

**AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE**  
**(Skagit Bay Nearshore)**

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE ("Agreement") is made and entered into by and between the DUCKEN FAMILY LLC, a Washington limited liability company, having an address of c/o John Ducken, 12319 – 209<sup>th</sup> Avenue NE, Redmond, WA 98053 ("Seller"), and WHIDBEY CAMANO LAND TRUST, a Washington Nonprofit Corporation, having an address of 765 Wonn Road, C201, Greenbank, WA 98253 ("Land Trust") (collectively "Parties"), on the date provided below.

***RECITALS***

- A. Seller is the owner of that certain real property located in Island County, Washington, more particularly described in Exhibit A and shown on Exhibit B and consisting of approximately 39 acres, which are attached to this Agreement and incorporated herein by this reference (the "Property").
- B. The Property is made up of portions of six tax lots. The Parties will work together to reconfigure the six tax lots to create one tax lot that is configured similar to the Property as described in Exhibit A and shown on Exhibit B, with the other five tax lots configured to meet Seller's reasonable specifications.
- C. Land Trust desires to purchase all of Seller's rights, title, and interests in the Property, including, without limitation, the land and all improvements and fixtures thereon, all mineral, timber, water, grazing, and other surface and subsurface rights, permits, hereditaments, easements, incidents, and appurtenances belonging, and Seller desires to sell the Property, on the terms and conditions contained in this Agreement.
- D. Seller acknowledges that Land Trust is a nonprofit corporation and that Land Trust may depend in this transaction on grants and contributions from public agencies, individuals, and/or private organizations to support its acquisition of the Property.
- E. Seller agrees to sell and convey the Property to Land Trust, and Land Trust agrees to purchase the Property from Seller, subject to the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Seller and Land Trust agree as follows:

- 1. ***EFFECTIVE DATE.*** This Agreement is effective on the earliest date that it is executed by both Seller and Land Trust ("Effective Date").
- 2. ***PURCHASE PRICE and PAYMENT.*** The purchase price for the Property shall be ONE MILLION ONE HUNDRED THOUSAND DOLLARS (\$1,100,000.00) ("Purchase Price"), payable as follows:

- 2.1. Land Trust shall pay to Seller the Earnest Money in accordance with Section 3 below.
- 2.2. Land Trust shall pay to Seller the remaining balance in cash at Closing (as defined in Section 7 below).
3. **EARNEST MONEY.** Within five (5) business days after the Effective Date of this Agreement, Land Trust shall deliver to Land Title Company of Island County, P.O. Box 1138, Oak Harbor, WA 98277 ("Title Company") the sum of FIVE THOUSAND and No/100 Dollars (\$5,000.00) ("Earnest Money"). If the transaction contemplated by this Agreement is consummated, the Earnest Money shall be applied against the Purchase Price. If the transaction is not consummated, the Earnest Money shall be refunded to Land Trust or paid to Seller in accordance with the terms of this Agreement.
4. **TITLE and CONVEYANCE.**
  - 4.1. Title and Conveyance. At Closing, Seller shall convey the Property to Land Trust, by execution and delivery of a Statutory Warranty Deed ("Deed"), subject only to the exceptions approved by Land Trust pursuant to Section 4.4 below ("Permitted Exceptions").
  - 4.2. Preliminary Commitment. Land Trust has obtained Preliminary Commitments for title insurance issued by the Title Company (Order Numbers LT-97187). The Preliminary Commitment for title insurance and all supplements thereto, together with copies of all exceptions noted therein, shall constitute the "Title Report."
  - 4.3. Documents. Seller shall, within fifteen (15) days after the Effective Date of this Agreement, provide to Land Trust a copy of all unrecorded liens, licenses, claims, and agreements known to Seller and a list of lawsuits affecting the Property, including a written summary of Seller's understanding of any such unrecorded leases, claims, licenses or agreements (hereinafter "Disclosed Documents"). Seller represents and warrants that, except as so disclosed to Land Trust, no such unrecorded liens, licenses, claims, agreements, and/or lawsuits exist.
  - 4.4. Permitted Exceptions. Land Trust shall notify Seller no later than fifteen (15) days before the Closing Date, as defined in Section 7.1 below, either: (a) that Land Trust has approved the Title Report and Disclosed Documents and thereby intends to proceed with the purchase of the Property (assuming that Land Trust's other contingencies and conditions to purchase have been met); or (b) of those exceptions that Land Trust disapproves (any exceptions contained within the Title Report not so objected to shall thereafter be Permitted Exceptions). Seller, at its sole cost and expense, shall remove, prior to Closing, all exceptions other than Permitted Exceptions. Seller shall have five (5) days following receipt from Land Trust of any notice of objection(s) to title to notify Land Trust in writing of any such objections that Seller does not intend to attempt to eliminate. The failure of Seller to respond in writing within the time stated shall be deemed an agreement by Seller to attempt to eliminate all exceptions objected to by Land Trust. If Seller notifies Land Trust that Seller does not intend to eliminate any

