



00240035202009033910270273

AFTER RECORDING RETURN DOCUMENT TO:

City of Bellingham
Public Works, Engineering
210 Lottie Street
Bellingham, WA 98225



202009250107

09/25/2020 11:36 AM Pages: 1 of 27 Fees: \$129.50
Skagit County Auditor

GRANT OF RIGHT OF FIRST REFUSAL

Grantor: Bloedel Timberlands Development, Inc

Grantee: City of Bellingham

Abbreviated Portions of: the NE ¼, and the SW ¼ of Section 28, T37N, R4E;
Legal Description: the SW ¼ and SE ¼ of Section 27, T37N, R4E;
the NW ¼, NE ¼, SW ¼, and SE ¼, of Section 33, T37N, R4E;
the NE ¼, and SE ¼, of Section 34, T37N, R4E;
the NW ¼ and the SW ¼ of Section 35, T37N, R4E; WM
(Complete Legal Descriptions are on Exhibit A, pages 8 - 10)
Situate in Whatcom County and Skagit County, Washington

G1104136104

Whatcom County 370427 073072 0000, 370427 214053 0000,
Assessor's Tax 370427 474068 0000, 370428 446061 0000,
Parcel Nos.: 370433 198332 0000, 370434 198060 0000,
370434 466323 0000, 370433 212050 0000,
370433 461466 0000, 370428 198190 0000,
370435 132263 0000, 370433 072067 0000.

Skagit County P48806, P48828, P48829, P48833, P48835,
Assessor's Tax P48836, P48851, P48853, P48854.
Parcel Nos.:

THIS GRANT OF RIGHT OF FIRST REFUSAL ("Agreement") is entered into by and between and BLOEDEL TIMBERLANDS DEVELOPMENT, INC., a Washington State corporation ("**Grantor**" or "**Bloedel**"), and the CITY OF BELLINGHAM, a first-class city and municipal corporation of the State of Washington, ("**Grantee**" or the "**City**"). Hereinafter, Grantor and Grantee may be referred to collectively as the "**Parties**".

RECORDED:

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RECITALS

WHEREAS, Bloedel is the owner of real property located in Whatcom County, Washington legally described in Exhibit A, and graphically depicted in Exhibit B, (the "**Property**"); and

WHEREAS, in consideration of the City granting an access easement to Bloedel over a separate City parcel pursuant to a separate instrument recorded under Whatcom County Auditor's File No. 1991101811, and the extension thereof recorded under Whatcom County Auditor's File No. 2020-0903390, (together "**Easement**"), Bloedel agrees to grant the City a right of first refusal to purchase the Property as provided herein.

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

TERMS AND CONDITIONS

1. RIGHT OF FIRST REFUSAL.

1.1 Bloedel shall not sell or convey the Property, or any portion thereof, to any party other than the City without the City first being given the right of first refusal provided herein for a period of twenty years from the date of the last authorized signature below ("**Option Period**").

1.2 If at any time during the Option Period, Bloedel receives and desires to accept a bona fide offer from a third-party to purchase the Property or any portion thereof ("**Offer**"), Bloedel shall provide the City with written notice of the Offer ("**Seller's Notice**"). The Seller's Notice shall contain a copy of the Offer and shall separately state the offer price ("**Offer Price**"). The City shall have the option but not the obligation to purchase the Property for the Offer Price. The City's option to purchase the Property shall be exercised, if at all, by written notice from the City to Bloedel ("**Buyer's Notice**") given within ninety (90) days of receipt by the City of Seller's Notice.

1.3 If the City elects to purchase the Property, the Parties shall execute a Purchase and Sale Agreement in substantially the form attached hereto as Exhibit C. Said Purchase and Sale Agreement shall be executed within thirty (30) days of receipt by Bloedel of the Buyer's Notice. Closing shall be scheduled to occur within sixty (60) days of the effective date of the Purchase and Sale Agreement, subject to all terms and conditions of closing as set forth therein, including ratification and approval by the Bellingham City Council.

1.4 If the City does not exercise its right of first refusal within ninety (90) days of receipt of Sellers Notice, then Bloedel may convey the Property to a third-party upon substantially the same terms and conditions and price set forth in the Offer; provided that the City's election not to exercise its right of first refusal in any instance shall not be deemed a waiver of the City's right of first refusal for subsequent offers.

1.5 In the event the Easement is terminated pursuant to paragraph 5 (recorded at Whatcom County Auditor's File No. 1991101811), the Option Period under this Agreement shall also terminate.

1.6 *Special Use Tax Designation – Tax Implications.* If the Property is subject to a special use tax designation (such as designated forest land or open space) as described by Chapter 84.33 and Chapter 84.34 of the Revised Code of Washington, then the third party offer shall specify whether the buyer shall file with the County Assessor at the time of sale a notice of continuation or similar document (“**NOC**”) intended to continue application of the special use tax designation or, alternatively, whether the seller or buyer will be responsible for the payment of any compensating taxes arising from the removal of the special use tax designation at the time of sale. If the offer specifies that the buyer shall file an NOC or pay any compensating taxes resulting from the removal of the special use tax designation, then in exercising its option to purchase the Property the City shall be required to pay at closing, in addition to the Offer Price, any compensating taxes, interest, penalties, or fees that will become due in whole or in part as a result of the removal of the special use tax designation on the Property.

2. TIME IS OF THE ESSENCE.

Time is of the essence of this Agreement.

