

Return To:
Woodrich & Archer LLP
110 SE Cascade Ave.
PO Box 510
Stevenson, WA 98648
Attn: Ken Woodrich

GRANT DEED OF CONSERVATION EASEMENT

Grantor:

1. Angel Heights, LLC
- 2.

REAL ESTATE EXCISE TAX

SEP 28 2005

PAID

SKAMANIA COUNTY TREASURER

Grantee:

City of Stevenson

Legal Description:

1. Abbreviated form: Lots 8-18 and Park Angel Heights
2. Additional legal description on page 20 of document

AF 2005158873

Assessor's Property Tax Parcel Account Number:

03-07-36-3-3 -0100-00
0200-00

J.M.
9/28/05

Reference number(s) of related/assigned/released/document(s):

1. 2005158873
- 2.

GRANT DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT ("Easement") is made this 27th day of September, 2005, by, ANGEL HEIGHTS, LLC, a Washington Limited Liability Company, having an address at 1801 NE 82nd St, Vancouver, WA ("Grantor"), in favor of City of Stevenson having an address at PO Box 371, Stevenson, WA 98648 ("Grantee").

I. RECITALS

A. Grantor is the sole owner in fee simple of that certain real property (the "Protected Property") in the City of Stevenson, Skamania County, Washington as shown on Exhibit B (site map), which is incorporated into this Easement by this reference.

B. The Protected Property possesses a natural and critical area of great importance to Grantor, the people of the City of Stevenson and the people of the State of Washington (collectively, "Conservation Values").

C. The Protected Property consists of a steeply sloped area directly adjacent to Rock Creek. The area serves as a natural watershed to filter stormwater from Rock Creek minimizing sedimentation and protecting the habitat of many species of fish and other wildlife that inhabit the Creek and its banks.

D. The Protected Property is within the Shoreline Area, includes a City of Stevenson Critical Area due to its slope instability and is designated in part as a Natural Area. This Conservation easement is intended to continue and expand upon the protections afforded by those land-use regulations, and further the Grantor's expressed desire to keep the area free from building or other human uses. This Conservation Easement is also for the health and safety of the residents of the community, since the area is an identified slide hazard area.

E. The Protected Property is in the same watershed as Rock Creek, a habitat of local importance designated by the State of Washington Fish and Wildlife Department. Restrictions on uses of the Protected Property would benefit the habitat of local importance because it will minimize the deterioration of the area due to the close proximity of the Grantor's residential development.

D. The Protected Property contains a bank of Rock Creek, a shoreline of the state, which has been identified as a natural shoreline environment under the Washington Shoreline Management Act, Chapter 90.58 RCW. The state legislature has recognized that "the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation." The legislature has also recognized that unrestricted construction on privately owned shorelines of the state is not in the best interest of the public. Restrictions on uses of the Protected Property would benefit the shoreline environment because the area is

quite steep and its vegetation stabilized the slope and filters the stormwater before it enters the creek.

E. Grantor, as owner of the Protected Property, has the right to identify, protect, and preserve the Conservation Values of the Protected Property, and desires to transfer such rights to Grantee in perpetuity.

F. Grantee is a Washington Code City qualified under RCW 64.04.130 to accept a Conservation Easement for the benefit of the public and pursuant to City Council action on May 19, 2005 accepted this Conservation Easement.

G. Grantee agrees, by accepting this Easement, to honor the intentions of Grantor as stated in this Easement and to preserve and protect in perpetuity the Conservation Values of the Protected Property for the benefit of this generation and the generations to come.

H. The foregoing recitals are incorporated into this Easement by this reference.

II. CONVEYANCE AND CONSIDERATION

A. For the reasons stated above, in consideration of the mutual covenants, terms, conditions, and restrictions contained in this Easement, Grantor hereby voluntarily grants, conveys and warrants to Grantee a conservation easement in perpetuity over the Protected Property, consisting of certain rights in the Protected Property, as defined in this Easement, subject only to the restrictions contained in this Easement.

