


CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: December 9, 2013

AGENDA ITEM: North Marysville Regional Stormwater Pond 2 – Purchase of Mitigation Credits for Wetland Impacts	
PREPARED BY: Kari Chennault, Surface Water – Program Engineer	DIRECTOR APPROVAL: 
DEPARTMENT: Public Works	
ATTACHMENTS: Wetland Mitigation Credit Buy/Sell Agreement with Mitigation Banking Services, LLC and associated Addendum	
BUDGET CODE: 40250594.563000.D0401	AMOUNT: \$137,600

SUMMARY:

In accordance with Administrative Order #10330 issued to the City of Marysville by the Washington State Department of Ecology, the City is obligated to mitigate for impacts to sensitive areas that will occur as a result of the upcoming North Marysville Regional Stormwater Pond 2 Project. The City determined that the most cost-efficient way to do so would be through the purchase of wetland mitigation “credits” from an approved wetland bank.

The attached Agreement between the City and Mitigation Banking Services, LLC provides the framework for the purchase of 0.86 mitigation credits for a purchase price of \$137,600. This purchase will mitigate for impacts to 1.01 acres of Category IV wetlands which presently reside on the Project property.

RECOMMENDED ACTION: Staff recommends that Council authorize the Mayor to sign the attached Wetland Mitigation Credit Buy/Sell Agreement with Mitigation Banking Services, LLC, in the amount of \$137,600.
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September 1, 2010

Authorized Signatory Authority:

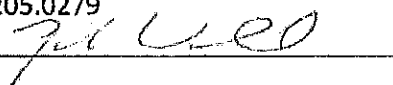
Mitigation Banking Services, LLC and its Executive Committee comprised of:

Skykomish Habitat LLC
David Remlinger, Member/Manager

Habitat Bank LLC
Victor Woodward, Member/Manager

Hereby authorize Zach Woodward, in the role of Sales Manager of Mitigation Banking Services, LLC to execute instruments and documents, including without limitation, checks, drafts, notes and other negotiable instruments, bills of sale, purchase agreements, leases, partnership agreements and any other instruments or documents necessary in the opinion of the Executive Committee, to the business of the Company.

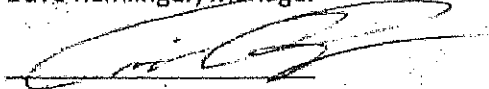
Authorized Signatory Details:

Name: Zach Woodward
Title: Sales Manager
Email: zach@mitigationbankingservices.com
Phone: 425.205.0279
Signature: 

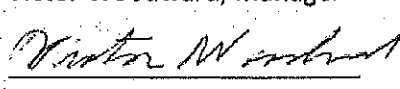
This authorization is valid until further written notice from Mitigation Banking Services LLC.

Signed,

Dave Remlinger, Manager



Victor Woodward, Manager



WETLAND MITIGATION CREDIT BUY/SELL AGREEMENT MITIGATION BANKING SERVICES

This Wetland Mitigation Credit Buy/Sell Agreement (“Agreement”) is made by and between Mitigation Banking Services, LLC, a Washington limited liability company (“MBS” or “Credit Seller”), and the City of Marysville, a local jurisdiction in the State of Washington (“Buyer”) (collectively “Parties”).