3. COMPUTATION OF TIME.

The time in which any act under this Agreement is to be done shall be computed as follows. When the period is stated in days: (a) exclude the day of the event that triggers the period; (b) count every day, including intermediate Saturdays, Sundays, and legal holidays; and (c) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the next day that is not a Saturday, Sunday, or legal holiday.

4. BREACH.

In the event of a breach or threatened breach of this Agreement, the parties shall be entitled to institute legal proceedings for full and adequate relief from the consequences of said breach or threatened breach, including, without limitation, the right to obtain injunctive relief, specific performance and/or damages. The prevailing Party in such proceedings shall be entitled to recover its reasonable attorney's fees and costs. The remedies provided in this section are not exclusive but rather are in addition to any other remedies available to the Parties at law or in equity.

5. NOTICES.

All notices, waivers, elections, approvals and demands required or permitted to be given hereunder shall be in writing and shall be personally delivered or sent by United States mail, return receipt requested, to the addressee's mailing address as follows:

To Grantor: Bloedel Timberlands Development, Inc.
Attn: Controller
1938 Fairview Ave. East.
Seattle, Washington. 98102

To Grantee: City of Bellingham
Attn: Public Works Director
104 W. Magnolia Street, Suite 109
Bellingham, WA 98225

With copy to:

City of Bellingham Legal Department
Attn: City Attorney
210 Lottie Street
Bellingham, WA 98225

Either Party to this Agreement may by proper notice to the other Party designate any other address for the giving of notice. Any notice shall be effective when personally delivered or, if mailed as provided herein, on the earlier of actual receipt or three (3) days after the date deposited in the mail.

6. GENERAL.

In addition to the other terms and conditions of this Agreement, the Parties agree as follows:

6.1 *Headings.* The title to sections of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.

6.2 *Heirs & Assigns.* All of the covenants, agreements, terms and conditions contained in this Agreement shall inure to and be binding upon Bloedel and the City and their respective heirs, executors, administrators, successors and assigns.

RECORDED:

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6.3 **Entire Agreement.** This Agreement contains all covenants and agreements between Bloedel and the City. No prior agreements or understanding pertaining to the same shall be valid or of any force or effect and the covenants and agreements of this Agreement shall not be altered, modified or added to except in writing signed by Bloedel and the City.

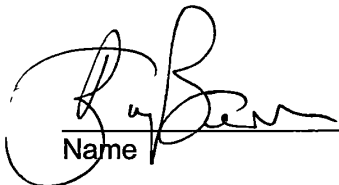
6.4 **Severability.** Any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision of this Agreement, and the remaining provision shall nevertheless remain in full force and effect.

6.5 **Governing Law and Venue.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington. Venue shall lie exclusively in Whatcom County Superior Court, and both Parties hereby consent to personal jurisdiction of said court for the purposes state herein.

7. **RECORDING.**

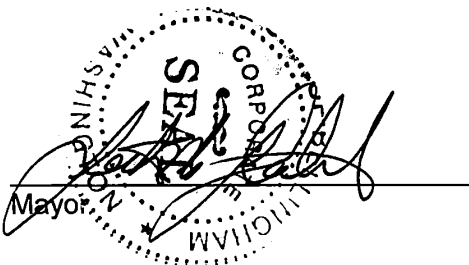
After full execution, the City shall record this Agreement with the Whatcom County Auditor.

EXECUTED, this 13th day of August, 2020, for the Grantor, **BLOEDEL TIMBERLANDS DEVELOPMENT, INC.** by:

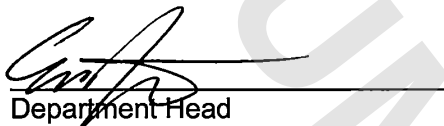

Name

V-P Forest Operations
Title

EXECUTED, this 10 day of September, 2020, for the **CITY OF BELLINGHAM** by:


Mayor


Departmental Approval:


Department Head

RECORDED:

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Attest:



Finance Director

Approved as to Form:



Office of the City Attorney

ACKNOWLEDGEMENT

GRANTOR

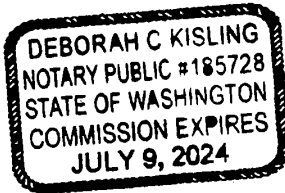
STATE OF WASHINGTON)

) ss.

COUNTY OF WHATCOM)

I CERTIFY that I know or have satisfactory evidence that Roy Bever is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Vice President of **BLOEDEL TIMBERLANDS DEVELOPMENT, INC.**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 18th day of August, 2020.



Deborah C. Kisling
NOTARY PUBLIC in and for the State of Washington
My appointment expires: 7-9-24

ACKNOWLEDGEMENT

GRANTEE

STATE OF WASHINGTON)

) ss.

COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that **SETH FLEETWOOD** is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the **MAYOR** of the **CITY OF BELLINGHAM** to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 17th day of September, 2020.



Elisabeth A. Oakes

NOTARY PUBLIC in and for the State of Washington
My appointment expires: 6/19/23

EXHIBIT A**Legal Descriptions****WHATCOM COUNTY PARCELS****APN: 370427 073072 0000**

THE WEST $\frac{1}{2}$ OF THE SW $\frac{1}{4}$ OF SECTION 27, TOWNSHIP 37 NORTH, RANGE 4 EAST, W.M., LESS ROAD AND RAILROAD RIGHT-OF-WAY,

AND,

EXCEPT GAS-OIL-MINERAL RIGHTS AS RESERVED IN AF 1643308.