B. This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130 and is made as an absolute, unconditional, unqualified, and completed gift, subject only to the mutual covenants, terms, conditions and restrictions set forth in the Easement, and for no other consideration whatsoever.

C. Grantor expressly intends that this Easement runs with the land and that this Easement shall be binding upon Grantor's personal representatives, heirs, successors, and assigns.

III. PURPOSE

The purpose of this Easement is to assure that the Protected Property will be retained forever predominantly in its natural condition as "a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," (as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(ii), as amended and in regulations promulgated under this law), and to prevent any use of, or activity

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on, the Protected Property that will impair or interfere with the Conservation Values of the Protected Property (the "Purpose"). Grantor intends that this Easement will confine the use of, or activity on, the Protected Property to such uses and activities that are consistent with this Purpose. Except as specifically provided for in Section XI, this Easement shall not be construed as affording to the general public physical access to the Protected Property.

IV. RIGHTS CONVEYED TO GRANTEE

To accomplish the Purpose of this Easement, the following rights are conveyed to Grantee by this Easement:

A. **Identification and Protection.** To identify, preserve and protect in perpetuity and to enhance by mutual agreement the Conservation Values of the Protected Property.

B. **Access.**

1. To enter the Protected Property annually, at a mutually agreeable time and upon prior written notice to Grantor or its successors, for the purpose of making a general inspection to monitor compliance with this Easement.

2. To enter the Protected Property at such other times as are necessary if Grantee has a reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of this Easement. Such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property.

C. **Scientific/Educational Use.** To allow persons or groups to enter the Protected Property for educational, scientific and biological purposes to observe and study on the Protected Property; provided that any such persons or groups first are approved by Grantor, make prior arrangements with Grantor and agree to abide by any restrictions on access set forth by Grantor. All persons or groups given permission to enter the Protected Property shall sign a waiver, substantially in the form attached to this Easement as Exhibit D. This waiver is intended to release Grantor and Grantee from all liability to the extent allowed by law.

D. **Injunction and Restoration.** To enjoin any use of, or activity on, the Protected Property that is inconsistent with the Purpose of this Easement, including trespasses by members of the public, and to require or undertake the restoration of such areas or features of the Protected Property as may be damaged by uses or activities inconsistent with the provisions of this Easement, all in accordance with Section X.

V. USES AND ACTIVITIES CONSISTENT WITH THE PURPOSE OF THE EASEMENT

A. **General.** Grantor reserves for itself and its personal representatives, heirs, successors and assigns, all rights accruing from ownership of the Protected Property, including the right to engage in, or permit or invite others to engage in, any use of, or activity on, the Protected Property that is not inconsistent with the Purpose of the Easement and that is not prohibited by this Easement. Without limiting the generality of this subsection, Grantor specifically reserves for itself and its personal representatives, heirs, successors, and assigns, the following uses and activities:

B. **Protection of Public Health or Safety.** The undertaking of other activities necessary to protect public health or safety on the Protected Property, or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity; provided that any such activity shall be conducted so that interference with the Conservation Values of the Protected Property is avoided, or, if avoidance is not possible, minimized to the extent possible.

C. **Stewardship Activities.** The undertaking of any activity performed to protect the natural habitat and vegetation pursuant to any Stewardship Plan covering the Protected Property and agreed to by the parties to the Stewardship Plan.

VI. USES AND ACTIVITIES INCONSISTENT WITH THE PURPOSE OF THE EASEMENT

A. **General.** Any use of, or activity on, the Protected Property inconsistent with the Purpose of this Easement is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in or permit any such use or activity. Without limiting the generality of this subsection, the following uses of, or activities on, the Protected Property, though not an exhaustive list, are inconsistent with the Purpose of this Easement and shall be prohibited; except as expressly provided for in Section V:

B. **Subdivision.** The legal or "de facto" division, subdivision, or partitioning of the Protected Property.

C. **Utilities.** The above ground installation of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and

communication lines and related facilities outside the [residential and agricultural] areas identified in Exhibit B.

D. Construction. The placement or construction of any buildings, structures, or other improvements of any kind (including, without limitation, pipelines, wells, septic systems, drain fields, fences, roads and parking areas, stairways, ramps and trails).

