

**AGREEMENT FOR  
PURCHASE AND BARGAIN SALE OF CONSERVATION EASEMENT  
(North Start Preserve-SJPT)**

This Agreement for Purchase and Bargain Sale of Conservation Easement (this "Agreement") is made this **20<sup>th</sup> day of December 2013** (the "Effective Date"), between The San Juan Preservation Trust, a Washington nonprofit corporation ("Buyer"), and North Star Preserve, LLC, a Washington limited liability company ("Seller").

**RECITALS**

WHEREAS, Seller is the owner of certain real property located in San Juan County, Washington, generally described as San Juan County Assessor's Tax Parcel Numbers 473350001000, 473350002000, 473421001000, 473421002000, 473421003000, 473421004000, and 473421005000, and more particularly described in EXHIBIT A attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, Seller desires to sell, and Buyer desires to purchase a conservation easement over the Property, in substantially the same form as EXHIBIT B attached hereto and incorporated herein by this reference ("Conservation Easement"); and

WHEREAS, the purchase of the Conservation Easement is being funded, in part, with funds from a Puget Sound Acquisition and Restoration ("PSAR") grant, a state grant program of the Salmon Recovery Fund Board, administered by the Recreation and Conservation Office ("RCO"); and

WHEREAS, Seller wishes to sell and Buyer wishes to purchase the Conservation Easement on the terms and conditions set forth in this Agreement; and

NOW, THEREFORE, in exchange for the mutual promises and covenants contained herein, and other good and valuable consideration, the mutual receipt and sufficiency of which is hereby acknowledged by Seller and Buyer, it is hereby agreed as follows:

1. **Purchase and Sale.** Seller agrees to sell to Buyer, and Buyer agrees to buy from Seller the Conservation Easement on the terms and conditions set forth herein.
2. **Purchase Terms.**
  - (a) **Price.** The purchase price for the Conservation Easement shall be **Seven Hundred Fifty Thousand and No/100 Dollars (\$ 750,000.00)** (the "Purchase Price").
  - (b) **Bargain Sale.** Seller believes that the Purchase Price for the Conservation Easement is less than the fair market value. Seller intends that the difference between the Purchase Price and the fair market value shall be a charitable contribution to Buyer. However, Buyer makes no representation as to the tax consequences of the transaction contemplated by this Agreement. Seller will obtain independent tax counsel and be solely responsible for compliance with the gift value substantiation requirements of the Internal Revenue Code (the "Code") and regulations promulgated pursuant to the Code. To the extent that the Purchase Price for the Conservation Easement is less than fair

market value, the parties agree that such difference does not reflect the existence of defects in the Property, such as environmental conditions requiring remediation, known to Seller or to Buyer.

**(c) Method of Payment.**

- (i) One Thousand Dollars (\$1,000) in the form of a promissory note as an earnest money deposit (the "Earnest Money") shall be delivered by Buyer to First American Title Insurance Company, Attn: Kelly Hilsinger, Escrow Officer, 531 Fern Street, #201, PO Box 29, Eastsound, Washington 98245-9444 (phone # 360-376-4939; fax # 800-481-0271; khilsinger@firstam.com) ("Escrow Holder"), within three (3) business days after execution of this Agreement by Seller and Buyer.

The earnest money deposit paid by Buyer to Seller shall be credited to the Purchase Price of the Conservation Easement.

- (ii) The unpaid portion of the Purchase Price shall be paid in cash at Closing.

3. **Conditions Precedent to Seller's Obligation to Sell the Conservation Easement.** The following are conditions precedent to Seller's obligation to sell the Conservation Easement:

None.

