



201906210159

08/21/2019 04:14 PM Pages: 1 of 20 Fees: \$118.00
Skagit County Auditor

When Recorded Return to:

Andrew W. Martin
AXA Equitable AgriFinance, LLC
6300 C Street SW, MS 3B-CR
Cedar Rapids, Iowa 52499-5223

LAND TITLE OF SKAGIT COUNTY

01-172581-0E

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in)

MODIFICATION AGREEMENT

201906310012

Reference Number(s) of Documents assigned or released:

Additional reference #'s on page _____ of document

Grantor(s) (Last name, first name, initials)

1. Vander Kooy, Dirk aka Dick Vander Kooy and Dick J. Vander Kooy
2. Vander Kooy, Olga Marie aka Olga Vander Kooy and Olga M. Vander Kooy

Additional names on page _____ of document.

Grantee(s) (Last name first, then first name and initials)

AXA Equitable Life Insurance Company

Additional names on page _____ of document.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

ptn South 1/2 of SW 1/4 & ptn South 1/2 of North 1/2 34-34-3 E W.M.
 Gov Lot 3, 3-33-3 E W.M.
 East 1/2 SW 1/4 16-34-3 E W.M.
 ptn North 1/2 of N 1/4 21-34-3 E W.M.
 Lot 2 SP 93-077 (ptn Gov Lots 1 & 3-33-3 E W.M.)
 Gov Lot 8, 2-33-3 E W.M.
 ptn Gov Lot 1, 11-33-3 E W.M.
 NE 1/4 SE 1/4, 3-33-3 E W.M.
 ptn South 1/2 of NW 1/4 34-34-3 E W.M.
 SE 1/4 of NW 1/4; SW 1/4 of NE 1/4; ptn NE 1/4 of NW 1/4; ptn NW 1/4 of NE 1/4 16-34-3 E W.M.

815626

Additional legal is on page _____ of document.

Assessor's Property Tax Parcel/Account Number	<input type="checkbox"/> Assessor Tax # not yet assigned
Tax Parcel No.: 330303-0-003-0002, P15339, 340334-3-008-0003, P23137, 340334-3-007-0004, P23136, 340334-3-006-0005, P23135, 330302-0-012-0002, P15308, 330303-0-001-0100, P104197, 330303-0-001-0100, P104197, 330303-0-002-0003, P15338, 330303-4-001-0048, P15354, 330311-2-001-0103, P15687, 340316-3-001-0002, P22060, 340316-3-005-0008, P22064, 340321-2-001-0007, P22234, 340321-2-004-0004, P22236, 340334-4-004-0005, P23141, 340334-4-005-0004, P23142, 340316-1-005-0002, P22049, 340316-1-006-0001, P22050, 340316-2-002-0003, P22053, 340316-2-006-0009, P22059	
The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.	

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature of Requesting Party

RETURN RECORDED DOCUMENT TO:
AXA Equitable AgriFinance, LLC
Andrew W. Martin, Esq./tm
6300 C Street SW, MS 3B-CR
Cedar Rapids, Iowa 52499

Loan No. 60719141

MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT ("Agreement") is made as of this 21st day of June, 2019, between AXA EQUITABLE LIFE INSURANCE COMPANY, a New York corporation located and having its principal office at Twelfth Floor, 1290 Avenue of the Americas, New York, NY 10104 ("**Lender**"), and Dirk Vander Kooy, Olga Marie Vander Kooy, Jason L. Vander Kooy, Shelby R. Vander Kooy, Eric R. Vander Kooy, Theresa M. Vander Kooy, Harmony Dairy, LLC, a Washington limited liability company and Harmony Land Company, LLC, a Washington limited liability company (whether one or more, "**Borrower**") whose address is 15000 Van Pelt Lane, Mount Vernon, WA 98273.