exception to which Land Trust has objected, Land Trust shall then have the right to either terminate this Agreement and receive a refund of the Earnest Money, or to waive its objection to that exception.

- 4.5. Intervening Encumbrances. Any liens, leases, encumbrances, easements, restrictions, conditions, covenants, rights, rights-of-way, and other matters affecting title to the Property, recorded or unrecorded, that are created and which may appear or be revealed by a survey or otherwise after the Effective Date of this Agreement but before the Closing Date (“Intervening Encumbrances”), shall also be subject to Land Trust’s approval and Land Trust shall have ten (10) days after notice of any Intervening Encumbrance, together with a description thereof and a copy of the instrument creating or evidencing the Intervening Encumbrance, if any, to submit written objections thereto. If Seller shall fail to remove from title prior to Closing any Intervening Encumbrance objected to by Land Trust, Seller shall be in default under this Agreement and, without limiting Land Trust’s rights and remedies against Seller, Land Trust shall then have the right to terminate this Agreement and receive a refund of the Earnest Money or to waive its objection to that exception. If any Intervening Encumbrance is first disclosed to Land Trust within ten (10) days of the Closing Date, the Closing Date shall be extended by the number of days required to afford Land Trust the foregoing 10-day review period.
- 4.6. Termination. If title to the Property does not conform to the requirements described in Section 4.1 above and cannot be made to so conform prior to Closing, Land Trust may elect to either waive such encumbrances or defects or terminate this Agreement. If Land Trust terminates this Agreement pursuant to this Section 4, the Earnest Money shall be refunded to Land Trust and neither party hereto shall have any further rights or obligations under this Agreement, except as otherwise expressly provided herein.
- 4.7. Title Insurance. Seller shall at Seller’s expense purchase a standard form of Owner’s Policy of Title Insurance (“Title Policy”) from the Title Company, in the full amount of the Purchase Price, insuring Land Trust’s title to the Property, subject only to the Permitted Exceptions and the pre-printed general exceptions contained in the standard form of Owner’s Title Policy. The Title Policy shall be issued upon Closing.
- 4.8. Sale and Encumbrances. From the Effective Date of this Agreement to the Closing Date, Seller shall not: (a) sell, transfer, convey, or alienate (“Sell”), whether voluntarily or involuntarily, all or any portion of the Property; or (b) create or permit any encumbrances of the Property except as may legally exist prior to the Effective Date of this Agreement. Seller shall also not market or otherwise attempt to Sell the Property, or any portion thereof, during the term of this Agreement.

## 5. ***CONDITION OF PROPERTY.***

- 5.1. Condition of Property. Seller acknowledges that Land Trust intends to use Property for fish and wildlife habitat, open space, and low-impact public use. Between the Effective Date of this Agreement and the Closing Date, Seller shall maintain the Property and

keep the Property in a condition at least as good as existed on the Effective Date of this Agreement. Seller shall refrain from and shall not permit any use of the Property that would adversely affect the Land Trust's intended use of the Property. Seller shall not permit or commit any waste, impairment, or deterioration of the Property (other than ordinary wear and tear); or commit, suffer, or permit any act upon or use of the Property in violation of any applicable law, order, permit, or license of any governmental authority.

