

ANNOTATED MODEL AGRICULTURAL CONSERVATION EASEMENT FOR FARMLAND PRESERVATION PROGRAM, RCW 79A.15.130(1)

WITH LAND TRUST AS OPTIONAL CO-GRANTEE

This annotated model agricultural conservation easement is intended as a drafting guide only. Each conservation easement should be tailored to address the objectives of the landowner, funding agencies (e.g., RCO, NRCS), and grantee(s) (the project sponsor or the State of Washington, and sometimes a land trust), as well as the specific agricultural values and any habitat values intended for protection on the subject property.

The annotations in this document identify choices of language and include notes, commentary, and instructions to assist with the use of this document in various situations. These annotations will not appear in the final version of the conservation easement. Where choices of language are identified, the drafter should make the appropriate choice and delete other choices. All annotations, including footnotes, should be removed. Additionally, the drafter should update all cross-references to specific sections within this document that may have been renumbered during the drafting and editing process.¹

When preparing the conservation easement for execution and recording, the drafter should also ensure that the final version complies with statutory formatting requirements for recorded documents. Special attention should be paid to margins² and to legibility, particularly when recording exhibits that feature graphics or difficult-to-read text. If there is any doubt as to the legibility of any page in a document, the local Auditor/Recorder should be consulted to avoid rejection of the document. For details regarding formatting, see “Standard Formatting Requirements for Recording Documents,” provided to RCO in a separate document.

This document has been formatted as follows: Plain text, **bold text**, or *italics* without brackets or braces indicates required text; **[bold text in brackets] (or parentheses)** indicates a note, commentary or instruction; *[text in bracketed italics {or italics in braces}]* indicates sample or optional text; and [plain text in brackets] indicates a description of sample or optional text. All text in footnotes is explanatory only and should not be included in the final version of the conservation easement.

¹ Cross-references can be located by searching this document for the word “Section.” Click “Find” in the “Edit” menu or use the Ctrl+F shortcut.

² For example, under current requirements, the document must be formatted either with a cover sheet on the first page and at least 1-inch margins on all edges, or (if no cover sheet) with a 3-inch top margin on the first page and at least 1-inch margins on all other edges. This document has been formatted with a cover sheet on the first page and 1.1-inch margins on all edges.

AFTER RECORDING RETURN TO:

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

Document Title(s) (or transactions contained therein):

Grant Deed of Agricultural Conservation Easement

Reference Number(s) of Documents assigned or released:

Additional reference numbers on page(s) _____ of document.

Grantor(s) (Last name, first name, initials)

- 1.
- 2.

Additional names are on page(s) _____ of document.

Grantee(s) (Last name first, then first name and initials)

- 1.
- 2.

Additional names are on page(s) _____ of document.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

Additional legal description is on page(s) _____ of document.

Assessor's Property Tax Parcel/Account Number

Assessor Tax # not yet assigned

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

GRANT DEED OF AGRICULTURAL CONSERVATION EASEMENT

This GRANT DEED OF AGRICULTURAL CONSERVATION EASEMENT (“Easement”) is made by _____ [insert GRANTOR³], a _____ [insert marital status of individual(s) or form of entity], having an address of _____ (“Grantor”), in favor of _____ [insert GRANTEE⁴], a _____ [insert form of entity], having an address of _____ (“Grantee”) [if applicable, insert LAND TRUST CO-GRANTEE: , and _____, a Washington nonprofit and corporation, having an address of _____ (“Co-Grantee”)] (collectively “Parties”). [Insert the following unless there are no third party beneficiaries: Each of the following third party beneficiaries (collectively the “Beneficiaries” and individually “Beneficiary”) has certain rights hereunder, including third party right of enforcement: {Insert THIRD PARTY BENEFICIARIES, as appropriate:} The State of Washington, by and through the Washington State Recreation and Conservation Office (“RCO”); and/or the United States, by and through the Natural Resources Conservation Service (“NRCS” or the “United States”).]

1. RECITALS

- 1.1. Grantor is the owner in fee simple of the certain real property (hereinafter, “Protected Property”) located in _____ County, Washington, more particularly described in Exhibit “A” (Legal Description) and shown on Exhibit “B” (Site Map), which are attached to this instrument and incorporated herein by this reference. The Protected Property consists of approximately ____ acres in ____ parcel(s) [and is commonly known as the “_____ Farm/Ranch”].
- 1.2. The Protected Property possesses significant agricultural values of great importance to Grantor, Grantee, [insert if applicable: Co-Grantee,] the people of _____ County, and the people of the State of Washington (collectively, “Agricultural Conservation Values”). The Agricultural Conservation Values include [describe Agricultural Conservation Values, e.g.: agricultural productivity, prime, unique and important agricultural soils {of regional and/or State-wide importance}, the suitability of the Protected Property for producing _____, the size of the commercially productive portion of the Protected Property, existing and potential economic productivity, the viability of the site for continued agricultural production, including farm-to-market access, proximity to roads and utilities, historic structures, water availability, drainage, etc.].

³ Insert landowner’s name(s) or name of project sponsor acquiring fee simple interest.

⁴ Insert name of project sponsor acquiring conservation easement or, if project sponsor is acquiring fee simple interest and RCO is Grantee of conservation easement, the State of Washington, by and through the Washington State Recreation and Conservation Office (“RCO”).

- 1.3. **[Identify Habitat Values, if applicable:** *The Protected Property also possesses significant fish and wildlife habitat values of great importance to Grantor, Grantee, [insert if applicable: Co-Grantee,] the people of _____ County, and the people of the State of Washington (collectively, “Habitat Values”). The Habitat Values include {describe Habitat Values, e.g.: habitat, migratory bird habitat and/or forage areas, and/or other fish and wildlife habitat, including habitat for the _____, a species classified as _____}.*]
- 1.4. The Protected Property consists primarily of farmland (as defined in RCW 79A.15.010(4)) **[insert specific description of farmland/soil characteristics, e.g.:** *whose soils have been classified as {e.g., prime farmland; farmland of statewide importance, etc.} by the Natural Resource Conservation Service, U.S. Department of Agriculture {e.g., because this land has a soil quality, growing season, and moisture supply needed for sustained agricultural production; because of the fertility of its silt loam soils, etc.}].*
- 1.5. The Protected Property contains **[insert other relevant information important for agricultural preservation purposes, e.g.:** *features that make the Property valuable farmland, such as ditches, canals, lakes and reservoirs, topographic features, historic farm identity, historic structures, etc.].*
- 1.6. The Agricultural Conservation Values [*and Habitat Values*] are documented in an inventory of relevant features of the Protected Property on file at the offices of _____ and incorporated herein by this reference (“Baseline Documentation”). The Baseline Documentation consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant. The Parties acknowledge that the Baseline Documentation is complete and accurate as of the date of this Easement. [*The Parties further agree that within three (3) months of the execution of this Easement, a collection of additional Baseline Documentation may be compiled by Grantee, and incorporated into the Easement by this reference. Failure to timely compile the additional Baseline Documentation shall not affect the enforceability or this Easement or any of its provisions.*] The Baseline Documentation may be used to establish that a change in the use or condition of the Protected Property has occurred, but its existence shall not preclude the use of other evidence to establish the condition of the Protected Property as of the date of this Easement. Grantee may use the Baseline Documentation in enforcing provisions of this Easement, but is not limited to the use of the Baseline Documentation to show a change in the use or condition of the Protected Property.
- 1.7. Permanent protection of the Protected Property will further the purposes of the Washington State Farmlands Preservation Account (FPA) established under RCW

79A.15.130(1), which provides that moneys appropriated to the FPA “must be distributed for the acquisition and preservation of farmlands in order to maintain the opportunity for agricultural activity upon these lands.” The legislatively declared policies of the State of Washington in the Washington State Open Space Tax Act, Chapter 84.34 RCW (OSTA), provide that “it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence adequate open space lands for the production of food, fiber and forest crop, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well being of the state and its citizens.” **[Insert the following if there is a local open space tax ordinance (and consult the ordinance for site specific qualifications):** *Under the OSTA, lands eligible for preferential real property tax treatment include lands such as the subject Protected Property where the preservation in its present use would conserve and enhance natural resources and promote conservation of soils. Pursuant to this legislative directive, _____ County has adopted an Open Space Tax Program, Ordinance No. _____, that recognizes the importance of and provides preferential tax treatment for the following resources that occur on the Property: describe resources that receive preferential tax treatment* **[Insert the following language if federal funding is used:** *Permanent protection of the Protected Property will also further the purposes of the federal Farm and Ranch Lands Protection Program, which seeks to protect prime, unique, State-wide or locally important soil from conversion to non-agricultural uses by purchasing interests in land. 16 U.S.C. §§ 3838h and 3838i.]*

- 1.8. This Easement is acquired in part with a grant from RCO pursuant to that certain grant agreement (#_____) between **[insert one of the following: i) {RCO is third party} RCO and Grantee; or ii) {RCO is grantee} RCO and Grantor]** dated _____ (“RCO Grant Agreement”). **[Insert unless RCO is Grantee: RCO is a third-party beneficiary of certain rights under this Easement.]** **[Insert only if federal funds are used:** *This Easement is also acquired in part with funds from the Farm and Ranchland Protection Program, administered on behalf of the United States by the United States Department of Agriculture through the Commodity Credit Corporation and NRCS. By virtue of these funds, NRCS recognizes that purchase of this Easement is in the public interest. NRCS is a third-party beneficiary of certain rights under this Easement.]*
- 1.9. **[Insert if land trust is Co-Grantee:** *Co-Grantee is a Washington nonprofit nature conservancy corporation or association authorized to acquire and hold conservation easement interests under RCW 64.04.130 and RCW 84.34.210.]*
- 1.10. **[Insert one of the following water rights recitals:**
 - (i) **{Easement includes all water rights}** The Parties agree that, in order to maintain the opportunity for agricultural activity upon the Protected Property pursuant to

RCW 79A.15.130(1), it is appropriate to include in this Easement any and all adjudicated and unadjudicated water rights, whether appropriative or riparian, including but not limited to ditches and ditch rights, springs and spring rights, reservoir and reservoir rights, wells and groundwater rights, water allotments, units or shares, memberships, shares, or rights to receive water from any water company, ditch company, or irrigation district, permits, certificates, or claims under RCW Chapter 90.14, and any other types of rights related to the ownership of water, appurtenant to or customarily or historically used or associated with or upon the Property, including but not limited to those specifically described in Exhibit "C" (Water Rights), which is attached to this instrument and incorporated herein by this reference (collectively, the "Water Rights"). For purposes of this Easement, the Water Rights shall also include any and all of the rights associated with the historical and beneficial use of any of the embankments, flumes, headgates, measuring devices or any other structures that are appurtenant to those water rights, together with all easements and rights of way therefor.

or

- (ii) **{Easement includes only Dedicated Water Rights}** The Parties agree that, in order to maintain the opportunity for agricultural activity upon the Protected Property pursuant to RCW 79A.15.130(1), it is appropriate to include in this Easement certain water rights appurtenant to or customarily or historically used or associated with or upon the Protected Property (collectively, the "Dedicated Water Rights"). The Dedicated Water Rights are described in Exhibit "C" (Dedicated Water Rights), which is attached to this instrument and incorporated herein by this reference.

