When recorded return to:

**CONSERVATION EASEMENT**

Grantor:

Grantee:

Legal Description: See Attached Exhibit A – Legal Description

Assessor’s Tax Parcel Numbers:

 This Conservation Easement (hereinafter “Easement”) is made by      , having an address of      , (hereinafter “Grantor”), in favor of (     ) having an address of       (hereinafter “Grantee”), (hereinafter, collectively, “the Parties”).

**1. RECITALS**

 **1.1.** Grantor is the sole owner in fee simple of that certain real property, referred to as      , in       County, Washington, (hereinafter the “Protected Property”) more particularly described in Exhibit A (legal description and site map), which are attached and incorporated into this Easement by this reference. The legal description and site map shall be signed and stamped by a licensed surveyor.

 **1.2.** The Protected Property possesses Conservation Values consisting of wetlands, riparian habitat, floodplains, fish and wildlife habitat, and other natural and open space areas of ecological importance.

 **1.3.** The Parties intend that the Conservation Values be preserved and maintained in perpetuity by permitting only those land uses on the Protected Property that do not impair or interfere with the Conservation Values as further provided in this Easement.

**2. CONVEYANCE AND CONSIDERATION**

 **2.1.** For and in consideration of the mutual covenants, terms, conditions, and restrictions contained in this Easement, and other good and valuable consideration provided by the Parties, Grantor hereby voluntarily grants, conveys, and quit claims to Grantee a conservation easement in perpetuity over the Protected Property as set forth in this Easement, subject only to the restrictions contained in this Easement and the outstanding rights and interests of record identified in Exhibit B attached hereto.

 **2.2.** Grantor expressly intends that this Easement run with the land and that this Easement shall be binding upon Grantor’s successors and assigns.

**3. RIGHTS CONVEYED TO GRANTEE**

 The following rights are conveyed to Grantee by this Easement:

 **3.1. Access.**

 3.1.1. The Right to enter the Protected Property for inspections and monitoring as follows:\_

 3.1.2. The right to enter the Protected Property in the event of a violation of this easement as follows:

 **3.2. Restriction of Activities or Use**. The right to restrict use or activity on the Protected Property that is inconsistent with this Easement, including trespasses by members of the public.

**3.3. Restoration.** The right to request or direct the restoration of such areas or features of the Protected Property as may be damaged by uses or activities inconsistent with the provisions of this Easement.

**3.4. Baseline Documentation.**

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3.4.1. As further provided in Section 3.4.2 below, Grantee shall document specifically the Conservation Values in an inventory of relevant features of the Protected Property, which Grantee shall maintain on file at its offices and which shall be incorporated into this Easement by this reference (“Baseline Documentation”). The Baseline Documentation shall consist of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property. The Baseline Documentation is intended to serve as an objective, although nonexclusive, information baseline for monitoring compliance with the terms and conditions of this Easement. Grantee shall timely provide Grantor with a copy of the Baseline Documentation.

3.4.2. The Parties acknowledge and agree that through the process of developing the Mitigation Site(s) there may be prepared by the Mitigation Sponsor from time to time such annual reports, “as-built” plans, and other documentation of the condition of the Protected Property (“Mitigation Plans & Reports”) sufficient to constitute the Baseline Documentation. Promptly after Grantor’s receipt thereof from the Mitigation Sponsor, Grantor agrees to provide Grantee with a copy of each such document constituting a Mitigation Plan or Report. The Parties further agree that Grantee may, but shall have no obligation to, independently obtain any other information for the purpose of establishing or updating the Baseline Documentation.

**4. GRANTOR’S RESERVED RIGHTS AND OBLIGATIONS**

 **4.1. General.** Grantor reserves for itself and its successors and assigns all rights accruing from ownership of the Protected Property that is neither inconsistent with nor prohibited by this Easement. Grantor specifically reserves for itself and its successors and assigns, the following uses and activities.