1. *RECITALS*

- 1.1. Mitigation Banking Services, LLC has been contracted by the Snohomish Basin Mitigation Bank (“SBMB”) and the Skykomish Habitat Mitigation Bank (“SHMB”) to market and sell their mitigation credits.
- 1.2. With approval and authorization from the Washington State Department of Ecology (“Ecology”), U.S. Army Corps of Engineers (“Corps”), Environmental Protection Agency (“EPA”), Washington State Department of Natural Resources (“DNR”), and Snohomish County (“County”) (collectively the “Permitting Authorities”), the SBMB and SHMB have been established.
- 1.3. The SBMB and SHMB are established to operate within a portion the State of Washington’s Water Resource Inventory Area Number 7 (“WRIA No. 7”), which portion constitutes the banks “Service Area.”
- 1.4. The purpose of the SBMB and SHMB are to provide off-site mitigation for unavoidable impacts to wetlands and other critical area associated with certain development activity within the Service Area.
- 1.5. The SBMB and SHMB are authorized by the Permitting Authorities to sell and transfer wetland and critical area mitigation credits for permits, said credits being units of trade representing the increase in ecological value of a site, as measured by acreage, functions, and/or values (“Mitigation Credits”).
- 1.6. Buyer contemplates undertaking a development activity within the Service Area (“Project”), which will require permits and/or approvals (“Permit(s)”) from regulatory agencies and which development activity may cause unavoidable impacts to wetlands or other critical areas and may require mitigation. Buyer is solely responsible for determining whether such mitigation can be satisfied by its acquisition of Mitigation Credits.
- 1.7. Buyer wishes to purchase from MBS and MBS wishes to sell to Buyer Mitigation Credits from the SBMB and or the SHMB for the Project on the terms and conditions contained in this Agreement.

2. **AGREEMENT**

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

2.1. **Purchase/Sale of Mitigation Credits**

- 2.1.1. **Purchase/Sale.** Credit Seller hereby sells to Buyer and Buyer hereby buys from Credit Seller 0.86/100th (0.86) Mitigation Credits upon all of the terms, covenants, and conditions set forth in this Agreement (“Project Mitigation Credits”).
- 2.1.2. **Purchase Price.** The purchase price for the Project Mitigation Credits shall be One hundred thirty seven thousand six hundred and 00/100 Dollars (U.S. \$137,600.00) (“Purchase Price”).
- 2.1.3. **Payment.** Buyer agrees to pay the Purchase Price to Credit Seller within 30 days of the effective date.

2.2. **Buyer's Obligations/Limitation on Transfer of Mitigation Credits/Project Information.**

- 2.2.1. **Mitigation Credits for Project.** Buyer shall be solely responsible for determining whether the Mitigation Credits may be used for the Project and the Permit(s). Credit Seller provides no representation or warranty as to the utility or applicability of the Mitigation Credits to the Project or Permit(s). Buyer acknowledges and agrees that Credit Seller shall sell the Project Mitigation Credits specifically for the Permit(s) identified in Section 2.2.2 below and that, as of Closing, said credits shall not be transferable.

- 2.2.2. **Project.** The Project, Permit(s), and related information is as follows:

- 2.2.2.1. Buyer's name, address, & telephone number:

City of Marysville
1049 State Avenue
Marysville, Washington 98270
360.363.8000

- 2.2.2.2. Permitting Agency(ies) name(s), address(es), telephone number(s):

Jurisdictional Determination of Isolated Waters
Pamela Sanguinetti, Project Manager
U.S. Army Corps of Engineers – Seattle District Regulatory Program
P.O. Box 3755
Seattle, WA 98124

Department of Ecology, Administrative Order
Paul Anderson, Wetland Specialist
Washington State Department of Ecology
3190 160th Avenue SE
Bellevue, WA 98008

SEPA Mitigated Determination of Nonsignificance
Chris Holland, Planning Manager / Land Use
City of Marysville
80 Columbia Avenue
Marysville, WA 98270

2.2.2.3. Permit(s) Number(s) Date of Permit:

Permit Agency	Number	Date of Issuance
U.S. Army Corps of Engineers (JD, Isolated Waters)	NWS-2013 -139	Sept. 3, 2013
WA State Department of Ecology (Administrative Order)	AO#10330	Nov. 4, 2013
City of Marysville (SEPA MDNS)	PA-12038	January 16, 2013

2.2.2.4. Project Name & Location: North Marysville Regional Stormwater Pond #2

2.2.2.5. Brief Description of Impact(s) to be Compensated for by the Project
Mitigation Credits: Impacts to 1.01 acres of isolated Category IV wetlands
D, B, C, E and F.

2.2.3. **Disclosure.** Buyer acknowledges and agrees that Credit Seller may, as part of the process for transferring the Project Mitigation Credits, disclose the information provided under Section 2.2.2 above to the permitting agency(ies) described in Section 2.2.2, the Snohomish County Auditor, and the Permitting Authorities.