1.11. The Parties intend that the Agricultural Conservation Values [*and Habitat Values*] be preserved and maintained [**insert one of the following: (i) in perpetuity or (ii) for a term of _____ {identify term, at least 25 years} years**] by permitting only those land uses on the Protected Property that do not impair or interfere with the Agricultural Conservation Values [*or Habitat Values*].

1.12. Grantor, as owner of the Protected Property, has the right to protect and preserve the Agricultural Conservation Values [*and Habitat Values*], and desires and intends to transfer such rights to Grantee [**insert one of the following: (i) in perpetuity or (ii) for a term of _____ {identify term, at least 25 years} years, commencing on the Effective Date of this Easement.**]

2. CONVEYANCE AND CONSIDERATION

2.1. For the reasons stated above, and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of Washington

and in particular RCW 64.04.130 and RCW 84.34.210, Grantor hereby voluntarily grants, conveys and warrants, for valuable consideration, the receipt of which is acknowledged hereby, to Grantee **[insert if applicable: and Co-Grantee]** a conservation easement in gross **[insert one of the following: (i) in perpetuity or (ii) for a term of _____ {identify term, at least 25 years} years]** over the Protected Property, consisting of the rights in the Protected Property, hereinafter enumerated, subject only to the title matters set forth in Exhibit D (Permitted Exceptions), which is attached to this instrument and incorporated herein by this reference.

- 2.2. This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130.
- 2.3. Grantor expressly intends that this Easement runs with the land and that this Easement shall be binding upon **[insert one of the following: (i) Grantor's and Grantee's successors and assigns or (ii) Grantor's, Grantee's, and Co-Grantee's successors and assigns]** **[insert one of the following: (i) in perpetuity or (ii) for a term of _____ {identify term, at least 25 years} years]**.

3. PURPOSE

3.1. **Purpose.** The Purpose of this Easement is to protect the Agricultural Conservation Values of the Protected Property **[insert one of the following: (i) forever or (ii) for a term of _____ {identify term, at least 25 years} years]** and prevent any use of the Protected Property that will impair or interfere with its Agricultural Conservation Values, thereby maintaining the opportunity for agricultural activity upon the Protected Property pursuant to RCW 79A.15.130(1). **[Insert if Habitat Values are to be protected: To the extent that the protection of Habitat Values is consistent with maintaining the opportunity for agricultural activity upon the Protected Property, it is within the Purpose of this Easement to protect such Habitat Values by preventing any use of the Protected Property that will impair or interfere with its Habitat Values.]**

3.2. **Stewardship Plan.** To further the Purpose of this Easement, the Parties *[may develop] [have developed]* a plan for stewardship of the Protected Property (the "Stewardship Plan") *[dated _____, on file at the offices of Grantee and incorporated herein by this reference]*. **[Insert if federal funds are used: The Stewardship Plan must be consistent with, and may be developed in conjunction with, the Conservation Plan prepared in consultation with NRCS as provided for in Section 5.2.4.]**

3.3. Interpretation of the Easement

3.3.1. The Parties intend that this Easement be interpreted in a manner consistent with its Purpose.

3.3.2. The Parties intend that this Easement be interpreted to confine the Grantor's use of the Protected Property to such activities that are consistent with the Purpose and terms of this Easement. At the same time, the Parties intend, and this Easement is structured, to give Grantor maximum flexibility and discretion to undertake activities that are consistent with the Purpose and terms of this Easement.

3.4. **No Public Rights Conveyed Through Easement.** The Parties acknowledge that, except as specifically provided herein, Grantor does not grant, expand or extend any rights to the general public through this Easement, including without limitation, any rights of public access to, on or across, or public use of, the Protected Property.

4. **RIGHTS CONVEYED TO GRANTEE [*AND CO-GRANTEE*]**

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

4.1. **Protection.** Grantee shall have the right to identify, protect, preserve, maintain and conserve [**insert one of the following: (i) *in perpetuity* or (ii) *for a term of*** _____ **{identify term, at least 25 years} *years***] and to enhance, restore, or improve by mutual agreement the Agricultural Conservation Values [*and/or Habitat Values*] of the Protected Property.

4.2. **Access by Grantee.** As provided for and limited herein, Grantor hereby grants to Grantee reasonable and non-exclusive access at reasonable times across the Protected Property solely for the purposes of fulfilling Grantee's obligations under this Easement and exercising its affirmative rights under this Easement. Specifically, Grantee shall have the right:

4.2.1. To enter upon, inspect, observe and study the Protected Property, with such persons as Grantee may require, at mutually agreeable dates and times and upon reasonable prior notice to the Grantor, for the purpose of (a) identifying the current uses and practices on the Protected Property and the condition of the Protected Property, and (b) monitoring the uses and activities on the Protected Property to determine whether they are consistent with this Easement.

4.2.2. To enter upon the Protected Property, at a mutually agreeable date and time and upon prior notice to Grantor, to inspect the Protected Property after major natural events occur, such as fires, windstorms, and floods.

- 4.2.3. To enter upon the Protected Property at such other times as are necessary if there is reason to believe that a violation of the Easement is occurring, for the purposes of enforcing the provisions of this Easement. Prior to entry, Grantee must provide Grantor notice, and describe the basis of the reasonable belief that a violation is occurring on the Protected Property.
- 4.2.4. Grantee shall exercise its access rights in compliance with applicable law and in a manner that will not materially disturb or interfere with Grantor's reserved rights, any other person's lawful use of the Protected Property, or Grantor's quiet enjoyment of the Protected Property.
- 4.2.5. Grantor shall not unreasonably withhold or delay its consent to dates and times of access proposed by Grantee.
- 4.3. **Development Rights.** Grantor hereby grants to Grantee all development rights except as specifically reserved herein, and the Parties agree that such rights may not be used on or transferred off of the Protected Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, or (except as expressly permitted herein) used for the purpose of calculating permissible lot yield or density of the Protected Property or any other property.
- 4.4. **Injunction and Restoration.** Grantee shall have the right to prevent, or cause Grantor to prevent, any use of, or activity on, the Protected Property that is inconsistent with the Purpose and terms of this Easement, including trespasses by members of the public, and shall have the right to undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be materially damaged by activities contrary to the provisions hereof, all in accordance with Section 9.
- 4.5. **Enforcement.** Grantee shall have the right to enforce the terms of this Easement, in accordance with Sections 8 and 9.
- 4.6. **Assignment.** Grantee shall have the right to assign, convey, or otherwise transfer Grantee's interest in the Protected Property in accordance with Section 13.
- 4.7. *[Signage. Grantee shall have the right to erect and maintain a sign or other appropriate marker on the Protected Property, visible from a public road, bearing information indicating that the Protected Property is protected by this Easement and held by Grantee. The sign shall also name the funding sources for the acquisition of the Easement to the extent required by the funding sources. The location and design of the sign shall be determined by mutual consent of Grantor and Grantee, which consent shall not be unreasonably withheld. The wording of the information shall be*

determined by Grantee, but shall clearly indicate that the Protected Property is privately owned and not open to the public. Grantee shall be responsible for the costs of erecting and maintaining such sign or marker.]

- 4.8. **[Insert if land trust is Co-Grantee:** *To accomplish the Purpose of this Easement, the rights conveyed to Grantee by this Section 4 are also conveyed to Co-Grantee by this Easement. The limitations imposed by this Section 4 on Grantee's exercise of such rights shall also apply to Co-Grantee's exercise of such rights.]*

5. PERMITTED USES

- 5.1. **General.** Grantor reserves for itself and its successors and assigns, any and all rights not otherwise conveyed to Grantee **[insert if applicable: and Co-Grantee]** under this Easement and any and all uses of, or activities on, the Protected Property that are not inconsistent with the Purpose and terms of this Easement, and that are not prohibited herein. Without limiting the generality of the foregoing, Grantor specifically reserves for itself and its successors and assigns the following uses and activities, which shall be considered permitted uses and activities under the Easement.

- 5.2. **Agricultural Activities.** Grantor may engage in, and allow others to engage in, Agricultural Activities (as defined below) on the Protected Property, as further provided for and limited in this Section and in Section 6.

- 5.2.1. As used herein, "Agricultural Activities" shall mean the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products [*including but not limited to crops commonly found in the community surrounding the Protected Property, field crops, fruits, vegetables, horticultural specialties, livestock or livestock products,*] or the commercial production of berries, grain, hay, straw, turf, seed, or Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140 [, *and all conditions and activities occurring on a farm in connection with such commercial production, including, but not limited to, marketed produce at roadside stands or farm markets; noise; odors; dust; fumes; operation of machinery and irrigation pumps; movement, including, but not limited to, use of current county road ditches, streams, rivers, canals, and drains, and use of water for agricultural purposes; ground and aerial application of seed, fertilizers, conditioners, and plant protection products; employment and use of labor; roadway movement of equipment and livestock; protection from damage by wildlife; prevention of trespass; and construction and maintenance of buildings, fences, roads, bridges, ponds, drains, waterways, and similar features and maintenance of streambanks and watercourses].*

5.2.2. Agricultural Activities shall also include such “Accessory Uses,” as defined in RCW 36.70A.177(3)(b),⁵ that are related to the permitted Agricultural Activities on the Protected Property, that maintain the primacy of, and are subordinate to, the farmland character and use of the Protected Property, that are compatible with the Agricultural Conservation Values, and that provide supplemental income. [*Such Accessory Uses may include, as examples, A, B, and C (insert examples of appropriate accessory uses). Such Accessory Uses do not include, as examples, X, Y, and Z (insert examples of inappropriate accessory uses).*]

5.2.3. All Agricultural Activities shall be carried out in accordance with applicable law and in compliance with the Purpose and terms of this Easement. Grantor retains discretion over the specific character and content of the management decisions and practices necessary to identify, protect, preserve, maintain and conserve [**insert one of the following: (i) in perpetuity or (ii) for a term of _____ {identify term, at least 25 years} years**] and to enhance, restore, or improve the Agricultural Conservation Values consistent with the Purpose and terms of this Easement.

5.2.4. [If federal funds are used, insert the following:

As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor, his heirs, successors, or assigns, shall conduct all agricultural operations on the Protected Property in a manner consistent with a conservation plan prepared in consultation with NRCS and approved by the _____ County Conservation District (“Conservation Plan”). This Conservation Plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12 that are in effect on the Effective Date of this Easement. However, the Grantor may develop and implement a Conservation Plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the Property, with advance notice to the Grantor, in order to monitor compliance with the Conservation Plan.