APN: 370427 214053 0000

THE EAST $\frac{1}{2}$ OF THE WEST $\frac{1}{2}$ OF SE $\frac{1}{4}$, AND THAT PORTION OF SW $\frac{1}{4}$ OF NE $\frac{1}{4}$ LYING SOUTH OF COUNTY ROAD, AND THE EAST $\frac{1}{2}$ OF THE SW $\frac{1}{4}$ ALL IN SECTION 27, TOWNSHIP 37 NORTH, RANGE 4 EAST, W.M., LESS ROAD.

EXCEPT PORTION TO WHATCOM COUNTY FOR ROAD DESCRIBED IN AF 904233

AND,

EXCEPT PORTION DEFINED AS FOLLOWS: THAT PORTION OF EAST $\frac{1}{2}$ OF SW $\frac{1}{4}$ OF NE $\frac{1}{4}$ LYING SOUTHERLY OF THE SOUTH BOUNDARY LINE OF COUNTY ROAD FROM ALGER TO PARK ROAD LYING NORTHERLY OF THE NORTHERLY BOUNDARY LINE OF COUNTY ROAD 553 (COUNTY ROAD 281)(SOUTH BAY DRIVE).

APN: 370427 474068 0000

THE EAST $\frac{1}{2}$ OF THE SE $\frac{1}{4}$ OF SECTION 27, TOWNSHIP 37 NORTH, RANGE 4 EAST, W.M.

APN: 370428 198190 0000

THE NE $\frac{1}{4}$ OF SECTION 28, TOWNSHIP 37 NORTH, RANGE 4 EAST, W.M., LESS ROAD,

AND,

THE SE $\frac{1}{4}$ OF THE SW $\frac{1}{4}$, AND THE NE $\frac{1}{4}$ OF THE SW $\frac{1}{4}$, LESS ROAD,

EXCEPT THE: SW $\frac{1}{4}$, OF NW $\frac{1}{4}$, OF NE $\frac{1}{4}$ OF SW $\frac{1}{4}$ OF SAID SECTION,

AND,

EXCEPT THE NW $\frac{1}{4}$, OF SW $\frac{1}{4}$ OF NE $\frac{1}{4}$, OF SW $\frac{1}{4}$ OF SAID SECTION, SUBJECT TO GAS-OIL-MINERAL RIGHTS IN THE NE $\frac{1}{4}$ -SE $\frac{1}{4}$, SW $\frac{1}{4}$, AS RESERVED IN AF 766416, AND AF 832804.

APN: 370428 446061 0000

THE SE $\frac{1}{4}$ OF SECTION 28, TOWNSHIP 37 NORTH, RANGE 4 EAST, W.M.,

EXCEPT GAS-OIL-MINERAL RIGHTS AS RESERVED IN AF 1643308.

APN: 370433 198332 0000

THE NW $\frac{1}{4}$ OF SECTION 33, TOWNSHIP 37 NORTH, RANGE 4 EAST, W.M., LESS ROAD.

APN: 370433 212050 0000

THAT PORTION OF EAST $\frac{1}{2}$ OF SW $\frac{1}{4}$ OF SECTION 33, TOWNSHIP 37 NORTH, RANGE 4 EAST, W.M., LYING SOUTHEASTERLY OF COUNTY ROAD 281,

AND THAT PORTION OF THE WEST $\frac{1}{2}$ OF SW $\frac{1}{4}$ OF SECTION 33, TOWNSHIP 37, RANGE 4 EAST, W.M., LYING SOUTHEAST OF COUNTY ROAD 281,

AND THAT PORTION OF THE SOUTH $\frac{1}{2}$ OF THE SE $\frac{1}{4}$ OF SECTION 33, TOWNSHIP 37 NORTH, RANGE 4 EAST, W.M., LYING EAST OF SAID COUNTY ROAD:

EXCEPT THE NORTH 559 FEET THEREOF,

AND,

THAT PORTION OF THE SE $\frac{1}{4}$ LYING WESTERLY OF THE WESTERLY LINE OF LOGGING ROAD RIGHT-OF-WAY,

AND,
EXCEPT E.C. PORTER 10.80 ACRE TRACT

AND,
EXCEPT PORTION LYING NORTHWESTERLY OF COUNTY ROAD 281.

APN: 370433 461466 0000

THE NE $\frac{1}{4}$ OF NE $\frac{1}{4}$ OF SECTION 33, TOWNSHIP 37 NORTH, RANGE 4 EAST,
W.M., LESS ROAD, EXCEPT GAS-OIL-MIN RTS AS RESERVED IN AF 1643308.

APN: 370434 198060 0000

THE SW $\frac{1}{4}$ OF SECTION 34, TOWNSHIP 37 NORTH, RANGE 4 EAST, W.M.

APN: 370434 466323 0000

THE NE $\frac{1}{4}$ OF SECTION 34, TOWNSHIP 37 NORTH, RANGE 4 EAST, W.M.

APN: 370435 132263 0000

THE NW $\frac{1}{4}$ AND THE SW $\frac{1}{4}$ OF SECTION 35, TOWNSHIP 37 NORTH, RANGE 4
EAST, W.M.