E. Alteration of Land. The alteration of the surface of the land, including, without limitation, the excavation, fill or removal of soil, sand, gravel, rock, peat, or sod; except as deemed necessary by Grantee to preserve or protect the Conservation Values of the Protected Property.

F. Alteration of Water Courses. The draining, filling, dredging, ditching, or diking of wetland areas, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water courses; except as deemed necessary by Grantee to preserve, protect or enhance the Conservation Values of the Protected Property.

G. Erosion or Water Pollution. Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters.

H. Feedlots. The establishment and maintenance of a commercial feedlot. For the purposes of this Easement, a commercial feedlot is a confined area or facility within which the land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Protected Property for feeding and fattening for market.

I. Agricultural Activities. The conducting of grazing or agricultural activities of any kind, except in accordance with Section V.C.

J. Waste Disposal. The disposal or storage of rubbish, yard clippings and vegetation, garbage, debris, vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or hazardous waste or material on the Protected Property.

K. Signs. The placement of commercial signs, billboards, or other advertising material on the Protected Property.

L. Hunting. Hunting or trapping; except to the extent determined necessary by Grantee to preserve, protect or enhance the Conservation Values of the Protected Property. Feral domestic mammals and individuals from the family Muridae of the order Rodentia (old

world rats and mice) may be killed without approval of Grantee if done in a manner so as not to adversely impact native plants and animals.

M. Mining. The exploration for, or development and extraction of, minerals and hydrocarbons on or below the surface of the Protected Property.

N. Wildlife Disruption. The disruption of wildlife breeding, foraging and nesting activities.

O. Domestic Animals. The keeping of domestic animals on the Protected Property.

P. Herbicides or Pesticides. The use of any herbicides or pesticides; except as deemed necessary by Grantor and Grantee to preserve, protect or enhance the Conservation Values of the Protected Property.

Q. Removal of Trees and Other Vegetation. The pruning, cutting down, or other destruction or removal of live and dead trees and other vegetation located on the Protected Property; except as deemed necessary by Grantee to preserve, protect or enhance the Conservation Values of the Protected Property or to conduct educational or research activities consistent with the Purpose of this Easement.

R. Introduced Vegetation. The introduction of nonnative wetland plants and nonnative invasive species on the Protected Property, or the planting or introduction of any species of vegetation on the Protected Property except as deemed necessary by Grantee to enhance the Conservation Values of the Protected Property.

S. Harvesting of Native Plants. The gathering, picking, taking, or harvesting of native plants, or any parts thereof, from the Protected Property.

T. Off-Road Vehicles and Excessive Noise. The operation of motorcycles, dune buggies, snow mobiles, or any other type of off-road motorized vehicles or the operation of other sources of excessive noise pollution on the Protected Property.

VII. AFFIRMATIVE OBLIGATIONS AND COMMITMENTS

A. Invasive Non-Native Species. Grantor and Grantee commit to work together over the coming years to explore and implement reasonable methods of controlling or eradicating invasive non-native species on the Protected Property.

B. Native Species. Grantor and Grantee commit to work together over the coming years to encourage the establishment of appropriate native species on the Protected Property.

VIII. NOTICE AND APPROVAL

A. Notice.

1. Grantee. Several provisions of this Easement require Grantee to give notice to Grantor prior to undertaking certain activities within the Protected Property (e.g., Article IV (B) and (C)). Whenever such notice is required, Grantee shall notify Grantor in writing not less than thirty (30) days prior to the date Grantee intends to undertake the use or activity in question, unless a shorter time is agreed to by Grantor or otherwise provided for by this Easement.

B. Approval. Where approval by one of the parties is required under this Easement, such approval shall be granted or denied in writing within thirty (30) days of receipt of a written request for approval, and such approval shall not be unreasonably withheld.

1. Emergency Action. If either party must undertake emergency action to protect health or safety on the Protected Property or must act by and subject to compulsion of any governmental agency, that party may proceed with such action without the other party's approval only if it notifies the other party prior to taking such action and the party receiving notice cannot provide its approval, with or without conditions, within such time as is reasonable under the circumstances.

