

OPTION AGREEMENT
FOR THE PURCHASE AND SALE OF REAL ESTATE
Port Susan Bay, WA (Barnum Pointe, LLC)

This Option Agreement (the "**Agreement**") is entered into by and between Barnum Pointe, LLC, a Washington limited liability company, and Edward Lawrence Stay and Amy L. Stay, husband and wife (individually "**Barnum Pointe**" and "**Stay**," collectively "**the Seller**"), and The Nature Conservancy, a District of Columbia nonprofit corporation (the "**Conservancy**").

RECITALS

A. Barnum Pointe is the owner of the fee simple interest in and to that certain real property located in Island County, Washington, more particularly described on **EXHIBIT A** under the heading "Barnum Pointe Property." Stay is the owner of the fee simple interest in and to that certain real property located in Island County, Washington, more particularly described on **EXHIBIT A** under the heading "Stay Property." The Barnum Pointe Property and the Stay Property are shown generally on the map attached as **EXHIBIT B**, and are referred to herein individually as the "**Barnum Pointe Property**" and the "**Stay Property**" and collectively as the "**Property**". The Property also includes all improvements and fixtures thereon, all water and water rights appurtenant to or otherwise used in connection with the Property, minerals and mineral rights and other surface and subsurface rights, permits, hereditaments, easements, incidents and appurtenances belonging thereto and all leases, rents, and profits therefrom, and including unrestricted legal access to the real property.

B. The Seller desires to grant to the Conservancy, and the Conservancy desires to accept from the Seller, a non-exclusive option to purchase (i) the fee simple interest in the Barnum Pointe Property, (ii) a conservation easement on the Stay Property the salient conservation elements of which are described in **EXHIBIT C** (the "**Conservation Easement**"), and (iii) if necessary, an easement across the Stay Property for ingress, egress, and utilities to the Barnum Pointe Property, on the terms and conditions set forth in this Agreement.

GRANT OF OPTION

In consideration of the Option Consideration (as defined below) and of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration given by the Conservancy to the Seller, the receipt and sufficiency of which are hereby acknowledged, the Seller hereby grants to the Conservancy and its successors and assigns the non-exclusive right and option (the "**Option**") to purchase the interests in the Property on the terms and conditions set forth herein.

TERMS AND CONDITIONS

1. Option Terms and Exercise. The term of the Option (the "**Option Term**") shall commence on the date of the last party's signature on this Agreement and shall continue until 11:59 p.m. (then-applicable Washington time) on March 19, 2012 (the "**Option Expiration Date**"). The Conservancy shall exercise the Option, if at all, by delivering written notice of

exercise (in accordance with Paragraph 17 of this Agreement) to the Seller on or before the Option Expiration Date.

2. Option Consideration. As consideration for the Option, the Conservancy shall deposit promptly after mutual execution of this Agreement the sum of \$100 (the "**Option Consideration**") with Land Title and Escrow of Island County, with an address at 7202 267th Street, N.W., Suite 101, Stanwood, WA 98292, or other escrow company satisfactory to both parties that will consummate the transaction (the "**Escrow Holder**"). The Option Consideration shall be delivered to Seller within 5 days after its delivery to the Escrow Holder. If the Conservancy exercises the Option, then on the Closing Date (as defined in Paragraph 6 below), the Option Consideration shall be credited towards the Purchase Price (as defined in Paragraph 3 below).

Except as otherwise specifically set forth in this Agreement, in the event the Conservancy elects not to exercise the Option or fails to deliver a timely notice of exercise, and in the absence of the Seller's breach of this Agreement, then the Agreement shall automatically terminate, the Option Consideration shall be retained by the Seller, and neither party shall have any further right or obligation with regard to the purchase and sale of the Property.

3. Purchase Price. The total purchase price for the Property, including the Option Consideration, shall be \$ [REDACTED] (the "**Purchase Price**"). The Purchase Price shall be paid in cash at closing. The Seller does not consider this transaction to have a "bargain sale" component, and the Seller will not submit an IRS Form 8283 "Noncash Charitable Contributions" to Conservancy in connection with this sale.

4. Tax Disclaimer. The Seller hereby represents and warrants that (i) it has not relied upon any representation by or on behalf of the Conservancy concerning the tax consequences of this transaction; and (ii) it has been advised by the Conservancy to seek its own professional advice regarding such tax consequences.

5. Title Commitment. The Conservancy has obtained from Land Title and Escrow of Island County (the "**Title Company**") a preliminary commitment for a standard ALTA owner's policy of title insurance on the Property showing the Conservancy as the proposed owner of the respective interests therein, along with copies of all documents listed as exceptions in the commitment (the "**Title Commitment**"). Upon discovering the need to amend the Title Commitment, the Title Company will immediately notify the Conservancy and the Seller. The Conservancy shall have until January 31, 2012, or in the event of a later amendment to the Title Commitment, 10 business days after the Conservancy's receipt of the amended Title Commitment, to notify the Seller in writing what exceptions to title, if any, will be accepted by the Conservancy. The Conservancy shall specify in its notice whether it seeks the removal or revision of the exception, and in the case of a revision, the nature of the revision. The Conservancy's failure to object to any matter shown in the Title Commitment within the time stated above shall be deemed to be its approval of the matter.

The Seller shall have 10 business days following notice from the Conservancy of any objection to title to notify the Conservancy in writing of any such objection that the Seller does not intend to remove from title or to revise in accordance with the Conservancy's notice. Notwithstanding the foregoing, the Seller shall, on or before the Closing Date, remove all monetary liens and exceptions that appear on or affect title to the Barnum Pointe Property, or subordinate such liens and exceptions to the Conservation Easement on the Stay Property on terms acceptable to the Conservancy, except for current taxes, which shall be prorated on the Barnum Pointe Property as provided below. The Seller's failure to respond in writing within the time stated shall be deemed a statement from Seller that it is unwilling or unable to remove or revise all exceptions objected to by the Conservancy. If the Seller does not intend to remove or revise an exception to which the Conservancy has objected (other than monetary exceptions, which the Seller shall address as provided above), then, within 10 business days of such notice from the Seller, the Conservancy shall notify the Seller either that the Conservancy: (i) waives the objection to such exception and accepts such title as the Seller is willing to convey; or (ii) terminates this Agreement, in which event the Option Consideration shall be returned to the Conservancy and neither party shall have any further obligation under this Agreement. The exceptions to which the Conservancy does not object or to which it has waived its objections shall be referenced herein as the "Permitted Exceptions".