APN: 370433 072067 0000

THAT PORTION OF THE SW $\frac{1}{4}$ LYING NORTHWESTERLY OF COUNTY ROAD 281,
AND EASTERLY OF COUNTY ROAD 688, AND A PORTION OF THE NW $\frac{1}{4}$ OF THE
SE $\frac{1}{4}$ LYING NORTHWESTERLY OF COUNTY ROAD 281 ALL IN SECTION 33,
TOWNSHIP 37 NORTH, RANGE 4 EAST, W.M

- ALL SITUATE IN WHATCOM COUNTY, WASHINGTON -

(CONTINUED)

RECORDED:

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SKAGIT COUNTY PARCELS**APN: P48806**

GOVERNMENT LOT 1 IN SECTION 4, TOWNSHIP 36 NORTH, RANGE 4 EAST,
W.M.

APN: P48828

SW $\frac{1}{4}$, NE $\frac{1}{4}$ OF SECTION 4, TOWNSHIP 36 NORTH, RANGE 4 EAST, W.M.

APN: P48829

SE $\frac{1}{4}$, NE $\frac{1}{4}$ OF SECTION 4, TOWNSHIP 36 NORTH, RANGE 4 EAST, W.M.

APN: P48833

SE $\frac{1}{4}$ OF NW $\frac{1}{4}$ OF SECTION 4, TOWNSHIP 36 NORTH, RANGE 4 EAST, W.M.,
EAST OF RLY LESS N $\frac{1}{2}$ OF N $\frac{1}{2}$, LESS TAX 2.

APN: P48835

NE $\frac{1}{4}$ SW $\frac{1}{4}$, OF SECTION 4, TOWNSHIP 36 NORTH, RANGE 4 EAST, W.M.,

APN: P48836

NW $\frac{1}{4}$, SW $\frac{1}{4}$, OF SECTION 4, TOWNSHIP 36 NORTH, RANGE 4 EAST, W.M. EAST
OF COUNTY ROAD LES TR & TAX 1.

APN: P48851

SE $\frac{1}{4}$, SW $\frac{1}{4}$, OF SECTION 4, TOWNSHIP 36 NORTH, RANGE 4 EAST, W.M.

APN: P48853

NW $\frac{1}{4}$, SE $\frac{1}{4}$, OF SECTION 4, TOWNSHIP 36 NORTH, RANGE 4 EAST, W.M.

APN: P48854

SW $\frac{1}{4}$, SE $\frac{1}{4}$, OF SECTION 4, TOWNSHIP 36 NORTH, RANGE 4 EAST, W.M.

- ALL SITUATE IN SKAGIT COUNTY, WASHINGTON -

END OF LEGAL DESCRIPTIONS

RECORDED:

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EXHIBIT B
WHATCOM COUNTY PARCELS