C. Addresses. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: Angel Heights, LLC
 c/o Better World Acquisitions
 1801 NE 82nd Street
 Vancouver, WA 98665

To Grantee: City of Stevenson
 Attn: City Administrator
 PO Box 371
 Stevenson, WA 98648

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or to such other address as either party designates by written notice to the other.

IX. DISPUTE RESOLUTION

If a dispute arises between the parties concerning the consistency of any present or proposed use or activity with the Purpose of this Easement, and if Grantor agrees not to proceed with the use or activity pending resolution of the dispute, the parties shall meet together to discuss the dispute and attempt resolution. Thereafter, either party may refer the dispute to mediation or arbitration by request made in writing to the other. Within thirty (30) days of the receipt of such a request, the parties shall select a single mediator or arbitrator to hear the matter. The matter shall be settled in accordance with any Washington State mediation or arbitration statute then in effect, and a mediation or an arbitration award may be entered in any court having jurisdiction. If mediation or arbitration is pursued, the prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for all its costs and expenses related to such mediation or arbitration, including, without limitation, the fees and expenses of the mediator or arbitrator and attorney's fees, which shall be determined by the mediator or arbitrator or any court having jurisdiction that may be called upon to enforce or review the award.

X. GRANTEE'S REMEDIES

A. Notice of Violation, Corrective Action. If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.

B. Grantor's Failure to Respond. Grantee may bring an action as provided in subsection C if Grantor:

1. Fails to cure the violation within thirty (30) days after receipt of a notice of violation from Grantee; or
2. Under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.

C. Grantee's Action.

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1. **Injunctive Relief.** Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement:

a. To enjoin the violation, ex parte as necessary, by temporary or permanent injunction; and

b. To require the restoration of the Protected Property to the condition that existed prior to any such injury.

2. **Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability in any way, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking corrective or restoration action on the Protected Property.

D. **Emergency Enforcement.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.

E. **Scope of Relief.** Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

F. **Costs of Enforcement.** In the event Grantee must enforce the terms of this Easement, the costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, family members, invitees or licensees in violation of the terms of this Easement and Grantee's reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by Grantor or those of its personal representatives, heirs, successors, or assigns, against whom a judgment is entered. In the event that Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the

costs of such restoration and Grantee's reasonable expenses shall be borne by Grantor and those of its personal representatives, heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized use or activity.

G. Grantee's Forbearance. Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

H. Waiver of Certain Defenses. Grantor acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors or assigns under or pertaining to this Easement based upon waiver, laches, estoppel, or prescription.

I. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, natural changes, fire, flood, storm, or earth movement, or from acts of trespassers, that Grantor could not reasonably have anticipated or prevented or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. In the event the terms of this Easement are violated by acts of trespassers that Grantors could not reasonably have anticipated or prevented, Grantor agrees, at Grantee's option, to join in any suit, to assign its right of action to Grantee, or to appoint Grantee its attorney in fact, for the purpose of pursuing enforcement action against the responsible parties.

J. Estoppel Certificates. Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, that certifies, to the best of Grantee's knowledge, Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Protected Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within thirty (30) days of receipt of Grantor's written request.

managerial control over the day-to-day operations of the Protected Property, or any of Grantor's activities on the Protected Property, or otherwise to become an operation with respect to the Protected Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"), and MTCA.

D. Indemnification. Grantor hereby agrees to release and hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' and consultants' fees, arising from or in any way connected with:

Grantor hereby agrees to release and hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with:

1. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Protected Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; and

2. The obligations, covenants, representations and warranties in subsections A, B, C, and D of this section.

XIII. EXTINGUISHMENT, CONDEMNATION AND SUBSEQUENT TRANSFER

A. Extinguishment. If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court having jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with Section XIII.B of this Easement.

XI. ACCESS BY PUBLIC

Access by the general public to any portion of the Protected Property is only through special arrangement with Grantee and Grantor.