- 5.2. Loss by Fire or Other Casualty. In the event that, prior to Closing, the Property or any portion thereof is destroyed or materially damaged, or if condemnation proceedings are threatened or commenced against the Property or any portion thereof, Land Trust shall have the right, exercisable by giving notice of such decision to Seller within ten (10) days after receiving notice from Seller of such damage, destruction, or condemnation proceedings, to terminate this Agreement, in which case, the Earnest Money shall be refunded to Land Trust and neither party hereto shall have any further rights or obligations under this Agreement except as otherwise expressly provided herein. If any such casualty or condemnation is first disclosed to Land Trust within ten (10) days of the Closing Date, the Closing Date shall be extended by the number of days required to afford Land Trust the foregoing 10-day review period.

6. ***LAND TRUST'S INSPECTION.***

- 6.1. Land Trust's Inspection/Feasibility Analysis. Land Trust's performance under this Agreement is subject to Land Trust's approval, in Land Trust's sole discretion, of an inspection of the Property and an analysis of the feasibility of the Property for Land Trust's intended use ("Land Trust's Inspection"). Land Trust's Inspection may include, but is not limited to, surveying the Property, conducting a wetland delineation, and inspecting the Property for Hazardous Substances (as defined in Section 8.3 below). Land Trust shall complete Land Trust's Inspection at Land Trust's sole cost and expense. Land Trust's Inspection may be conducted by any person or persons of Land Trust's choice.
- 6.2. Indemnification. Land Trust shall defend, protect, indemnify, and hold Seller harmless from any and all loss, damage, liability, or expense, including reasonable attorneys' fees and costs, that Seller may suffer as a result of Land Trust conducting Land Trust's Inspection and the activities of Land Trust and Land Trust's contractors and agents on the Property prior to Closing; provided, however, that in no event will Land Trust be liable for, or required to indemnify Seller on account of any preexisting soil, groundwater, or other environmental contamination of the Property, or any other physical condition in, on, over, under, or concerning the Property.
- 6.3. Inspection Period. Land Trust shall have until thirty (30) days before the Closing Date to conduct Land Trust's Inspection ("Land Trust's Inspection Period").
- 6.4. Access. Land Trust and Land Trust's contractors and agents shall have the right to enter the Property, at reasonable times and with reasonable notice to Seller, for the purpose of

conducting the Land Trust's Inspection.

- 6.5. Approval/Termination. Land Trust shall notify Seller prior to the expiration of the Land Trust's Inspection Period that Land Trust either: (a) has approved Land Trust's Inspection and thereby intends to proceed with the purchase of the Property (assuming that Land Trust's other contingencies and conditions to purchase have been met); or (b) has elected to terminate this Agreement, in which case, the Earnest Money shall be refunded to Land Trust and neither party hereto shall have any further rights or obligations under this Agreement except as otherwise expressly provided herein. If Land Trust does not so notify Seller, Land Trust shall be deemed to have approved Land Trust's Inspection and waived its contingency under Section 6.1 above.

## **7. *CLOSING and ESCROW.***

- 7.1. Closing. The conveyance of the Property pursuant to this Agreement shall be consummated ("Closing") at the offices of the Title Company (as escrow agent) no later than September 1, 2009 or any earlier date to which the Parties agree ("Closing Date"). The Closing Date shall not be modified without the written approval of Seller and Land Trust.

### **7.2. Conditions Precedent to Closing.**

7.2.1. For Land Trust's and Seller's benefit, the Parties' performance under this Agreement is conditioned on, and the Closing hereunder is subject to, Island County's approval of a boundary line adjustment (BLA) whereby the Property, as legally described in Exhibit A, and as approximately shown on Exhibit B, is established as a separate, legal lot and the remaining five tax lots -are adjusted as reasonably specified by Seller. The Parties shall prepare and submit the BLA to Island County as follows: Land Trust shall prepare and submit the application for the BLAs, including any associated requirements; Seller shall execute such application; and Land Trust shall pay all filing and processing fees required by Island County.

7.2.2. For Land Trust's benefit, Closing shall not occur unless and until the Title Company is irrevocably committed to issue the Title Policy.

7.2.3. If any or all of the foregoing conditions do not occur and such condition(s) is/are not waived by a/the benefiting party, this Agreement shall terminate and neither party hereto shall have any further rights or obligations under this Agreement, except as otherwise expressly provided herein, and the Earnest Money shall be refunded to Land Trust.