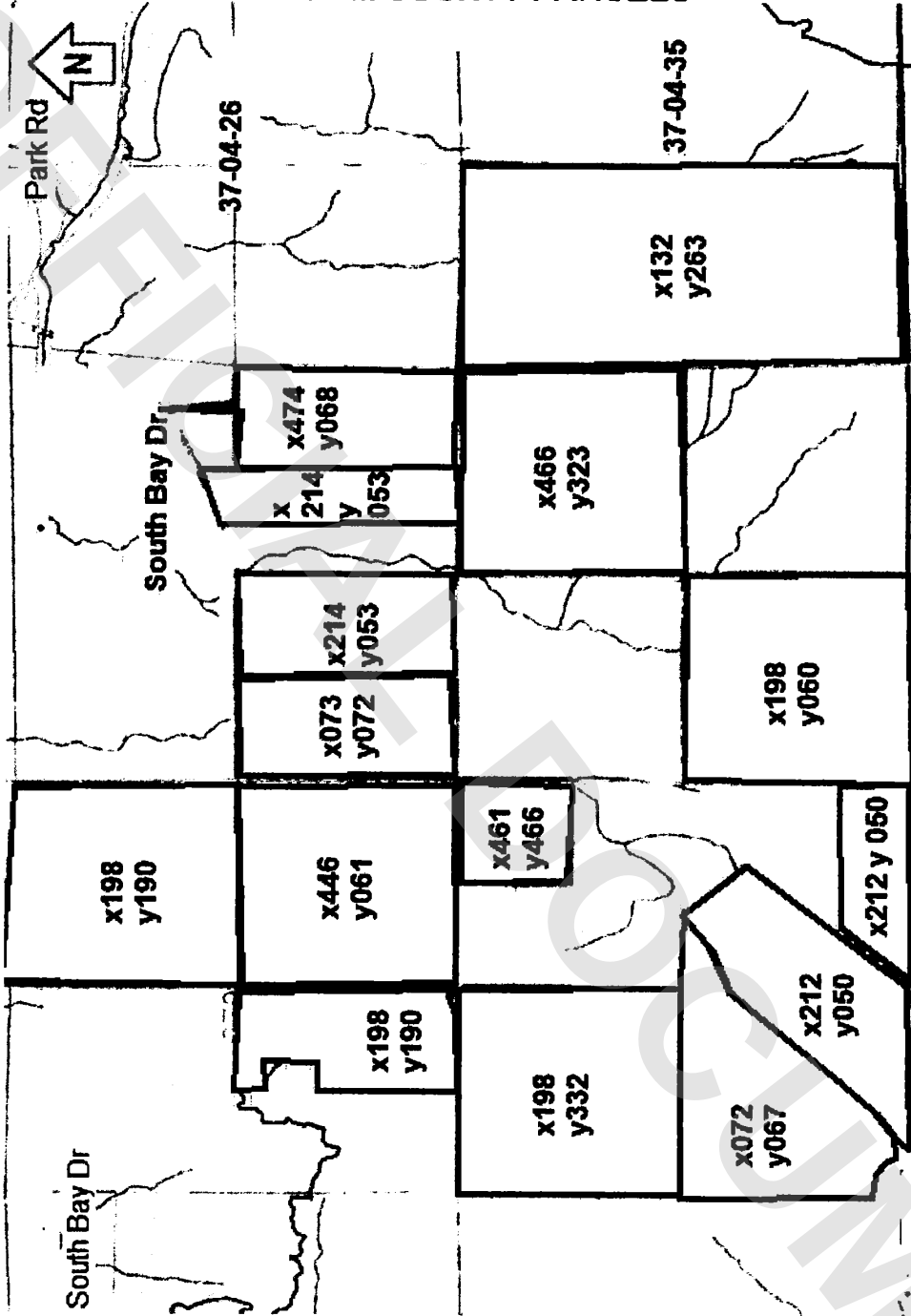


EXHIBIT B
SKAGIT COUNTY PARCELS

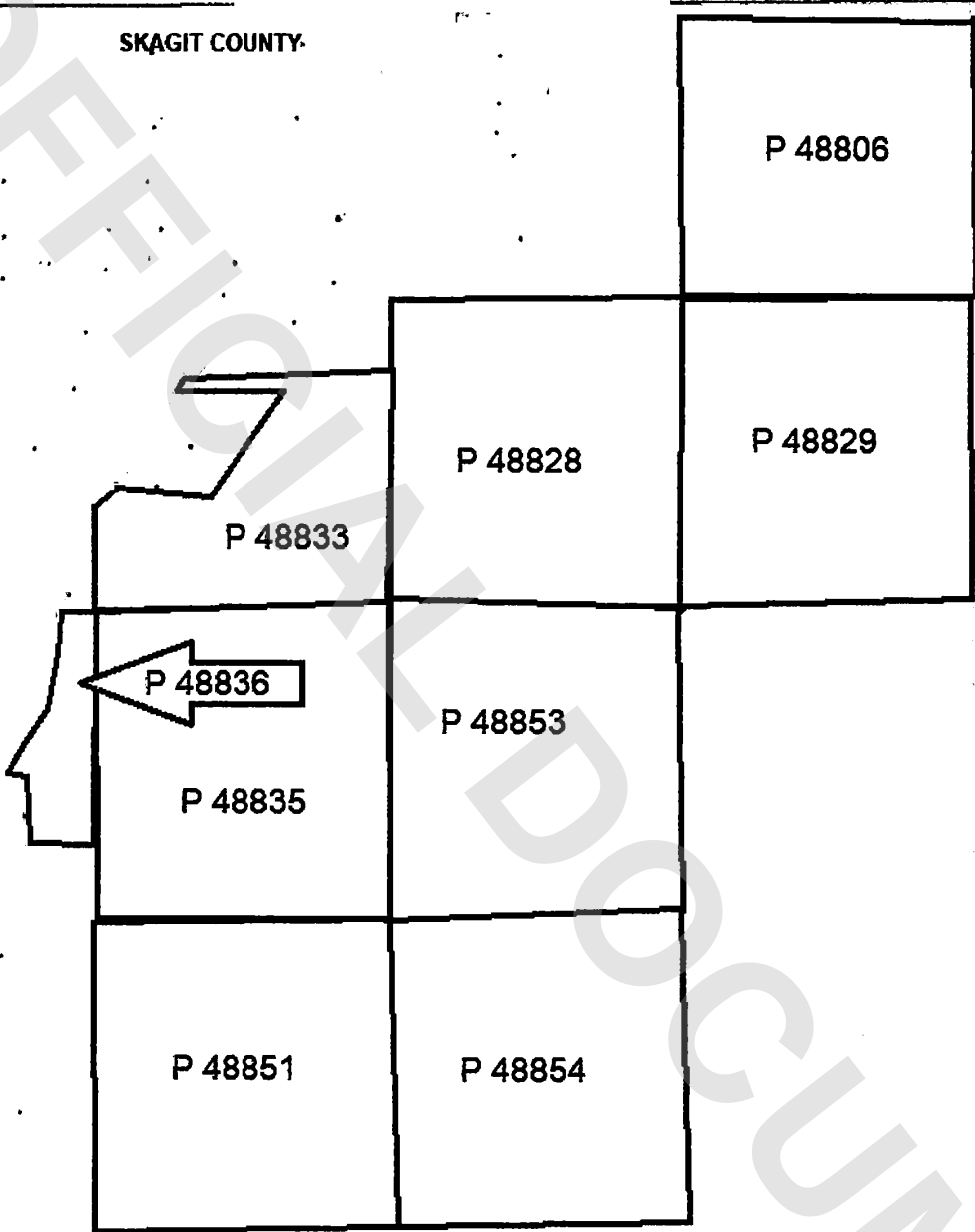


EXHIBIT C**REAL ESTATE PURCHASE AND SALE AGREEMENT**

This REAL ESTATE PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of _____, 20__ between the CITY OF BELLINGHAM, a first class municipal corporation ("Buyer") and _____ ("Seller").

RECITALS

WHEREAS, Seller is the owner of certain real property more particularly described in Section 1, below.

