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COVER SHEET FOR RECORDING DOCUMENTS

Return to: **Becky Jensen**
City of Mount Vernon
P.O. Box 809
Mount Vernon, WA 98273

DOCUMENT: DEDICATION, EASEMENT AND MAINTENANCE AGREEMENT

GRANTORS: Wells Nursery, LLC, a Washington Limited Liability Company

ABBREVIATED LEGAL DESCRIPTION: Trail easement, a 20 foot strip of land on P26275, 18/34/04

AUDITOR'S FILES NO.: Corrects legal description contained in document 201311140057

COMPLETE LEGAL DESCRIPTION ON PAGE: 9

ASSESSOR'S PARCEL/TAX ID NUMBER: P26275

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After Recording Return to:

City of Mount Vernon
P.O. Box 809
Mount Vernon, Washington 98273

Grantor: WELLS NURSERY, LLC, a Washington Limited Liability Company
Grantee: THE CITY OF MOUNT VERNON, WA, a Municipal Corporation
Legal(s) attached as Exhibit "A"
Assessor's Tax Parcel Number(s): P26275

DEDICATION, EASEMENT, and MAINTENANCE AGREEMENT

This Dedication, Easement and Maintenance Agreement, ("Agreement") is entered into this 5th day of November, 2013 by and between WELLS NURSERY, LLC, a Washington Limited Liability Company, ("Grantor") and the CITY OF MOUNT VERNON, WA a municipal corporation of the State of Washington ("Grantee")

Recitals

A. Grantor is the owner of certain real property located in Mount Vernon, WA, as legally described on **Exhibit "A"**, attached hereto and incorporated herein by this reference (Grantor's property); and

B. Grantee is the owner of property and maintains a system of public trails which abuts Grantor's Property; and

C. For valuable consideration paid, Grantor agreed to convey to Grantee the trail easement described herein, for purposes of allowing public access to Grantee property and the trail system located thereon; and

D. The parties wish to evidence their agreement with respect to the contemplated trail easement in this Agreement.

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NOW THEREFORE, for and in consideration of the terms and conditions set forth herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Easement Grant. Grantor hereby declares, grants, conveys and warrants to Grantee a non-exclusive, perpetual easement for public trail passage over, under, through, upon and across the Property, as legally described on **Exhibit "B"**, attached hereto and incorporated herein by this reference, (the "Trail Easement"). The Trail Easement is conveyed for the benefit of the Grantee, the Grantee's successors and assigns, and the public.

2. Easement Conditions. In consideration of the conveyance of the Trail Easement, Grantees shall pay the Grantor a total sum of seven thousand dollars ($7,000.00) and the parties agree as follows:

2.1 Use of Trail Easement. Grantee shall have the right to use the Trail Easement for pedestrian and other non-motorized travel purposes. Motorized use of the Trail Easement shall be reasonably limited; provided however, such use shall be expressly allowed when in conjunction with trail, levee, or detention pond construction or maintenance, or in cases requiring emergency such as evacuation or persons requiring assistance. Notwithstanding the above, Grantee may allow for the use of motorized devices by physically disabled persons such as single occupant electric wheelchairs or other devices necessary comply with any state and federal laws including but not limited to the Americans with Disabilities Act.

2.2 Construction and Maintenance of Trail Easement. Grantee, in Grantee's sole discretion and at Grantee's sole cost and expense, may delineate and construct a pedestrian trail that is contained entirely within the Trail Easement area, and shall maintain said trail of its intended purpose provided, that nothing herein shall require Grantee to undertake or perform any particular construction of the trail. As long as the trail is used for trail purposes, Grantee shall maintain the trail in a condition that allows this use. To an extent not otherwise mandated by law, the trail will be unpaved. Trail width shall conform to the Trail Easement area. Grantee, in Grantee's sole discretion and at grantee's sole cost and expense, may erect or post signage in the Trail Easement area relating to the trail, its use and/or scenic and/or cultural points of interest. Grantee shall, where reasonable, post signs along the trail, located along the boundary of the Trail Easement area. Signs shall provide reasonable notice to the general public against trespass beyond the Trail Easement Area.

2.3 Monitoring of Trail Easement. Grantee and/or its designees shall reasonably monitor the use of the trail as deemed by Grantee to be appropriate and/or necessary, in Grantee's sole discretion, to prohibit prevent and enforce against unauthorized use of the Trail Easement. Grantee may, in Grantee's sole discretion, establish and enforce hours of use of the Trail Easement; provided however, that nothing herein shall be construed as requiring Grantee to establish or enforce rules of use which are inconsistent or impermissible under general nuisance laws and/or other regulations, ordinance or local, state or federal law pertaining to the use of parks and other public recreation areas.

