Filed for Record at Request of and copy returned to:

Harrang Long Gary Rudnick P.C. Attn: John T. Witherspoon 1001 SW 5th Ave 16th Floor Portland, OR 97204

Real Estate Excise Tax

AFF# OLSMA

Date Pd

Original

Amt Pd

Int Pen

Stevens County Treasurer Deputy

By Schools Date 5-2-11

Auditor File #: 2011 0002998

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STEVENS COUNTY TITLE COMPANY

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STEVENS COUNTY, WASHINGTON

TIM GRAY, AUDITOR

AALLEN

BEACH ACCESS EASEMENT AGREEMENT

This BEACH ACCESS EASEMENT AGREEMENT ("Agreement") is effectively dated the _______, 2010 ("Effective Date"), by and between Deep Lake, LLC, a Washington limited liability company ("Grantor") and Deep Lake Condominium Association, a Washington non-profit corporation, in and of itself and also on behalf of its members ("Grantee").

A. The members of the Grantee own the real property legally described in the attached Exhibit A ("Association Parcel") with an abbreviated legal description of:

PTN GOV LOT 1, S 26, T 39 N, R 41 EWM.

Assessor's Tax Parcel ID Numbers: 5675202, 5675211, 5675212, 5675213, 5675214, 5675215, 5675216

The Association Parcel is not located on the shores of Deep Lake.

B. Grantor owns the real property located across Grizzly Way to the south of the Association Parcel and situated along the shores of Deep Lake, legally described in the attached Exhibit B ("Lot 12") with an abbreviated legal description of:

DEEP LAKE WILDERNESS WEST LOT 12.

Assessor's Tax Parcel ID Number: 621326

C. Grantor also owns the real property situated along the shore of Deep Lake and located further south of Lot 12 legally described in the attached <u>Exhibit C</u> ("<u>Beachfront Parcel</u>") with an abbreviated legal description of:

PTN GOV LOT 2, S 26, T 39 N, R 41 EWM.

Assessor's Tax Parcel ID Number: 5675301

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D. Grantor has created a condominium for the Association Parcel pursuant to a Declaration of Covenants, Conditions, and Restrictions of the Deep Lake Condominium, which declaration is recorded in the real property records of Stevens County. Grantor desires to grant the Grantee an easement for access across Lot 12 to the Beachfront Parcel and an easement on the Beachfront Parcel for the purpose of providing beachfront and lake access to the Grantee and its members, all as set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between Grantee and Grantor as set forth below:

- 1. Grant of Pedestrian Access Easement. Grantor hereby grants to Grantee a non-exclusive easement in gross over and across the portions of Lot 12 as legally described in Exhibit D to this Agreement and the Beachfront Parcel as described in Exhibit F (collectively, the "Access Area") for the purpose of accessing the Beachfront Area (defined below) by the Grantee and the Grantee's members and invitees. The Access Area on Lot 12 is initially fifteen (15) feet wide and the Access Area on the Beachfront Parcel is initially seven (7) feet wide. The Access Area may be relocated within the sole discretion of the Grantor by the Grantor unilaterally recording an amendment to this Agreement which shows the amended Access Area; provided, however, that the amended Access Area must still provide the Grantee and the Grantee's members access to the Beachfront Area from Grizzly Road. The Access Area may be used only for pedestrian access and may not be used by any motorized vehicles.
- 2. Grant of Beach Easement. Grantor hereby grants to Grantee a non-exclusive easement in gross over, under, and across the portions of the Beachfront Parcel as legally described in Exhibit E to this Agreement ("Beach Area") for the use and enjoyment of the Beachfront Area for lounging, water access, dock access, and such other activities as are common to beaches by the Grantee and its members and invitees. Any dock, pilings, and other related property attached to the Beachfront Parcel are not being conveyed by this easement, but the Grantee and may use the dock affixed to the Beachfront Parcel as if it were a part of the "Beach Area," which term includes the dock.
- 3. <u>Easement Rules and Regulations</u>. The use of the Access Area and the Beachfront Area is subject to reasonable rules and regulations adopted by the Grantor, including without limitation rules and regulations adopted regarding noise and noise control, the number of beach users at given times of day, hours of operation, location of swimming area, and number and use of boats. The Grantor reserves the right to limit and restrict the Grantee's rights to use the dock affixed to the Beachfront Parcel including, without limitation, the right to dock boats in specific areas on the dock. Grantee specifically acknowledges, without limiting any other acknowledgments or agreements, that the easements granted in this Agreement are non-exclusive and that the Grantor and the Grantor's successors, invitees, assigns, and others may be entitled to concurrent use of the Access Area and the Beachfront Area.
- 4. Persons Entitled to Use. The easements granted in this Agreement are to be used only by the Deep Lake Condominium Association (and its members and invitees) and only so long as the Grantee continues to manage the condominium on the Association Parcel. The

