

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

R. Darrin Class
In House Counsel
11815 NE 99th Street, Suite 1200
Vancouver, WA 98682

Grantor: Woodland School District
Grantee: Consolidated Diking Improvement District No. 2 of Cowlitz County, WA
Abbreviated Legal: S11-T5N-R1W, WM
**Assessor's Property Tax
Parcel/Account #:** 508540100
Other Reference Nos: N/A

DRAINAGE DITCH EASEMENT

This Drainage Ditch Easement (Easement) is entered into this _____ day of _____ 2014, between the Woodland School District (School District) and the Consolidated Diking Improvement District No. 2 of Cowlitz County, WA (CDID2).

RECITALS

- A. The School District is the owner of a parcel of real property located in Cowlitz County, Washington, with Tax Parcel Number 508540100 and more particularly described in **Exhibit A** attached and incorporated by reference (School District Parcel);
- B. CDID2 is a special purpose district formed pursuant to Chapter 85 RCW to provide maintenance, enlargement and extension of diking, drainage and sewerage improvements.
- C. A Drainage Ditch currently is located on the School District Parcel as shown generally on **Exhibit C**, and the School District plans to realign the Drainage Ditch to accommodate the School District's new high school project.
- D. CDID2 requires an easement across the School District Property within the Drainage Ditch and along the realigned Drainage Ditch for the purpose of maintaining it. The Easement is legally described in **Exhibit B**, attached and incorporated by reference.

NOW THEREFORE in consideration of the recitals, and mutual covenants and promises contained herein, the parties agree as follows:

1. Easement: The School District hereby grants and conveys to CDID2 a perpetual easement over and across the School District Property described in **Exhibit A**. The Easement is legally described in **Exhibit B**, attached and incorporated by reference, and is for the purpose of maintaining the Drainage Ditch. The Easement includes the Drainage Ditch and additional property adjacent to the Drainage Ditch (Access) as generally shown in **Exhibit C**. The School District agrees that no permanent improvement shall be constructed or placed in the Easement that restricts the Access or the proper functioning of the ditch, nor shall any trees be planted or allowed to grow within the Easement.

2. Scope of Easement: CDID2 shall have the right to enter and exit the Easement to maintain the Drainage Ditch. The School District shall construct the Access with native or imported fill with no or a negligible amount of organic materials. Fill material shall be sufficiently compacted to allow vehicle and equipment access. CDID2 may access the Easement at any time but will endeavor to perform ditch maintenance in the summer months when the material will be driest and there will be fewer disturbances to the activities on the School District Property. CDID2 will maintain the Drainage Ditch as necessary to allow it to function as intended for drainage purposes. CDID2 shall be responsible for repairing the Access that may occur due to improper Ditch maintenance or by equipment that may be used by CDID2 to maintain the Ditch. The School District shall be responsible for maintaining the Access free of any vegetation adjacent to the Drainage Ditch. CDID2 shall not be allowed to improve or place any structures within the Access without the School District's advanced consent. If the Access becomes overgrown with vegetation, the School District shall be responsible for removing such vegetation as is necessary for CDID2 to gain access for Drainage Ditch maintenance purposes. The School District shall be responsible for maintenance and replacement of all facilities, piping, culverts and appurtenances that are adjacent to and tie into the Drainage Ditch. The School District shall install and maintain markers for each culvert entering the ditch except for the culverts under the access roads from Dike Access Road.

3. Hold Harmless and Indemnification: Each party shall be liable to the other party for all damage caused by the first party, its contractors, agents, or employees, to the School District Property. Each party hereby waives all claims against the other party for injury, illness or death of any person or damage to any property in, upon or about School District's Property arising at any time and from any cause whatsoever other than solely by reason of the negligence or willful act of the other party, its employees or contractors. Each party shall hold the other party harmless and defend the other party against any and all claims or liability for any damage to any property or injury, illness or death of any person occurring in or on School District's Property or any part thereof arising at any time from the actions of the first party, its employees or contractors. In addition, each party shall hold the other party harmless from any and all liability arising out of, directly or indirectly, a violation or breach of this Drainage Ditch Easement or violation of any law or regulation with said agreement to hold harmless to include, but not be limited to, any and all attorney fees, court costs, expert fees, testing fees, cleanup costs or disposal costs, fines, penalties, charges, liens or other costs.

4. Run With the Land: This Easement shall run with the land and shall be binding upon the School District Property and its owners and CDID2, their successors and assigns, heirs and all other persons claiming under and through them, and shall be a part of all transfers and

conveyances of the School District Property as if set forth in full in such transfers and conveyances.