WITNESSETH:

WHEREAS, Lender is the holder of a note dated January 31, 2019, for Three Million and No/100 Dollars (\$3,000,000.00) ("**Note**") made by Borrower, secured by a mortgage, deed of trust, or security deed ("**Mortgage**") of even date therewith executed by Dirk Vander Kooy aka Dick Vander Kooy aka Dick R. Vander Kooy and Olga Marie Vander Kooy aka Olga M. Vander Kooy aka Olga Vander Kooy (whether one or more "**Mortgagor**"), whose address is 15000 Van Pelt Lane, Mount Vernon, Washington 98273, to Lender and recorded on January 31, 2019, as Document No. 201901310012 in the records of Skagit County, Washington, encumbering the real estate described on the attached **Exhibit A** ("**Property**"); and

WHEREAS, the parties hereto are desirous of modifying the Note and Mortgage in the particulars hereinafter mentioned. The Note, Mortgage and any documents or instruments executed by Borrower or Mortgagor in connection with the Loan are referred to herein as the "**Loan Documents**."

NOW THEREFORE, in consideration of the premises and of the mutual promises herein contained, and of the sum of One Dollar (\$1.00) duly paid to Lender, it is hereby mutually

covenanted and agreed that the terms of the Note and Mortgage be and the same are hereby modified as follows:

1. **Financing Statements.** Mortgagor hereby authorizes Lender, without obtaining the signature of Mortgagor, to file financing statements or amendments to existing financing statements in order to perfect the lien granted by the Mortgage.
2. **Representations and Warranties.** Mortgagor and Borrower represent and warrant that (a) Mortgagor's and Borrower's chief executive office or principal residence is the address set forth above in this Agreement; (b) Mortgagor's and Borrower's state of organization, if applicable, is as set forth above in this Agreement; and (c) Mortgagor's and Borrower's exact legal name is as set forth above in this Agreement.
3. **Cross-Default and Cross-Collateralization.** The Mortgage is hereby revised to provide as follows: Notwithstanding anything to the contrary and in addition to all other indebtedness and obligations secured hereby, this Mortgage also secures the following described other loans (**the "Other Loan"**), including without limitation, the indebtedness evidenced by the Secured Promissory Note (**the "Other Note"**) described below, and the payment and performance of all other indebtedness and obligations (including any other advances) (collectively, the **"Other Indebtedness"**) under the Other Note and all agreements, instruments, deed of trust and/or mortgage recorded in favor of Lender and other documents evidencing, securing or relating to the Other Loan (each an **"Other Loan Document"**), together with any and all amendments, renewals, replacements, extensions or other modifications to any of the foregoing:

(1) Loan No. 60719242 in the original principal amount of \$1,100,000.00 evidenced by a Fixed Interest Rate Promissory Note executed by Dirk and Sons, LLC, a Washington limited liability company, Harmony Dairy, LLC, a Washington limited liability company, Harmony Land Company, LLC, a Washington limited liability company, Dirk Vander Kooy, Olga Marie Vander Kooy, Jason L. Vander Kooy, Shelby R. Vander Kooy, Eric R. Vander Kooy and Theresa Vander Kooy, and payable to the Lender dated of even date herewith, in such original principal amount, secured by property located in the county of Skagit, State of Washington.

The holder of the Other Note shall be entitled to the benefits of this Mortgage to the same extent as the holder of the Note. Accordingly, all references in this Mortgage to the Loan, the Note, or the Loan Documents shall be construed to include, respectively, the Other Loan, the Other Note, and the Other Loan Documents.

Any default or event of default under any Other Loan Documents shall constitute an Event of Default under this Mortgage and any of the Loan Documents, including without limitation, the Note. Any Event of Default hereunder or under any of the Loan Documents shall constitute a default or event of default under this Mortgage and the

Other Loan Documents, including without limitation the Other Note. In the Event of a Default, Lender may declare all of the principal, interest and other sums which may be outstanding under the Note, this Mortgage or the Loan Documents, or the Other Indebtedness (collectively, the "**Indebtedness**") to be immediately due and payable without further demand, and Lender may exercise any and all rights and remedies provided in any of this Mortgage, the Loan Documents or any Other Loan Documents, whether or not Lender exercises its right to accelerate the Indebtedness secured by this Mortgage, the Loan Documents or the Other Loan Documents.

The **properties** secured by the Other Loan Documents commonly described above and which **are** more particularly described in the Other Loan Documents are herein referred to as the "Other Premises". Lender may, from time to time, at its sole election, release the Loan and/or **any or all of** the Other Loan from the cross-collateralization and cross-default provisions set forth above.