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easements granted in this Agreement are personal to the Grantee for the use of the Grantee, the Grantee's members, and their invitees. The easements granted in this Agreement do not run with the Association Parcel and may not be assigned. In the event that the condominium terminates, then this easement will automatically also terminate.

- 5. <u>Improvements, Maintenance, and Repair</u>. The Grantor is not obligated to install any improvements or to maintain, repair, or replace any improvements within the Easement Area, the Beachfront Area, or elsewhere. However, nothing in this Agreement limits or shall be construed to limit the Grantor from making improvements and maintaining, repairing, or replacing improvements on Lot 12 or the Beachfront Parcel. The Grantee may construct improvements on the Easement Area or the Beachfront Area only after obtaining the prior written consent of the Grantor, which consent may be unreasonably withheld.
 - (a) <u>Security Improvements</u>. Notwithstanding the foregoing, the Grantee shall construct, after obtaining the prior written consent of the Grantor, such fences, gates, locks, or other security devices as are reasonably necessary for preventing the beach and dock from becoming an attractive nuisance; without limiting the right of the Grantor to construct improvements on the Easement Area and Beachfront Area, the Grantor may, but is not obligated to, also install and maintain fences, gates, locks, and other similar security devices regulating access to the Access Area and the Beachfront Area. The Grantee shall provide the Grantor and the Grantor shall provide the Grantee with copies of all keys or other security devices necessary to access such areas.
 - (b) <u>Dock Maintenance and Costs</u>. The dock affixed to the Beachfront Parcel shall be maintained, repaired, and replaced by the Grantor, but the Grantee shall reimburse the Grantor for all costs associated with such maintenance, repair, and replacement in proportion to the relative use of the dock by the Grantee and the Grantee's members and invitees. The Grantor shall determine the relative use of the dock by the Grantee and the Grantee's members and invitees, which determination is deemed conclusive, final, and binding upon the parties.
 - (c) Grantee's Improvements. Any improvements made to the Beachfront Area by Grantee will be maintained, repaired, and replaced by Grantee and kept by Grantee in a first class condition. Grantee shall ensure that the planning, design, materials, specifications and all other aspects of construction comply with applicable laws and regulations and shall be done in a workmanlike manner. Grantee will not at any time permit any materialman's liens, mechanic's liens, and similar statutory liens associated with the provision of goods or services to stand against Lot 12 or the Beachfront Parcel. Construction on the Beachfront Area may not be accessed through the Access Area and shall not unreasonably interfere with the use and enjoyment of Lot 12 or any other property owned by Grantor. The timing, noise, debris, dust, and waste of such construction is subject to the reasonable rules and regulation of the Grantor.
 - (d) <u>Failure to Maintain, Repair or Replace</u>. In the event that Grantee or any of its members fails to maintain, repair or replace any improvement made by the Grantee as set forth in this Agreement, or in the event that the Grantee fails to pay when

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due its share of the expenses related to the dock as set forth in Section 5(b), above, the Grantor will have the right, but not the obligation, to send a notice to Grantee of such failure. If the failure is not cured within seven (7) days of when the notice is sent, the Grantor will have the right under this Agreement to cure the failure and collect from Grantee all expenses and costs, including attorneys' fees, incurred in curing the failure, together with interest at fifteen percent (15%) per annum (or the highest rate permitted by law, if lower). Additionally, if such costs are not paid within seven (7) days of a demand, this Agreement may be terminated, within the sole discretion of Grantor, and Grantor may record a release and termination of this Agreement in the real property records of Stevens County.