XII. COSTS, LIABILITIES AND INSURANCE, TAXES, ENVIRONMENTAL COMPLIANCE, AND INDEMNIFICATION

A. Costs, Legal Requirements, Liabilities and Insurance. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage.

B. Representations and Warranties. Grantor represents and warrants that, after reasonable investigation and to the best of Grantor's knowledge:

1. There has been no release, dumping, burying, abandonment or migration from off-site on the Protected Property of any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute, or ordinance;

2. Neither Grantor nor Grantor's predecessors in interest have disposed of any hazardous substances off-site, nor have they disposed of substances at sites designated or proposed to be designated as federal Superfund (42 U.S.C. § 9601 et seq.) or state Model Toxics Control Act (RCW 70.105D.010 et seq.) ("MTCA") sites; and

3. There is no pending or threatened litigation affecting the Protected Property or any portion of the Protected Property that will materially impair the Conservation Values of any portion of the Protected Property. No civil or criminal proceedings have been instigated or are pending against Grantor or its predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and neither Grantor nor its predecessors in interest have received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.

C. Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or

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B. Condemnation. If all or any of the Protected Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interest in the Protected Property subject to the taking or in lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Except as provided by applicable law, Grantor and Grantee agree that Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in subsection XIII. B above.

C. Application of Proceeds. Grantee shall use any proceeds received under the circumstances described in this Article XIII in a manner consistent with its Conservation Values, which are exemplified by the grant.

D. Subsequent Transfers. Grantor agrees to:

1. Incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including, without limitation, a leasehold interest;

2. Describe this Easement in and append it to any executory contract for the transfer of any interest in the Protected Property;

The failure of Grantor to perform any act required by this subsection shall not impair the validity of this Easement or limit its enforceability in any way.

XIV. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including RCW 64.04.130, Chapter 84.34 RCW, or Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision(s) then applicable). Any such amendment shall be consistent with the Purpose of this Easement, shall not affect its perpetual duration, and shall be recorded in the official records of Skamania County, Washington, and any other jurisdiction in which such recording is required.

XV. ASSIGNMENT AND SUCCESSION

A. **Assignment.** This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under RCW 64.04.130 or RCW 84.34.250 (or any successor provision(s) then applicable). As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

B. **Succession.** If at any time it becomes impossible for Grantee to ensure compliance with the covenants, terms, conditions and restrictions contained in this Easement and Grantee has not named a successor organization, or Grantee ceases to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable) or to be authorized to acquire and hold conservation easements under RCW 64.04.130 and 84.34.250 (or any successor provision(s) then applicable), then Grantee's rights and obligations under this Easement shall become vested and fall upon one of the following named entities to the extent that they shall accept this Easement, in the following order:

1. Skamania County
2. Such other entity, with purposes similar to Grantee's, constituting a "qualified organization" within the meaning of the Internal Revenue Code of 1986, as amended (or any successor provision(s) then applicable);

provided that if such vesting in any of the entities named above is deemed to be void under the Rule Against Perpetuities, the rights and obligations under this Easement shall vest in such organization as a court having jurisdiction shall direct, pursuant to the applicable Washington law and the Internal Revenue Code and with due regard to the Purpose of this Easement.

XVI. RECORDATION

Grantor shall record this instrument in a timely fashion in the official records of Skamania County, Washington, and in any other appropriate jurisdictions, and may re-record it at any time as may be required to preserve its rights in this Easement.

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XVII. SUBORDINATION

At the time of conveyance of this Easement, the Protected Property is subject to that certain mortgage or deed of trust dated July 15, 2005 which was recorded under Auditor's File No. 2005158039, and that certain mortgage or deed of trust dated August 1, 2004 which was recorded under Auditor's File No. 2004153959, and that certain mortgage or deed of trust dated July 15, 2005 which was recorded under Auditor's File No. 2005158037 ("Mortgage" or "Deed of Trust"). The beneficiary of the Mortgage or Deed of Trust shall agree and within 30 days record a separate instrument in the form attached as Exhibit E hereto, which will be recorded concurrently with this Easement, to subordinate its rights in the Protected Property to this Easement to the extent necessary to permit Grantee to enforce the Purpose of the Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the beneficiary under the Mortgage or Deed of Trust.]