 **4.2. Recreation.** The undertaking of passive recreational activities, such as      ; ***provided*** that such activities are conducted in a manner and intensity that does not adversely affect the Conservation Values. Notwithstanding the foregoing, Grantor shall not construct improvements in furtherance of the foregoing recreational uses and activities.

 **4.3. Road Maintenance.** The use, maintenance, or replacement of existing roads necessary to maintain, restore, or enhance the Conservation Values or to facilitate access within the Protected Property necessary for uses and activities expressly allowed in this Section.

 **4.4. Fences.** The construction and maintenance of fences within or around the Protected Property.

 **4.5. Habitat Stewardship, Restoration, and Enhancement.** Constructing, installing, planting, maintaining, and engaging in other activities to maintain or further restore or enhance the Conservation Values which may include, but are not limited to:      .

**4.6. Maintenance.** Taking various actions necessary to protect the Conservation Values and other features of the Protected Property such as:      . ***[If there are maintenance needs that are not already covered in this document, list and describe in this section. If not, remove this section.]***

**4.7. Signs.** The installation and maintenance of signs specific to the compensatory mitigation site, ***provided*** that such installation does not adversely affect the Conservation Values, and ***further provided*** that signs in excess of twenty-five (25) square feet in area shall not be permitted.

 **4.8. Protection of Health or Safety.** The undertaking of other activities necessary to protect human health or safety, or that are actively required by and subject to compulsion of any governmental agency with authority to require such activity; ***provided*** that any such activity shall be conducted so that adverse impacts on the Conservation Values are avoided, or, if avoidance is not possible, minimized to the greatest extent possible under the circumstances. Trees that pose an imminent hazard or are determined to be hazardous by a certified arborist may be removed. Grantor shall replace trees removed under these conditions with a suitable species and quantity to be determined by Grantee.

 **4.9 Grantor’s Obligations.**

 4.9.1. Noxious Weed Control. Grantor shall comply with all state and local requirements for controlling noxious weeds within the Protected Property.All pesticide and herbicide application must be performed by a licensed applicator.

 4.9.2. Structures, Facilities and Improvements.Grantor shall maintain all structures, facilities, and improvements associated with any of the foregoing activities, including:       .