The "**Total Property**" (which shall be the "Property" as that term is defined in the Mortgage and described in Exhibit A hereof, together with the Other Premises shall secure to Lender the payment of the Indebtedness and the performance of the covenants and agreements set forth in this Mortgage, the Loan Documents and the Other Loan Documents, all of which are secured to Lender by this Mortgage without apportionment or allocation of any part or portion of the Property and without apportionment or allocation of any part or portion of the Total Property.

In addition to the rights and remedies provided to Lender elsewhere in this Mortgage, upon the breach of any covenant or agreement of this Mortgage, the Loan Documents or the Other Loan Documents, Lender shall be allowed to enforce the payment of the Indebtedness and performance of the obligations hereunder, and to exercise all of the rights, remedies and powers provided under this Mortgage or any of the Loan Documents and the Other Loan Documents, or any of them, or under any provision of law, in one or more proceedings, whether contemporaneous, consecutive or both, to be determined by Lender in its sole and absolute discretion. Lender may enforce its rights against any one or more parcels of the Total Property in such order and manner as Lender may elect in its sole and absolute discretion. The enforcement of this Mortgage, the Loan Documents or the Other Loan Documents, or any of them against any one or more parcel of the Total Property, whether by court action, power of sale, or otherwise, shall not constitute an election of remedies, and shall not prejudice or in any way limit or preclude the enforcement of this Mortgage, the Loan Documents or any of the Other Loan Documents, or any of them, through one or more additional proceedings. No judgment obtained by Lender in any one or more enforcement proceedings shall merge the debt secured hereby into such judgment, and all of such debt which shall remain unpaid shall be a continuing obligation of Borrower, not merged into any such judgment. This Mortgage shall secure to Lender the repayment of any amount which Borrower may owe to Lender, including without limitation the amount of any judgment, together with any interest thereon, which

may be rendered in connection with the enforcement of the Note secured hereby, the Loan Documents or any of the Other Loan Documents. Borrower waives and relinquishes any and all rights it may have, whether at law or equity, to require Lender to proceed to enforce or exercise any rights, powers or remedies Lender may have under this Mortgage, the Loan Documents or any of the Other Loan Documents in any particular manner or order or in any particular state or county. Lender may bring any action or proceeding, including without limitation foreclosure through judicial proceedings or by power of sale in state or federal courts, and such proceeding may relate to all or any part of the Total Property without regard to the fact that any one or more prior or contemporaneous proceeding has been commenced elsewhere with respect to the same or any other part of the Total Property.

Any release of this Mortgage with respect to any one parcel of the Total Property shall not in any event prevent or impair Lender from enforcing all of its rights and remedies with respect to any other parcel of the Total Property. Borrower shall pay Lender's reasonable costs incurred in releasing this Mortgage.

Lender shall have the right to determine the order in which any or all of the Total Property shall be subjected to the remedies provided in this Mortgage, the Loan Documents or any of the Other Loan Documents or applicable law. Lender shall have the right to determine the order in which any of the Indebtedness is satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now has or may in the future have a security or other interest in any of the Total Property waives any and all right to require the marshaling of assets or to require that any of the Total Property be sold in the inverse order of alienation, or that any of the Total Property be sold in parcels, or as an entirety, or in any combination, in connection with the exercise of any of the remedies permitted by applicable law, this Mortgage or any of the Loan Documents and/or the Other Loan Documents.

If the lien of this Mortgage, the Loan Documents or any other of the Loan Documents is invalid or unenforceable as to any parcel of the Total Property, the unsecured or partially secured portion of the Indebtedness secured by this Mortgage, the Loan Documents or any other of the Loan Documents shall be completely paid prior to the payment of the remaining secured or partially secured portions of such Indebtedness.]

4. **Authority and Enforceability.** Mortgagor and Borrower represent and warrant to Lender that the execution of this Agreement, and Mortgagor's and Borrower's performance hereof have been duly authorized by the requisite action on the part of Mortgagor and Borrower. The Agreement constitutes the valid and binding obligations of Mortgagor and Borrower and is enforceable against Mortgagor and Borrower in accordance with its terms.

5. **Choice of Law.** This Agreement shall be governed by and shall be construed in

accordance with the laws of the state in which the Property is located.