XVII. GENERAL PROVISIONS

A. **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Washington.

B. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the Purpose of this Easement and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. **Severability.** If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

D. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Protected Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Protected Property, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section XIV.

E. **No Forfeiture.** Nothing contained in this Easement will result in a forfeiture or reversion of Grantor's title in any respect.

CONSERVATION EASEMENT

F. **"Grantor" - "Grantee".** The terms "Grantor" and "Grantee," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include, respectively the above-named Grantor, and its personal representatives, heirs, successors, and assigns, and the above-named Grantee, its personal representatives, successors and assigns.

G. **Successors and Assigns.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

H. **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

I. **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

XIX. SCHEDULE OF EXHIBITS

- A. Legal Description of Property Subject to Easement.
- B. Site Map.
- C. Stewardship Plan.
- D. Agreement For Release From Liability.
- E. Subordination Agreement.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 27th day of September, 2005.

ANGEL HEIGHTS LLC by its Managing Member,
Better World Acquisitions, LLC

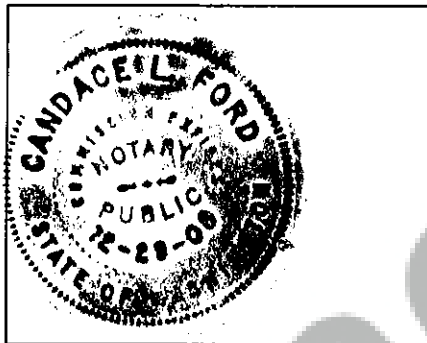
CONSERVATION EASEMENT

By: Mimi Morissette
Mimi Morissette
Managing Member
(Grantor)

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAMANIA)

I certify that I know or have satisfactory evidence that Mimi Morissette is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Conservation Easement of Angel Heights, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 9/27/05



(Use this space for notarial stamp/seal)

Candace L. Ford
Notary Public
Print Name Candace L. Ford
My commission expires 12/29/08

The City of Stevenson does hereby accept the above Grant Deed of Conservation Easement.

Dated: 9/27/05

Rand M. McKenzie for
Grantee City of Stevenson
By [Signature]
Its [Official Capacity]
Mayor

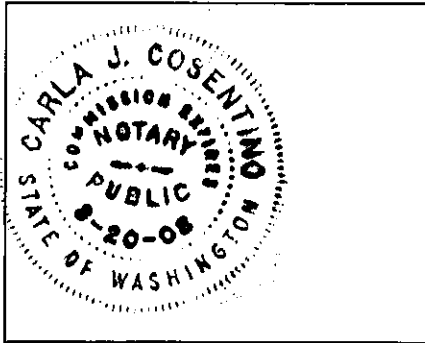
STATE OF WASHINGTON)
) ss.

CONSERVATION EASEMENT

COUNTY OF SKAMANIA)

I certify that I know or have satisfactory evidence that David M McKenzie is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Mayor of City of Stevenson to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 9/27/05



(Use this space for notarial stamp/seal)

Carla J Cosentino
Notary Public
Print Name Carla J Cosentino
My commission expires 8/20/08

Unofficial Copy

CONSERVATION EASEMENT

EXHIBIT A

Legal Description

Final Plat of Angel Heights Subdivision – Phase I recorded in Book of Plats,
Page , Auditor's File Number 2005158873, Records of Skamania County,
Washington.