Liability and Indemnification. Grantee shall indemnify, defend, and hold Grantor harmless from and against all claims, demands, suits and causes of action, and the accompanying liabilities, damages, losses, costs and expenses, whether presently known or unknown, or fixed or contingent (including, without limitation, reasonable legal expenses and attorneys' fees with respect to the same) related to or arising from the use of the Access Area and Beachfront Area by Grantee or by Grantee's guests, invitees, licensees, agents, employees, members, officers, directors, or other affiliates, under this Agreement, including without limitation any environmental liability. Grantee further agrees to obtain and maintain during the term of this Agreement, at its sole cost and expense, an insurance policy for comprehensive or general liability arising out of the ownership, use, occupancy or maintenance of the Access Area and Beachfront Area under this Agreement. Such insurance shall initially be for an amount not less than Two Million Dollars (\$2,000,000.00) for injury or death to one person in any one accident or occurrence and for Three Million Dollars (\$3,000,000.00) in the aggregate and shall be for an amount not less than Two Million Dollars (\$2,000,000.00) for property damage. The limits of such insurance will increase from time to time upon the recommendation of an independent third party insurance agent or broker. Such insurance will name as additional insureds the Grantor and such other persons or entities having an insurable interest in Lot 12 or the Beachfront Parcel as the Grantor may designate. Grantee shall provide Grantor upon Grantor's request with a copy of or certificate of each policy required to be obtained or maintained under this Agreement. Each party acknowledges that its obligations under this Section survive and continue in effect after the termination of this Agreement.

7. <u>Miscellaneous Provisions</u>.

- (a) <u>Term.</u> The term of this Agreement is perpetual. In the event that the term violates the rule against perpetuities or any other similar rule or law, then the term of this Agreement will be for later of the time permitted under law, twenty-one years after the last life in being, or, if longer, twenty-one years after the life in being of the youngest lineal descendant of the Queen of England living at the time of this Agreement.
- **(b)** <u>Successors and Assigns</u>. The terms, covenants and conditions contained in this Agreement are binding upon Grantor and any other person having any interest in the Beachfront Parcel and Lot 12, and any legal representatives, successors and assigns.

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- Covenant to Run with Land. Except as may be specifically limited in this Agreement, the easements granted herein are covenants which run with and burden the Beachfront Parcel and Lot 12.
- **Incorporation**. The above recitals and all exhibits to this Agreement are hereby incorporated by this reference. This Agreement, including all exhibits, is the entire agreement between the parties with respect to the subject matter. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties.
- **Recording.** This Agreement may be recorded by any party without the prior written consent of the other.
- No Waiver. The waiver by any party of any right granted to it hereunder shall not be deemed to be a waiver of any other right granted hereunder, nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived. No waiver will be effective unless in writing and executed by the party against whom such waiver is sought.
- Venue and Governing Law. The venue for any suit or action brought in connection with this Agreement shall be in Stevens County in the State of Washington. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington.
- (h) Time of the Essence. Time is of the essence with respect to the performance of all terms, conditions and provisions of this Agreement.
- Not a Public Dedication. Nothing contained in this Agreement shall be deemed to be a dedication of any portion of Lot 12 or the Beachfront Parcel to the general public or for the general public or for any public purposes whatsoever, it being the intention that this grant of easement is strictly limited to and for the purposes expressed in this Agreement.

This Agreement is entered into effective as of the Effective Date.