2.3. **Title/Risk of Loss**

2.3.1. **Conveyance.** Upon receipt of payment Credit Seller shall convey to Buyer the Project Mitigation Credits, free of liens, encumbrances, restrictions, rights, and conditions, except as expressly provided for herein. Conveyance shall be in the form of a letter from the Credit Seller to the Buyer and Permitting Authorities notifying them that credits have been transferred from the banks to the Buyer for the permits and projects detailed in Section 2.2.2. Credit Seller will provide Buyer with a credit ledger listing the ecology Order Number, order issuance date, and the debited credits verifying the credit withdrawal from the Snohomish Basin Mitigation Bank. Credit Seller will provide Buyer also with documentation that credits applied to Buyer's project have been registered, with the Ecology Order number assigned to the project and the order issuance date at the Snohomish County Auditor's Office.

2.3.2. **Risk of Loss.** Credit Seller shall bear the risk of loss of the Project Mitigation Credits prior to Closing.

2.4. *Representations and Warranties*

Credit Seller represents and warrants to Buyer that:

2.4.1. Credit Seller is authorized by the SBMB and the SHMB to sell and transfer wetland and critical area mitigation credits for permits from those banks to the Buyer.

2.5. *Closing*

2.5.1. **Closing and Closing Date.** The closing of the purchase and sale of the Project Mitigation Credits ("Closing") shall occur when the Credit Seller receives a cashiers check for the purchase amount, under the terms of this Agreement.

2.5.2. **Limits on Closing Date.** The Closing Date shall not be modified without the written approval of Credit Seller and Buyer.

2.6. *Notice*

2.6.1. Except as may be otherwise expressly provided for herein, all notices required or permitted to be given under this Agreement shall be in writing and shall be delivered or sent: (a) in person; (b) by U.S. Mail, postage prepaid and certified with return receipt requested; or (c) by nationally recognized overnight delivery service, prepaid, and addressed as set forth below. Either party may change its address by notifying the other party in writing of the change of address. Notice shall be deemed delivered immediately, if delivered in person, or within two days if sent by any other means set forth in this Section 2.6.

2.6.2. If to Credit Seller: Mitigation Banking Services, LLC
PO Box 354
Kirkland, WA 98033

2.6.3. If to Buyer: As provided in Section 2.2.2 above.

2.7. *Miscellaneous*

2.7.1. **Effective date.** The effective date of this Agreement shall be the earliest date by which both Credit Seller and Buyer have executed this Agreement.

2.7.2. **Assignment.** Buyer's rights under this Agreement shall not be assigned or apportioned, either voluntarily or by operation of law, without the prior written consent of Credit Seller, which shall be in Credit Seller's reasonable discretion.

Subject to the foregoing limitation, this Agreement shall inure to the benefit of and be binding upon the Parties' respective successors and assigns.

- 2.7.3. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties with respect to the purchase and sale of the Project Mitigation Credits, and supersedes and replaces any prior agreements and understandings, whether oral or written, between them with respect to said matters.
- 2.7.4. **Confidentiality.** The existence of this Agreement and the number of Project Mitigation Credits may be disclosed to the permitting agency(ies) described in Section 2.2.2 above and the Permitting Authorities.
- 2.7.5. **Time.** Time is of the essence of this Agreement.
- 2.7.6. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington.
- 2.7.7. **Amendment.** No change or modification of this Agreement shall be valid unless the same is in writing and signed by the Parties. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced.
- 2.7.8. **Captions.** The captions of this Agreement have no effect upon its interpretation and are for convenience and ease of reference only.
- 2.7.9. **Severability.** The unenforceability, invalidity, or illegality of any provision hereof shall not render any other provision unenforceable, invalid, or illegal.
- 2.7.10. **Computation of Time.** If any date set forth in this Agreement for the delivery of any document or the happening of any event should, under the terms hereof, fall on a weekend or holiday, then such date shall be automatically extended to the next succeeding weekday that is not a holiday.
- 2.7.11. **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 (and any appeal thereof) shall be paid all costs and reasonable attorneys' fees by the other party. This provision shall survive Closing and shall not be merged into the Bill of Sale.
- 2.7.12. **Acts Beyond Party's Control.** Neither party to this Agreement shall be in default or violation as to any obligation created hereby and no condition precedent or subsequent shall be deemed to fail to occur if such party is prevented from fulfilling such obligation by, or such condition fails to occur due to, forces beyond such party's reasonable control, including without limitation, destruction or impairment of facilities resulting from breakdown not resulting from lack of ordinary care and maintenance, flood, earthquake, slide, storm, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, proceeding by court or public