⁵ **NOTE: RCW 36.70A.177(3)(b) provides that “[a]ccessory uses may include” the following:** “(i) Agricultural accessory uses and activities, including but not limited to the storage, distribution, and marketing of regional agricultural products from one or more producers, agriculturally related experiences, or the production, marketing, and distribution of value-added agricultural products, including support services that facilitate these activities; and (ii) Nonagricultural accessory uses and activities as long as they are consistent with the size, scale, and intensity of the existing agricultural use of the property and the existing buildings on the site. Nonagricultural accessory uses and activities, including new buildings, parking, or supportive uses, shall not be located outside the general area already developed for buildings and residential uses and shall not otherwise convert more than one acre of agricultural land to nonagricultural uses.”

In the event of noncompliance with the Conservation Plan, NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the Conservation Plan, NRCS will inform Grantee of the Grantor's noncompliance. The Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the Conservation Plan following written notification from NRCS that (a) there is a substantial, ongoing event or circumstance of non-compliance with the Conservation Plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Grant based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised Conservation Plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.]

5.3. Stewardship Activities. Grantor may engage in, and allow others to engage in, any activity to monitor, protect and maintain the Agricultural Conservation Values [*and Habitat Values, including but not limited to habitat restoration, enhancement and management activities ("Habitat Activities"),*] [**insert one of the following: i)** with prior written notice to and consent of Grantee; **ii)** pursuant to any Stewardship Plan {or Conservation Plan} covering the Protected Property and agreed to by the parties to the Stewardship Plan {or Conservation Plan}; **or iii)** with prior written notice to and consent of Grantee and pursuant to any Stewardship Plan {or Conservation Plan} covering the Protected Property and agreed to by the parties to the Stewardship Plan {or Conservation Plan}]. [**Insert if applicable: All Habitat Activities on the Protected Property shall be carried out in compliance with the Purpose and terms of this Easement.**]

5.4. Maintenance and Construction of Buildings and Other Structures

5.4.1. Maintenance of Existing Structures. Grantor may maintain, repair, replace or decommission structures, houses, barns, water-pollution-control facilities, water impoundments, fences, corrals, roads, ditches, sloughs, pumps, levees, and other permanent improvements ("Improvements") existing on the Property as of the Effective Date of this Easement, provided that such activities related to existing Improvements are carried out in compliance with the Purpose and terms of this Easement, including the impervious surface limitations provided for in Section 6.6.1. Such Improvements shall include utility systems that support the Improvements such as electric power lines, septic systems, water

storage and delivery systems, telephone and communication cable systems and the like.

5.4.2. Construction of New Structures and Expansion of Existing Structures. Grantor may construct additional Improvements not existing as of the Effective Date of this Easement and may construct expansions or enlargements of Improvements existing on the Property as of the Effective Date of this Easement in compliance with the Purpose and terms of this Easement, subject to the impervious surface limitations and restrictions on new Improvements provided for in Section 6.6.

5.4.3. Reservation of Dwelling Unit(s). Grantor reserves the right to the use of _____ single-family dwelling units(s) on the Land, subject to the impervious surface limitations and restrictions on new Improvements provided for in Section 6.6, for the sole purpose of accommodating the Grantors and their successors in interest to the Land, the farm operator, or the families of such persons, or for accommodating agricultural employees of the owner or operator and their families. No more than _____ dwelling units(s) in total will be permitted regardless of whether the Land is subdivided by the Grantors or by any successor in interest of the Grantors.

5.5. **Water Rights.** The Parties agree that the **[insert Water Rights or Dedicated Water Rights]** must be maintained on the Property to ensure the protection of the Agricultural Conservation Values[*and Habitat Values*]. Grantor may exercise the **[insert Water Rights or Dedicated Water Rights]** by putting them to any beneficial use that is not inconsistent with the Purpose and terms of this Easement, and that is not prohibited herein. Grantor may maintain, repair, and if destroyed, reconstruct any existing facilities relating to the **[insert Water Rights or Dedicated Water Rights]** (such as ditches, wells and reservoirs) with notice to Grantee as provided for in Section 7, provided that such activities are carried out in compliance with the Purpose and terms of this Easement.

5.6. **Recreational or Educational Use.** **[Insert one of the following:**

i) **{Grantor is City/County}:** *Grantor shall not engage in or permit any recreational use of the Protected Property. Grantor may engage in or permit educational activities on the Protected Property; provided, however, that such activities shall be carried out in compliance with the Purpose and terms of this Easement, and in a manner that maintains the primacy of, and remains subordinate to, the farmland character and use of the Protected Property.*

or

- ii) **Grantor is farmer**}: *Grantor may engage in, and allow others to engage in, recreational or educational activities on the Protected Property. Recreational uses are limited to uses such as hiking, fishing, horseback riding, and other forms of recreation that do not require site modification to accommodate motorized, mechanical or electronic accessories. All forms of developed recreation or recreation that adversely impacts the Agricultural Conservation Values {or Habitat Values} are prohibited.*

All recreational and educational activities on the Protected Property shall be carried out in compliance with the Purpose and terms of this Easement, and in a manner that maintains the primacy of, and remains subordinate to, the farmland character and use of the Protected Property.

5.7. **Forestry Use**: Grantor may remove trees from the Protected Property when required for safety, fire protection, salvage purposes, pest control, disease control, restoration, domestic use, or as necessary to benefit Agricultural Activities (the “Forestry Activities”). All Forestry Activities on the Protected Property shall be carried out in compliance with the Purpose and terms of this Easement. Grantor shall not engage in or permit any Forestry Activities that would preclude the opportunity for agricultural activity upon the Protected Property. The provisions of this Section 5.7 shall not apply to the commercial production of Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140.

5.8. **Emergencies**: Grantor may undertake any activities that are necessary to protect health or safety or prevent significant property damage on the Protected Property or are required by and subject to compulsion of any governmental agency; provided, however, that Grantor shall first reasonably attempt to notify Grantee prior to taking such action. If Grantee cannot provide consent, with or without conditions, within such time as is reasonable under the circumstances, Grantor may proceed with such action without consent.

6. PROHIBITED USES AND RESTRICTIONS ON PERMITTED USES

6.1. **General**. Any use of, or activity on, the Protected Property inconsistent with the Purpose or other terms of the 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 the foregoing, the following uses of, or activities on, the Protected Property are either (a) inconsistent with the Agricultural Conservation Values [*and/or Habitat Values*] and Purpose of this Easement and prohibited herein or (b) limited as provided herein to make such uses or activities consistent with the Agricultural Conservation Values [, *Habitat Values*] and Purpose of this Easement.

6.2. **No Conversion to Incompatible Uses.** Grantor shall not convert the Protected Property to industrial or suburban/residential development or to any other use that is incompatible with maintaining the opportunity for agricultural activity on the Protected Property.

6.3. **Limitations on Subdivision.** Grantor shall not legally or in a “de facto” manner subdivide the Protected Property, which shall include, but not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Protected Property is divided into lots, without prior written notice to and consent of Grantee as provided for in Section 7. Such consent shall not be granted unless Grantor demonstrates that the proposed subdivision is consistent with the Purpose and terms of this Easement. *[No subdivision of the Land that reduces any parcel to less than _____ acres shall be permitted.]* Grantor shall incorporate by express reference on the face of any plat, short plat, or other legal instrument by which the Protected Property is divided into lots the following restrictions: i) the terms of this Easement; ii) the number of dwelling units allocated to each subdivided parcel out of the total number of dwelling units specified above; iii) any additional restrictions necessary to meet the impervious surface limit of Section 6.6.1, as determined by Grantee as part of its consent; and iv) any additional restrictions necessary to achieve the Purpose of this Easement, as determined by Grantee as part of its consent. If land possessing water rights is subdivided, a water right of sufficient quantity to support agriculture must be allocated to each parcel created by the subdivision. 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.

6.4. **Water Rights.**

6.4.1. In furtherance of the Purpose of this Easement, Grantor shall cooperate with Grantee to help assure the maintenance of the **[insert Water Rights or Dedicated Water Rights]**.

6.4.2. Except as expressly provided in this section, Grantor shall not transfer, encumber, sell, lease or otherwise separate the **[insert Water Rights or Dedicated Water Rights]** from the Protected Property.

6.4.3. Grantor shall not abandon, relinquish or otherwise lose or forfeit, by action or inaction, any of the **[insert Water Rights or Dedicated Water Rights]**.

6.4.4. Grantor shall take affirmative actions to avoid such abandonment, relinquishment, loss or forfeiture, including but not limited to the following: i) exercising the **[insert Water Rights or Dedicated Water Rights]** by putting them to beneficial use in accordance with Chapter 90.14 RCW; ii) seeking to place or

enroll the **[insert Water Rights or Dedicated Water Rights]** in the Washington State trust water rights program on a temporary basis, provided that any acquisition of the **[insert Water Rights or Dedicated Water Rights]** by the State shall be expressly conditioned to limit its use to instream purposes and its duration to a term no longer than 10 years; or (iii) seeking to lease the **[insert Water Rights or Dedicated Water Rights]** for use on land other than the Protected Property for a term no longer than 10 years, with prior written notice to and consent of Grantee, after obtaining approval in accordance with RCW 90.03.380, 90.03.383, 90.03.390, or 90.44.100 for a temporary transfer or change of the Water Rights; provided, however, that any such lease shall require the lessee to make beneficial use of the **[insert Water Rights or Dedicated Water Rights]** in accordance with Chapter 90.14 RCW and for Agricultural Activities only (collectively “Water Rights Maintenance Actions”). If Grantor is unable to take the Water Rights Maintenance Actions and the **[insert Water Rights or Dedicated Water Rights]** are under threat of abandonment, relinquishment, loss or forfeiture, Grantor shall convey ownership of said **[insert Water Rights or Dedicated Water Rights]** to Grantee for Grantee’s use in order to maintain the opportunity for agricultural activity on the Protected Property [*or elsewhere in _____ (adjacent) County/counties*].

6.4.5. Any relinquishment, loss or forfeiture of the **[insert Water Rights or Dedicated Water Rights]** shall not be deemed or construed to be a waiver of Grantee’s rights under this Easement or to defeat the Purpose of this Easement, and shall not otherwise impair the validity of this Easement or limit its enforceability in any way.

6.5. Limitations on Agricultural Use.

6.5.1. The establishment or maintenance of a commercial feedlot is prohibited. For purposes of this Easement, a commercial feedlot is defined as a permanently constructed confined area or facility within which the land is not grazed or cropped annually, and that is used to receive livestock that are confined solely for the purpose of growing or finishing. However, seasonal confinement of animals raised on the Protected Property and year-round confinement for the commercial production of dairy products on the Protected Property are expressly permitted. Furthermore, nothing in this Section shall prevent Grantor from leasing pasture for the grazing of livestock owned by others.

