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Skagit County Auditor

When recorded return to:

Skagit Land Trust
P. O. Box 1017
Mount Vernon, WA 98273

Document Title: Amendment to Grant Deed of Conservation Easement
[Safe Harbor Provisions pursuant to IRS Notice 2023-30]

Reference No. of Document: 201604280037 (Original Easement)

Grantor: Elaine Anderson

Grantee: Skagit Land Trust

Brief Legal Description: S 7, T 35N, R 2E; Ptn. Gov't Lot 5 and the NW NE
Full legal descriptions shown in Exhibits A and C.

Assessor's Tax Parcel and I.D. Nos.:

P32763 / 350207-0-003-0007; P32784 / 350207-1-004-0004;
P32786 / 350207-1-004-0202; P96273 / 350207-0-003-0304;
P132832 / 350207-0-003-1007

AMENDMENT TO GRANT DEED OF CONSERVATION EASEMENT

[Safe Harbor Provisions pursuant to IRS Notice 2023-30]

This Amendment to Grant Deed of Conservation Easement (hereinafter referred to as "Amendment") is executed by Elaine Anderson, a single woman, whose address is 6237 S. Shore Road, Anacortes, Washington 98221 ("Grantor"), and Skagit Land Trust, a Washington nonprofit corporation qualified to do business in Washington, having an address at P.O. Box 1017, Mount Vernon, Washington 98273 ("Grantee") (each a "Party", collectively the "Parties") with reference to that certain Grant Deed of Conservation Easement, recorded on April 24, 2016 in the official records of Skagit County, Washington, under Auditor's File Number 201604280037 (hereinafter referred to as "Original Easement"). Capitalized terms used in this Amendment that are not defined herein shall have the meanings set forth in the Original Easement.

1. RECITALS

- 1.1. In 2016, Grantor and her husband J. Winston Anderson conveyed to Grantee the Original Easement which provides permanent protection to approximately 36 acres of land located on

Guemes Island in Skagit County, Washington, legally described in Exhibit A of the Original Easement (hereinafter referred to as "Protected Property"). The Protected Property possesses habitat, marine and freshwater shoreline, wetland, and forest conservation values as further described in the Original Easement.

- 1.2. Grantor is the legal owner in fee simple of the parcels of record that together comprise the Protected Property, and Grantee is the legal beneficiary of the covenants, conditions and restrictions set forth in the Original Easement, which burden the Protected Property. The Protected Property transferred into Elaine Anderson's sole ownership as surviving spouse through a bargain and sale deed recorded on July 31, 2020, under Auditor's File Number 202007310158.
- 1.3. Grantor claimed a charitable tax deduction in relation to the donation of the Original Easement to Grantee. On December 29, 2022, the United States Congress passed the SECURE 2.0 Act, Section 605(d)(1) of which directed the Internal Revenue Service (the "IRS") to publish safe harbor deed language for certain clauses in conservation easements that have been challenged by the IRS in recent audits and litigation. The IRS complied with this congressional directive by issuing Notice 2023-30 on April 24, 2023 (the "Notice"), which contains two safe harbor provisions, one concerning a conservation easement's "Extinguishment Clause" and one concerning a conservation easement's "Boundary Line Adjustment Clause," if any (collectively, the "Safe Harbor Provisions"). The Notice provides the exact language for the Safe Harbor Provisions. Until July 24, 2023, if donors elect to do so, donors of conservation easements are permitted to amend their conservation easements to include the Safe Harbor Provisions.
- 1.4. Grantor and Grantee desire to amend the terms of the Original Easement to conform with IRS Notice 2023-30, Safe Harbor Deed Language for Extinguishment Clauses. By this Amendment, Grantor and Grantee delete the language in the extinguishment, valuation, and proceeds clauses of the Original Easement and replace it with the Extinguishment Clause of the Safe Harbor Provisions. By this Amendment, Grantor and Grantee also renumber the condemnation clause to make it consistent with the included Extinguishment Clause and delete the final sentence of the condemnation clause.
- 1.5. This Amendment of the Original Easement is consistent with the conservation easement provisions of RCW 64.04.130 and 84.34.210; §170(h) of the Internal Revenue Code ("Code") and associated Treasury Regulations; and Grantee's organizational policies regarding amendment of conservation easements.
- 1.6. Section 21 of the Original Easement permits amendment of the Original Easement under certain conditions, and the Parties acknowledge and agree that the amendments set forth herein are consistent with those conditions and are therefore permitted.
- 1.7. Nothing in this Amendment affects the perpetual duration of the Original Easement, and all other provisions of the Original Easement shall remain unchanged.
- 1.8. The foregoing recitals are incorporated into this Amendment by this reference.