authority, or act or failure to act by court, public authority, or third party, which forces by exercise of due diligence and foresight such party could not reasonably have expected to avoid.

2.7.13. **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 Buyer and Credit Seller. No term or 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.

2.7.14. **Counterparts/Faxes.** This Agreement may be executed in one or more counterparts with like effect as if all signatures appeared on one copy. Facsimile transmission of any signed original document (other than the Bill of Sale), and retransmission of any signed facsimile transmission shall be the same as delivery of an original. At the request of either party or the Escrow Agent, the Parties shall confirm facsimile transmitted signatures by signing an original document.

The Parties have executed this Agreement as of the dates set forth below.

“MBS” OR “CREDIT SELLER”

MITIGATION BANKING SERVICES, LLC, Credit Seller

By 

11-15-2013

ZACH WOODWARD, MANAGER

Date

[print name and title]

“BUYER”

CITY OF MARYSVILLE

By _____
JON NEHRING, Mayor

Date

Exhibit A- SAMPLE Mitigation Credit Transfer Letter



US Army Corps of Engineers
Pamela Sanguinetti, Project Manager
Regulatory Branch
PO Box 3755
Seattle, WA 98124-3755

Chris Holland, Planning Manager/Land Use
City of Marysville
80 Columbia Avenue
Marysville, WA 98270

WA Dept. of Ecology
Paul Anderson, Wetland Specialist
Shorelands and Environment Program
PO Box 47600
Olympia, WA 98504-7600

RE: Notification of Credit Transfer

Notice is hereby given that on _____, Mitigation Banking Services LLC, representing the *Skykomish Habitat Mitigation Bank* and the *Snohomish Basin Mitigation Bank*, has transferred the following amount of Wetland or Buffer Credits to _____ (applicant).

Applicant: _____
File Number: _____
Credits Transferred from the Snohomish Basin Mitigation Bank: _____
Credits Transferred from the Skykomish Habitat Mitigation Bank: _____
Total Number of Credits Transferred to Applicant: _____

These credits are to be applied to the following permits:

Permit # Issue Date Issuing Regulatory Agency
(To be finalized upon proof of credit transfer)

Notice will also be sent to the Snohomish County Auditor per the Mitigation Banking Agreement. The bank credit ledgers have been updated and a copy is enclosed to reflect this transaction.

Sincerely,

Zachary Woodward
Sales Manager, Mitigation Banking Services LLC.

Encl. Permitting Agency(s)
 Applicant
 Bank Sponsors

**ADDENDUM TO
WETLAND MITIGATION CREDIT BUY/SELL AGREEMENT
MITIGATION BANKING SERVICES**

COME NOW CITY OF MARYSVILLE, a municipal corporation of the State of Washington, Buyer, and MITIGATION BANKING SERVICES, LLC, a Washington limited liability company, Credit Seller, under that certain Wetland Mitigation Credit Buy/Sell Agreement – Mitigation Banking Services, for the purchase of 0.86 Mitigation Credits for satisfaction of wetland mitigation requirements associated with the WA State Department of Ecology’s Administrative Order #10330, and hereby agree to amend said agreement as follows:

1. Mitigation bank credits sold pursuant to this transaction shall be from the Snohomish Basin Mitigation Bank (“SBMB”) in compliance with the provisions of that mitigation bank’s Army Corps of Engineers-approved Mitigation Banking Instrument dated July 28, 2005.
2. This transaction shall be closed within thirty (30) days after the Buy/Sell Agreement and this Addendum have been executed by the Buyer.
3. The firm of Weed, Graafstra and Benson, Inc., P.S. shall serve as Escrow Agent for this transaction. Buyer acknowledges that the firm of Weed, Graafstra and Benson, Inc., P.S. serves as City Attorney for the Buyer. Weed, Graafstra and Benson, Inc., P.S. has not and will not represent the Credit Seller’s or SBMB’s interests in this transaction or render any advice to the Credit Seller or SBMB about this transaction. Credit Seller and SBMB are advised to consult with an attorney of their choosing if either desires any legal advice about this transaction or the documents involved.
4. Immediately on demand, Buyer will deposit into escrow the purchase price pursuant to the Buy/Sell Agreement, and Credit Seller will deposit into escrow the letter from Mitigation Banking Services to Permitting Authorities notifying them that credits have been transferred as provided in paragraph 2.3.1 of the Buy/Sell Agreement, in the form attached hereto as EXHIBIT A, and the Amended Notice of wetland mitigation credit sale – Snohomish Basin Mitigation Bank, in the form attached hereto as EXHIBIT B. Upon payment of the purchase price to Credit Seller, Escrow Agent shall be responsible for transmitting the Exhibit A letter to the addressees and for recording the Exhibit B notice, and after recording for delivery of a copy to the Department of Ecology. In addition, Credit Seller shall promptly deliver to Escrow Agent any additional documentation required to complete this transaction and/or document the transfer of the credits.
5. Buyer will pay the escrow fee. Credit Seller will pay the recording fee.

6. Upon completion of this transaction Seller shall update the Snohomish Basin Mitigation Bank Wetland Credits Ledger to reflect this transaction and shall forward a copy of the updated credit ledger to Escrow Agent within thirty (30) days after closing for delivery to the Department of Ecology.

All other terms and conditions of the Wetland Mitigation Credit Buy/Sell Agreement – Mitigation Banking Services shall remain in full force and effect.

DATED this ____ day of _____, 2013.

CITY OF MARYSVILLE, Buyer

By _____
JON NEHRING, Mayor

DATED this ____ day of _____, 2013.

MITIGATION BANKING SERVICES, LLC, Seller

By _____
_____ (print name)
Its _____ (title)

EXHIBIT A



US Army Corps of Engineers
Pamela Sanguinetti, Project Manager
Regulatory Branch
PO Box 3755
Seattle, WA 98124-3755

Chris Holland, Planning Manager/Land Use
City of Marysville
80 Columbia Avenue
Marysville, WA 98270

WA Dept. of Ecology
Paul Anderson, Wetland Specialist
Shorelands and Environment Program
PO Box 47600
Olympia, WA 98504-7600

RE: Notification of Credit Transfer

Notice is hereby given that on _____, Mitigation Banking Services LLC, representing the *Skykomish Habitat Mitigation Bank* and the *Snohomish Basin Mitigation Bank*, has transferred the following amount of Wetland or Buffer Credits to CITY OF MARYSVILLE (applicant).

Applicant: CITY OF MARYSVILLE
File Number: D-0401
Credits Transferred from the Snohomish Basin Mitigation Bank: 0.86
Credits Transferred from the Skykomish Habitat Mitigation Bank: -0-
Total Number of Credits Transferred to Applicant: 0.86

These credits are to be applied to the following permits:

<u>Permit #</u>	<u>Issue Date</u>	<u>Issuing Regulatory Agency</u>
(To be finalized upon proof of credit transfer)		
NWS-2013-139	Sept. 3, 2013	US Army Corps of Engineers <i>(JD, Isolated Waters)</i>
AO #10330	Nov. 4, 2013	WA State Department of Ecology
PA-12038	Jan. 16, 2013	City of Marysville <i>(SEPA MDNS)</i>

Notice will also be sent to the Snohomish County Auditor per the Mitigation Banking Agreement. The bank credit ledgers have been updated.