It shall be a condition precedent to the Conservancy's obligation to proceed with closing that the Title Company shall be irrevocably committed to issue to the Conservancy a standard ALTA owner's title policy in the amount of the Purchase Price, insuring that fee simple title to the Barnum Pointe Property and the Conservation Easement in the Stay Property is vested in the Conservancy, subject only to the Permitted Exceptions. The title policy shall be paid for by the Seller.

6. Closing.

(a) Closing of the sale shall be through escrow held at the office of the Escrow Holder by April 3, 2012 (the "**Closing Date**"). The provisions of this Agreement shall constitute joint instructions to the Escrow Holder; provided, however, that the parties shall execute such additional customary instructions as requested by the Escrow Holder not inconsistent with the provisions of this Agreement. At closing, Barnum Pointe shall execute and deliver a good and sufficient statutory warranty deed, conveying good, insurable, and marketable fee simple title to the Barnum Pointe Property to the Conservancy and its assigns, subject only to the Permitted Exceptions, together with unrestricted legal access and all other right, title and interest of Barnum Pointe in the Barnum Pointe Property. At closing, Stay shall execute and deliver (i) the Conservation Easement conveying good, insurable, and marketable title to the Conservation Easement interest in the Stay Property to the Conservancy and its assigns, subject only to the Permitted Exceptions; and (ii) if necessary, a permanent non-exclusive easement for ingress, egress, and utilities across the Stay Property to the Barnum Pointe Property, subject only to the Permitted Exceptions. The Conservation Easement will include unrestricted legal access to the designated agents in connection with the Conservation Easement and shall not be used by the general public. At closing, the parties shall mutually execute and deliver real estate excise tax

affidavits relating to the deed and easement and disclosing the Purchase Price for each, for filing with the Island County Treasurer.

(b) In addition to all other conditions set forth in this Agreement, the obligation of the Conservancy to proceed with the closing shall be subject to the following conditions precedent:

- i. the Seller's timely compliance with each of its obligations, covenants and agreements set forth in this Agreement;
- ii. the accuracy and completeness in all material respects of each of the Seller's representations and warranties as of the Date of this Agreement and the Closing Date;
- iii. no administrative or judicial proceeding shall have commenced as of the Closing Date that seeks to prevent or restrain the consummation of the transaction contemplated by this Agreement or that would adversely affect the Property or its use; and
- iv. as of the Closing Date, there shall have been no material adverse change in the physical and environmental condition of the Property.

The foregoing conditions are for the sole benefit of the Conservancy. If any of those conditions are not satisfied or waived by the Conservancy on or before the Closing Date, then the Conservancy may terminate this Agreement by written notice to the Seller, in which event the Option Consideration shall be returned to the Conservancy.

7. Water Rights Documentation. As part of this Agreement Barnum Pointe and Stay have completed the Water Rights Questionnaire attached as **EXHIBIT D**. Within 10 days of the execution of this Agreement by the Seller, the Seller shall deliver to the Conservancy all documentation on the water rights for the Property, if any. Failure of the Seller to comply with this provision shall be considered a breach of this Agreement entitling the Conservancy to terminate this Agreement, in which event, the Option Consideration shall be returned to the Conservancy.

8. Seller's Representations and Warranties. The Seller represents and warrants to the Conservancy that, as of the date that this Agreement is signed by the Seller and as of the Closing Date:

- a) No labor, materials or services have been furnished in, on or about the Property or any part thereof from which any mechanics', laborers', or materialpersons' liens or claims might arise.
- b) As used herein, the term "**Hazardous Substances**" shall mean any substance or material now or hereafter defined or regulated as a hazardous substance, hazardous waste, toxic substance, pollutant, or contaminant under any federal, state, or local law, regulation, or ordinance governing any substance that could cause actual or suspected harm to human health or the environment ("**Environmental Law**"). Hazardous Substances specifically

includes, but is not limited to, petroleum, petroleum by-products, polychlorinated biphenyls and asbestos. To the best of Seller's knowledge, there are no Hazardous Substances present in, on or under the Property, including without limitation, in the soil, air or groundwater, and there is no pending or threatened investigation or remedial action by any governmental agency regarding the release of Hazardous Substances or the violation of any Environmental Law at the Property. There are no underground storage tanks located on the Property.

- c) There are no parties or trespassers in possession or which have a right to possess all or any portion of the Property, nor are there any boundary line disputes regarding the Property.
- d) The Seller has complied in all material respects with all applicable laws, ordinances, regulations, statutes and rules relating to the Property, and every part thereof. The Seller has not received, nor is the Seller aware of, any notification from any governmental authority having jurisdiction of (i) violation of such law, ordinance, regulation, statute or rule relating to the Property, (ii) requiring any work to be done on the Property or (iii) advising of any condition (including without limitation Hazardous Substance) which would render the Property unusable or affect the usability of the Property.
- e) There are no leases, trust deeds, mortgages, restrictions, encumbrances, liens, licenses, rights of first refusal, options to purchase or other instruments, contracts or agreements affecting the Property (each, an "Instrument"), except as disclosed in the Title Commitment. The Conservancy shall not assume nor be deemed to have assumed any obligation or liability under any Instrument without its express written agreement to do so.
- f) Barnum Pointe and Stay are the sole legal fee owners of the Barnum Pointe Property and Stay Property, respectively, and are not holding fee title as a nominee for any other person or entity.
- g) There is presently no pending or threatened condemnation or similar proceeding. Except as disclosed in the Title Commitment, the Property is not within the boundaries of any planned or authorized local improvement or assessment district.
- h) Neither the execution nor delivery of this Agreement, nor consummation of the transaction contemplated hereby, nor fulfillment of nor compliance with the terms and conditions hereof contravenes any provision of any law, statute, rule or ordinance to which the Seller or the Property is subject, or conflicts with or results in a breach of or constitutes a default under any of the terms or conditions of any agreement or instrument to which the Seller is a party or by which it is bound, or constitutes a default under any of the foregoing.
- i) Except for the Seller's default under that certain deed of trust between Seller and Olympic Coast Investment, Inc., dated March 10, 2010, and recorded under Island

County Recording No. 4271336, as amended and subsequently assigned, the Seller is not in default and there has occurred no uncured event which, with notice, the passage of time, or both would be a default under any contract, transaction, agreement, lease, encumbrance or other Instrument pertaining to the Property.