4. **Conditions Precedent to Buyer's Obligation to Purchase the Conservation Easement over the Property.** The following are conditions precedent to Buyer's obligation to purchase the Conservation Easement over the Property:

- (a) Completion of an investigation and feasibility study of the suitability of the Property for Buyer's intended conservation use, in Buyer's sole judgment and discretion ("Buyer's Feasibility Study"). Seller gives Buyer the right to enter the Property and conduct Buyer's Feasibility Study for a period not exceeding five (5) calendar days after the Effective Date of this Agreement ("Buyer's Feasibility Study Period"). This contingency shall conclusively be deemed satisfied unless, on or before the end of Buyer's Feasibility Study Period, Buyer gives written notice of disapproval, in which event this Agreement shall terminate, Buyer shall restore the Property to its original condition (if changed in the course of the above investigation), Buyer shall deliver to Seller copies of all results and products of Buyer's Feasibility Study, and the Earnest Money shall be refunded to Buyer.
- (b) Completion of an appraisal and review appraisal confirming that the fair market value of the Conservation Easement over the Property is equal to or exceeds the Purchase Price.
- (c) Vesting of title to the Property in Seller, as it is presently vested in the Cooley-Gilliom-Cooley Family Partnership.
- (d) Prior approval and release of sufficient funds by the PSAR grant manager to allow the purchase of the Conservation Easement over the Property by Buyer.



5. **Form of Conservation Easement.** Seller shall convey the Conservation Easement in a form substantially the same as Exhibit B, as aforesaid. The Property subject to the Conservation Easement shall be free and clear of all liens, encumbrances, and security interests, except the lien for non-delinquent real property taxes, and those exceptions that Buyer has approved in writing pursuant to Section 6 below (together, the "Permitted Exceptions").

6. **Title Insurance.**

(a) **Review of Title.** Buyer has obtained a preliminary title commitment ("Commitment") issued by First American Title Insurance Company (the "Title Company"), File No. 0610-09, First Supplemental (dated December 10, 2013) ("Title Commitment"). Buyer has approved special exceptions numbers 1-14 provided in Schedule B, Section II of the Title Commitment ("Permitted Exceptions").

(b) **Condition of Title.** Buyer shall be provided with a 2006 ALTA standard owner's policy of title insurance from the Title Company in the full amount of the Purchase Price insuring that the Conservation Easement is vested in Buyer upon close of Escrow subject only to the Permitted Exceptions (the "Title Policy"). Closing shall be conditioned upon Title Company issuing its Title Policy in the name of Buyer in the amount of the Purchase Price, subject only to (i) the printed form exceptions contained in the Title Policy and (ii) the Permitted Exceptions. Seller shall be responsible for the cost of the Title Insurance Policy. Buyer shall be responsible for the cost of any additional endorsements issued by Title Company at Buyer's request.

(c) **Intervening Exceptions.** Seller shall immediately notify Buyer of any liens, leases, encumbrances, easements, restrictions, conditions, covenants, rights-of-way and other matters affecting title to the Property, that are created and which may appear of record or be revealed by survey or otherwise after the date of the Commitment but before the Closing (collectively, "Intervening Exceptions"). Intervening Exceptions shall be subject to Buyer's approval and Buyer shall have three (3) days after notice in writing of any Intervening Exception, together with a description thereof and a copy of the instrument creating or evidencing the Intervening Exception, if any, to either accept it (whereupon the Intervening Exception shall be a Permitted Exception) or submit written objection to Seller. Seller will promptly within the earlier of three (3) days or the Closing Date, remove all Intervening Exceptions that do not become Permitted Exceptions. If each such Intervening Exception has not been cured by Seller or waived by Buyer within the earlier of three (3) days or the Closing Date, and the Buyer does not elect to waive such exception, then this transaction shall terminate and neither party will be obligated to the other unless the Buyer elects, by notice to the Seller within the earlier of three (3) days after Seller's notice or the Closing Date, to complete the sale subject to the Intervening Exceptions that Seller is unable or unwilling to remove.

7. **Closing Date.** "Closing," "Closing Date," or "Date of Closing" as those terms are used herein, shall mean the date upon which all documents are recorded and monies paid to complete the purchase contemplated herein. The Date of Closing shall occur on or prior to December 31, 2013, provided that the Date of Closing shall occur no later than December 31, 2013, unless otherwise agreed in writing by the parties.

8. **Escrow Instructions.** The Parties agree to prepare joint escrow instructions in a form substantially similar to that in EXHIBIT C attached hereto and incorporated herein by this reference ("Joint Escrow Instructions"), which Joint Escrow Instructions shall be followed by the

Escrow Agent in closing this transaction. Each of the Parties may execute additional escrow instructions provided that such additional escrow instructions shall not change the terms of this Agreement or the provisions of the Joint Escrow Instructions.