Sincerely,

Zachary Woodward
Sales Manager, Mitigation Banking Services LLC.

cc: Permitting Agency(s)
Applicant
Bank Sponsors

EXHIBIT B

Return to:
Victor Woodward
Habitat Bank, LLC
15600 NE 173rd St.
Woodinville, WA 98072

Amended Notice of wetland mitigation credit sale - Snohomish Basin Mitigation Bank.

Amend to AFN # 200608280777

Grantor: Habitat Bank, LLC

Grantee: Habitat Bank, LLC

Legal Description: Ptns of E½ 35-27-06 and W½ 36-27-06, Snohomish County, WA Add'l on P. 2

Parcel # 270636-003-003-00, 270636-003-004-00, 270636-002-004-00,
270635-001-007-00, & portions of 270635-004-001-00 & 270635-004-006-00

Notice is given that on _____, 2013, 0.86/100THS (0.86) mitigation credits have been transferred to the CITY OF MARYSVILLE for the North Marysville Regional Stormwater Pond No. 2 Project, from the Snohomish Basin Mitigation Bank. (Washington State Department of Ecology project No. 9E03)

Project Location: Marysville, Washington

Permit Numbers:

Permit No. 10330 issued Nov. 4, 2013 by WA State Dept. of Ecology

Permit No. NWS-2013-139 issued Sept. 3, 2013 by U.S. Army Corps of Engineers

Permit No. PA12038 issued Jan. 16, 2013 by City of Marysville (SEPA MDNS)

Legal Description:

The southwest quarter of the southwest quarter of Section 36, Township 27 North, Range 6 East, W.M.

M-10-032/Wetland Mitigation/
Addendum to Buy-Sell

1

The northwest quarter of the southwest quarter of Section 36, Township 27 North, Range 6 East, W.M.

That portion of the southwest quarter of the northwest quarter of Section 36, Township 27 North, Range 6 East, W.M., lying southerly of the following described line:

Commencing at the southwest corner of the northwest quarter of said Section 36; thence north $0^{\circ} 46' 59''$ east 1029.88 feet along the westerly line thereof and the true point of beginning of this line description; thence south $88^{\circ} 53' 45''$ east 1352.62 feet to the east line of said subdivision and the end of this described line.

That portion of the southeast quarter of the northeast quarter of Section 35, Township 27 North, Range 6 East, W.M., lying southerly and easterly of the following described line:

Commencing at the southeast corner of the northeast quarter of said Section 35; thence north $0^{\circ} 46' 59''$ east 1029.88 feet along the easterly line thereof and the true point of beginning of this line description; thence north $88^{\circ} 53' 45''$ west 726.76 feet; thence south $1^{\circ} 55' 30''$ east 770.10 feet; thence south $5^{\circ} 10' 17''$ east 257.58 feet to the south line of said southeast quarter of the northeast quarter and the end of this described lined.

That portion of the northeast quarter of the southeast quarter of Section 35, Township 27 North, Range 6 East, W.M., lying easterly of a line that is parallel to, and 100 feet west of, that certain main ditch line running south to north into Pearson Eddy, said ditch more or less bisecting said northeast quarter of the southeast quarter of Section 35.

The easterly 100 feet of the southeast quarter of the southeast quarter of Section 35, Township 27 North, Range 6 East, W.M.

That portion of the northerly 100 feet of the southeast quarter of the southeast quarter of Section 35, Township 27 North, Range 6 East, W.M., lying easterly of a line that is parallel to, and 100 feet west of, that certain main ditch line running south to north into Pearson Eddy, said ditch more or less bisecting said southeast quarter of the southeast quarter of Section 35, except the easterly 100 of said northerly 100 feet.

DATED this _____ day of _____, 2013.

HABITAT BANK, LLC

By [Signature]
ZACH WOODWARD (print name)
Its MANAGER (title)

STATE OF WASHINGTON)
)ss.
COUNTY OF SNOHOMISH)

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

DATED this 15th day of November, 2013.

[Signature]
Susan Walker
(Legibly print name of notary)
NOTARY PUBLIC in and for the State of
Washington, residing at Kirkland
My commission expires 12-5-15

SUSAN M WALKER
Notary Public
State of Washington
My Commission Expires
December 05, 2015