GRANTOR:

DEEP LAKE, LLC, a Washington limited liability company

William M. Fanning, Managing Member

GRANTEE:

DEEP LAKE CONDOMINIUM ASSOCIATION, a Washington nonprofit

corporation

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STATE OF Washington)	
County of Spokano)	
On this little day of Aure , 2010, before Melinda Budwey, a Notary Public in and for the State of Washington personally appeared WILLIAM M. FANNING, known or identified to me to be a the Member of Deep Lake, LLC, the limited liability company that executed the within ins and the person who executed the instrument on behalf of said limited liability company acknowledged to me that such limited liability company executed the same.	anaging trument
WITNESS my hand and official seal hereto affixed the day and year first above writt	en.
Notary Public for Residing at Spokawe, WA Commission Expires 16, 2002	
STATE OF Washington) : ss County of Apoleuno)	
On this 16th day of And , 2010, before Melivaa Budwee, a Notary Public in and for the State of Lushington per appeared WILLIAM M. FANNING, known or identified to me to be a the President of Lake Condominium Association, the corporation that executed the within instrument person who executed the instrument on behalf of said corporation, and acknowledged to such corporation executed the same.	of Deep and the
GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certififirst above written.	icate
Notary Public (Signature Welinda J Budweg (Print Name OF 16, 2015) My appointment expires: 10/16/20/2	2 (:) (:) (:) (:)

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EXHIBIT "A" BEACH EASEMENT

ENTIRE CONDOMINIUM TRACT JANUARY 5, 2010

A tract of land located in Government Lot 1 of Section 26, Township 39 North, Range 41 E., W.M., Stevens County, Washington, more particularly described as follows:

Beginning at a point on the Southerly boundary of a tract of land described in that deed dated August 31, 1948, recorded in book 136 of Deeds, page 263, said point bears N 88°29'06" W, along the North line of said Section 26, 1455.94 feet and S 1°30'54" W, perpendicular to said North line, 200.00 feet, all from the North quarter corner of said Section 26 (said point also being the Northwesterly corner of the "Wilderness West Homeowners Association" community drainfield); thence S 19°14'36" W, along the Westerly boundary of said community drainfield, 106.94 feet; thence S 0°07'29" W, along the Westerly boundary of said community drainfield, 11.60 feet; thence N 85°50'03" E, along the Westerly boundary of said community drainfield, 31.90 feet; thence S 2°13'31" E, along the Westerly boundary of said community drainfield, 32.39 feet; thence S 78°46'01" W, along the Westerly boundary of said community drainfeld, 6.22 feet; thence S 11°13'59" E, along the Westerly boundary of said community drainfield, 64.00 feet; thence N 78°46'01" E, along the Westerly boundary of said community drainfield, 7.81 feet; thence S 11°13'59" E, along the Westerly boundary of said community drainfield, 73.71 feet to the Southwesterly corner of said "Wilderness West Homeowners Association" community drainfield; thence N 79°53'27" E, along the Southerly boundary of said community drainfield, 3.98 feet; thence S 4°08'40" E 72.91 feet; thence S 49°18'49" E 31.95 feet; thence N 86°29'13" E 102.57 feet to its intersection with the Westerly right of way line of "Deep Lake Boundary Road"; thence Southeasterly, along said Westerly right of way line, along the arc of a curve to the right 326.89 feet (radius= 1402.50 feet, delta= 13°21'16", chord= S 5°39'10" E, 326.15 feet) to its intersection with the Northerly right of way line of "Grizzly Way"; thence N 88°36'19" W, along said Northerly right of way line of "Grizzly Way", 6.76 feet; thence Northwesterly, along said Northerly right of way line of "Grizzly Way", along the arc of a curve to the right 25.67 feet (radius= 25.30 feet, delta= 58°07'53", chord= N 59°32'22" W, 24.58 feet); thence N 30°28'25" W, along the Easterly right of way line of "Grizzly Way" 182.74 feet; thence Northwesterly, along said Easterly right of way line of "Grizzly Way", along the arc of a curve to the left 13.53 feet (radius= 124.70 feet, delta= 6°12'58", chord= N 33°34'54" W, 13.52 feet); thence N 36°41'23" W, along said Easterly right of way line of "Grizzly Way" 180.45 feet; thence Northwesterly, along said Easterly right of way line of "Grizzly Way", along the arc of a curve to the right 36.69 feet (radius= 75.00 feet, delta= 28°01'35", chord= N 22°40'36" W, 36.32 feet); thence N 8°39'48" W, along said Easterly right of way line of "Grizzly Way" 162.99 feet;