6.5.2. Grantor shall not engage in, or permit others to engage in, the commercial production of cultivated marine or freshwater aquatic products on the Protected Property.

6.6. Limitations on Improvements. Grantor may build or rebuild Improvements only in a manner consistent with the following absolute limit on Impervious Surfaces (as defined below) and other Improvement-related limitations:

6.6.1. Impervious Surfaces Limitation.

6.6.1.1. As used herein, “Impervious Surfaces” means hard surface areas that either prevent or retard the entry of water into the soil mantle as under natural conditions before development or that cause water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions before development. Impervious Surfaces include, but are not limited to, roofs, walkways, patios, driveways, parking lots, storage areas, areas that are paved, graveled or made of packed or oiled earthen materials, or other surfaces that similarly impede the natural infiltration of surface and storm water. Impervious Surfaces do not include an open uncovered flow control or storage area or water quality treatment facility, provided that the construction and maintenance of such area or facility is consistent with the Purpose and terms of this Easement.

6.6.1.2. The total area of the Protected Property covered by Improvements of any kind and Impervious Surfaces shall be limited to no more than **[insert percentage, e.g.: two percent (2%)]**⁶ of the area of the Protected Property; provided, however, that minor unenclosed agricultural improvements such as corrals, hayracks, headgates, fences, ditches, culverts, stock tanks, or other minor agricultural structures (“Minor Agricultural Improvements”) may be constructed or placed on the Protected Property and not count against this total impervious surface limit. The total area covered by gravel shall be subject to this **[2%]** limitation unless Grantor obtains prior consent from Grantee as provided in Section 7 to increase the percentage of total surfaces covered by gravel and other impervious surfaces above the **[2%]** limitation; provided, however, that the total amount of gravel and other impervious surfaces shall never exceed **[insert percentage, e.g.: six percent (6%)]** of the total area of the Protected Property.

6.6.2. Limitations on Building Envelope Improvements

6.6.2.1. *Building Envelope Improvements for Agricultural Activities.* For all Agricultural Activities within the _____ **[insert number]** building envelopes described and shown on the site map, in Exhibit “B”, together comprising approximately _____ **[insert number]** acres (“Building Envelopes”), Grantor may expand or enlarge Improvements existing on the Property as of the Effective Date of this Easement and may install, build or

⁶ See RCO Manual 10f for guidance regarding impervious surface limitation percentages.

construct, expand, enlarge, maintain, repair, replace or decommission Improvements not existing as of the Effective Date of this Easement

6.6.2.2. *Building Envelope Improvements for Nonagricultural Activities.* For personal and domestic uses and activities and other nonagricultural activities within the Building Envelopes, Grantor may expand or enlarge Improvements existing on the Property as of the Effective Date of this Easement and may install, build or construct, expand, enlarge, maintain, repair, replace or decommission Improvements not existing as of the Effective Date of this Easement if Grantor provides Grantee advance written notice of the proposed Improvements and consent is given by Grantee for such Improvements as provided for in Section 7 [; *provided, however, that the following shall require notice but shall not require consent: insert one or both of the following, as appropriate: (i) telecommunications installations within the Building Envelopes, which may include a suitable support structure, associated antennas, I beams, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of any area of the Protected Property within the Building Envelopes for telecommunications purposes, and/or (ii) wind energy installations within the Building Envelopes, which may include foundations, concrete pads and footings; wind turbine units; guy wires, support fixtures, anchors and fences; buildings needed for maintenance of wind turbine units and maintenance and storage of related equipment; electrical transformers and energy storage facilities; electric transformers, electric distribution and transmission towers and lines either above ground or underground; substations or switching facilities for the purpose of connecting to transmission system; private roads providing access from public roads to the wind energy facilities; and any other items necessary to the successful and secure use of any area of the Protected Property within the Building Envelopes for the production of wind energy.*]

6.6.3. Limitations on New Improvements Outside the Building Envelopes

6.6.3.1. Outside the Building Envelopes, Grantor shall not expand or enlarge Improvements existing on the Property as of the Effective Date or install, build, or construct Improvements or not existing as of the Effective Date, unless such Improvements are consented to in writing in advance by Grantee as provided for in Section 7 and such Improvements are either (a) Temporary in nature (present on the Protected Property for less than one year); or (b) Reasonably necessary for Agricultural Activities (excluding Accessory Uses) in compliance with the total impervious surface limit of Section 6.6.1; provided, however, that Grantor may expand or enlarge Minor Agricultural Improvements without providing such notice or receiving such consent.

6.6.3.2. Nonagricultural Accessory Uses shall not be located outside the Building Envelopes and shall not otherwise convert more than one acre of agricultural land to nonagricultural uses.

6.6.4. **[Insert if applicable: Alternative Energy Production.** Grantor may install, build, or construct Improvements for alternative energy production (micro-hydro, micro-wind or micro-solar power) exclusively for generating energy for the permitted uses on the Protected Property with advance written notice to and consent of Grantee for such Improvements as provided for in Section 7.]

6.6.5. **[Insert if applicable: Limitations on Improvements Related to Advertising.** Commercial signs, billboards, or other improvements installed, built or constructed for the purpose of advertising nonagricultural activities or products are not allowed on the Protected Property, except in connection with the sale or lease of the Protected Property or to state the conditions of access to the Protected Property. Signage consistent with the character of a working farm, and for Agricultural Activities, is allowed on the Protected Property.]

6.7. **Limitations on Mining:** Grantor shall not conduct, engage in, or permit the commercial mining or commercial extraction of soil, sand, gravel, oil, natural gas, fuel, or any other mineral substance, using any surface mining method [, *except to the extent required by applicable law or by the terms of a lease, easement or other encumbrance that existed and was recorded in the records of the County auditor before the Effective Date of this Easement and not subordinated to this Easement*]. Grantor may conduct or engage in mineral extraction if such extraction is not accomplished by any surface mining method and the method of extraction has a limited, localized impact on the land that does not damage, impair or endanger the Agricultural Conservation Values [*or Habitat Values*] of the Protected Property. No extraction permitted pursuant to this Section shall occur without prior written notice to and consent of Grantee as provided for in Section 7. Notice shall include a description of the type of extraction, the areas within which such extraction shall occur, and the anticipated impact thereof.

6.8. **Limitations on Alteration of Land.** Grantor shall not alter the surface of the land, including, without limitation, grading, excavating or removing soil, sand, gravel, rock, stone, aggregate, peat, or sod, except as provided below.

6.8.1. Notwithstanding anything in this Section or Section 6.7 to the contrary, soil, sand, gravel, rock, stone, aggregate, peat or sod may be extracted without further consent from Grantee so long as such extraction is solely for use on the Protected Property, is in conjunction with permitted Agricultural Activities, is revegetated promptly after extraction is complete, and is accomplished in a manner that is consistent with the Purpose and terms of this Easement.

6.8.2. **[Insert if appropriate:** *Notwithstanding anything in this Section to the contrary, prior to extraction activities or developing improvements as referenced in Section 6.6 and Section 6.8.1, Grantor shall comply with all applicable state and federal laws and shall give notice to and receive consent from Grantee as provided for in Section 7 with respect to any alteration of land that would have the effect of physically disturbing a known cultural site{, a survey of which is included in the Baseline Documentation and incorporated herein by this reference}.]*

6.9. **No Significant Erosion or Pollution:** Grantor shall not engage in any use or activity that causes or is likely to cause significant soil degradation or erosion or significant contamination or pollution of any soils or surface or subsurface waters on the Protected Property.

6.10. **Limitations on Waste Disposal.**

6.10.1. Grantor may accumulate and store ashes, garbage or other waste (“Trash”) on the Protected Property only if such accumulation occurs in the normal course of domestic or Agricultural Activities on the Protected Property. Long-term accumulation of Trash (i.e., exceeding one calendar year in time) may occur within areas designated by Grantor with prior notice to and written consent of Grantee as long as such waste is either destined for transfer off-site, or for incineration on-site, or, in the case of biodegradable material, composted on-site.

6.10.2. Grantor shall not otherwise dispose of or Release (or permit the disposal or release of) any Hazardous Substance on the Protected Property. The term “Release” shall mean any release, generation, treatment, disposal, dumping, burying, or abandonment. The term “Hazardous Substance” shall mean 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 which are subject to regulation as hazardous, toxic, dangerous, or harmful or as a pollutant by any federal, state, or local law, regulation, statute, or ordinance, including, but not limited to, petroleum or any petroleum product. The term “Hazardous Substances” shall not include biosolids, herbicides, pesticides, rodenticides, insecticides, and fertilizers applied in accordance with federal, state, and local law. Any storage of Hazardous Substances shall be in accordance with federal, state, and local law.

6.11. **No Compensatory Mitigation.** The creation, enhancement, restoration or preservation of wetlands, fish or wildlife habitat, or other natural resources for the purpose of, directly or indirectly, compensating for or mitigating resource losses or damages in any way associated with actual or potential impacts of development

except for impacts caused by Grantor on the Protected Property (“Compensatory Mitigation”) is prohibited on the Protected Property. Compensatory Mitigation includes, but is not limited to, mitigation banking, conservation banking, and any other sale or exchange of mitigation credits based on the creation, restoration, enhancement and/or preservation of such natural resources within the Protected Property.

6.12. Compliance with Regulatory Requirements. Grantor shall conduct all reserved and permitted uses and activities under this Easement to meet all requirements of federal, state and local statutes, rules, and regulations as they may be amended from time to time.

6.13. Limitation on Transfers.

6.13.1. For purposes of this Section, “Transfer” includes but is not limited to any sale, grant, lease, hypothecation, encumbrance, assignment, conveyance, or any transaction the purpose of which is to effect a sale, grant, lease, hypothecation, encumbrance, assignment, or conveyance.

6.13.2. Except as provided in Section 6.14.3, Grantor shall not undertake or permit any Transfer of any rights in the Protected Property without prior notice to and consent of Grantee as provided for in Section 7; provided, however, that such consent shall not be withheld unless Grantee determines that the proposed Transfer would be inconsistent with the Purpose and terms of this Easement.

6.13.3. The following shall require notice to but shall not require consent of Grantee: i) Any mortgage, deed of trust, or similar document providing security for an indebtedness of Grantor, provided that such security interest shall be subject and subordinate to this Easement; ii) leases for telecommunications installations or wind energy installations within the Building Envelopes, as provided for in Section 6.6.2.2; iii) temporary transfers or leases of the **{insert Water Rights or Dedicated Water Rights}** pursuant to Section 6.4.3; or iv) any gift, bargain, sale or devise of fee simple absolute title to the Protected Property.