Unofficial
Copy

DOC # 2005158874
Page 20 of 25

ANGEL HEIGHTS SUBDIVISION-PHASE 1

SW1/4 OF SECTION 36, T 3 N, R 7 E, WM
CITY OF STEVENSON, SKAMANIA CO, WA

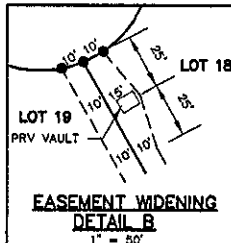
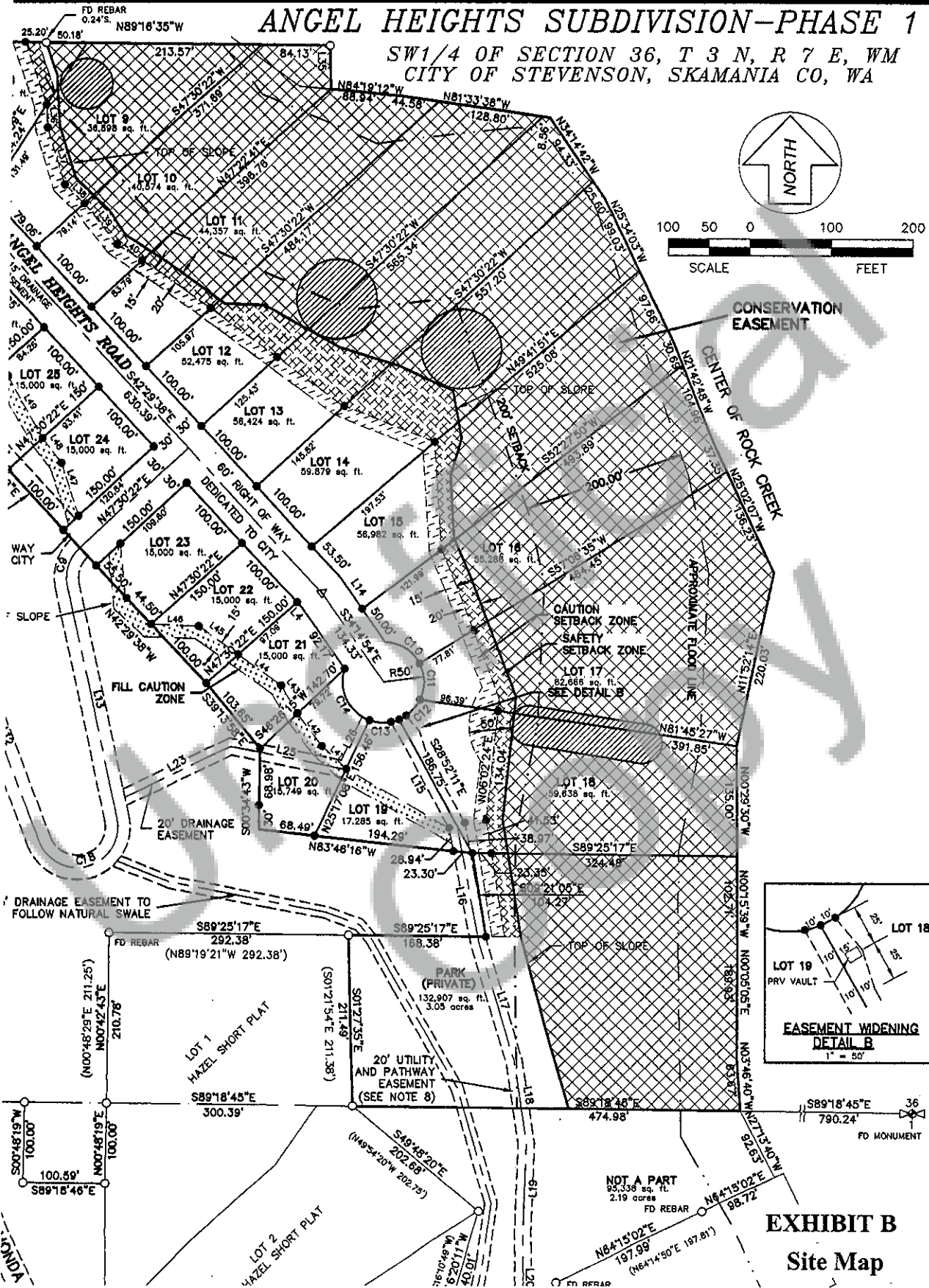
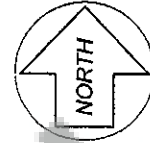


EXHIBIT B
Site Map

EXHIBIT C

Stewardship Plan

The Grantor shall contract with a third party landscaping contractor to at least annually from the date of this Conservation Easement inspect the easement property for the purposes of surveying for any invasive or non-native plant species, hazardous brush accumulations, or danger trees, and the threat of plant disease or infestation. The contractor shall propose and recommend remedial actions. The contractor's written report shall be promptly transmitted to the City.