- j) There is no litigation either pending or, to the best of the Seller's knowledge, threatened, which could now or in the future in any way constitute a lien, claim or obligation of any kind on the Property, affect the use, ownership or operation of the Property or otherwise adversely affect the Property or the consummation of the transaction contemplated by this Agreement. For purposes of this subsection, "litigation" includes any lawsuit, action, administrative proceeding, governmental investigation and all other proceedings before any tribunal having jurisdiction over the Property.
- k) The Seller has the right and authority to enter into this Agreement and all documents contemplated by this Agreement, to make the representations and warranties set forth herein and to perform this Agreement in accordance with its terms.
- l) Prior to the Seller's execution of this Agreement, the Seller has completed and delivered to the Conservancy the Disclosure Form attached hereto as **EXHIBIT E** regarding potential conflicts of interest related to transactions contemplated in this Agreement (the "**Conflicts Certification**"). All information provided in the Conflicts Certification is correct and accurate.
- m) Material Support to Terrorists. The Seller does not commit, attempt to commit, advocate, facilitate, or participates in terrorist acts, nor has it committed, attempted to commit, facilitated, or participated in terrorist acts. The Seller will take all reasonable steps to ensure that it does not and will not knowingly provide material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated, or participated in terrorist acts. Before providing any material support or resources to an individual or entity, the Seller will consider all information about that individual or entity of which it is aware or that is available to the public. The Seller will implement reasonable monitoring and oversight procedures to safeguard against assistance being diverted to support terrorist activity. For purposes of this paragraph "entity" means a partnership, association, corporation, or other organization, group or subgroup. "Material support and resources" means currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials. "Terrorist act" means: (i) an act prohibited pursuant to one of the 12 United Nations Conventions and Protocols related to terrorism (see UN terrorism conventions Internet site: <http://untreaty.un.org/English/Terrorism.asp>); or (ii) an act of premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents; or (iii) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not

taking an active part in hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population or to compel a government or an international organization to do or to abstain from doing any act.

The Seller agrees to indemnify, defend (by counsel reasonably satisfactory to the Conservancy), and hold harmless the Conservancy, its directors, officers, employees, and agents from and against any and all claims, losses, damages, penalties, liabilities, costs, and expenses, including but not limited to litigation costs and attorneys' fees, arising out of the Seller's breach of this Agreement or the inaccuracy of any representation or warranty provided by the Seller in, or otherwise given in writing to the Conservancy pursuant to, this Agreement. The Seller also agrees that if any misrepresentation by the Seller in this Agreement or in the Conflicts Certification is discovered, the Conservancy may elect to terminate this Agreement, in which event the Option Consideration and all payments made by the Conservancy shall immediately be refunded to the Conservancy and the Seller shall pay any escrow cancellation fees due to Escrow Holder.

9. Certification. To inform the Conservancy that withholding of tax is not required under Section 1445 of the Internal Revenue Code and under penalties of perjury, the Seller hereby certifies that the Seller is not a non-resident alien or a foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined for purposes of federal income tax law and that the Seller's social security number/federal taxpayer identification number is as set out below. At closing, the Seller agrees to deliver non-foreign transferor certificates for Barnum Pointe and Stay confirming the foregoing representations regarding Section 1445 of the Internal Revenue Code. The Seller understands that this certification may be disclosed to the Internal Revenue Service and that any false statement made could be punished by fines, imprisonment or both.

10. Taxes. The Seller agrees that all taxes, assessments and encumbrances that will be a lien against the Property at closing, together with all deferred taxes and charges applicable to the Property in the future by recapture or otherwise as a result of classification of the Property for assessment purposes existing prior to closing, including without limitation any compensating tax, additional tax, interest and penalties, whether or not a lien against the Property, shall be satisfied of record by the Seller at or before closing. If the Seller shall fail to do so, the Conservancy may, in addition to other remedies, pay any such tax, assessment, encumbrance, or other charge and deduct an amount equal to any such payment from the Purchase Price. It is agreed that the Conservancy has no obligation to maintain any use of the Property, make any applications to any governmental authority, or take or refrain from taking any other actions that would continue to defer, or preclude, the imposition of any of the above-referred-to charges on the Property. The Seller agrees to indemnify, defend, and hold the Conservancy harmless from all liability, claims, demands and expense arising from any such charges on the Property.

11. Preservation of Property. The Seller acknowledges that the Conservancy intends to use the Property as a nature preserve. Between the date of this Agreement and the Closing Date, the Seller shall maintain the Property and keep the Property in a condition at least as good as existed on the date of this Agreement. The Seller shall refrain from and shall not permit any use of the

that would adversely affect the Conservancy's intended use of the Property as a nature preserve or similar use, including without limitation, removal of any timber, improvements, minerals, sand, gravel, or other item from the Property. At least 10 calendar days prior to the Closing Date, the Seller shall have removed all junked vehicles, equipment, machines, and other solid waste and trash from the Property to the satisfaction of the Conservancy.

12. Possession and Risk of Loss. The Seller shall deliver possession of the Property to the Conservancy at closing and shall bear the risk of loss until the delivery of possession to the Conservancy.

13. Closing Costs and Prorations. Escrow fees shall be paid one-half by the Seller and one-half by the Conservancy. The premium for the title insurance policy described above and any transfer taxes, excise taxes, and documentary fees shall be paid by the Seller. Recording costs for the deed and Conservation Easement shall be paid by the Conservancy. All other closing costs shall be borne by the parties according to custom in Island County, Washington. Regular real property taxes applicable to the Barnum Pointe Property payable during the year in which closing occurs shall be prorated as of closing. Consistent with the terms of the Conservation Easement, the Conservancy shall not be responsible for payment of real property taxes applicable to the Stay Property.