9. **Closing Expenses and Fees.** Seller will be responsible for any real estate excise tax and property taxes due on the sale of the Conservation Easement (other than the 1% buyer open space tax), and any premium on the Title Policy referred to in Section 6. Buyer shall pay the 1% buyer open space tax and any and all recording fees; Buyer and Seller shall equally split the escrow fee.

10. **Rights Upon Closing and Risk of Loss.** Buyer shall be entitled to exercise all rights arising out of and enforce the terms and conditions of the Conservation Easement on Closing. Seller shall bear all risk of loss until Closing.

11. **Seller's Preclosing Covenants.** Seller shall not do any of the following without the prior written consent of Buyer:

- (a) make or allow to be made, extend or allow to be extended any leases, contracts, options, easements or agreements affecting the Property, other than those described in this Agreement;
- (b) cause or permit any lien, encumbrance, mortgage, deed of trust, right, restriction or easement to be placed upon the Property, other than those described in this Agreement;
- (c) permit any mortgage, deed of trust or other lien to be foreclosed upon due to Seller's actions or omission, including failure to make a required payment; or
- (d) take or permit any action that could materially alter the physical characteristics of the Property.

12. **Seller's Representations.** Seller makes the following representations and warranties:

- (a) Seller is not a "foreign person" as defined in section 1445 of the Code.
- (b) Seller has full power and authority to enter into this Agreement and to sell, transfer and convey all right, title and interest in the Conservation Easement in accordance with this Agreement. Neither this Agreement nor execution of this Agreement will constitute a breach or default of any agreement to which Seller is bound and/or to which the Property is subject.
- (c) No one other than the Seller will be in possession of any portion of the Property at the close of escrow.
- (d) All information furnished by Seller to Buyer with respect to the Property is accurate and true.
- (e) To the best of Seller's knowledge, there are no apparent or latent defects in the Property; the Property does not contain any underground storage tanks, surface impoundments, asbestos or asbestos-containing material, or polychlorinated biphenyls (PCBs) or PCB-containing materials, past or present refuse dump sites, chemical storage sites, areas of heavily stained soil, or sites of known hazardous material releases other than those indicated and described by exhibit attached hereto; and the Property is free from the



presence of hazardous waste or materials and no hazardous waste or materials have been generated, stored, released, disposed of, or transported over, on or within the Property. The term "hazardous waste or materials" includes any substance, waste or material defined or designated as hazardous, toxic or dangerous (or any similar term) by any federal, Buyer or local statute, regulation, rule or ordinance now in effect, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. ' 9601, et seq., and the Model Toxics Control Act, RCW 70.105D. Seller has no undisclosed knowledge of any fact or condition that would materially impair the market value of the Property, would materially increase the cost of operating the Property or would be inconsistent with the terms of this Agreement.

- (f) To the best of Seller's knowledge, there is no suit, action, arbitration, legal, administrative, or other proceeding or inquiry pending or threatened against Seller, the Property, or any portion of the Property, that could affect Seller's title to the Property; that could adversely affect the value of the Property; or that could potentially subject an owner of the Conservation Easement to liability.

Each of the above representations and warranties is material and is relied upon by Buyer. These representations are made as of the Effective Date of this Agreement, shall continue in effect through Closing, and shall survive Closing.

13. **Buyer's Right to Inspect and Enter Upon the Property.** Buyer has a continuing right to inspect the Property through Closing. Buyer, its employees and agents shall have the right to enter upon the Property, at a reasonable time and upon reasonable notice to Seller, to perform any work or inspections necessary for the satisfaction of any of the contingencies. Buyer agrees to indemnify, defend and hold harmless Seller from and against any and all losses, liabilities, claims, damages and/or expenses, including legal fees and expenses, arising from the acts or omissions of Buyer, its agents or employees, in connection with the inspection of and entering onto the Property pursuant to this paragraph. This indemnity obligation shall survive Closing.

14. **Indemnification.** Each party to this Agreement shall indemnify, defend, and hold harmless the other party from and against any and all losses, liabilities, damages, claims or expenses incurred by the party arising out of or resulting from any breach of any representation or warranty (including without limitation any representation involving environmental matters) or the non-fulfillment or non-performance of any obligation or covenant set forth in this Agreement. This provision shall survive Closing.