6. **Ratification of Loan Documents.** Borrower and Mortgagor hereby further ratify and acknowledge the continuing validity and enforceability of the Loan Documents and the obligations and liens evidenced thereby.
7. **Continuing Representations.** Borrower and Mortgagor are and continue to be in compliance with all representations and warranties contained in the Loan Documents.
8. **Binding Terms and Covenants.** All of the provisions of the Note and Mortgage shall remain in full force and effect except as herein specifically modified and this Agreement is made upon the express condition that the Mortgagor is vested with the fee simple title to the premises covered by the Mortgage. Borrower in consideration of the granting of this modification further covenants and agrees to pay and comply with the terms and conditions of the Note and Mortgage as herein modified, and nothing herein contained shall invalidate any of the security now held for the payment of said debt. This Agreement shall bind the parties, their heirs, legal representatives, successors and assigns.

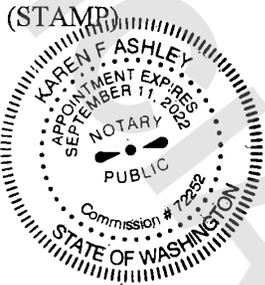
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE ON FOLLOWING PAGE(S)]

CONSENTED TO BY BORROWER:

Dirk Vander Kooy
Dirk Vander Kooy

STATE OF WASHINGTON)
) SS.
COUNTY OF Skagit)

This record was acknowledged before me on June 21st, 2019 by Dirk Vander Kooy.



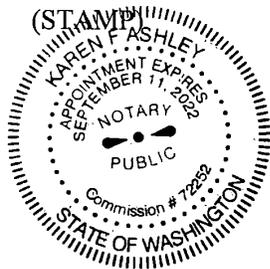
Karen Ashley
(Signature of notary public)
Notary Public
(Title of office)

My commission expires: 9-11-2022
(Date)

Olga Marie Vander Kooy
Olga Marie Vander Kooy

STATE OF WASHINGTON)
) SS.
COUNTY OF Skagit)

This record was acknowledged before me on June 21st, 2019 by Olga Marie Vander Kooy.



Karen Ashley
(Signature of notary public)
Notary Public
(Title of office)

My commission expires: 9-11-2022
(Date)

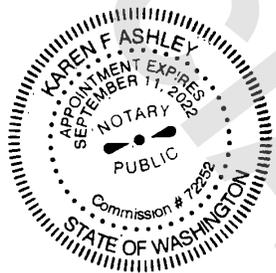
J

Jason L. Vander Kooy

STATE OF WASHINGTON)
) SS.
COUNTY OF Skagit)

This record was acknowledged before me on June 21st, 2019 by Jason L. Vander Kooy.

(STAMP)



Karen Ashley
(Signature of notary public)

Notary Public
(Title of office)

My commission expires: 9-11-2022
(Date)

Shelby Vanderkooy
Shelby R. Vander Kooy

STATE OF WASHINGTON)
) SS.
COUNTY OF Skagit)

This record was acknowledged before me on June 21, 2019, 2019 by Shelby R. Vander Kooy.

(STAMP)



Kerry Wilson
(Signature of notary public)

Notary
(Title of office)

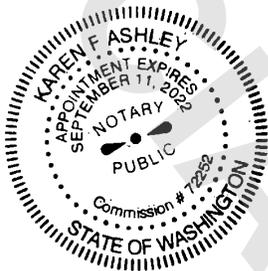
My commission expires: 8-06-19
(Date)

Eric R. Vander Kooy
Eric R. Vander Kooy

STATE OF WASHINGTON)
) SS.
COUNTY OF *Shagil*)

This record was acknowledged before me on *June 21st*, 2019 by Eric R. Vander Kooy.

(STAMP)



Karen Ashley
(Signature of notary public)

Notary Public
(Title of office)

My commission expires: *9-11-2022*
(Date)

Theresa Vander Kooy
Theresa Vander Kooy

STATE OF WASHINGTON)
) SS.
COUNTY OF *Shagil*)

This record was acknowledged before me on *June 21st*, 2019 by Theresa Vander Kooy.

(STAMP)



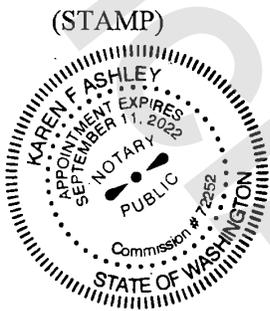
Karen Ashley
(Signature of notary public)

Notary Public
(Title of office)

My commission expires: *9-11-2022*
(Date)

STATE OF WASHINGTON)
) SS.
COUNTY OF Shagit)

This record was acknowledged before me on June 21st, 2019 by Eric R. Vander Kooy as Member of HARMONY DAIRY, LLC, a Washington limited liability company.