Unofficial
Copy

EXHIBIT D

Agreement for Release From Liability

In consideration for permission to enter certain property, _____, Washington, owned by _____ (hereafter the "Protected Property") to observe and study the ecology of the Protected Property, I hereby acknowledge and agree to the following:

1. My activities in the Protected Property involve many risks, including, but not limited to, risks of bodily injury/illness or death resulting from accident, poisonous plants or animals;

2. I am entering the Protected Property at my own risk and I assume full responsibility for the risk of bodily injury or death, whether foreseen or unforeseen, in connection with my activities in the Protected Property;

3. I HEREBY RELEASE, WAIVE AND DISCHARGE _____ and their personal representatives, heirs, successors, and assigns, and the _____ and its personal representatives, successors, and assigns from any liability for harm or loss suffered by me in connection with my activities in the Protected Property, WHETHER BY NEGLIGENCE OR NOT, and I FURTHER SAVE AND HOLD HARMLESS [property owner] _____

and their personal representatives, heirs, successors or assigns, and the City of Stevenson, and its personal representatives, successors, and assigns, from any and all liability, actions, causes of action, claims, demands of every kind and nature whatsoever by me or my family, estate, heirs, executors, administrators, legal representatives, successors or assigns arising out my activities in the Protected Property;

4. I hereby expressly agree that this "AGREEMENT FOR RELEASE FROM LIABILITY" is intended to be as broad and inclusive as permitted by the laws of the State of Washington, and if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full force and effect; and

5. This "AGREEMENT FOR RELEASE FROM LIABILITY" contains the entire agreement between the parties hereto and that the terms of this Agreement are contractual in nature and not a mere recital; I understand all of the terms; and I am of lawful age and legally competent to sign this Agreement.

** I HAVE FULLY INFORMED MYSELF OF THE CONTENT OF THIS "AGREEMENT FOR RELEASE FROM LIABILITY" BY READING IT CAREFULLY BEFORE SIGNING IT.

Name (print)

Signature

Date

City/County/State

EXHIBIT E
SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER INSTRUMENT.

The undersigned subordinator agrees as follows:

1. _____ ("Subordinator") is the owner and holder of a mortgage dated _____, which was recorded under Auditor's File No. _____, records of Skamania County;
2. The City of Stevenson ("Easement Holder") is the holder of a conservation easement dated _____, 2005, executed by Owner (as hereinafter defined) which will be recorded concurrently with this Subordination Agreement;
3. _____, ("Owner"), are the owners of all the real property described in the conservation easement identified above in Paragraph 2.
4. In consideration of benefits to Subordinator from Owner, receipt and sufficiency of which is hereby acknowledged, and as required by Treasury Regulation § 170A-14(g)(2) for any conservation easement transaction with anticipated federal income, gift or estate tax benefits to the property owner, the Subordinator does hereby unconditionally subordinate the lien of the mortgage identified above in Paragraph 1 to the conservation easement identified above in Paragraph 2, including to the assignment of rights identified above in Paragraph 3.
5. This Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the lien or charge of the mortgage first above mentioned to the conservation easement in favor of Easement Holder above referred to and the assignment of rights in favor of the City above referred to and shall supersede and cancel any prior agreements as to such, or any subordination including, but not limited to, those provisions, if any, contained in the mortgage first above mentioned, which provided for the subordination of the lien or charge thereof to a mortgage to be thereafter executed.
6. The heirs, administrators, assigns and successors in interest of the Subordinator shall be bound by this agreement. Where the word mortgage appears herein it shall also be considered as deed of trust, and gender and number of pronouns considered to conform to undersigned.

Executed this _____ day of _____, 200__.

SUBORDINATOR

SUBORDINATOR

(Name)

(Name)

[illegible]

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

Dated: _____

Notary Public _____
 Print Name _____
 My commission expires _____

(Use this space for notarial stamp/seal)