16. **Notices.** Unless otherwise specified, all notices under this agreement shall be in writing and shall be deemed given upon personal service, by facsimile or e-mail electronic delivery, or receipt after deposit in the United States first class mail addressed as follows:

To Seller:

North Star Preserve, LLC  
265 Robie Drive  
Auburn, California 95603  
Attn: Bob Gilliom  
Cell Phone: (916) 765-8265  
Telephone: (530) 550-7171  
Email: [rgilliom@sbcglobal.net](mailto:rgilliom@sbcglobal.net)

With a copy to Seller's attorney at:

M. John Way, Attorney at Law, L.L.M. (Taxation)  
Worth Law Group  
6963 Littlerock Road SW  
Tumwater, WA 98512  
Tel: (360) 753-0948  
Fax: (360) 705-3021  
Email: [mjway@worthlawgroup.com](mailto:mjway@worthlawgroup.com)

To Buyer:

The San Juan Preservation Trust  
P.O. Box 327  
Lopez Island, WA 98261  
Attention: Tim Seifert  
Tel: (360) 468-3202  
Fax: (360) 468-3509  
Email: [tim@sjpt.org](mailto:tim@sjpt.org)

With a copy to Buyer's attorney at:

Konrad J. Liegel, Attorney-At-Law, PLLC  
1463 E. Republican Street, #190  
Seattle, WA 98112  
Tel: (206) 491-2200  
Fax: (206) 913-2794  
Email: [Konrad@konradjliegel.com](mailto:Konrad@konradjliegel.com)

16. **Time of the Essence.** Time is of the essence of this Agreement.

17. **Binding on Successors.** This Agreement shall be binding on the parties and also upon their heirs, personal representatives, assigns, and other successors in interest.

18. **Additional Documents.** Seller and Buyer agree to execute such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.

19. **Entire Agreement; Modification; Waiver.** This Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, representations and understandings. No supplement, modification or amendment of this agreement shall be binding unless executed in writing by the parties. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

20. **Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.

21. **Captions.** The captions and section headings contained herein are inserted for convenience purposes only and shall not be deemed to limit or expand the meaning of any section.

22. **Survival.** All representations, warranties, covenants and agreements made herein shall survive Closing.

23. **Attorneys' Fees and Costs.** If either party is required to retain an attorney to bring suit or seek arbitration to interpret or enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and expenses actually incurred and reasonably necessary in connection therewith, including those incurred on appeal, in addition to all other amounts provided by law, regardless of whether the matter proceeds to judgment or is resolved by the defaulting party curing the defect.

24. **Counterparts/Facsimile Signature.** This document may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. This document may be delivered by facsimile or email pdf and each party shall be entitled to rely on a facsimile or email pdf signature the same as the original.

25. **Date of Agreement.** The Effective Date of this Agreement shall be the date on which the last party executes this Agreement. Said date shall be inserted on the first page hereof when such date is determined.

26. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

27. **Advice of Counsel.** Each party acknowledges that it has had an opportunity to seek independent legal advice regarding this transaction.

In witness whereof, the parties have executed this Agreement as of the date first above written.

**SELLER:**

North Star Preserve, LLC

By:   
Bob Gilliom, Manager

**BUYER:**

The San Juan Land Trust

By:   
Tim Seifert, Executive Director

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

**PARCEL "A"**

All of the Short Plat of NORTH STAR RANCH, as recorded at Volume 4 of Short Plats, pages 34 through 34A, inclusive, record of San Juan County, Washington.

Situate in San Juan County, Washington.

**PARCEL "B"**

Lot 1, Stuart Estates, according to the plat recorded in Volume 2 of Plats, page 15, records of San Juan County, Washington.

Situate in San Juan County, Washington.

**PARCEL "C"**

Lot 2, Stuart Estates, according to the plat recorded in Volume 2 of Plats, page 15, records of San Juan County, Washington.

Situate in San Juan County, Washington.



**EXHIBIT B**

CONSERVATION EASEMENT

(attached)

**EXHIBIT C**

**JOINT ESCROW INSTRUCTIONS**

(attached)