### **7.3. Delivery by Seller. At Closing and in a manner consistent with all other terms of this Agreement, Seller shall deliver to Land Trust the following:**

7.3.1. The Deed and any other instruments required pursuant to Section 12.2 below, duly

executed and acknowledged by Seller in recordable form and ready for recordation on the Closing Date;

7.3.2. Affidavit executed by Seller that satisfies the requirements of Section 1445 of the U.S. Internal Revenue Code regarding foreign investors (the "FIRPTA Affidavit"); and

7.3.3. As necessary, a duly executed real estate excise tax affidavit.

7.4. Delivery by Land Trust. At Closing and in a manner consistent with all other terms of this Agreement, Land Trust shall deliver to Seller the following:

7.4.1. The Purchase Price; and

7.4.2. As necessary, a duly executed counterpart of said real estate excise tax affidavit.

7.5. Closing Costs and Expenses. Escrow fees shall be paid one-half by Seller and one-half by Land Trust. The premium for the Title Policy and any transfer taxes, excise taxes, and documentary fees shall be paid by Seller. Recording costs for the Deed, and any other instruments required pursuant to Section 12.2 below, shall be paid by Land Trust. Regular real property taxes payable during the year in which closing occurs shall be prorated as of Closing.

## 8. ***REPRESENTATIONS and WARRANTIES.***

In order to induce Land Trust to enter into this Agreement and the transaction contemplated hereby, Seller makes the representations and warranties in this Section 8.

8.1. Title Representations and Warranties. ***Except*** as expressly disclosed in writing to Land Trust by Seller before the Effective Date of this Agreement or within this Agreement, Seller represents and warrants as of the date of this Agreement and as of the Closing Date that:

8.1.1. *Title.* At the Closing Date, Seller shall have good, marketable, and indefeasible title to the Property subject only to the Permitted Exceptions, and Seller is aware of no other matters that adversely affect title to the Property.

8.1.2. *Leases.* There are no leases, licenses, or other agreements granting any person or persons the right to use or occupy the Property or any portion thereof.

8.1.3. *Options.* Seller has not granted any options or committed or obligated itself in any manner whatsoever to sell the Property, or any portion thereof, to any party other than Land Trust.

8.2. Environmental Representations and Warranties. ***Except*** as expressly disclosed in writing to Land Trust by Seller before the end of Land Trust's Inspection Period, Seller

represents and warrants as of the date of this Agreement and as of the Closing Date, that to Seller's knowledge:

- 8.2.1. There are no apparent or latent defects in, on, or under the Property;
  - 8.2.2. Seller and the Property are in full compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use, including, but not limited to, building codes and health, safety, environmental, zoning, and land use laws;
  - 8.2.3. There has been no Release (as defined in Section 8.3 below) of Hazardous Substances, in, on, under, or from the Property prior to the Closing Date;
  - 8.2.4. There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;
  - 8.2.5. There is no pending or threatened litigation affecting, involving, or relating to the Property or any portion thereof; and
  - 8.2.6. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Seller might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.
- 8.3. Hazardous Substances. For the purpose of this Agreement:
- 8.3.1. "Hazardous Substance" shall include pollutants or substances defined as "hazardous waste," "hazardous substances," "hazardous materials," "pollutants," "contaminants," or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (PL 99-499); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq.; the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq., the Washington State Environmental Policy Act, RCW 43.21 et seq.; the Water Pollution Control Act, RCW 90.48.010 et seq.; the Hazardous Waste Management Statute, RCW 70.105 et seq.; the Toxic Substance Control Act, RCW 70.105B et seq.; and the Model Toxics Control Act, RCW 70.105C et seq.;

and in the rules or regulations adopted and guidelines promulgated pursuant to said laws.

8.3.2. "Release" shall mean releasing, spilling, leaking, pumping, pouring, flooding, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping.

9. ***SELLER'S INDEMNIFICATION.***

9.1. Indemnity. Seller shall indemnify, defend, and hold Land Trust harmless from and against any and all losses, damages, expenses, costs, obligations, penalties, fees, and liabilities, including, without limitation, reasonable attorneys' fees, that Land Trust may suffer or incur in connection with:

9.1.1. Seller's ownership of the Property or any action or inaction of Seller, its agents or employees, occurring before the Closing Date;

9.1.2. any breach of, falsity, or inaccuracy in the representations and warranties made by Seller and contained in this Agreement;

9.1.3. any misrepresentation in or omission of any material documents, items, or written information submitted by Seller to Land Trust relating to the Property; or

9.1.4. any failure of Seller to perform any of its obligations under this Agreement.