WHEREAS, Buyer, in accordance with its Lake Whatcom Watershed Property Acquisition Program, desires to purchase from Seller, and Seller desires to sell to Buyer the real property on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

AGREEMENT

1. Real Property. Seller agrees to sell and convey to Buyer and Buyer agrees to purchase from Seller, subject to the terms and conditions set forth in this Agreement, the real property located in Whatcom County, Washington, more particularly described in Exhibit A, and depicted in Exhibit B, both attached hereto and made a part hereof, together with all right, title and interest in and to all rights licenses, privileges, reversions and easements pertinent to the real property, including without limitation, all minerals, oil, gas and other hydrocarbon substances which Seller

RECORDED:

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has the right to convey on and under the real property as well as all development rights, air rights, water rights, water and water stock relating to the real property and any other easements rights of way or appurtenances used in connection with the beneficial use and enjoyment of the real property (collectively, the "Property").

2. **Deposit.** Buyer shall deliver to Whatcom Land Title Company in Bellingham, Washington (the "Title Company"), as escrow agent for the closing of this transaction, an earnest money deposit in the amount of _____ U.S. Dollars (\$_____) (the "Deposit") as part payment of the purchase price of the Property. The Deposit will be held by the Title Company for the benefit of the parties pursuant to the terms of this Agreement. Any interest that accrues on the Deposit will be for the benefit of Buyer and fully applicable to the Purchase Price (defined at section 3, below) at closing; provided, however, that if Buyer forfeits the Deposit to Seller pursuant to the terms of this Agreement, then all interest accrued on the Deposit will be paid to Seller. Buyer will deliver the Deposit to the Title Company within 14 days of the last authorized signature on this Agreement.

3. **Purchase Price.** The total purchase price for the Property (the "Purchase Price") will be _____ U.S. Dollars (\$_____), of which the Deposit is a fully applicable part. The Purchase Price will be paid to Seller in cash through escrow at closing.

4. **Title to Property.**

4.1 **Conveyance.** At closing Seller shall convey to Buyer marketable fee simple title to the Property by duly executed and acknowledged statutory warranty deed (the "Deed"), subject only to those encumbrances that Buyer approves pursuant to Section 4.3 below (the "Permitted Encumbrances").

4.2 **Preliminary Commitment.** Upon execution of this Agreement, Seller authorizes Buyer to order a preliminary commitment for an owner's standard coverage policy of title insurance (or, at Buyer's election and additional expense, if any, an owner's extended coverage policy of title insurance) in the amount of the Purchase Price to be issued by the Title Company and accompanied by copies of all documents referred to in the commitment (the "Preliminary Commitment").

4.3 Condition of Title. Buyer shall advise Seller by written notice what encumbrances to title, if any, are disapproved by Buyer ("Disapproved Encumbrances") by the expiration of the Feasibility Study Period (as defined in Section 5.2, below). All monetary encumbrances other than non-delinquent ad valorem property taxes will be deemed to be disapproved. Seller will have ten (10) business days after receipt of Buyer's notice to give Buyer notice that (i) Seller will remove Disapproved Encumbrances, or (ii) Seller elects not to remove Disapproved Encumbrances. If Seller fails to give Buyer notice before the expiration of the ten (10) day period, Seller will be deemed to have elected to remove Disapproved Encumbrances. Notwithstanding anything to the contrary in this Agreement, Seller shall remove from title on or before the Closing Date all monetary encumbrances other than those approved by Buyer. If Seller elects not to remove any Disapproved Encumbrances, Buyer will have fifteen (15) business days to notify Seller of Buyer's election either to proceed with the purchase and take the Property subject to those encumbrances, or to terminate this Agreement. If Buyer elects to terminate this Agreement pursuant to this section, the escrow will be terminated, the Deposit will be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise expressly provided for in this Agreement. If this Agreement is terminated through no fault of Seller, then Seller and Buyer shall share equally any costs of terminating the escrow and any cancellation fee for the Preliminary Commitment.

4.4 Title Policy. Seller shall cause the Title Company to issue to Buyer at closing a standard coverage owner's policy of title insurance insuring Buyer's title to the Property in the full amount of the Purchase Price subject only to the Permitted Encumbrances (the "Title Policy"). The Title Policy must be dated as of the Closing Date.

5. Conditions to Closing.

5.1 City Council Approval. This Agreement, and the transaction contemplated hereby, must be duly approved by the Bellingham City Council prior to closing. The Bellingham City Council's decision to approve or reject the transaction contemplated herein may occur before or after the conclusion of the Feasibility Study Period defined in Section 5.2, below. The Bellingham City Council's decision is wholly discretionary. If Bellingham City Council approval is not obtained, this Agreement will terminate, and the Deposit will be returned immediately to Buyer, all documents and other funds will be returned to the party who deposited them, and neither party will have any further rights or obligations under this Agreement, except as otherwise expressly provided for in this Agreement.