7. NOTICE AND CONSENT

7.1. Notice.

7.1.1. **Grantee.** Certain provisions of this Easement require Grantee to give notice to Grantor prior to undertaking certain activities. Whenever such notice is required, and no other timeline for notice is set forth elsewhere in this Easement, Grantee shall provide such notice in writing not less than thirty (30) days prior to the date Grantee intends to undertake the use or activity in question. **[Insert if land trust**

is Co-Grantee and/or there are third party beneficiaries: *Grantee shall provide a copy of any such notice to {Co-Grantee and/or each Beneficiary of this Easement} concurrently with notice to Grantor.*

7.1.2. **Grantor.** Certain provisions of this Easement require Grantor to give notice to Grantee prior to undertaking certain permitted uses and activities (e.g., Sections ____, ____, and ____). The purpose of requiring Grantor to notify Grantee prior to undertaking these permitted uses and activities is to afford Grantee an adequate opportunity to ensure that the use or activity in question is designed and carried out in a manner consistent with the Purpose of this Easement. Whenever such notice is required, and no other timeline for notice is set forth elsewhere in this Easement, Grantor shall provide such notice in writing not less than ninety (90) days prior to the date Grantor intends to undertake the use or activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the terms of this Easement and the Purpose thereof. **[Insert if land trust is Co-Grantee and/or there are third party beneficiaries:** *Upon receipt of such notice, Grantee shall immediately forward a copy to {Co-Grantee and/or each Beneficiary of this Easement}.*

7.2. Consent

7.2.1. **[Insert if land trust is Co-Grantee and/or there are third party beneficiaries:** *Consent by {Co-Grantee and/or Beneficiaries} Required. Wherever in this Easement Grantee's consent is required, such consent is also required of Co-Grantee and/or each Beneficiary to this Easement.*

7.2.2. **Consent Not Unreasonably Withheld.** Wherever in this Easement a Party's [or a Beneficiary's] consent is required, such consent may be withheld only upon a reasonable determination by the consenting party that the action as proposed would be inconsistent with the Purpose or terms of this Easement and cannot be modified to make the proposed action consistent with the Purpose and terms of this Easement. Any consent may include reasonable conditions consistent with the Purpose and terms of this Easement that must be satisfied in undertaking the proposed action, use, or activity.

7.2.3. **Timeline for Consent.** Whenever in this Easement Grantor's or Grantee's consent is required, and no other timeline for consent is set forth elsewhere in this Easement, the party whose consent is required shall grant or withhold its consent in writing within the following time periods:

7.2.3.1. Grantor. Where consent by Grantor is required under this Easement, Grantor shall grant or withhold its consent within sixty (60) days of receipt of a written request for consent.

7.2.3.2. Grantee. Where consent by Grantee is required under this Easement, Grantee shall grant or withhold its consent within **[insert sixty (60) days or, if RCO is Grantee, insert ninety (90) days]** of receipt of a written request for consent.

7.2.3.3. **[Insert if land trust is Co-Grantee: Co-Grantee.** Where consent by Co-Grantee is required under this Easement, Co-Grantee shall grant or withhold its consent within thirty (30) days of receipt of Grantee's written decision to grant or withhold consent or within ninety (90) days of receipt of Grantor's written request for consent, whichever comes later.]

7.2.3.4. **[Insert unless there are no third party beneficiaries: Beneficiaries.** Where consent by any Beneficiary is required under this Easement, the Beneficiary shall grant or withhold its consent within thirty (30) days of receipt of Grantee's written decision to grant or withhold consent or within ninety (90) days of receipt of Grantor's written request for consent, whichever comes later.]

7.2.4. **Failure to Grant or Deny Consent Within the Required Time.** When consent is required under this Easement, and when such consent is not granted or denied within the time period and manner set forth in this Section 7, the party requesting consent may conclusively assume the other party's consent of the proposed action, use, or activity in question. The Parties *[and each of the Beneficiaries]* agree that failure to grant or withhold consent within the required time on any proposed action, use or activity shall not be deemed or construed to be a waiver of Grantee's **[if applicable, insert one of the following: (i) or Co-Grantee's (ii) or any Beneficiary's (iii) , Co-Grantee's, or any Beneficiary's]** rights under this Easement with respect to any future proposed action, use or activity.

7.3. **Optional consultation.** If Grantor is unsure whether a proposed use or activity is prohibited by this Easement, Grantor may consult Grantee by providing written notice to Grantee describing the nature, scope, design, location, timetable, and any other material aspect of the proposed use or activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the Purpose of this Easement and to provide comments thereon to Grantor. This Section 7.3 does not itself impose a requirement of prior consent of the activity described in any such notice.

7.4. **Addresses for Notices.** Any notice, demand, request, consent, concurrence, approval, or communication that any party desires or is required to give to the other shall be in writing either served personally or sent by registered mail or overnight courier with

proof of delivery, addressed as follows (or to such other address as any party from time to time shall designate by written notices to each other party):

To Grantor: [name]
[address1]
[address 2]
[city, state zip]
[phone]
[fax]

To Grantee: [name]
[address1]
[address 2]
[city, state zip]
[phone]
[fax]

[Insert if land trust is Co-Grantee:

To Co-Grantee:[name]
[address1]
[address 2]
[city, state zip]
[phone]
[fax]]

[Insert unless RCO is Grantee:

To RCO: [name]
[address1]
[address 2]
[city, state zip]
[phone]
[fax]]

[Insert if NRCS is third party:

To NRCS: State Conservationist
U.S. Natural Resources Conservation Service
Washington State Office
[address1]
[address 2]
[city, state zip]
[phone]
[fax]]

8. DISPUTE RESOLUTION

8.1. Preventive Discussions.

8.1.1. **[Insert one of the following: (i) Grantor and Grantee will promptly give the other notice of problems or concerns arising in connection with the other's actions under this Easement (ii) Grantor, Grantee, and Co-Grantee will promptly give the other Parties notice of problems or concerns arising in connection with the others' actions under this Easement]** or the use of or activities or conditions on the Protected Property, and will meet as needed, but no later than fifteen (15) business days after receipt of a written request for a meeting, to minimize the same.

8.1.2. **[Insert if third party invitation is desired: Grantee shall invite each Beneficiary to this Easement to such preventive discussion meetings provided for in this Section 8.]**

8.2. **Mediation.** If the Parties disagree as to the consistency of any proposed use or activity with the Purpose or terms of this Easement and the Parties are unable to resolve such disagreement through unassisted preventive discussions between themselves *[and each Beneficiary to this Easement]*, and if Grantor agrees not to proceed with the use or activity pending resolution of the dispute, *[insert one of the following: (i) Grantor or Grantee (ii) Grantor, Grantee, or Co-Grantee]* may refer the dispute to mediation by request made in writing upon the other *[and with notice to RCO {and NRCS}]* (who have full discretion to participate or not to participate in the mediation). Within ten (10) business days of the receipt of such a request, the parties to the mediation ("Mediation Parties") shall select a single impartial mediator. Mediation shall then proceed in accordance with the following guidelines:

8.2.1. **Purpose.** The purpose of the mediation is to: (a) promote discussion among the Mediation Parties; (b) assist the Mediation Parties to develop and exchange pertinent information concerning the issues in dispute; and (c) assist the Mediation Parties to develop proposals which enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or de facto modification or amendment of the terms, conditions or restrictions of this Easement.

8.2.2. **Participation.** The mediator may meet with the Mediation Parties and their counsel jointly or ex parte. The Mediation Parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of all Mediation Parties with settlement authority will attend mediation sessions as requested by the mediator.

8.2.3. **Confidentiality.** All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the Mediation Parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party. Records of mediation communications shall be exempt from the requirements of Chapter 42.56 RCW (Washington State Public Records Act) to the extent provided for in Chapter 7.07 RCW (Washington State Uniform Mediation Act).

8.2.4. **Time Period.** Neither party shall be obligated to continue the mediation process beyond a period of sixty (60) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.

8.2.5. **Costs.** The costs of the mediator shall be borne equally by the Parties; the Mediation Parties shall bear their own expenses, including attorney's fees, individually.

8.3. **Arbitration.** **[Insert one of the following: (i) *The Parties and each Beneficiary may by mutual agreement submit disputed matters to arbitration upon such rules of arbitration as Grantor, Grantee, and each Beneficiary may agree; or (ii) {if no third party beneficiaries} The Parties may by mutual agreement submit disputed matters to arbitration upon such rules of arbitration as the Parties may agree.]***

9. **GRANTEE'S [AND CO-GRANTEE'S] REMEDIES**

9.1. **Notice of Non-Compliance.** If **[insert one of the following: (i) *Grantee determines (ii) Grantee or Co-Grantee determine]*** that the Grantor is in violation of the terms of this Easement or that a violation is likely to occur, Grantee *[or Co-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 or terms of this Easement, to restore the portion of the Protected Property so injured to its prior or potential condition in accordance with a plan to which **[insert one of the following: (i) *Grantee has given consent (ii) Grantee and Co-Grantee have given consent]***.

9.2. **Grantor's Failure to Respond.** Grantee *[or Co-Grantee]* may bring an action as provided in Section 9.3 if Grantor:

9.2.1. Fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee[*or Co-Grantee*];

9.2.2. Under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period; or

9.2.3. Fails to continue diligently to cure such violation until finally cured.

9.3. **Grantee's [or Co-Grantee's] Action.** Grantee [*or Co-Grantee*] may bring an action at law or in equity, or both, in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary and as allowed under the applicable civil rules, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any of the Agricultural Conservation Values [*or Habitat Values*] protected by this Easement, including damages for the loss of the Agricultural Conservation Values [*and/or Habitat Values*]; and to require the restoration of the Protected Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, [**insert one of the following: (i) Grantee, in its sole and absolute discretion (ii) Grantee or Co-Grantee, in their sole and absolute discretion**], may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property [**insert if land trust is Co-Grantee ; provided, however, that Co-Grantee shall obtain Grantee's {insert if RCO is not Grantee: and RCO's} consent before applying any such damages.**] All such actions for injunctive relief may be taken without Grantee [*or Co-Grantee*] being required to post bond or provide other security.

9.4. **Immediate Action Required.** Notwithstanding any other provision of this Easement, if [**insert one of the following: (i) Grantee, in its sole and absolute discretion, determines (ii) Grantee or Co-Grantee, in their sole and absolute discretion, determine**] that circumstances require immediate action to prevent or mitigate significant damage to the Agricultural Conservation Values [*and/or Habitat Values*], [**insert one of the following: (i) Grantee may pursue its remedies (ii) Grantee or Co-Grantee may pursue their remedies**] under this Section 9 without prior notice to Grantor, without participation in dispute resolution as provided for in Section 8, or without waiting for the period provided for cure to expire.

9.5. **Nature of Remedy.** Grantee's [*and Co-Grantee's*] rights under this Section 9 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's [*and Co-Grantee's*] remedies at law for any violation of the terms of this Easement are inadequate, and that Grantee [*and Co-Grantee*] shall be entitled to the injunctive relief described in this Section 9 both prohibitive and mandatory, in addition to such other relief to which Grantee [*and Co-*

Grantee] may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's [and Co-Grantee's] remedies described in this Section 9 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. The provisions of Section 9.6 shall not be interpreted to preclude Grantee [or Co-Grantee] from obtaining injunctive relief.