14. Right of Entry and Delivery of Documents. The Conservancy and its contractors and invitees may enter upon the Property at reasonable times for surveying, inspection, and other reasonable purposes related to this transaction. The Conservancy shall provide the Seller notice a reasonable amount of time before such entry of the nature, extent, and parties involved in the entry. The Seller shall make available for inspection by the Conservancy and its agents as soon as possible but no later than 10 days after mutual acceptance of this Agreement all documents available to the Seller relating to the ownership, operation, or development of the Property, including without limitation: statements for real estate taxes, assessments and utilities; property management agreements, service contracts and agreements with professionals or consultants entered into by the Seller or any predecessor in title to the Seller; environmental reports and studies; Instruments relating to all or a portion of the Property; and plans, specifications, permits, applications, drawings, surveys, studies and maintenance records.

15. Default and Remedies.

- a) Conservancy's Remedies. In the event of (i) a default by the Seller under this Agreement, (ii) the failure of one or more of the conditions precedent set forth in this Agreement, or (iii) the failure of this transaction to close under any circumstances other than those that entitle the Seller to retain the Option Consideration as provided in paragraph (b) of this section; then the Conservancy may proceed to close the transaction or may terminate this Agreement. In the event of such termination, the Option Consideration and all payments made by the Conservancy shall immediately be refunded to the Conservancy, and the Seller shall pay any escrow cancellation fees due to Escrow Holder. In either case, the Conservancy shall have all other rights and remedies available to the Conservancy at law or in equity, including, without limitation, the right to

specifically enforce this Agreement if the Conservancy has not elected to terminate this Agreement.

- b) Seller's Remedies. In the event that (i) the conditions precedent set forth in this Agreement shall have been satisfied or waived in writing by the Conservancy, (ii) the Seller shall not be in default under this Agreement, and (iii) the Conservancy shall be in default under this Agreement; then the Seller, as its sole and exclusive remedy, may terminate this Agreement by notifying the Conservancy thereof and retain the Option Consideration as liquidated damages. In the event of such termination, the Conservancy shall pay any escrow cancellation fees due to Escrow Holder. The parties have agreed that the Seller's actual damages, in the event of a default by the Conservancy, would be difficult or impracticable to determine. Therefore, the parties acknowledge that the Option Consideration has been agreed upon, after negotiation, as the parties' reasonable estimate of the Seller's damages and as the Seller's sole and exclusive remedy against the Conservancy, at law or in equity, in the event of a default under this Agreement by the Conservancy.

16. Binding Upon Successors; Assignment. The Conservancy may not assign its interest in this Agreement, or in any of the documents described herein, to any party, in whole or in part, without the Seller's prior written consent, which the Seller may grant or deny in the Seller's sole discretion. The terms and conditions of this Agreement shall benefit and bind the heirs, executors, administrators, successors and assigns of the Seller and the Conservancy.

17. Notices. Any notices, demands or other communications required or permitted to be given hereunder shall be given in writing and shall be delivered (i) in person, (ii) by certified mail, postage prepaid, (iii) by a commercial overnight courier that guarantees delivery within the next two business days, or (iv) by electronic mail. Notices delivered to the Seller, as provided below, shall be deemed to have been given to both Barnum Pointe and Stay. Such notices shall be addressed as follows:

To the Conservancy: The Nature Conservancy
Washington Field Office
1917 First Avenue
Seattle, Washington 98101
Attn: Regional Attorney
btodd@tnc.org

To the Seller: Edward L. Stay
Stay Appraisal
P.O. Box 1436
Bothell, WA 98041-1436
sasdsl@nwlink.com

With copy to: S. Michael Rodgers and Daryl A. Deutsch
Rodgers Deutsch & Turner, PLLC

Three Lake Bellevue Dr. #100
Bellevue, WA 98005
mandmrodgers@comcast.net and daryl@rdtlaw.com

Notice of change of address shall be effective only when done in accordance with this section. All notices complying with this section shall be effective only upon delivery, except that the Conservancy's notices concerning exercise of the option and the condition of title set forth in Paragraphs 1 and 5 above shall be effective upon the date shown on the electronic mail header or postmarked on the envelope in which such notice is sent.

18. Miscellaneous.

- a) This Agreement represents the entire agreement of the parties and may not be amended except by a writing signed by each party hereto. This Agreement may be executed in several counterparts and signatures may be delivered via telephone facsimile, which shall constitute one agreement that is binding on all of the parties, notwithstanding that the parties may have signed different counterparts. The parties agree to confirm facsimiles with originals upon request by the other party.
- b) The Seller acknowledges that the Seller has previously retained a broker in connection with the listing of the Property ("the Seller's Broker") who is acting solely as agent for the Seller and not as an agent for the Conservancy. The Seller shall pay to the Seller's Broker any and all real estate brokerage commission or fees due the Seller's Broker. The Seller shall indemnify, defend (using counsel satisfactory to the Conservancy) and hold the Conservancy harmless from any claims for any real estate brokerage commission or other compensation made by the Seller's Broker or any person or entity claiming to have been retained by the Seller in connection with this transaction. The Conservancy represents that it has not contracted with any broker or finder with regard to this transaction, and agrees to indemnify, defend (using counsel reasonably satisfactory to the Seller) and hold the Seller harmless from any claims for any real estate brokerage commission or other compensation made by any person or entity claiming to have been retained by the Conservancy in connection with this transaction.]
- c) In the event that any party to this Agreement is not a natural person, then that party warrants to the other that it is duly organized and existing and each party warrants that it and the respective signatories have full right and authority to enter into and consummate this Agreement and all related documents.
- d) The obligations, covenants, representations, warranties and remedies set forth in this Agreement shall not merge with transfer of title but shall remain in effect.
- e) The obligations, covenants, representations, and warranties of Barnum Pointe and Stay shall be joint and several, except to the extent explicitly limited to one such party.