9.2. Survival. Seller's obligations set forth in Section 9.1 shall survive termination of this Agreement, the Closing, and the execution and recording of the Deed (and any other instrument required pursuant to Section 12.2 below) and shall not be merged therein, and shall be in addition to, and not in derogation of, any other rights Land Trust may enjoy under this Agreement or under law for breach of any representation or warranty set forth in this Agreement. Seller's obligations set forth in Section 9.1 shall extend to Land Trust, any of Land Trust's assignees hereunder, and any other party taking an interest in the Property pursuant to Section 12.2 below.

10. ***DEFAULT and REMEDIES.***

10.1. Attorneys' Fees. In the event either party to this Agreement finds it necessary to bring an action at law or other proceeding against the other party to enforce any of the terms, covenants, or conditions of this Agreement or any instrument executed pursuant to this Agreement, or by reason of any breach or default under this Agreement, the prevailing party in any such action or proceeding (including any appeal thereof) shall be paid all costs and reasonable attorneys' fees by the other party, and in such event any judgment as secured by such prevailing party shall include all such costs and attorneys' fees. The reasonableness of such costs and attorneys' fees shall be determined by the court and not by a jury.



- 10.2. Seller's Remedies. In the event Land Trust fails, without legal excuse, to complete the purchase of the Property, Title Company shall deliver the Earnest Money to Seller, and the exclusive remedy available to Seller for such failure shall be to accept the Earnest Money as liquidated damages. Seller may, under the circumstances described in this Section 10.2, also terminate this Agreement upon written notice, and without liability, to Land Trust.

Land Trust: \_\_\_\_\_

Seller: \_\_\_\_\_

- 10.3. Land Trust's Remedies. In the event Seller fails, without legal excuse, to complete the sale of the Property, the Earnest Money shall, at Land Trust's sole discretion, be returned to Land Trust and Land Trust shall have all legal and equitable remedies against Seller, including, but not limited to, specific performance, injunction (mandatory or prohibitive), and damages. In the event Land Trust elects to terminate this Agreement in response to Seller's breach hereof, Seller shall pay all title and escrow charges. Seller agrees that, in the event of a breach or threatened breach of any of the provisions of this Agreement by Seller, damages at law may be an inadequate remedy and, accordingly, Seller's obligations under this Agreement shall be enforceable by an order of specific performance or injunction as provided above
- 10.4. Waiver. No delay in exercising a right or remedy under this Agreement shall constitute a waiver thereof, and no waiver by Seller or Land Trust of the breach of any term, covenant, or condition of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other term, covenant, or condition of this Agreement. Any waivers under this Agreement must be in writing.

11. ***NOTICES and DELIVERY OF DOCUMENTS.***

Unless otherwise specified in this Agreement, any and all notices, demands, requests, consents, and approvals ("Notices") required to be given under this Agreement shall be in writing and sent to the person and address specified below. Notices must be signed by the party sending such notice. Notices shall be deemed to have been duly given if delivered personally, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

Seller at: Ducken Family, LLC  
c/o John Ducken,  
12319 - 209<sup>th</sup> Avenue NE,  
Redmond, WA 98053

Land Trust at: Whidbey Camano Land Trust  
Attn: Pat Powell  
765 Wonn Road, Barn C201  
Greenbank, WA 98253

or to such other addresses as either party hereto may from time-to-time designate in writing and delivered in a like manner. All Notices shall be deemed complete upon actual receipt or refusal to accept delivery.