9.6. Damages. Inasmuch as the actual damages to the Agricultural Conservation Values [and/or Habitat Values] that could result from a breach of this Easement by Grantor would be impractical or extremely difficult to measure, the Parties agree that the money damages [insert one of the following: (i) Grantee is entitled to recover (ii) Grantee and/or Co-Grantee are entitled to recover] from Grantor shall be, at Grantee's election, the higher of [insert one of the following:

i) **{RCO is Grantee}** (i) the amount of economic gain realized by Grantor from violating the terms of the Easement; (ii) the cost of restoring any Agricultural Conservation Values {and/or Habitat Values} that have been damaged by such violation; (iii) an amount equal to the fair market value of this Easement, which shall be determined as provided in Section 11.3 and distributed as provided in Section 11.4; or (iv) an amount equal to the Total Project Cost as specified in the RCO Grant Agreement with interest due and payable from the date of breach at the rate provided for in RCW 43.17.240, as may be amended from time to time. In the event Grantee {or Co-Grantee} chooses the second of these four measures, Grantor agrees to allow **{insert one of the following: (a) Grantee, its agents or contractors, (b) Grantee, Co-Grantee, their agents or contractors,}** to enter upon the Protected Property and conduct restoration activities. In the event that Grantee {or Co-Grantee} chooses the third or fourth of these four measures, **{insert one of the following: (a) Grantee agrees that it will (b) Grantee and Co-Grantee agree that they will}** follow the dispute resolution process and remedies described in Sections 8 or 9 before exercising this right, unless legally compelled to do otherwise. Any amounts due and owing Grantee {or Co-Grantee} under this paragraph shall be due and owing within 120 days of receiving a written demand for repayment by Grantee {or Co-Grantee}. Upon repayment of such amount to Grantee {and/or Co-Grantee, as the case may be}, the Parties agree to prepare and record {, with NRCS's consent (which shall not be unreasonably withheld), } a deed amendment to release Grantor from any further obligations to Grantee {and Co-Grantee} under this Easement.]

or ii) **{RCO is third party}** (i) the amount of economic gain realized by Grantor from violating the terms of the Easement or (ii) the cost of restoring any Agricultural Conservation Values {and/or Habitat Values} that have been damaged by such violation. In the event Grantee {or Co-Grantee} chooses the second of these two measures, Grantor agrees to allow **{insert one of the following: (a) Grantee, its agents or contractors, (b) Grantee, Co-Grantee, their agents or contractors,}** to enter upon the Protected Property and conduct restoration activities.]

- 9.7. **Costs of Enforcement.** In the event [**insert one of the following: (i) Grantor or Grantee (ii) Grantor, Grantee, or Co-Grantee**] finds it necessary to bring an action at law or other proceeding against the other party to enforce or interpret any of the terms, covenants, or conditions of this Easement, the prevailing party in any such action or proceeding shall be paid all costs and reasonable attorneys' and consultants' fees by the other party and all such costs and attorneys' and consultants' fees shall be included in any judgment secured by such prevailing party.
- 9.8. **Grantee's Discretion.** Enforcement of the terms of this Easement shall be at the discretion of the Grantee [*and Co-Grantee*], and any forbearance by Grantee [*or Co-Grantee*] to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee [*or Co-Grantee*] of such term or of any of Grantee's [*or Co-Grantee's*] rights under this Easement. No delay or omission by Grantee [*or Co-Grantee*] in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.
- 9.9. **Waiver of Certain Defenses.** Grantor acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by legal 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 [**insert one of the following: (i) Grantee or its successors in interest (ii) Grantee, Co-Grantee, or their successors in interest**] under or pertaining to this Easement based upon abandonment, adverse possession or prescription relating to the Protected Property or this Easement. Except for the foregoing, Grantor specifically retains any and all rights it has under the law as owner of the Protected Property, including, without limitation, the right to bring claims against Grantee [*or Co-Grantee*] for any breach by Grantee [*or Co-Grantee*] of the terms of this Easement.
- 9.10. **Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee [*or Co-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 actions by a trespasser upon the Protected Property or causes beyond Grantor's control, including, without limitation, natural disaster, fire, flood, storm, pest infestation, earth movement, and climate change, and 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, and Grantor has not undertaken suit itself, Grantor agrees, at Grantee's [*and Co-Grantee's*] option, to assign its right of action to Grantee [*and Co-Grantee*] or to appoint [**insert one of the following: (i) Grantee its attorney**

in fact, (ii) Grantee and Co-Grantee its attorneys in fact,] for purposes of pursuing enforcement action against the responsible parties.

9.11. **Compliance Certificates.** Upon request by Grantor, Grantee [*and Co-Grantee*] shall, as soon as possible and no later than thirty (30) days after receipt of such request, execute and deliver to Grantor any document, including an estoppel certificate, which certifies, to the best of Grantee's [*and Co-Grantee's*] knowledge, Grantor's compliance or lack thereof with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as requested by Grantor. Such certification shall be limited to the condition of the Protected Property as of Grantee's [*and Co-Grantee's*] most recent inspection. If Grantor requests more current documentation, Grantee [*or Co-Grantee*] shall conduct an inspection, at Grantor's expense, within forty-five (45) days of receipt of Grantor's written request and payment therefor. **[Insert unless there are no third party beneficiaries: Any Beneficiary to this Easement shall not be estopped from claiming or enforcing a violation of this Easement unless such Beneficiary has also executed the Compliance Certificate.]**

10. LIABILITIES, TAXES, AND ENVIRONMENTAL COMPLIANCE

10.1. **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. Such insurance shall include Grantee's interest, name Grantee as an additional insured, and provide for at least thirty (30) days notice to Grantee before cancellation and that the act or omission of one insured will not invalidate the policy as to the other insured party. The Parties release and relieve the other, and waive their entire right to recovery for loss or damage to the extent that the loss or damage is covered by the injured party's insurance. This waiver applies whether or not the loss is due to the negligent acts or omissions of Grantor or Grantee.}*] Grantor remains solely responsible for obtaining any applicable governmental permits and approval for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Protected Property free of any liens arising out of any work performed for, material furnished to, or obligations incurred by Grantor; provided that the Protected Property shall be deemed to be free of such liens if i) Grantor or Grantee, as the case may be, is diligently challenging the application of such liens to the Protected Property; or ii) such liens are subordinated to this Easement and do not require any action or inaction inconsistent with the Purpose and terms of this Easement.

10.2. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority (collectively “taxes”), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

10.3. **Liability. [insert one of the following:**

i) { indemnification by Grantor only} *Grantor shall hold harmless, indemnify, and defend {insert one of the following: (a) Grantee and its members, directors, officers, employees, agents, and contractors (b) Grantee, Co-Grantee, and their members, directors, officers, employees, agents, and contractors (c) Grantee, each Beneficiary to this Easement, and their members, directors, officers, employees, agents, and contractors (d) Grantee, Co-Grantee, each Beneficiary to this Easement, and their members, directors, officers, employees, agents, and contractors} (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 injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter (including the release of hazardous or toxic substances) related to or occurring on or about the Protected Property that is not a consequence of any action or omission of any of the Indemnified Parties on or about the Protected Property.*

or ii) {mutual indemnification} *Each party to this Easement shall be responsible for its own acts and/or omissions and those of its members, directors, officers, employees, agents, and contractors. No party to this Easement shall be responsible for the acts and/or omissions of entities or individuals not a party to this agreement.]*

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

10.4.1. Grantor and the Protected Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Protected Property and its use;

10.4.2. 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 or are designated as, hazardous, toxic, dangerous, or harmful 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 by any federal, state or local law, regulation, statute, or ordinance;

10.4.3. 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

10.4.4. There is no pending or threatened litigation affecting the Protected Property or any portion of the Protected Property that will materially impair the Agricultural Conservation Values [*or Habitat 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.

10.5. **Remediation.** If, at any time, there occurs, or has occurred, a Release in, on, or about the Protected Property of a Hazardous Substance, Grantor agrees to take or compel responsible third parties to take all steps required under applicable law and necessary to assure its containment and remediation, including any cleanup that may be required (except that the use of institutional controls shall not be allowed without Grantee's consent), unless the Release was caused by Grantee, in which case Grantee shall be responsible for such remediation to the extent the Release was caused by Grantee. At its discretion, Grantee may assist Grantor in compelling third parties to contain and remediate any such Release.

10.6. **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 [*or any Beneficiary to this Easement*] to exercise physical or 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 operator with respect to the Protected Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").

11. SUBSEQUENT TRANSFER OR EXTINGUISHMENT

11.1. **Extinguishment.**

11.1.1. 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 of competent jurisdiction.

11.1.2. The amount of the proceeds to which Grantee [*and any Beneficiary to this Easement*] 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 11.3. **[Insert one of the following: i) {RCO is third party}: Grantee shall use all such proceeds for the acquisition of property interests that are substantially equivalent to those conveyed by this Easement. Grantee shall consult with and receive the approval of RCO {and NRCS} in the selection of any replacement property interests. Upon acquisition of such replacement property interests, Grantee shall convey to RCO {and NRCS} the same or substantially equivalent rights as provided for in this Easement; or ii) {RCO is Grantee} Grantee shall use all such proceeds in a manner consistent with the Purpose of this Easement.]**

11.1.3. In granting this Easement, Grantor has considered the fact that any use of the Property that is prohibited by this Easement, or any other use as determined to be inconsistent with the Purpose of this Easement, may become economically more valuable than permitted uses. It is the intent of both Grantor and Grantee that such circumstances shall not justify the termination or extinguishment of this Easement. Grantor's inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.

11.2. **Condemnation.** If the Easement is taken, in the whole or in the part, by the exercise of the power of eminent domain, **[insert one of the following: i) Grantee and RCO; ii) Grantee and NRCS; or iii) Grantee, RCO and NRCS]** shall be entitled to compensation in accordance with Section 11.3, for the value of the Easement taken; and the Grantor shall be entitled to compensation in accordance with applicable law for the value of the underlying fee title and improvements taken. In the event that Section 11.3. violates applicable law, then the proceeds to Grantor, **[insert one of the following: i) Grantee and RCO; ii) Grantee and NRCS; or iii) Grantee, RCO and NRCS]** shall be divided in accordance with applicable law. **[Insert unless RCO is Grantee: In the event that Grantee is the recipient of the proceeds from any condemnation, then Grantee shall disburse to RCO and the United States their respective shares of the proceeds pursuant to Section 11.4 as soon as is practicable.]**

11.3. **Valuation**

11.3.1. This Easement constitutes a real property interest immediately vested in Grantee. For purposes of this Section, the Parties stipulate that this Easement has a fair market value determined by multiplying (a) the then fair market value of the Protected Property unencumbered by the Easement (minus any increase in

value attributable to improvements on the Protected Property), at the time of termination or extinguishment, as determined by an appraisal that meets RCO requirements for appraisals, by (b) the ratio of the value of the Easement at the time of this grant to the value of the Protected Property, unencumbered by the Easement, at the time of this grant.