- f) Each party shall execute and deliver or cause to be executed and delivered all instruments reasonably required to convey the Property to the Conservancy and to vest in each party all rights, interests and benefits intended to be conferred by this Agreement.
- g) This Agreement shall be governed by the laws of the State of Washington, without reference to its rules regarding conflict of laws.
- h) In the event of a dispute the prevailing party shall be entitled to payment of its reasonable attorney's fees and costs in arbitrating or litigating the dispute.
- i) SELLER ACKNOWLEDGES THAT IT HAS HAD AN OPPORTUNITY TO SEEK INDEPENDENT LEGAL ADVICE REGARDING THIS TRANSACTION. Each party acknowledges that it and its legal counsel have reviewed and revised this Agreement. No rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Agreement.
- j) Time is of the essence in this Agreement.
- k) If the due date for performing any action or obligation or for providing any notice under this Agreement falls on a Saturday, Sunday or federal or Washington legal holiday, the due date shall be deemed to be the immediately following date that is not a Saturday, Sunday or federal or Washington legal holiday.
- l) The following exhibits are attached to and incorporated into this Agreement by reference:

Exhibit A – Description of Property	Exhibit F – Utility Easement Map
Exhibit B – Map of Property	
Exhibit C – Conservation Easement	
Exhibit D – Water Rights Questionnaire	
Exhibit E – Disclosure Form	
- m) Seller, upon written notice to the Conservancy, shall have the right to terminate this Agreement if it enters into a binding and non-contingent agreement with a third party for the sale of some or all of the Property prior to the Conservancy's exercise of its Option herein. In such a circumstance Seller's only obligation shall be to return the Option Consideration to the Conservancy. Once the Conservancy has exercised its Option, Seller may not terminate this Agreement.

19. Additional Easements

- a) It is the agreement of the parties that after closing both the Stay Property and the Barnum Pointe Property shall have access to Sunrise Blvd. Some uncertainty exists at this time whether Sunrise Blvd. terminates at the north boundary of the Stay property or the north boundary of the Barnum Pointe Property. If it terminates at the north boundary of the Stay property then Seller, at closing, shall convey to the Conservancy a permanent non-

exclusive easement across the northwesterly corner of the Stay Property for the purpose of providing permanent ingress, egress, and utilities to and from the Barnum Pointe Property. If it terminates at the north boundary of the Barnum Pointe Property then Seller, at closing, and notwithstanding any other provision in this Agreement to the contrary, shall convey and/or reserve, for the benefit of the Stay Property, a permanent non-exclusive ingress, egress, and utilities easement across the northeasterly corner of the Barnum Pointe Property. If Sunrise Blvd. terminates at a point that straddles the north boundary of both the Stay Property and the Barnum Pointe Property then Seller, at closing, shall convey and/or reserve such easements as are necessary so that each parcel has permanent easement rights for ingress, egress, and utilities over the other to Sunrise Blvd. It is the intention of Stay and the Conservancy to draft a mutually acceptable easement agreement consistent with this paragraph by January 31, 2012.

- b) An underground power line serving the improvements on the Stay property is located in a corridor that to the best of the Seller's knowledge follows the alignment of Sunrise Blvd. that would exist if extended to the south. The approximate location of this line is identified on the drawing attached as **Exhibit F**. Seller, at closing, shall convey and/or reserve a permanent non-exclusive easement, for the benefit of the Stay property, over the Barnum Pointe Property allowing the underground power line to continue in its current location, and for the maintenance thereof, to the extent said line encroaches onto said property. It is the intention of Stay and the Conservancy to draft a mutually acceptable easement agreement consistent with this paragraph by January 31, 2012.

IN WITNESS WHEREOF, the Seller and the Conservancy have executed this Agreement on the dates listed below their respective signatures.

THE NATURE CONSERVANCY

a District of Columbia nonprofit corporation

By: Chris Davis
Name: CHRIS DAVIS
Title: Dir. Conservation
Date: 1-9-11

SELLER:

BARNUM POINTE, LLC
a Washington limited liability company

By: Edward L. Stay
Name: Edward L. Stay
Title: Member

Robert E. Stay
ROBERT E. STAY
MEMBER
10 JANUARY 2012

Date: January 10, 2012
Tax Id. No.: ~~60714531234~~ 20-1993155

Edward Lawrence Stay
EDWARD LAWRENCE STAY
Date: January 10, 2012

Amy L. Stay
AMY L. STAY
Date: January 10, 2012

Exhibit A
Description of Property

Barnum Pointe Property

All that certain real estate situated in Island County, Washington, more particularly described as follows:

West 40 acres of Government Lot 1, Section 5, Township 31 North, Range 3 East, W.M. (Tax Parcel No. R33105-065-0680);

Government Lot 1, Section 8, Township 31 North, Range 3 East, W.M. (Tax Parcel No. R33108-495-0500) (said parcel containing approximately 22 acres);

TOGETHER WITH an easement for roadway over that portion South 30 feet of Government Lot 6 of Section 6, Township 31 North, Range 3 East lying Easterly of County Road.

Stay Property

All that certain real estate situated in Island County, Washington, containing approximately 17 acres, more particularly described as follows:

Government Lot 1, Section 5, Township 31 North, Range 3 East, W.M.; EXCEPT the West 40 acres thereof, (Tax Parcel No. R33105-086-1670);

TOGETHER WITH Second Class tidelands, as conveyed by the State of Washington located in front of, adjacent to and abutting thereon and lying between the meander line and a line parallel with and 600 feet Easterly of said meander line, the North boundary of this tidelands tract being the projection Easterly of the North line of said Government Lot 1 and the south line of said tract being the projection of the Easterly South line of said Government Lot 1.