12. ***GENERAL PROVISIONS.***

- 12.1. Section 1031 Exchange. Seller may enter into a tax-deferred exchange under Section 1031 of the U.S. Internal Revenue Code. Land Trust agrees to cooperate in any such exchange, provided that Land Trust incurs no liability, cost, or expense associated with any such exchange and that such exchange does not affect the Closing Date under this Agreement. Seller shall remain fully liable to perform all its obligations under this Agreement, including, but not limited to, Seller's representations, warranties, and indemnification regarding the Property. The success or failure of the anticipated tax consequences from such exchange shall not be deemed a term, condition, or contingency of this Agreement, nor shall such tax consequences, or the lack thereof, be deemed a legal excuse for nonperformance by Seller.
- 12.2. Assignability and Conveyance by Land Trust. Seller hereby agrees that Land Trust may assign its interest in this Agreement, in part or in whole, to any party without Seller's consent. At such time as Land Trust makes an assignment as provided herein, Seller shall, if so instructed by Land Trust, convey title by multiple and/or directed deed(s) or other instruments, which may include, but are not limited to, a grant deed of conservation easement ("Conservation Easement"). As between Land Trust and Seller, Land Trust shall be responsible for preparing the Conservation Easement and any additional instruments required pursuant to this Section 12.2.
- 12.3. Entire Agreement. This Agreement constitutes the entire agreement of the Land Trust and Seller with respect to the subject matter hereof, and this Agreement supersedes all prior and contemporaneous agreements and understandings between them, written or oral.
- 12.4. Binding Upon Successors. The terms and conditions of this Agreement shall benefit and bind the heirs, executors, administrators, successors, and assigns of Seller and Land Trust.
- 12.5. Representations/Warranties. Except as may be expressly provided otherwise herein, all representations and warranties contained in this Agreement shall be true and correct as of the date of execution of this Agreement by the party making such representations and warranties and as of the Closing Date and shall survive termination of this Agreement, the Closing, and the execution and recording of the Deed (and any other instrument required pursuant to Section 12.2 above) and shall not be merged therein. All representations and warranties made by Seller shall be considered made to Land Trust, any of Land Trust's assignees hereunder, and any other party taking an interest in the Property pursuant to Section 12.2 below.
- 12.6. Modification. This Agreement may be modified only by mutual agreement in writing.

- 12.7. Authority. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally execute, and bind such party to, this Agreement.
- 12.8. Legal Fees. Subject to Section 10.1 above, Land Trust and Seller shall each pay their own legal fees incurred in connection with the transaction under this Agreement.
- 12.9. Benefit of the Parties. This Agreement is solely for the benefit of, and binding upon, Land Trust and Seller and their respective successors and assigns. No provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation not a party to this Agreement, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
- 12.10. No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between Land Trust and Seller except as buyer and seller of real property.
- 12.11. Time. Time is of the essence of this Agreement.
- 12.12. Computation of Time. Unless otherwise expressly specified in this Agreement, any period of time specified in this Agreement shall expire at 5:00 p.m. on the last calendar day of the specified period, unless the last day is Saturday, Sunday, or a legal holiday, as prescribed in RCW 1.16.050, in which event the specified period shall expire at 5:00 p.m. on the next business day.
- 12.13. Money. All sums of money specified in this Agreement are stated in denominations of money of the United States.
- 12.14. Captions. The captions of this Agreement are for convenience and ease of reference only, and in no way define, limit, or describe the scope or intent of this Agreement.
- 12.15. Governing Law. This Agreement and the rights of the Parties shall be governed by and construed in accordance with the laws of the State of Washington.
- 12.16. Venue. Venue for any action to enforce this Agreement shall be Island County, Washington.
- 12.17. Survival of Terms. All provisions of this Agreement that involve obligations, duties, or rights that have not been determined or ascertained as of the Closing Date, including, but not limited to, provisions for attorneys' fees and costs, shall survive the Closing Date and the execution and recording of the Deed (and any other instrument required pursuant to Section 12.2 above) and shall not be merged therein.
- 12.18. Severability. Except as further provided in this Section 12.18, if any provision of this Agreement is determined by a court of competent jurisdiction to be void or unenforceable

for any reason, the remaining provisions hereof will remain in full force and effect. If a provision hereof is determined to be void or unenforceable by a court of competent jurisdiction and such provision was an essential part of the consideration given to support this Agreement and neither party bore the risk of mistake thereof, then this instrument shall either be reformed by such court to ensure fulfillment of the parties' purposes herein or be rescinded in its entirety and equity done.