5.2 Feasibility Study. Buyer will have thirty (30) days from the date of this Agreement (the "Feasibility Study Period") to conduct a review of the Property and satisfy itself with respect to the condition of and other matters related to the Property and its suitability for Buyer's intended use (the "Feasibility Study"). The Feasibility Study may include all inspections and studies Buyer deems reasonably necessary or desirable. Buyer and Buyer's agents, representatives, consultants, architects and engineers will have the right, from time to time, from and after the date of this Agreement to enter onto the Property and make borings, drive test piles and conduct any other reasonable tests and studies that may be necessary or desirable to ascertain the condition and suitability of the Property for Buyer's intended use. Such tests and inspections are to be performed in a manner not disruptive to the operation of the Property. Buyer shall protect, defend and indemnify Seller from and against any construction or other liens or encumbrances arising out of or in connection with its exercise of this right of entry and shall cause any such liens or encumbrances to be promptly released. Buyer shall not, however, be liable for any claims or diminution in value arising or resulting from (i) Buyer's discovery of any pre-existing condition (including, without limitation, the existence of Hazardous Materials as defined in Section 7.4) in, on, under or about the Property, or (ii) any exacerbation of a pre-existing condition in, on, under or about the Property, except to the extent, if any, said exacerbation results from the willful or negligent act or omission of Buyer, its agents, contractors or employees.

5.3 Non-Suitability. Buyer will have the right to terminate this Agreement if, in Buyer's good faith judgment, the Property is not suitable for Buyer's intended use. Buyer's right to terminate must be exercised by delivering written notice of its election to Seller on or before the expiration of the Feasibility Study Period. In the event Buyer does not complete the purchase, Buyer shall return the Property as near as is practicable to its original condition. If Buyer terminates this Agreement pursuant to this section, the Deposit will be returned to Buyer, this Agreement will terminate, and Seller and Buyer will be released from all further obligation or liability hereunder, except as otherwise specified by this Agreement and except for Buyer's obligations to indemnify Seller under Section 5.2. Failure by Buyer to notify Seller in writing of any matters affecting the suitability of the Property, whether or not an inspection has been carried out, shall deem Buyer to have waived this contingency.

6. Condition of the Property.

6.1 Seller's Covenant to Operate and Maintain. Seller shall maintain, repair, manage and operate the Property in a businesslike manner in accordance with Seller's prior practices. Seller agrees that it will not damage, dissipate, nor commit waste on any portion of the Property between the date of acceptance of this Agreement and the date of closing. Seller shall surrender the Property to Buyer in as good condition (normal wear and tear excepted) as exists on the date of this Agreement.

6.2 Inspections. Buyer agrees that it will rely on its own inspections and evaluations of the Property, with the exception of Seller's representations and warranties listed in Section 7, below, and of written documentation, including, but not limited to any disclosures required by law, provided to it by Seller, to determine the suitability of the Property for Buyer's intended use.

7. Seller's Representations and Warranties. Seller represents and warrants to Buyer as follows:

7.1 Claims or Litigation. To the best of Seller's knowledge, there is no litigation pending or threatened against Seller (or any basis for any claim) that arises out of the ownership of the Property and that might materially and/or detrimentally affect (i) the use or operation of the Property for Buyer's intended use, or (ii) the ability of Seller to perform its obligations under this Agreement, or (iii) the value of the Property.

7.2 Defaults. Seller has received no notice of any default or breach by Seller under any covenants, conditions, restrictions, rights of way or easements that may affect Seller in respect to the Property or may affect the Property or any portion thereof and no such default or breach now exists.

7.3 Organization. Seller is a _____ duly organized and validly existing under the laws of the state of _____. This Agreement and all documents executed by Seller that are to be delivered to Buyer at closing are, or at the time of closing will be, (i) duly authorized, executed and delivered by Seller, (ii) legal, valid and binding obligations of Seller, (iii) sufficient to convey title (if they purport to do so), and (iv) in compliance with all provisions of all agreements and judicial orders to which Seller is a party or to which Seller or all or any portion of the Property is subject.

7.4 Hazardous Substances. Seller has no actual knowledge of the release of or presence of any hazardous materials on, in from or onto the Property ("hazardous

materials" meaning any hazardous or toxic substance, petroleum product or wastes that are regulated or subject to cleanup authority under any state, federal or local statute, regulation or ordinance).

8. Closing. This transaction will be closed in escrow by the Title Company acting as escrow agent ("Escrow Agent"). The closing will be held at the office of the Title Company on or before sixty (60) days from the date of this Agreement (the "Closing Date"), unless affected by the provisions set forth in Section 5.2, above. If closing does not occur on or before the Closing Date, or any later date mutually agreed to in writing by Seller and Buyer, Escrow Agent will immediately terminate the escrow, forward the Deposit to the party entitled to receive it as provided in this Agreement and return all documents to the party that deposited them. When notified by Escrow Agent, Buyer and Seller will deposit with Escrow Agent without delay all instruments and moneys required to complete the transaction in accordance with this Agreement. "Closing," for the purpose of this Agreement, is defined as the date that all documents are executed, the sale proceeds are available for disbursement to the Seller, and legal title passes to the Buyer.

9. Closing Costs and Prorations. Seller shall pay the premium for a standard coverage owner's policy of title insurance in the full amount of the Purchase Price, State of Washington real estate excise taxes applicable to the sale, and one-half of the Escrow Agent's escrow fee. Buyer shall pay the additional premium, if any, attributable to an extended coverage owner's policy of title insurance (if elected by Buyer at Buyer's sole discretion) and any endorsements required by Buyer, the cost of recording the deed, and one-half of the Escrow Agent's escrow fee. Property taxes and assessments for the current year, water and other utility charges, if any, shall be prorated as of the Closing Date unless otherwise agreed. Buyer is a property tax exempt organization pursuant to R.C.W. 84.36.010, and therefore Escrow Agent is directed, to the extent possible, to apply to Whatcom County for a change in tax status for the Property, so that property taxes do not have to be collected from Buyer at closing.