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thence Northerly, along said Easterly right of way line of "Grizzly Way", along the arc of a curve to the right 11.98 feet (radius= 75.00 feet, delta= 9°08'55", chord= N 4°05'20" W, 11.96 feet); thence N 0°29'07" E, along said Easterly right of way line of "Grizzly Way" 61.90 feet; thence N 88°09'54" E, along said Easterly right of way line of "Grizzly Way" 25.02 feet; thence N 0°29'07" E, along said Easterly right of way line of "Grizzly Way" 50.04 feet; thence S 88°09'54" W, along said Easterly right of way line of "Grizzly Way" 25.00 feet; thence N 2°02' 22" W 46.09 feet to its intersection with the Southerly boundary of that tract of land described in that deed dated August 31, 1948, recorded in Book 136 of Deeds, Page 263; thence S 88°29' 06" E, along said Southerly boundary, 81.92 feet to the point of beginning.

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EXHIBIT "B" BEACH EASEMENT

WILDERNESS WEST (LP 1-98) - REVISED LOT 12 JANUARY 5, 2010

A tract of land located in Section 26, Township 39 North, Range 41 E., W.M., Stevens County, Washington, more particularly described as follows:

Said tract being revised Lot 12 of "Wilderness West (LP - 1-98)" as recorded on record of survey Auditor's instrument no. 2008-0010175 under Stevens County application and approval COE 015-2008.

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EXHIBIT "C" BEACH EASEMENT

BEACH FRONT (PREVIOUSLY A PORTION OF LOT 12) JANUARY 5, 2010

A tract of land located in Section 26, Township 39 North, Range 41 East, W.M., Stevens County, Washington, more particularly described as follows:

Beginning at a point on the Westerly right of way line of Deep Lake Boundary Road, said point being located Southerly, along the arc of a curve to the right, 30.97 feet (delta= 1°15'55", radius= 1402.50 feet, chord= S 3°39' 25" W 30.97 feet), and S 4°17'23" W 49.00 feet, all from the Northeasterly corner of Lot 12 of "Wilderness West" (LP-1-98); thence S 4°17'23" W, along said Westerly right of way line of Deep Lake Boundary Road, 245.00 feet; thence N 85°42' 37" W, along said Westerly right of way line of Deep Lake Boundary Road, 10.00 feet; thence S 4°17'23" W, along said Westerly line of Deep Lake Boundary Road, 31.56 feet; thence S 89°48'58" W 7.48 feet; thence S 89°48'58" W, 9 feet, more or less, to its intersection with the ordinary high water line of Deep Lake; thence Northerly, along said ordinary high water line, to its intersection with a line extended N 75°05'41" W 26.46 feet, and S 72°05'01" W from the point of beginning; thence N 72°05'01" E 11 feet, more or less, to a point; thence N 72°05'01" E 75.19 feet; thence S 75°05'41" E 26.46 feet to the point of beginning. Said tract containing approximately 0.33 acres.

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EXHIBIT "D" BEACH EASEMENT

LOT 12 PEDESTRIAN EASEMENT JANUARY 5, 2010

A tract of land for pedestrian easement being 15 feet wide and located in Section 26, Township 39 North, Range 41 E., W.M., Stevens County, Washington, more particularly described as follows:

Said easement being the Easterly 15.00 feet of revised Lot 12 (COE 015-2008), of "Wilderness West (L.P. 1-98"), as shown on record of survey Auditor's Instrument No. 2008-0010175 recorded October 23, 2008.