5. Entire Agreement: This Agreement constitutes the entire agreement between the parties hereto and neither of the parties shall be bound by any promises, representations or agreements except as are herein set forth or as otherwise memorialized in writing.

6. Venue and Applicable Law: This Agreement shall be interpreted according to the laws of the State of Washington. The exclusive venue for any arbitration herein or litigation shall be Cowlitz County, Washington.

7. Severability: Should any provision or provisions in this Agreement be construed to be invalid or unenforceable, the remaining provisions shall, in any event, be construed to be given full force and effect.

8. Waiver: Failure of either party at any time to require performance of the provisions of this Agreement shall not limit the other party's right to enforce the provision, nor shall any waiver of any breach of any provision constitute a waiver of any succeeding breach of that provision or a waiver of that provision itself.

9. Dispute Resolution: The parties each agree that all claims, counterclaims, controversies, or disputes, whether they are statutory, contract, and/or tort claims which arise out of or are related to this Easement, or which relate to the interpretation or breach of this Easement (collectively referred to as "claims") shall be resolved in accordance with the procedures specified in this Section.

9.1 Negotiated Resolution. The parties will seek a fair and prompt negotiated resolution of claims and shall meet, at least once within 30 days of either party requesting a meeting, to discuss and to seek to resolve such claims, but if this is not successful, all disputes shall be resolved by mediation or by binding arbitration as set forth in Sections 9.2 and 9.3 below, as applicable.

9.2 Mediation. Prior to mediation of any claim, the parties shall have endeavored to resolve disputes through the process set forth in Section 9.1 above. All claims that are not resolved by such process shall be subject to mediation as a condition precedent to arbitration. Such mediation shall be conducted by one mediator selected by the parties, or, if the parties cannot agree on a mediator within 15 days after a request for mediation by either party, the mediator shall be appointed by the presiding judge of the Superior Court for Cowlitz County, Washington. The mediation shall occur within 45 days after a request for mediation is made by either party unless the parties agree otherwise. The parties agree to equally share in the cost of the mediation.

9.3 Arbitration. Prior to arbitration of any claim, the parties shall have endeavored to resolve disputes through the processes set forth in Section 9.1 and 9.2 above, as applicable. All claims that have not been resolved by such processes shall be resolved by binding arbitration. Such arbitration shall be conducted by one arbitrator selected by the parties,

or, if the parties cannot agree on an arbitrator within 15 days after a request for arbitration by either party, the arbitrator shall be appointed by the presiding judge of the Superior Court for Cowlitz County, Washington. The arbitration shall be conducted by and pursuant to the then effective Washington Superior Court Mandatory Arbitration Rules (MAR) but not including the Cowlitz County Local Mandatory Arbitration Rules. Any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. The arbitration shall occur within 45 days after a request for arbitration is made by either party unless the parties agree otherwise.

10. Attorney Fees: If the parties shall have endeavored to resolve disputes through the processes set forth in Sections 9.1, 9.2 and 9.3 above, and one of the parties nonetheless seeks further relief by filing an action in any court, then thereafter, the prevailing party shall be entitled to its reasonable costs, disbursements and attorney fees, together with all expenses which they may reasonably incur in the taking of such judicial action, which shall not include the party's costs through binding arbitration but only those incurred from the commencement of the judicial action.

11. Amendments: This Agreement may be amended, modified, or extended without new consideration, but only by written instrument executed by all parties hereto.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date first written above.

Approved this ___ day of _____, 2014. Approved this ___ day of _____, 2014.

WOODLAND SCHOOL DISTRICT

CONSOLIDATED DIKING IMPROVEMENT
DISTRICT NO. 2 OF COWLITZ COUNTY, WA

By: _____
Name: Michael Green
Title: Superintendent
Date: _____

Jim Donald, Chairman

Randy Behrendsen, Supervisor

Matt Peterson, Supervisor

Approved as to form:

Barry Dahl (WSBA#3309) Date: _____
Attorney for CDID No. 2

Attest:

Department Head Secretary

STATE OF WASHINGTON)
) ss.
COUNTY OF COWLITZ)

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

DATED this _____ day of _____, 2014.

NOTARY PUBLIC FOR WASHINGTON
My Commission Expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF COWLITZ)

I certify that I know or have satisfactory evidence that Jim Donald, Randy Behrendsen, and Matt Peterson are the persons who appeared before me, and said persons acknowledged that (he/she/they) was authorized to execute the instrument and acknowledged it as the Board of Supervisor of the Consolidated Diking District No. 2, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this _____ day of _____, 2014.

NOTARY PUBLIC FOR WASHINGTON
My Commission Expires: _____