10. Casualty Loss. Seller shall promptly notify Buyer of any event prior to the Closing Date which causes damage to or destruction of any portion of the Property. If Buyer and Seller cannot come to an agreement regarding any such damage to or destruction of the Property, including the settlement of any insurance claims, then Buyer and Seller will each have the right to terminate this Agreement by giving written notice of termination to the other party within twenty (20) days after receipt of actual notice of such casualty loss. Upon exercise of such termination election by either party, this Agreement will terminate, and the Deposit will be returned to Buyer.

11. Possession. Seller shall deliver possession of the Property to Buyer on the Closing Date. Seller shall remove any and all personal property or debris from the Property on or before the Closing Date, unless specifically authorized in writing by Buyer.

12. Events of Default. In the event Buyer fails, without legal excuse or authorization under this Agreement, to complete the purchase of the Property, then that portion of the Deposit which does not exceed five percent (5%) of the Purchase Price shall be forfeited to Seller as the sole and exclusive remedy available to Seller for such failure. In the event Seller fails, without legal excuse or authorization under this Agreement, to complete the sale of the Property, Buyer shall be entitled to immediate return of its Deposit, and may pursue any remedies available to it in law or equity, including specific performance.

13. Notices. Any notice under this Agreement must be in writing and be personally delivered, delivered by recognized overnight courier service, or given by mail. E-mail transmission of notice shall not be effective. All notices must be addressed to the parties at the following addresses, or at such other addresses as the parties may from time to time direct in writing:

Buyer: City of Bellingham, Public Works Department
Atten: Real Property Manager
104 W. Magnolia Street, Suite 109
Bellingham, WA 98225

With a copy to: City of Bellingham, Legal Department
Atten: City Attorney
210 Lottie Street
Bellingham, WA 98225

Seller: _____

With a copy to: _____

Any notice will be deemed to have been given, when personally delivered, and if delivered by courier service, one business day after deposit with the courier service, and if mailed, two business days after deposit in the U.S. mail.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which counterpart when so executed shall have the same force and effect as if that party had signed all other counterparts.

15. Brokers and Finders. Each party represents and warrants to the other that, to such party's knowledge, no broker, agent or finder is involved in this transaction. In the event any broker or other person makes a claim for a commission or finder's fee based upon the transaction contemplated by this Agreement, the party through whom said broker or other person makes its claim shall indemnify and hold harmless the other party from said claim and all liabilities, costs and expenses related thereto, including reasonable attorneys' fees, which may be incurred by such other party in connection with such claim. This indemnity shall survive the closing of this transaction.

16. Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

17. Continuation and Survival of Representations and Warranties. All representations and warranties by the respective parties contained in this Agreement or made in writing pursuant to this Agreement are intended to and will remain true and correct as of the time of closing, will be deemed to be material and will survive the execution and delivery of this Agreement and the delivery of the Deed and transfer of title. Such representations and warranties, however, are not assignable and do not run with the land, except as may be expressly provided herein or contained in a written instrument signed by the party to be charged.

18. **Governing Law.** This Agreement will be governed and construed in accordance with the laws of the State of Washington without recourse to any principles of Conflicts of Laws.

19. **Attorney Fees.** If either party fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in the dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Agreement, including without limitation, court costs and reasonable attorney fees incurred in connection with any federal, state or bankruptcy proceeding.

20. **Time of the Essence.** Time is of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.

21. **FIRPTA.** The Escrow Agent is instructed to prepare a certification or equivalent that Seller is not a "foreign person" within the meaning of the Foreign Investment in Real Property Tax Act ("FIRPTA"), and Seller agrees to sign this certification. If Seller is a "foreign person" as the same is defined by FIRPTA, and this transaction is not otherwise exempt from FIRPTA, Escrow Agent is instructed to withhold and pay the required amount to the Internal Revenue Service.

22. **Waiver.** Neither Seller's nor Buyer's waiver of the breach of any covenant or obligation under this Agreement will be construed as a waiver of the breach of any other covenants or obligations or as a waiver of a subsequent breach of the same covenant or obligation.

23. **Nonmerger.** The terms and provisions of this Agreement, including without limitation, all indemnification obligations, will not merge in, but will survive, the closing of the transaction contemplated under the Agreement.

24. **Assignment.** Buyer shall not assign this Agreement without Seller's prior written consent, which consent may not be unreasonably withheld, conditioned or delayed.

25. **Negotiation and Construction.** This Agreement and each of its terms and provisions are deemed to have been explicitly negotiated between the parties, and the language in all parts of this Agreement will, in all cases, be construed according to its fair meaning and not strictly for or against either party.

26. **Additional Acts.** Except as otherwise provided herein, in addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by any party hereto, the parties agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered, any and all such further acts, deeds and assurances, which may reasonably be required to effect the Agreement contemplated herein.

27. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the purchase and sale of the Property, and supersedes all prior agreements and understandings, oral or written, between the parties relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

BUYER:


Name

V-P. Forest Operations
Title

CITY OF BELLINGHAM:

Mayor

RECORDED:

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Attest:

Department Approval:

Finance Director

Public Works Director

Approved as to form:

Office of City Attorney

RECORDED:

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Exhibit A
Legal Description

[To be added.]

RECORDED:

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Exhibit B

Map

[To be added.]

RECORDED:

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