympia, Washington.

Situate in the County of Skagit, State of Washington.