Karen Ashley
(Signature of notary public)

Notary Public
(Title of office)

My commission expires: 9-11-2022
(Date)

STATE OF WASHINGTON)
) SS.
COUNTY OF Shagit)

This record was acknowledged before me on June 21st, 2019 by Jason L. Vander Kooy as Member of HARMONY DAIRY, LLC, a Washington limited liability company.



Karen Ashley
(Signature of notary public)

Notary Public
(Title of office)

My commission expires: 9-11-2022
(Date)

CONSENTED TO BY MORTGAGOR:

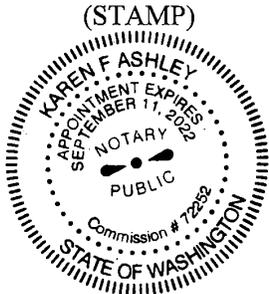
Dirk Vander Kooy

Dirk Vander Kooy aka Dick Vander Kooy aka Dick J. Vander Kooy

Olga Marie Vander Kooy
Olga Marie Vander Kooy aka Olga M. Vander Kooy aka Olga Vander Kooy

STATE OF WASHINGTON)
) SS.
COUNTY OF *Snohomish*)

This record was acknowledged before me on June 21st, 2019 by Dirk Vander Kooy aka Dick Vander Kooy aka Dick J. Vander Kooy.

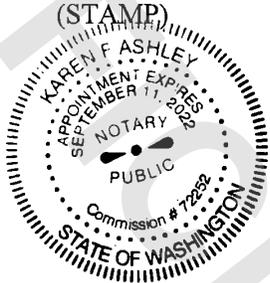


Karen Ashley
(Signature of notary public)
Notary Public
(Title of office)

My commission expires: 9/11/2022
(Date)

STATE OF WASHINGTON)
) SS.
COUNTY OF Shagit)

This record was acknowledged before me on June 21st, 2019 by Olga Marie Vander Kooy aka Olga M. Vander Kooy aka Olga Vander Kooy.



Karen Ashley
(Signature of notary public)

Notary Public
(Title of office)

My commission expires: 9-11-2022
(Date)

EXHIBIT "A"**PARCEL "A":**

The South 16.5 feet of the Southwest ¼ of the Southwest ¼ of Section 34, Township 34 North, Range 3 East, W.M., EXCEPT Bradshaw Road along the West line thereof. (Also shown as Parcel A of Survey recorded March 14, 2007, under Auditor's File No. 200703140049.)

Situate in the County of Skagit, State of Washington.

PARCEL "B":

The Southeast ¼ of the Southwest ¼ of Section 34, Township 34 North, Range 3 East, W.M. (Also shown as Parcel A of Survey recorded March 14, 2007, under Auditor's File No. 200703140049.)

Situate in the County of Skagit, State of Washington.

PARCEL "C":

Government Lot 3, Section 3, Township 33 North, Range 3 East, W.M.

EXCEPT from the above described Parcels a, b AND c, all ditch and dike rights of way. (Also shown as Parcel A of Survey recorded March 14, 2007, under Auditor's File No. 200703140049.)

Situate in the County of Skagit, State of Washington.

PARCEL "D": (INTENTIONALLY OMITTED)**PARCEL "E":**

The East ½ of the Southwest ¼ of Section 16 and the North ½ of the Northwest ¼ of Section 21, all in Township 34 North, Range 3 East, W.M.,

EXCEPT the West 30 feet of the Northwest ¼ of the Northwest ¼ of said Section 21, as conveyed to Skagit County by Deeds recorded February 2, 1904 in Volume 54 of Deeds, page 122 and recorded November 20, 1967, under Auditor's File No. 707100, records of Skagit County, Washington,

AND EXCEPT drainage ditch rights of way, if any.

Situate in the County of Skagit, State of Washington.

PARCEL "F":

A non-exclusive easement for ingress and egress, over and across the West 20 feet of the Southwest ¼ of the Northeast ¼ of Section 21, Township 34 North, Range 3 East, W.M., as conveyed by Deed from Joseph E. Ewing, et ux, recorded May 13, 1997, under Auditor's File No. 9705130028, records of Skagit County, Washington.