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EXHIBIT "E" BEACH EASEMENT

BEACH FRONT WEST OF GRAVEL ROAD JANUARY 6, 2010

A tract of land located in Section 26, Township 39 North, Range 41 E., W.M., Stevens County, Washington, more particularly described as follows:

Beginning at a point on the Westerly right of way line of Deep Lake Boundary Road, said point being located S 4°17'23" W 192.00 feet from the Southeasterly corner of revised Lot 12(COE 015-2008), of "Wilderness West (L.P. 1-98"), as shown on record of survey Auditor's Instrument No. 2008-0010175 recorded October 23, 2008; thence N 5°57'01" W, along the center line of an existing gravel road, 73.34 feet; thence N 9°20'50" W, along said center line, 53.18 feet; thence N 14°36'04" W, along said center line, 46.18 feet; thence N 32°05'56" W, along said center line, 22.34 feet to its intersection with the Southerly line of said revised Lot 12(COE 015-2008); thence S 72°05'01" W, along said Southerly line of revised Lot 12(COE 015-2008), 75.19 feet; thence S 72°05'01" W, along said Southerly line of revised Lot 12(COE 015-2008), 11 feet, more or less, to its intersection with the ordinary high water line of Deep Lake; thence Southerly, along said ordinary high water line of Deep Lake, 281 feet, more or less, to its intersection with the Westerly extension of the Southerly line of Lot 12 as shown on the plat of "Wilderness West (L.P. 1-98)"; thence N 89°48'58" E, along said Southerly line of Lot 12, 9 feet, more or less; thence N 89°48'58" E, along said Southerly line of Lot 12, 7.48 feet to the Southeasterly corner of said Lot 12; thence N 4°17'23" E, along the Westerly right of way line of Deep Lake Boundary Road, 31.56 feet; thence S 85°42'37" E, along said right of way line, 10.00 feet; thence N 4°17'23" E, along said right of way line, 53.00 feet to the point of beginning.

EXHIBIT "F" BEACH EASEMENT

7 FOOT PEDESTRIAN EASEMENT JANUARY 6, 2010

A tract of land located in Section 26, Township 39 North, Range 41 E., W.M., Stevens County, Washington, more particularly described as follows:

Beginning at a point on the Westerly right of way line of Deep Lake Boundary Road, said point being located N 4°17'23" W 7.93 feet from the Southeasterly corner of revised Lot 12 of "Wilderness West (LP - 1-98)" as recorded on record of survey Auditor's instrument no. 2008-0010175, under Stevens County application and approval COE 015-2008; thence N 4°17'23" W, along said Westerly right of way line of Deep Lake Boundary Road, 7.56 feet; thence S 72°05' 01" W 28.08 feet to the angle corner in the Southerly line of said revised Lot 12; thence S 72° 05'01" W, along the Southerly line of said revised Lot 12, 30.00 feet to its intersection with a line described as follows: (Beginning at a point on the Westerly right of way line of Deep Lake Boundary Road, said point being located Southerly, along the arc of a curve to the right, 30.97 feet (delta= 1°15'55", radius= 1402.50 feet, chord= S 3°39'25" W 30.97 feet), and S 4°17'23" W 241.00 feet, all from the Northeasterly corner of Lot 12 of "Wilderness West" (LP-1-98); thence N 5°57'01" W, along the center line of said roadway easement, 73.34 feet; thence N 9°20'50" W, along the center line of said roadway easement, 53.18 feet; thence N 14°36'04" W, along the center line of said roadway easement, 46.18 feet; thence N 32°05'56" W, along the center line of said roadway easement, 22.34 feet to its intersection with the Southerly boundary of the new Lot 12 as revised in Boundary Line Adjustment Application No. COE 015-2008. Said intersection being located N 75°05'41" W 26.46 feet, and S 72°05'01" W 30.00 feet, all from the Southeasterly corner of said revised Lot 12); thence S 32°05'56" E, along said above described line, 7.22 feet; thence N 72°05'01" E 53.46 feet to the point of beginning.