11.3.2. For purposes of this Section, the Parties agree that the ratio of the value of the Easement to the value of Grantor's property unencumbered by the Easement **[insert one of the following: i) is _____ and shall remain constant.; or ii) is evidenced by that certain real property appraisal prepared by _____, dated _____, on file with Grantee. This ratio is _____ (e.g., 0.375) and shall remain constant.]**

11.4. **Distribution of Proceeds.** In the event of extinguishment of this Easement pursuant to Section 11.1, condemnation of this Easement pursuant to Section 11.2, or damages received by Grantor in an amount equal to the fair market value of this Easement pursuant to Section 9.4, any proceeds attributable to the value of the Easement shall be distributed as follows:**[e.g., Project Funding ratio specified in Project Agreement]** RCO is entitled to _____%, _____ is entitled to _____%, and _____ is entitled to _____% of any such proceeds.

11.5. **Subsequent Transfers.** Grantor agrees to: (1) incorporate by express reference the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property; and (2) describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property. Grantor further agrees to give written notice to the Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or such transferee's representative. The failure of the Grantor to perform any act required by this Section 11 shall not impair the validity of this Easement or limit its enforceability in any way.

12. AMENDMENT

12.1. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the Parties are free to jointly amend this Easement **[insert unless there are no third party beneficiaries: provided that the Parties first obtain the written consent of each Beneficiary to this Easement]**. Any such amendment shall be consistent with the Purpose of this Easement, shall not affect the qualification of this Easement or the status of Grantee **[or Co-Grantee]** under any applicable laws, shall not shorten the duration of this Easement and shall be recorded in the official records of _____ County, Washington, and any other jurisdiction in which such recording is required.

13. ASSIGNMENT

13.1. Assignment.

13.1.1. *Grantee's Interest.* Grantee's interest in this Easement is transferable [**insert unless RCO is Grantee:** *with prior written notice to and consent of RCO {and NRCS}*], but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified holder at the time of transfer under RCW 64.04.130, as amended, and a qualified recipient of grant funds from the farmlands preservation account under RCW 79A.15.139. [**Insert unless RCO is Grantee:** *Grantee shall not assign this Easement without notice to and consent of {insert one of the following: i) Grantor and RCO; or ii) Grantor, RCO and NRCS}, which consent shall not be unreasonably withheld.*] As conditions of such transfer, Grantee shall require that assignee (a) continue to carry out the Purpose of this Easement and (b) comply with the terms of the RCO Grant Agreement, as described in Section 14. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment. The assignment shall not be valid without such notice; provided, however, that the failure of Grantee to give such notice shall not impair the validity of this Easement or limit its enforceability in any way.

13.1.2. [**Insert if land trust is Co-Grantee:** *Co-Grantee's Interest.* Co-Grantee's interest in this Easement is transferable, but Co-Grantee may assign its rights and obligations under this Easement only to an organization that is a Washington nonprofit nature conservancy corporation or association authorized to acquire and hold conservation easement interests under RCW 64.04.130 and RCW 84.34.210, as amended. Co-Grantee shall not assign this Easement without notice to and consent of RCO, which consent shall not be unreasonably withheld. As conditions of such transfer, Co-Grantee shall require that assignee (a) continue to carry out the Purpose of this Easement and (b) comply with the terms of the RCO Grant Agreement, as described in Section 14. Co-Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment. The assignment shall not be valid without such notice; provided, however, that the failure of Grantee to give such notice shall not impair the validity of this Easement or limit its enforceability in any way.

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

13.3. [**Insert this Section unless RCO is Grantee:** *Succession.* *If at any time it becomes impossible for Grantee to ensure compliance with the covenants contained herein and Grantee has not named a successor organization, or the Grantee shall*

cease to exist, then Grantee's rights and duties hereunder shall become vested and fall upon RCO, who may then assign { , with NRCS's consent (which shall not be unreasonably withheld),} Grantee's rights and duties hereunder to an organization with a similar mission to that of Grantee.]

14. [Insert this Section unless RCO is Grantee: RCO THIRD PARTY RIGHT OF ENFORCEMENT

- 14.1. *RCO is hereby granted third party right of enforcement of this Easement. As such, RCO may exercise all of the rights and remedies provided to Grantee herein, and is entitled to all of the indemnifications provided to Grantee in this Easement. **{Insert one of the following: (i) RCO and Grantee (ii) RCO, Grantee, and Co-Grantee}** each have independent authority to enforce the terms of this Easement; provided, however, that RCO expects that Grantee [and Co-Grantee] shall have primary responsibility for monitoring and enforcement of the Easement. In the event that **{Insert one of the following: (i) RCO and Grantee (ii) RCO, Grantee, and/or Co-Grantee}** do not agree as to whether the Grantor is complying with the terms of the easement, RCO or Grantee may proceed with enforcement actions without the consent of the other. If RCO elects to enforce the terms of this Easement, it shall first follow the dispute resolution process and remedies described in Sections 8 and 9 above; provided, however, that RCO shall not be obligated to repeat any non-judicial dispute resolution steps already taken by Grantee.*
- 14.2. *This third party right of enforcement does not extend to any other third party and will automatically transfer to another State agency charged with maintaining, preserving and/or restoring agricultural lands in the event RCO is dissolved or reorganized.*
- 14.3. *In the event that the Easement is transferred or assigned without the consent of RCO, which consent shall not be unreasonably withheld, RCO may require that Grantee pay to RCO, at RCO's election, the higher of (i) an amount equal to the fair market value of this Easement, which shall be determined as provided in Section 11.3 and distributed as provided in Section 11.4; or (ii) an amount equal to the Total Project Cost as specified in the RCO Grant Agreement with interest due and payable from the date of breach at the rate provided for in RCW 43.17.240, as may be amended from time to time.*
- 14.4. *In the event that the Protected Property is used by Grantor in a manner that is not consistent with the Purpose of this Easement or the terms of the RCO Grant Agreement, RCO shall have the right, in addition to any other remedies described in this Easement, to require that Grantor pay to RCO, at RCO's election, the higher of (i) an amount equal to the fair market value of this Easement, which shall be determined as provided in Section 11.3 and distributed as provided in Section 11.4;*

or (ii) an amount equal to the Total Project Cost as specified in the RCO Grant Agreement with interest due and payable from the date of breach at the rate provided for in RCW 43.17.240, as may be amended from time to time. Any costs, fees or damages paid by Grantor for enforcement of this Easement or restoration of the Conservation Values pursuant to Section 9 shall be deducted from this amount. RCO agrees that it will follow the dispute resolution process and remedies described in Sections 8 and 9 before exercising this right, unless legally compelled to do otherwise. Any amounts due and owing RCO under this paragraph shall be due and owing within 120 days of receiving a written demand for repayment by RCO. Upon Grantor's repayment of such amount to RCO, Grantee and RCO agree to prepare and record, a deed amendment to release Grantor from any further obligations to RCO or Grantee under this Easement.]

15. [Insert this Section if federal funding is used: RIGHTS OF THE UNITED STATES OF AMERICA

Under this Conservation Easement, the same rights are granted to the United States that are granted to the Grantee. However, the Secretary of the United States Department of Agriculture (the Secretary), on behalf of the United States, will only exercise these rights under the following circumstances: In the event that {insert one of the following: i) Grantee fails or ii) Grantee or RCO fail} to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary, the Secretary and his or her successors or assigns may exercise the United States' rights to enforce the terms of this Conservation Easement through any and all authorities available under Federal or State law. In the event that {insert one of the following: i) Grantee attempts or ii) Grantee or RCO attempt} to terminate, transfer or otherwise divest itself of any rights, title, or interests in this Conservation Easement without the prior consent of the Secretary and, if applicable, payment of consideration to the United States, then, at the option of the Secretary, all right, title, and interest in this Conservation Easement shall become vested solely in the United States of America.]

16. [Insert this section unless there is no Co-Grantee or third party: JOINT ENFORCEMENT

16.1. Before Grantee [, Co-Grantee,] or any Beneficiary to this Easement exercises its rights to undertake mediation, arbitration or legal action as provided for in Sections 8 and 9, the party contemplating such action agrees to confer with the other parties holding enforcement rights under this Easement as to whether they will join the mediation, arbitration or legal action and share costs and expenses related to such action; provided, however, that this agreement to confer shall not be construed as a limitation on the ability of Grantee [, Co-Grantee,] or any Beneficiary to this Easement to exercise its enforcement and other rights under this Easement. If Grantee [, Co-Grantee,] and/or any Beneficiary to this Easement decide(s) to join in

the action and share costs and expenses related to the action, the parties joining in the action and sharing costs and expenses related to the action shall apply any recovery to reimburse such parties for their costs and expenses; provided, however, that any amount received based on loss of value to the easement, or resulting from condemnation and/or extinguishment of the Easement, shall be {insert one of the following: i) distributed to RCO; or ii) shared equally by RCO and NRCS} only after reimbursing such parties for their costs and expenses.

16.2. *If Grantee [, Co-Grantee,] or any Beneficiary to this Easement chooses not to undertake mediation, arbitration or legal action as provided for in Sections 8 and 9, and/or share costs and expenses related to such action, such party shall not be entitled to any recovery for enforcement costs; provided, however, that any amount received based on loss of value to the easement, or resulting from condemnation and/or extinguishment of the Easement, shall be distributed in accordance with Section 11.4 only after first reimbursing any party for its costs and expenses that are not otherwise separately paid as part of any arbitration award or judgment.*

17. RECORDATION

Grantee shall record this instrument in a timely fashion in the official records of _____ 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.

18. NO MERGER

In the event that Grantee [*or Co-Grantee*] acquires all or a portion of the fee title to the Protected Property, it is the intent of the Parties that no merger of title shall take place that would merge the restrictions of this Easement with fee title to the Protected Property and thereby eliminate them, and that the restrictions on the use of the Protected Property, as embodied in the Easement, shall, in the event that all or a portion of title become vested in Grantee [*or Co-Grantee*], become and remain permanent and perpetual restrictions on the use of the Protected Property. **[Insert one of the following: (i) Grantee covenants (ii) Grantee and Co-Grantee covenant]** to do what is required to prevent merger of title, including, if necessary, assignment of the Easement to an appropriate third party pursuant to Section 13.1.