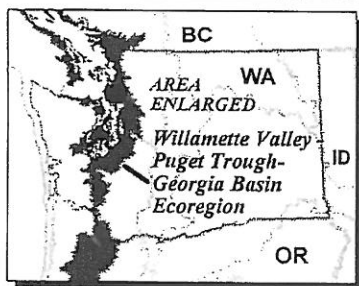
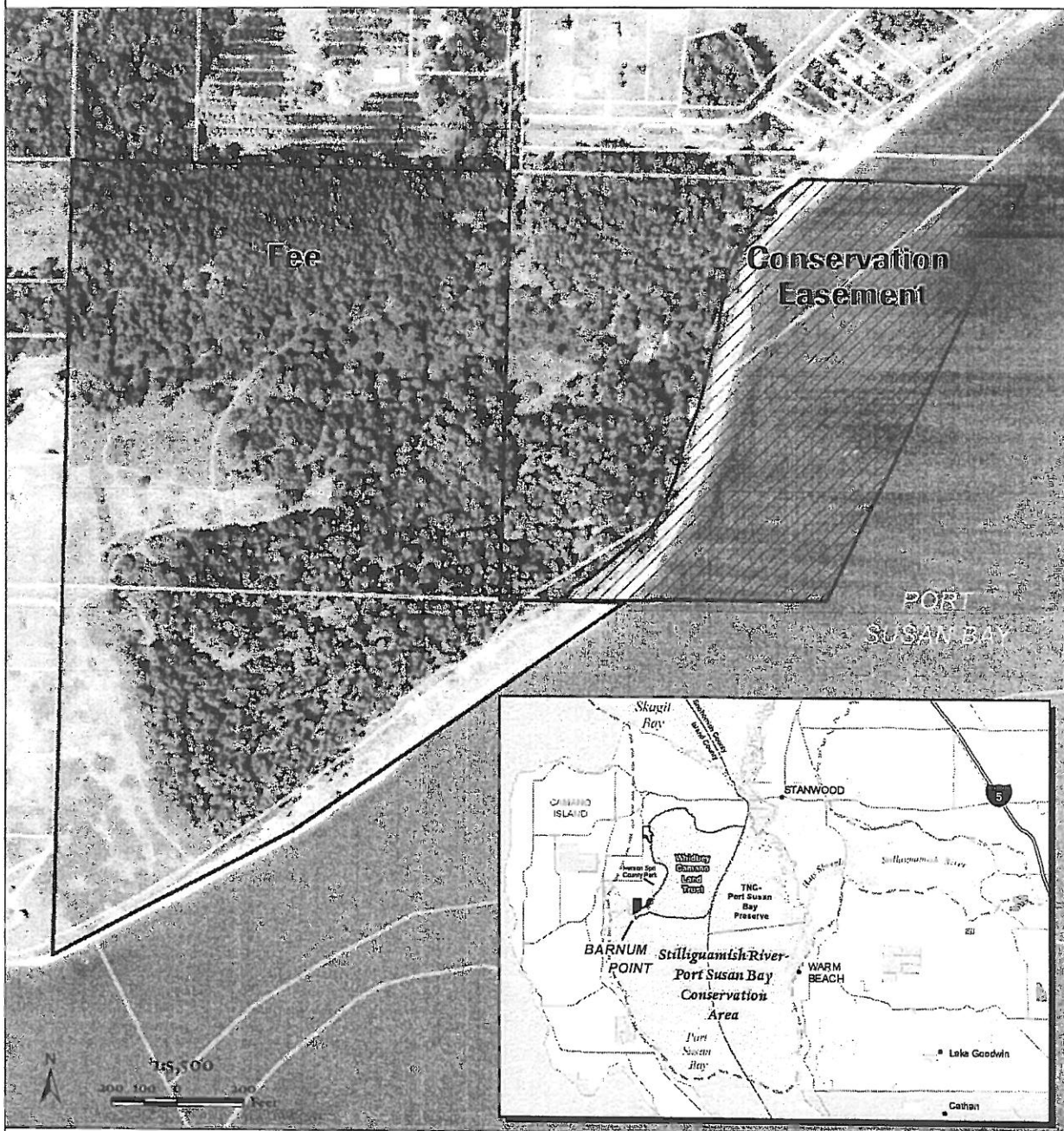
Exhibit B
Map of Property

[See attached.]

Exhibit B

Port Susan Bay (Barnum Pointe LLC and Stay)

Island County, WA- Willamette Valley - Puget Trough - Georgia Basin Ecoregion



Barnum Pointe LLC Tract
 County Parcels

Stay Tract

December, 2011

Map Created by:
E. Simek, Seattle, WA

Map Inset Legend

Managed Lands- State
 Managed Lands- Local
 Managed Lands- Native/Tribal
 Managed Lands- Private Conservation
 County Line

The Nature Conservancy
 Greater Skagit Delta Conservation Area
 Interstate Highway
 Major Road
 Stream

Data Sources:
Parcels - Island County, 2010

Map Projection: NAD83 UTM 10N

Exhibit C

Description of Conservation Easement

This exhibit describes the salient conservation elements of the Conservation Easement on the Stay Property. It is the intention of Stay and the Conservancy to draft a mutually acceptable Conservation Easement by January 31, 2012.

Conservation Purpose: The easement will protect the natural littoral habitat, features and processes of the portion of the Stay Property that contains the coastal bluff, beach and tidelands (the "Stay Conservation Easement Property"). The remainder of the Stay Property the ("Stay Property Uplands") will not be affected except to the extent that tidal erosion of the bluff results in loss of land and improvements thereon. The attributes of the conservation values will be more specifically described in a report, to be approved by all parties, documenting the condition of the Stay Conservation Easement Property as it exists on or before the date of closing (the "Baseline Easement Documentation Report"). The Baseline Easement Documentation Report may include maps, photographs and other information regarding the Stay Property that the Conservancy may consider appropriate.

Prohibited Uses: Any activity on or use of the Stay Conservation Easement Property that is inconsistent with the conservation purposes is prohibited. Although not an exhaustive list of prohibited uses, none of the uses described below will be permitted.

- Ditching; trenching; draining; diking; filling; excavating; removal of topsoil, sand, gravel, rock, or other materials, or any other change in the topography of the Property, including any form of armoring or hardening that prevents erosion of the coastal bluff except in front of the existing Stay beach house, where a bulwark may protect the house and its yard and driveway.
- Commercial activity including shellfish harvest or aquaculture.
- Any structure including house, outbuilding, pier or dock, except use, maintenance and repair of existing structures.
- Dumping or storage of trash, yard or food wastes, garbage, or other unsightly or offensive material.
- Mining, drilling, exploring for or removal of oil, gas, or other minerals, including sand, gravel and rock.
- Manipulation or alteration of creeks, streams, wetlands, surface or subsurface springs or other bodies of water or the shorelines, except as specifically provided, or uses detrimental to water purity, quality, or quantity.
- Existing roads may be maintained and repaired but shall not be widened or improved. The Conservation Easement shall not contain any provision restricting the construction of roads or other improvements or uses on the Stay Property Uplands.