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3. Right of Ingress/Egress. Grantee shall have the right, without notice and without the institution of any suit or proceeding at law or equity, at all times as may be necessary to enter the Trail Easement for purposed of constructing, maintain, and monitoring the trail.

4. Grantor's Use of Trail Easement. Grantor shall not construct, install or place any structure or obstruction of any kind, including fences and/or gates, over, upon, or within the Trail Easement, and shall not use the Trail Easement for any purpose inconsistent with its intended use. Grantor reserves the right to transit over, across, under, above or within the boundaries of the Trail Easement area if necessary to maintain or provide egress and ingress to all existing utilities located on Grantor's property.

5. Title. Grantor warrants that it: (a) is the fee simple owner of the Easement Area; (b) has good, marketable and indefeasible title to the Easement Area; (c) has full and lawful authority to grant and convey the rights described in this Agreement; and (d) will defend the Trail Easement, and title to the Trail Easement Area, against claims of third persons whomsoever.

6. Default/Remedies.

6.1 Notice/Opportunity to Cure. If either party (the "Claimant") determines that the other party (the "Breaching Party") is in violation of the terms and covenants of this Agreement or that a violation is threatened, the Claimant shall deliver written notice to the Breaching Party of such violation and demand corrective action sufficient to cure the violation and, where the violation involves damage to the Trail Easement, to restore the portion of the Trail Easement so damaged. If the Breaching Party fails to cure the violation within thirty (30) days after receipt of the notice from the Claimant, or under circumstances where the violation cannot be reasonably cured within a thirty (30)-day period, fails to begin curing such violation within the thirty (30)-day period and to thereafter diligently pursue such cure to completion, the Claimant may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Agreement or by reason of injury to the Trail Easement, to require the restoration of the Trail Easement Area to the condition that existed before the damage and to pursue any other remedies provided in this Agreement or available at law or in equity.

6.2 Costs Advanced by Claimant. Without limiting the Breaching Party's liability for a violation of this Agreement, Claimant, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Trail Easement. If Claimant, in its sole discretion, determines that circumstances require immediate corrective action to prevent or mitigate significant damage to impairment of use of the Trail Easement Area, the Claimant may take such immediate corrective action as it deems appropriate, and may pursue its remedies under this paragraph without prior notice to the Breaching Party and without waiting for the period provided for cure to expire.

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7. Judicial Termination of Easement/Condemnation

7.1 The Trail Easement constitutes a real property interest vested in Grantee. If circumstances arise in the future that render the purpose of the Trail Easement impossible to accomplish, or in the event of condemnation or other exercise of eminent domain by any governmental authority or by voluntary transfer in lieu thereof (collectively "Condemnation") and if by reason of such Condemnation continued use of the Trail Easement for its intended purposes is rendered impossible or impracticable, the Trail Easement may be terminated or extinguished in whole or in part, but only by judicial proceedings in a court of competent jurisdiction. If all or any portion of the Trail Easement Area is taken or lost in Condemnation, then Grantee and Grantor shall share the proceeds from such Condemnation sale, in proportion to their respective interests, as determined by a fair market value appraisal or as otherwise agreed to in writing by the parties.

7.2 If all or any portion of the Trail Easement Area is taken by Condemnation, the Grantor and Grantee shall act jointly to recover the full fair market value of the portion of the Trail Easement Area so taken or acquired, together with all direct and incidental costs and damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with such taking or voluntary transfer will be reimbursed to them, respectively, out of the amount recovered.

8. Notices. All notices, demands, consents, requests or other communications required to or permitted to be given pursuant to this Agreement shall be in writing, shall be given only in accordance with the provisions of this Section, shall be addressed to the parties in the manner set forth below, and shall be conclusively deemed to have been properly delivered: (a) upon receipt when hand delivered during normal business hours (provided that notices which are hand delivered shall not be effective unless the sending party obtains a signature of a person at such address that the notice has been received); (b) upon receipt when sent by facsimile prior to 5:00 p.m. of a given business day (otherwise such receipt is deemed as of the following business day) to the number set forth below (provided, however, that notices given by facsimile shall not be effective unless the sending party's machine provides written confirmation of successful delivery thereof); (c) upon the day of delivery if the notice has been deposited in a authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that the sender has in its possession the return receipt to prove actual delivery); or (d) one (1) Business Day after the notice has been deposited with either FedEx or United Parcel Service to be delivered by overnight delivery (provided that the sending party receives a confirmation of actual delivery from the courier). The addresses of the parties to receive notices are as follows:

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Grantor:

Wells Nursery, LLC: [insert name/title]
14015 Riverbend Road
Mount Vernon, WA 98273
Facsimile: (360) 424-3283

Grantee:

Mount Vernon City Parks: Director
PO Box 809
910 Cleveland Avenue
Mount Vernon, WA 98273
Facsimile: (360) 336-6290

With copies to:

Kevin Rogerson, City Attorney
PO Box 809
910 Cleveland Avenue
Mount Vernon, WA 98273
Facsimile: (360) 336-6267

9. Covenant Running with the Land. The Trail Easement and covenants, terms and conditions contained herein are intended to and shall run with the land and shall be binding upon Grantor and Grantee and their respective successors, heirs and assigns.

10. Venue and Choice of Law. In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Skagit. This Agreement shall be governed by the laws of the State of Washington.

11. Severability. If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

12. Attorneys' Fees. If either party commences an action against the other to interpret or enforce any of the terms of this Agreement because of the breach by the other party of any of the terms hereof, the losing party shall pay to the prevailing party reasonable attorneys' fees, costs and expenses and court costs and other costs of action incurred in connection with the prosecution or defense of such action, whether or not the action is prosecuted to a final judgment. For the purpose of this Agreement, the terms "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the parties hereto, which may include printing, photostating, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought

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with respect to the matter for which said fees and expenses were incurred. The term "attorney" shall have the same meaning as the term "counsel."

13. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter covered herein and cannot be changed or modified other than by a written agreement executed by both parties.

14. Counterparts. This Agreement may be fully or partially executed in any number of counterparts all of which taken together shall be deemed a single agreement as to the parties executing such counterparts.

GRANTEE:

CITY OF MOUNT VERNON, a municipal corporation of the State of Washington

Jill Boudreau
Mayor City of Mount Vernon

Date: 11-25-13

Attest By:

Alicia D. Huschka, Finance Director

Date: 11-25-13

Approved as to Form:

Kevin Rogerson
City Attorney

Date: 11-21-13

GRANTOR:

WELLS NURSERY, LLC, a limited liability company

By: Susan Wells Hall
[insert name]

Its: owner

Date: Nov. 21, 2013

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STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

I certify on this 21 day of Nov, 2013, that I know or have satisfactory evidence that before me personally appeared [insert name], to me known, respectively, to be the [insert title]of the municipal Wells Nursery, LLC, a limited liability company that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the any seal affixed is the corporate seal of said limited liability company.

Given under my hand and official seal the day and year last above written.

MARY M. FINE
COMMISSION EXPIRES
NOTARY
PUBLIC
8-9-2015
STATE OF WASHINGTON

Mary Fine
NOTARY PUBLIC in and for the State of Washington, residing at 901 S. Cleveland St Anacortes 98273
My Commission Expires: 8-9-15

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

I certify on this ___ day of _____, 2013, that I know or have satisfactory evidence that before me personally appeared Jill Boudreau, to me known to be the Mayor of the City of Mount Vernon, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that she is authorized to execute the said instrument and that the any seal affixed is the corporate seal of said limited liability company.

Given under my hand and official seal the day and year last above written.

_____
Notary Public in and for the state of
Washington, residing at _____
My commission expires: _____
Printed Name:_____

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EXHIBIT "A"
Legal Description of Grantor's Property
(Parcel 26275)

The North 48 feet, 5 inches of the East 689 feet, 4 inches of the Southeast ¼ of the Northwest ¼ Section 18, Township 34 North, Range 4 East, W.M.

EXCEPT the West 338.70 feet of the Southeast ¼ of the Northwest ¼ Section 18, Township 34 North, Range 4 East, W.M.

Situated in the County of Skagit, State of Washington.

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EXHIBIT "B"
Legal Description of 20' wide Trail Easement Area over Parcel P26275

A 20.00 foot wide strip of land described below:

The West 20 feet, TOGETHER WITH the South 20 feet of the West 120 feet of the following described property:

The North 48 feet, 5 inches of the East 689 feet, 4 inches of the Southeast ¼ of the Northwest ¼ of Section 18, Township 34 North, Range 4 East, W.M.

EXCEPT the West 338.70 feet of the Southeast ¼ of the Northwest ¼ Section 18, Township 34 North, Range 4 East, W.M.

Situated in the County of Skagit, State of Washington.

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