NOW THEREFORE, for the reasons stated above, and in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, Grantor, as owner of the Protected Property, and Grantee, as beneficiary of the covenants, conditions and restrictions over the Protected Property set forth in the Original Easement, hereby amend the Original Easement as follows:

2. AMENDMENT

The Parties amend the Original Easement as follows:

a. Section 22.1, *Extinguishment*, Section 22.3, *Valuation*, and Section 22.4, *Proceeds*, of the Original Easement are hereby deleted, and the following Extinguishment Clause language provided by IRS Notice 2023-30 is inserted in their place notwithstanding any other provisions of the Original Easement that may be construed to the contrary:

22.1 "Pursuant to Notice 2023-30, Grantor and Grantee agree that, if a subsequent unexpected change in the conditions surrounding the Protected Property that is the subject of a donation of the perpetual conservation restriction renders impossible or impractical the continued use of the property for conservation purposes, the conservation purpose can nonetheless be treated as protected in perpetuity if (1) the restrictions are extinguished by judicial proceeding and (2) all of Grantee's portion of the proceeds (as determined below) from a subsequent sale or exchange of the Protected Property are used by the Grantee in a manner consistent with the conservation purposes of the original contribution."

22.2 "Grantor and Grantee agree that the donation of the perpetual conservation restriction gives rise to a property right, immediately vested in Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction, at the time of the gift, bears to the fair market value of the property as a whole at that time. The proportionate value of Grantee's property rights remains constant such that if a subsequent sale, exchange, or involuntary conversion of the Protected Property occurs, Grantee is entitled to a portion of the proceeds at least equal to that proportionate value of the perpetual conservation restriction, unless state law provides that the donor is entitled to the full proceeds from the conversion without regard to the terms of the prior perpetual conservation restriction."

b. Section 22.2, *Condemnation* of the Original Easement is hereby renumbered as Section 22.3 and the final sentence of the section beginning "All expenses" and ending "paid out of the amount recovered" is hereby deleted.

3. GENERAL PROVISIONS

3.1. The Easement is hereby ratified and affirmed and shall continue in full force and effect except as expressly modified by this Amendment. The undersigned Grantor and the undersigned Grantee expressly intend that the Original Easement as modified by this Amendment shall be binding upon, and inure to the benefit of Grantor and Grantee, and the respective successors and assigns of each and shall continue as a servitude running in perpetuity with the Protected Property.

3.2. From and after the Effective Date of this Amendment, all references to the "Easement" shall mean the Original Easement as modified by the Amendment.

- 3.3. The "Effective Date" of this Amendment shall be the date that the Original Easement was originally executed, acknowledged and recorded in the official records of Skagit County, Washington, for purposes of § 170, § 605(d)(2) of the SECURE 2.0 Act, and section 3.01(2) of IRS Notice 2023-30. For purposes of determining priority of recorded third-party rights in and to the Protected Property, this Amendment relates back to the Effective Date.
- 3.4. Should any portion of this Amendment be declared invalid and unenforceable, then such portion shall be deemed to be severed from this instrument and shall not affect the remainder of this Amendment.
- 3.5. This Amendment, together with the Original Easement, constitute the entire agreement among the Parties with respect to the subject matter hereof. This Amendment supersedes all prior and contemporaneous oral and written agreements and discussions with respect to the subject matter hereof.
- 3.6. This instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same document, binding all of the Parties hereto, notwithstanding all of the Parties are not signatory to the original or the same counterparts. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

{Signature page(s) to follow}

TO HAVE AND TO HOLD unto the said *Grantee and their successors and assigns forever.*

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 25 day of July, 2023

GRANTOR

Elaine M. Anderson
Elaine M. Anderson

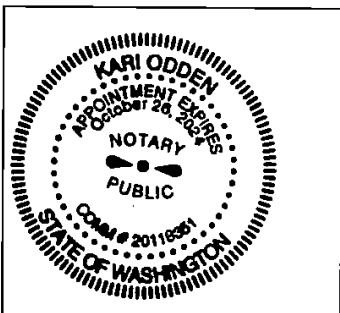
STATE OF WASHINGTON)

) ss.

COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that Elaine Anderson is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: 7/24/2023



(Use this space for notarial stamp/seal)

Kari Odden
Notary Public

Print Name Kari Odden

My commission expires 10-26-2024

The Skagit Land Trust, a Washington nonprofit corporation, does hereby accept the above Amendment to Grant Deed of Conservation Easement.

Dated: July 21, 2023

GRANTEE

Skagit Land Trust,
a Washington nonprofit corporation

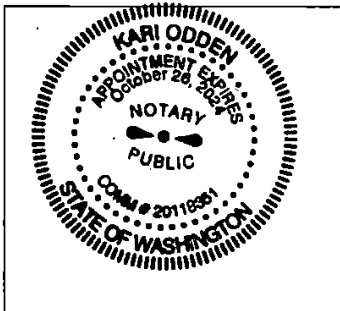
By:

Timothy Manns
Timothy Manns, Its Secretary

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that Kathy Thornburgh is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the President of Skagit Land Trust, a Washington nonprofit corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 7/21/2023



(Use this space for notarial stamp/seal)

Kari Odden
Notary Public
Print Name Kari Odden
My commission expires Oct 26, 2024