- Overseeding or interseeding to change the composition of the vegetation, or excavation or removal of native plants (except for those designated as noxious weeds), except when it is agreed that it would enhance the conservation values of the Property.
- Indiscriminant broadcast spraying of herbicides or pesticides. Herbicides and pesticides may be used by spot applications (including by gun or boom nozzles) of government approved chemicals to control state-designated noxious weeds, invasive woody species or pest insect infestations, provided their use is designed to minimize the impact on the conservation values of the Property.

Allowed Uses by Stay:

- Recreational shellfish harvesting, subject to compliance with applicable federal, state, or local regulations.
- Passive recreation.

Allowed Uses by the Conservancy:

- Access by the Conservancy and its agents for use only by the Conservancy or its designated agents in connection with the Conservation Easement, which shall not be for use by the general public. The Conservation Easement shall not contain any provision granting any public access to or through the Stay Conservation Easement Property.
- The right, but not the obligation, to engage in ecological monitoring, biological surveys, inventories and research of plant and wildlife populations, plant communities and natural habitats.
- The right, but not the obligation, to control, manage, or destroy plants and animals in order to enhance, preserve, protect, restore, or eliminate or mitigate threats to the conservation values of the Property. The Conservancy will notify the landowner prior to implementing management activities.
- The right to install and maintain, at the Conservancy's sole cost and expense, signage on the Property indicating the Conservancy's and any of the Conservancy's public or private funding sources' participation in the acquisition and maintenance of the Conservation Easement; provided, however, that the Conservancy will consult with the landowner regarding the size, locations, text, design, and quantity of the signage.
- The right to restore and enhance the natural conditions and conservation values of the Property, including, without limitation, the right to remove riparian armoring structures, except as described above, and revegetate.

The final Conservation Easement to be conveyed at closing will contain additional terms to be negotiated by Stay and the Conservancy, including without limitation, terms addressing remedies, costs, liability, transfer, and representations and warranties.

Exhibit D
WATER RIGHTS QUESTIONNAIRE

Are there any water rights for the Property? X Yes No
If "No," please sign and date this form below.

If "Yes," please complete the following:

1. Please list the water rights for the Property, according to the name of the structure and the name of the source of water (stream, spring, groundwater) that is diverted, pumped or stored by that structure. For each structure listed, please describe to the best of your knowledge the extent of its use during your ownership (e.g., rate and period diversions, acreage irrigated). N/A

Structure	Source	Use

2. Please identify any water organization that supplies water to the Property and describe the nature the shares, allotments or other entitlement to that supply (e.g., 200 shares in the Irrigation Ditch Company). N/A

3. Please enclose all documentation of these water rights. (see comment below)

4. Please draw a map of the land that is currently irrigated by these water rights, along with their diversion points, ditches/pipelines, or pumps (a sketch on a USGS quad map is sufficient). Please draw on the same map any other structures for putting water to use. N/A

5. Please list all movable equipment or structures (e.g., pumps, pipes, sprinklers, measuring flumes, and gages) associated with all water uses mentioned above. N/A

SELLER:

Edward L. Stay
a member

By: Edward L. Stay
Name: Edward L. Stay
Title: member, Bannock LLC
Date: January 10, 2012

- 3) Water rights for future wells for residential and Agricultural uses of record with Washington State Dept. of Ecology (mid 1970's)

Exhibit E

Disclosure Form

It is the policy of The Nature Conservancy ("TNC") to identify real or perceived conflicts of interest involving any party with whom TNC is entering into a transaction. To assist TNC in complying with this policy, we request that all individuals and/or "entities" (other than TNC) that will be involved in this transaction complete this form.

I. **TRANSACTION INFORMATION** (to be completed by TNC staff)

Real Estate Transactions

Site (Tract):

Check one:

TNC acquisition: ☒

TNC sale: ☐

Check one:

Fee interest: ☒

Conservation easement: ☒

Other (describe):

Acreage: 62 acres in fee

Location (Country,
state/province, county/other
local unit): Island County,
Washington

B. **Non-Real Estate Transactions** (non-real estate contracts, grants to other non-profits, and other transactions)

Describe:

C. **Total dollar value of transaction:** \$ [REDACTED]

II. **NAMES OF PARTIES TO THE TRANSACTION:** Please identify all individuals and/or entities (other than TNC) that will be involved in this transaction. An "entity" includes a corporation, partnership, trust, estate, joint venture, unincorporated affiliation, or public board, commission, or not-for-profit organization.

Barnum Pointe, LLC, Edward Lawrence Stay and Amy L. Stay

INDIVIDUALS ANSWER SECTIONS III AND V; ENTITIES ANSWER SECTIONS IV AND V.

III. **QUESTIONS FOR EACH INDIVIDUAL IDENTIFIED IN SECTION II:**

Are you: (please attach an explanation for any "Yes" answers)	Yes	No
a TNC employee (now or during the last 12 months)		<input checked="" type="checkbox"/>
a member of TNC's Board of Directors (now or during the last 12 months)		<input checked="" type="checkbox"/>
a TNC Chapter Trustee/Advisor (now or during the last 12 months)		<input checked="" type="checkbox"/>
a Major Donor of TNC- A "major donor" is an individual or organization that has made a gift or pledge of US\$500,000 or more at any one time or cumulatively within the last 5 years in cash, appreciated securities or other assets, or in land, easement, or bargain-sale value		<input checked="" type="checkbox"/>

an other insider of TNC - " Other insiders " of TNC include individuals such as former members of TNC's Board of Directors, former Chapter Trustees, members of TNC advisory boards or committees, members of TNC's President's Conservation Council, volunteers or former employees of TNC who, by virtue of their <u>current</u> involvement or their involvement within the past 12 months with TNC either have access to "inside information" that could place them within a conflict situation or could give the appearance of such persons having the ability to unduly influence TNC. Depending on circumstances, an independent contractor, grantee, other outside party or their employees may be an "other insider" if that person or entity has access to "inside information." " <u>Inside information</u> " consists of any material information that is identified as confidential and proprietary and pertains to the business and affairs of TNC, whether related to a specific transaction or to matters relating to TNC's interests, activities and policies.		✓
to your knowledge, a close relative of any individual described in A-E, above- A " <u>close relative of an individual</u> " includes (a) his or her spouse, in-laws(father, mother, brother, sister, son and daughter in-laws), natural or adopted children, parents and/or step-parents, grandchildren, grandparents, brothers and sisters; (b) any person who shares living quarters with the individual under circumstances that closely resemble a marital relationship; and (c) any person who is financially dependent upon the individual?		✓