19. **[Insert this section unless the property is not subject to any mortgage or deed of trust: LIENS**

At the time of conveyance of this Easement, the Protected Property is subject to that certain mortgage or deed of trust dated _____, which was recorded under Auditor's File No. _____ (“Mortgage” or “Deed of Trust”). The beneficiary of the Mortgage or Deed of Trust has agreed by separate instrument

{substantially in the form of the instrument attached hereto as Exhibit E}, 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 **{insert one of the following: (i) in perpetuity or (ii) for a term of _____ {identify term, at least 25 years} years}** 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. Notwithstanding anything to the contrary in this Easement, the Parties agree that any and all liens (consensual or non-consensual, judicial or non-judicial) arising from non-performance of the obligations of Grantor under this Easement and charged to Grantor by Grantee [*or Co-Grantee*] or by a third party beneficiary under this Easement, shall be subordinate, junior and subject to the Mortgage or Deed of Trust. This Section shall be binding upon the Parties hereto **{insert one of the following: i) and upon the intended third party beneficiary, RCO; or ii) and upon the intended third party beneficiaries, RCO and NRCS}**.

20. GENERAL PROVISIONS

- 20.1. **Effective Date.** The Effective Date of this Easement shall be the date on which the Grantor executed this Easement.
- 20.2. **Governing Law and Venue.** The laws of the State of Washington and applicable federal law shall govern the interpretation and performance of this Easement. By executing this Easement, Grantor acknowledges the jurisdiction of the courts of the State of Washington in this matter. In the event of a lawsuit involving this Easement, venue shall be proper only in Thurston County.
- 20.3. **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. 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.
- 20.4. **Severability.**
- 20.4.1. Except as provided in Section 20.4.2 below, if any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid or unenforceable by any court of competent jurisdiction or is superseded by state or federal legislation, rules, regulations or decision, 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 or unenforceable, as the case may be, shall not be affected thereby.

20.4.2. If any material provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid or unenforceable by any court of competent jurisdiction or is superseded by state or federal legislation, rules, regulations or decision, so that the intent of these provisions is frustrated, the parties agree to immediately negotiate a replacement provision to fulfill the intent of the superseded provisions consistent with the Purpose of this Easement and applicable law.

20.5. **Entire Agreement.** This instrument sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 12.

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

20.7. **"Grantor" - "Grantee".** The terms "Grantor," "Grantee," and "Co-Grantee," wherever used in this instrument, and any pronouns used in the place thereof, shall be held to mean and include, respectively the above-named Grantor and its successors and assigns, the above-named Grantee and its successors and assigns, and the above-named Co-Grantee and its successors and assigns. The term "Grantor" shall also include any party taking ownership of the Protected Property, or any portion thereof, subsequent to the foreclosure of any mortgage or deed of trust.

20.8. **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns, and to any party taking ownership of the Protected Property, or any portion thereof, subsequent to the foreclosure of any mortgage or deed of trust, and shall continue as a servitude running [**insert one of the following: (i) in perpetuity or (ii) for a term of _____** {identify term, at least 25 years} *years*] with the Protected Property.

20.9. **Captions.** The captions in this instrument have been inserted solely for convenience and ease of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

20.10. **Counterparts.** The Parties may execute this instrument in two or more counterparts, which shall, in the aggregate, 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.

20.11. **Authority.** The individuals signing below, if signing on behalf of any entity, represent and warrant that they have the requisite authority to bind the entity on whose behalf they are signing.

20.12. **Recitals.** The Parties agree that the terms and recitals set forth in Section 1 (among other terms of this Easement) are material to this Easement, and that each Party has relied on the material nature of such terms and recitals in entering into this Easement. Each term and recital set forth in Section 1 is fully incorporated into this Easement.

21. SCHEDULE OF EXHIBITS

- 21.1. Exhibit A. Legal Description of Property Subject to Easement.
- 21.2. Exhibit B. Site Map.
- 21.3. Exhibit C. Water Rights.
- 21.4. Exhibit D. Permitted Exceptions.
- 21.5. Exhibit E. Subordination Agreement.

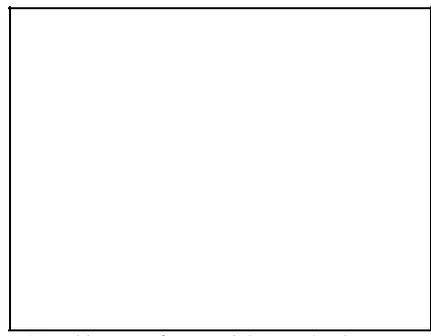
TO HAVE AND TO HOLD unto **[insert one of the following: (i) Grantee, its successors and assigns or (ii) Grantee, Co-Grantee, their respective successors, and assigns]** **[insert one of the following: (i) forever or (ii) for a term of _____ {identify term, at least 25 years} years]**.

REMAINDER OF PAGE IS INTENTIONALLY BLANK; SIGNATURE PAGES FOLLOW

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____
[*name of second Grantor*] 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: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

REMAINDER OF PAGE IS INTENTIONALLY BLANK; ADDITIONAL SIGNATURE
PAGES FOLLOW

_____ [insert name of Grantee] does hereby accept the above Grant Deed of Agricultural Conservation Easement.

Dated: _____

Grantee

By _____

Its _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

[insert signature blocks below if a land trust is Co-Grantee and/or there are third party beneficiaries to this Easement]:

REMAINDER OF PAGE IS INTENTIONALLY BLANK; ADDITIONAL SIGNATURE PAGES FOLLOW

_____ [insert name of Co-Grantee] does hereby accept the above Grant Deed of Agricultural Conservation Easement.

Dated: _____

Co-Grantee

By _____

Its _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

REMAINDER OF PAGE IS INTENTIONALLY BLANK; ADDITIONAL SIGNATURE PAGES FOLLOW

The NATURAL RESOURCES CONSERVATION SERVICE, an agency of the United States government, and Third Party Beneficiary, does hereby accept the above Grant Deed of Agricultural Conservation Easement.

Dated: _____

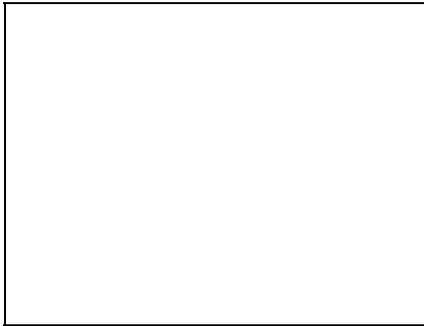
By _____

Its _____

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

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: _____



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

1
2
3
4
5

EXHIBIT A
Legal Description

1
2
3
4

EXHIBIT B

Site Map(s)

1
2
3

EXHIBIT C
Water Rights

1
2
3
4

EXHIBIT D
Permitted Exceptions

1 [EXHIBIT E

2
3 **Subordination Agreement]**

4
5
6
7 When recorded return to:

8
9 _____
10 _____
11 _____
12 _____

13
14
15
16
17 Grantor: _____

18 Grantee: _____

19
20 Legal Description

21 Abbreviated form: _____

22 Additional legal at Exhibit A.

23
24 Assessor's Tax Parcel Number: _____

25
26 Reference number(s) of related/assigned/released documents: _____

27 Reference(s) to document(s) appears on page(s) _____

28
29
30 **SUBORDINATION AGREEMENT**

31
32 NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY
33 INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY
34 THAN THE LIEN OF SOME OTHER OR LATER INSTRUMENT.

35
36 The undersigned subordinator agrees as follows:

37
38 1. _____ ("Subordinator") is the owner and holder of a mortgage dated
39 _____, which was recorded under Auditor's File No. _____, records of
40 _____ County;

41
42 2. _____ ("Easement Holder") is the holder of a conservation easement dated
43 _____, 200_, executed by [("Owner") or ("Owners")] (as hereinafter defined) which
44 will be recorded concurrently with this Subordination Agreement;

45

- 1 3. _____, [*husband and wife,*] [("Owner") or ("Owners")] [*is the owner or*
 2 *are the owners*] of all the real property described in the conservation easement identified above in
 3 Paragraph 2.
 4
- 5 4. In consideration of benefits to Subordinator from [("Owner") or ("Owners")], receipt and
 6 sufficiency of which is hereby acknowledged, the Subordinator does hereby unconditionally
 7 subordinate the lien of the mortgage identified above in Paragraph 1 to the conservation easement
 8 identified above in Paragraph 2.
 9
- 10 5. This Agreement shall be the whole and only agreement between the parties hereto with regard to
 11 the subordination of the lien or charge of the mortgage first above mentioned to the conservation
 12 easement in favor of Easement Holder above referred to and shall supersede and cancel any prior
 13 agreements as to such, or any subordination including, but not limited to, those provisions, if any,
 14 contained in the mortgage first above mentioned, which provided for the subordination of the lien
 15 or charge thereof to a mortgage to be thereafter executed.
 16
- 17 6. The heirs, administrators, assigns and successors in interest of the Subordinator shall be bound by
 18 this agreement. Where the word mortgage appears herein it shall also be considered as deed of
 19 trust, and gender and number of pronouns considered to conform to undersigned.
 20

21 Executed this _____ day of _____, 200_.

22
 23 SUBORDINATOR

SUBORDINATOR

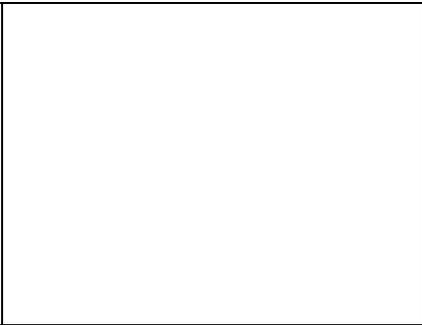
24
 25 _____
 26 (Name)

 (Name)

27
 28
 29 STATE OF WASHINGTON)
 30) ss.
 31 COUNTY OF _____)
 32

33 I certify that I know or have satisfactory evidence that _____ is the
 34 person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath
 35 stated that he/she was authorized to execute the instrument and acknowledged it as the
 36 _____ of _____ to be the free and voluntary
 37 act of such party for the uses and purposes mentioned in the instrument.
 38

39 Dated: _____
 40



 Notary Public
 Print Name _____
 My commission expires _____

1 (Use this space for notarial stamp/seal)

2

3 STATE OF WASHINGTON)

4) ss.

5 COUNTY OF _____)

6

7 I certify that I know or have satisfactory evidence that _____ is the

8 person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath

9 stated that he/she was authorized to execute the instrument and acknowledged it as the

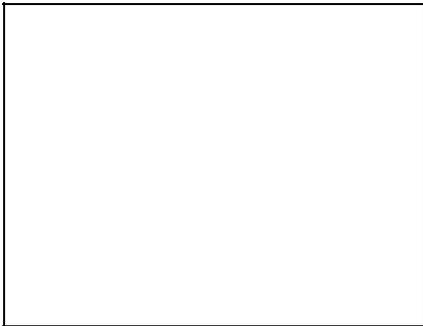
10 _____ of _____ to be the free and voluntary

11 act of such party for the uses and purposes mentioned in the instrument.

12

13 Dated: _____

14



Notary Public

Print Name _____

My commission expires _____

15 (Use this space for notarial stamp/seal)

16

17