- 12.19. Faxes and Counterparts. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original. At the request of either party, the Parties shall confirm facsimile transmitted signatures by signing an original document. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute only one agreement.
- 12.20. Broker. Land Trust and Seller each represent and warrant to the other that it has not entered into any agreement for brokerage or finder's fees, charges or commissions in connection with this transaction. Seller and Land Trust each agree to indemnify, defend, and hold the other harmless from and against any costs or liabilities arising in connection with any brokerage or finder's fees, charges, or commissions, which are (or are claimed to be) payable in connection with the transaction contemplated under this Agreement by reasons of the actions (or alleged actions) of the indemnifying party. The foregoing indemnity shall survive the termination of this Agreement, the Closing, and the execution and recording of the Deed (and any other instrument required pursuant to Section 12.2 above) and shall not be merged therein.
- 12.21. Recitals. Each recital set forth above is hereby incorporated into this Agreement as though fully set forth herein.

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IN WITNESS WHEREOF, the Parties have executed this Agreement:

WHIDBEY CAMANO LAND TRUST, Buyer

By Ivan D. Miller  
Ivan Miller, President

Date: 6/17/09

DUCKEN FAMILY LLC, Seller

By: John Ducken  
John Ducken

Date: 6-5-09

By: Joseph K. Ducken  
Joseph K. Ducken

Date: 6-5-09

**EXHIBIT A**  
**Legal Description of Property**

**NEW LOT 1**

A parcel of land located in Government Lots 3 and 4 of Section 17, Township 33 North, Range 2 East of the Willamette Meridian, Island County, Washington, more particularly described as follows: Commencing at the NW corner of said Section 17, with all bearings contained herein relative to the Plat of Dugualla Bay Heights Division No. 9 as recorded in Volume 11 of Plats, Page 57, Records of Island County, Washington; Thence S2°37'30"E along the west line of said Section 17 a distance of 1294.53 feet to the north line of existing right of way of Frostad Road, as shown on said Plat; Thence N87°19'51"E along said north line a distance of 454.74 feet to the west line of the east 840 feet of Government Lot 4 of said Section 17; Thence N2°42'48"W along said west line a distance of 175.00 feet to the Point of Beginning; Thence N84°15'53"E a distance of 841.34 feet; Thence N70°09'56"E a distance of 376.49 feet; Thence N42°56'20"E a distance of 462.11 feet; Thence N1°00'15"W a distance of 380 feet, more or less, to the north line of said Government Lot 3; Thence westerly along the north line of said Government Lot 3, and along the north line of said Government Lot 4, to the west line of the east 850 feet of said Government Lot 4; Thence southerly along said west line to the Point of Beginning,

**TOGETHER WITH**

Second Class tidelands as conveyed by the State of Washington, located in front of Government Lot 4, Section 17, Township 33 North, Range 2 East, Willamette Meridian, Island County, Washington, described as follows:

Beginning at the corner common to Sections 7, 8, 17 and 18, said Township 33 North, Range 2 East; thence South a distance of 1098.7 feet; thence North 76°08 East a distance of 467 feet; thence North a distance of 540 feet; thence North 46° West a distance of 632 feet, more or less to the point of beginning;

**EXCEPT** therefrom that portion, if any, lying within the following described parcel:

Beginning at the corner common to said Sections 7, 8, 17 and 18; thence South 46°East a distance of 632 feet; thence North a distance of 210 feet; thence N63°55'West a distance of 510 feet, more or less, to the point of beginning,

**ALSO TOGETHER WITH**

Second Class tidelands as conveyed by the State of Washington, located in front of Government Lot 4, Section 17, Township 33 North, Range 2 East, Willamette Meridian, Island County, Washington, described as follows:

Beginning at the corner common to said Sections 7, 8, 17 and 18; thence South 46°East a distance of 632 feet; thence North a distance of 210 feet; thence N63°55'West a distance of 510 feet, more or less, to the point of beginning,

**ALSO TOGETHER WITH**

That portion of Second Class tidelands as conveyed by the State of Washington, located in front of Government Lot 4, Section 17, Township 33 North, Range 2 East, Willamette Meridian, Island County, Washington, lying East of the following described line:

Beginning at the corner common to Sections 7, 8, 17 and 18, said Township 33 North, Range 2 East; thence South a distance of 1098.7 feet; thence North 76°08'East a distance of 476 feet to the true point of beginning of said line; thence North 540 feet to the terminus of said line.

## EXHIBIT B

### Map of the Property