IV. **QUESTIONS FOR EACH ENTITY IDENTIFIED IN SECTION II:**

<i>Please attach an explanation for any "Yes" answers:</i>	Yes	No
Is the entity a TNC "major donor" or "other insider"? (as those terms are defined in III D & E, above.)		✓
To your knowledge, does any current or former TNC employee, current or former TNC Board member, current or former (for these purposes, former means within the last 12 months) Chapter Trustee/Advisor, "major donor", "other insider" of TNC, or any "close relative" of any of the foregoing:		✓
Own directly or indirectly more than 5% of the equity or any voting security in the entity?		✓
Serve as a director, executive officer, executor, administrator, trustee, beneficiary, controlling partner, or otherwise serve in a fiduciary capacity or hold a substantial beneficial interest in the entity?		✓
Have legal or de facto power to control the election of a majority of directors of the organization or to control the management or policies of the entity?		✓

V. **QUESTION FOR EACH INDIVIDUAL AND/OR ENTITY IDENTIFIED IN SECTION II:**

<i>Please attach an explanation for a "Yes" answer.</i>	Yes	No
To your knowledge, do you, or does the entity, own or control a " related organization " that is also a " major donor " or an " other insider " of TNC (as those terms are defined in III D & E, above)?		✓
For purposes of this question, an organization is a " related organization " if any individual or entity identified in Section II: <i>Owns directly or indirectly more than 5% of the equity or any voting security in the organization, or Serves as an officer, director, or partner, or otherwise has the ability to control management and policies of the organization.</i>		

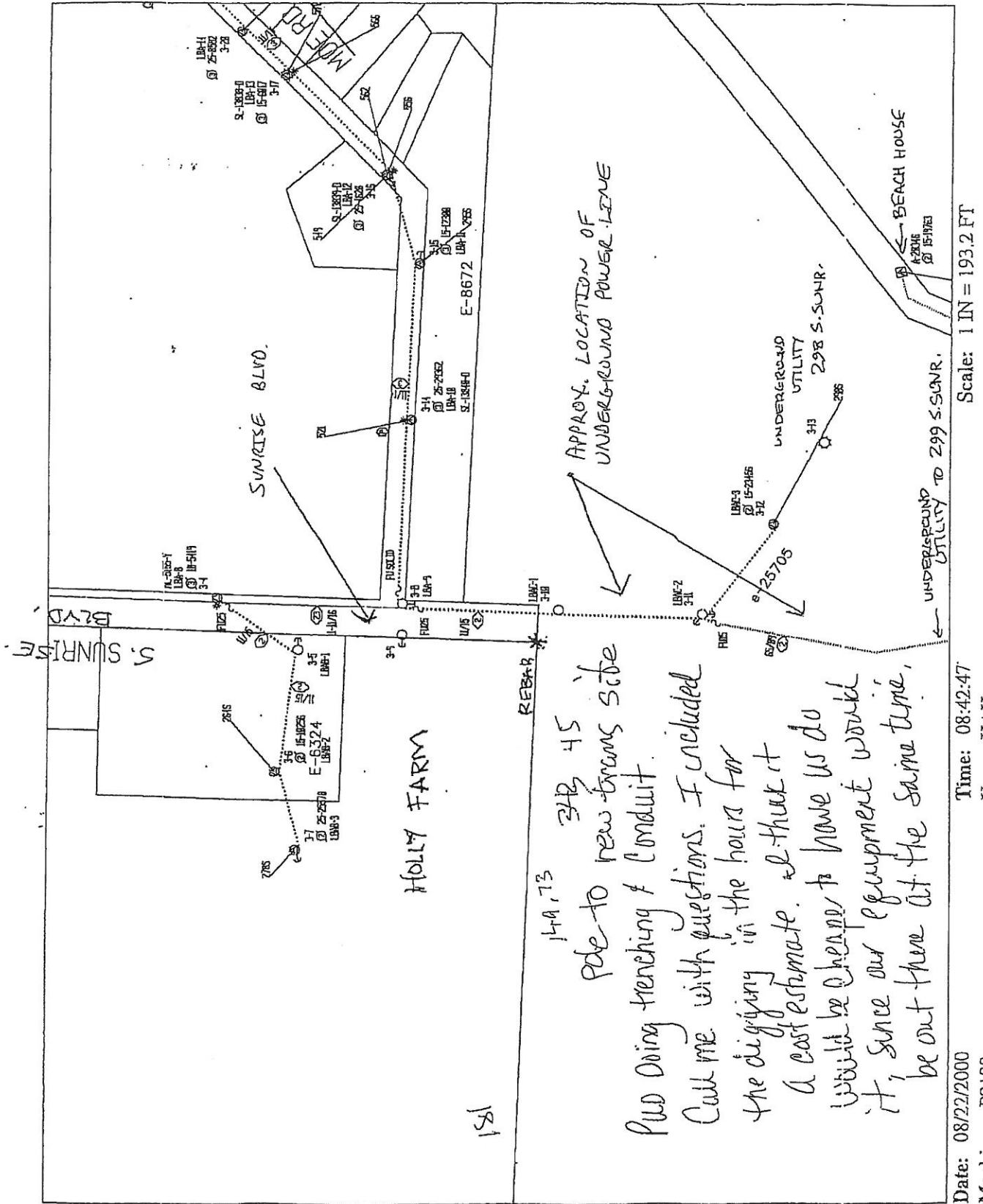
Signatures of all the individuals and/or signatures on behalf of all entities identified in Section II:
Exhibit E

Edward L. Stay
Edward L. Stay
Name of individual
January 10, 2012

Amy L. Stay
Amy L. Stay
Date
January 10, 2012

Entity name: Barnum Ponds LLC	
Signed by: <u>Edward L. Stay, Partner</u>	Date <u>January 10, 2012</u>

EXHIBIT "F"



Date: 08/22/2000

Machine: P2199

Field View

Time: 08:42:47

User: HAHanse

Scale: 1 IN = 193.2 FT