Situate in the County of Skagit, State of Washington.

PARCEL "G":

Lot 2 of Skagit County Short Plat No. 93-077, approved November 3, 1993 and recorded November 4, 1993, in Volume 11 of Short Plats, pages 9 and 10, under Auditor's File No. 9311040064, records of Skagit County, Washington; being a portion of Government Lots 1 and 2, Section 3, Township 33 North, Range 3 East, W.M., and the Southeast ¼ of Section 34, Township 34 North, Range 3 East, W.M.

Situate in the County of Skagit, State of Washington.

PARCEL "H":

Government Lot 8 in Section 2, Township 33 North, Range 3 East, W.M. and Government Lot 1 in Section 11, Township 33 North, Range 3 East, W.M.,

EXCEPT Dike District No. 1 as condemned by decree entered in Skagit County Superior Court Cause No. 3049.

ALSO EXCEPT a tract of land in Government Lot 1 of Section 11, Township 33 North, Range 3 East, W.M., and in Government Lot 8 of Section 2, Township 33 North, Range 3 East, W.M., described as follows:

Beginning at a point on the West line of said Lot 1 of Section 11, 362.82 feet South of the Northwest corner thereof; (the West line of said Section 11 bears South 02°06' West);
thence North 85°23'20" East 355.72 feet to the P.C. of an 03° curve to the left;
thence along said 03° curve to the left a distance of 240.35 feet;
thence North 66°09'70" East a distance of 261.41 feet to the P.C. of a 07°30' curve to the left;
thence along said 07°30' curve to the left a distance of 242.50 feet to an intersection with the North line of said Section 11;
thence continuing along said 07°30' curve to the left in said Section 2, a distance of 560.95 feet to the P.T. of said curve and an intersection with the existing dike of Diking District No. 1;
thence South and Southwesterly along the existing dike to the West line of said Lot 1 of Section 11;
thence North along the West line of said Lot 1 to the point of beginning.

PARCEL "H" continued:

ALSO EXCEPT the West 30 feet of the South 272 feet to the North 390 feet of Government Lot 1, Section 11, Township 33 North, Range 3 East, W.M., as conveyed to Skagit County for road purposes by Deed recorded November 18, 1974, under Auditor's File No. 810184, records of Skagit County, Washington.

ALSO EXCEPT Tract A, Short Plat No. 59-74, as approved November 19, 1974, recorded in Volume 1 of Short Plats, page 7, under Auditor's File No. 810207, records of Skagit County, Washington; being a portion of Government Lot 1 in Section 11, Township 33 North, Range 3 East, W.M.

Situate in the County of Skagit, State of Washington.

PARCEL "I"

The Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 3, Township 33 North, Range 3 East, W.M.

Situate in the County of Skagit, State of Washington.

PARCEL "J": (INTENTIONALLY OMITTED)

PARCEL "K":

The Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ Section 16, Township 34 North, Range 3 East, W.M.;

EXCEPT all ditch and dike rights of way;

Situate in the County of Skagit, State of Washington.

PARCEL "L":

The Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 16, Township 34 North, Range 3 East, W.M.;

EXCEPT all ditch and dike rights of way;

Situate in the County of Skagit, State of Washington.

PARCEL "M":

That portion of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 16, Township 34 North, Range 3 East, W.M., described as follows:

Beginning at the Southwest corner of said subdivision;
thence North along the West line thereof 150 feet, more or less, to the center of Higgens Slough;
thence Southeasterly along the center of Higgens Slough to the South line of said Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$;
thence West along said South line 165 feet, more or less, to the point of beginning.

EXCEPT that portion, if any, lying within the boundaries of the following described tract:

The West 20 feet of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of said Section 16, EXCEPT the South 150 feet thereof.

AND ALSO EXCEPT all ditch and dike rights of way, if any;

Situate in the County of Skagit, State of Washington.

PARCEL "N":

The West 10 feet of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and the East 10 feet of the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$, lying South of the road, Section 16, Township 34 North, Range 3 East, W.M.;

AND ALSO EXCEPT all ditch and dike rights of way, if any;

Situate in the County of Skagit, State of Washington.