**5. USES AND ACTIVITIES INCONSISTENT WITH**

**THE PURPOSE OF THE EASEMENT**

* + 1. **General.** Any use of, or activity on, the Protected Property inconsistent with the Purpose of this Easement is prohibited and Grantor acknowledges and agrees that it will not conduct, engage in, or permit any such use or activity. Without limiting the generality of the foregoing, the following uses are inconsistent with this Easement and shall be prohibited:
			1. Subdivision. The legal or “de facto” division or subdivision of 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. This prohibition shall not be interpreted to preclude any lot line adjustment that does not create a number of lots that is greater than the number of lots in existence on the effective date of this Easement.
			2. Construction. The placement, installation, or construction of any buildings, structures, or other improvements of any kind either of a temporary or permanent nature, including, but not limited to, roads, railroads, utilities, cellular phone towers, septic systems, wells, recreational facilities, and parking lots, *except* as expressly allowed in Section 4 above.
			3. Alteration of Land. The alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or sod, *except* in conjunction with a use or activity expressly allowed in Section 4 above.
			4. Erosion or Water Pollution. Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters. For the purposes of this Easement, the uses and activities expressly allowed in Section 4 above.
			5. Waste Disposal. The disposal, storage, or Release of Hazardous Substances, rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other offensive waste or material. The term “Release” shall mean release, generation, treatment, disposal, storage, dumping, burying, or abandonment. The term “Hazardous Substances” shall mean any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful, or are designated as, or contain components that are hazardous, toxic, dangerous, or harmful, and/or that 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.
			6. Mining. The exploration for, or development and extraction or removal of, oil, gas, coal, limestone, fossils, metals, geothermal resources, peat, sand, gravel, soils, or rock of any type on or below the surface of the Protected Property.
			7. Removal of Trees and Other Vegetation. The pruning, topping, cutting, felling, uprooting, girdling, clearing, burning, haying, or other destruction or removal of live and dead trees and other vegetation, including removal for commercial purposes, *except* as expressly provided in Section 4 above or in conjunction with a use or activity expressly allowed in Section 4 above.
			8. Agricultural Activities. The plowing, tilling, or cultivating the soils or vegetation, *except* as expressly provided in Section 4 above ***[add text to Section 4 as necessary]***.
			9. Planting or Introduction of Non-Native Species of Plants. The introduction of nonnative wetland plants and nonnative invasive species on the Protected Property, or the planting or introduction of any species of vegetation.
			10. Motorized Vehicles and Excessive Noise. The operation of motorcycles, dune buggies, snowmobiles, or other type of off-road motorized recreational vehicles, the launching or beaching of motorized watercraft, or the operation of other sources of excessive noise pollution on the Protected Property, *except* as expressly provided in Section 4 above ***[add text to Section 4 as necessary]***.
			11. Signs. The placement of commercial signs, billboards, or other advertising material on the Protected Property, *except* as expressly provided in Section 4 above.
			12. Granting or Allowing New Road or Utility Easements. The above- or below-ground installation of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities on the Protected Property except as deemed necessary by the owner to preserve, protect or effectuate the intent of this Easement.
			13. Recreational Activities. The undertaking of recreational activities and the installation or construction of improvements in furtherance of the same, *except* as expressly provided in Section 4 above.
			14. To Otherwise Use the Protected Property in a Manner that is Inconsistent with the Reservation of Rights and Purposes of this Easement.

***[Include or exclude the items below as appropriate for your Mitigation Site(s)]***

* + - 1. Grazing of Domestic Animals. The keeping of domestic animals on the Protected Property, *except* in conjunction with a use or activity expressly allowed in Section 4 above. ***[add text to Section 4 as necessary including requirement for NRCS approved Grazing Management Plan]***.
			2. Hunting or Trapping. Hunting or trapping, except to the extent determined necessary by Grantee to preserve or protect the Conservation Values of the Protected Property or *except* as expressly allowed in Section 4 above.
			3. Harvesting of Native Plants. The gathering, picking, taking, or harvesting of native plants on the Protected Property, *except* as expressly allowed in Section 4 above ***[add text to Section 4 as necessary]***.
			4. Altering of Surface or Subsurface Hydrology Entering, on, or Leaving the Protected Property. Draining, filling, dredging, ditching, diking, impounding, altering or manipulating aquatic resources of the Protected Property, except to the extent determined necessary by Grantee to preserve or protect the Conservation Values of the Protected Property.

**6. NOTICE**

 **6.1. Notice.**

6.1.1. By Grantor. When required by the terms of this Easement, the Grantor shall notify Grantee in writing at the following mailing address:     .

 6.1.2. By Grantee. When required by the terms of this Easement, the Grantee shall notify Grantor in writing at the following mailing address:      .

**7. ENFORCEMENT**

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

 **7.2. Failure to Respond.** Either Party may bring an action as provided in Section 7.3 below if the other Party:

 7.2.1. Fails to cure the violation within thirty (30) days after receipt of a notice of violation; or

 7.2.2. Under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.

 **7.3. Action.**

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

 7.3.1.1. To enjoin the violation, *ex parte* as necessary and as allowed under the applicable civil rules, by temporary or permanent injunction; and

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

 7.3.2. **Damages.** The prevailing Party shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement. Without limiting Grantor’s liability in any way, Grantee shall first apply any damages recovered to the cost of undertaking corrective or restoration action on the Protected Property.

 **7.4. Emergency Enforcement.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, Grantee may pursue its remedies under this Section 7 without prior notice to Grantor or without waiting for the period provided for cure to expire.

 **7.5. Scope of Relief.** Grantee’s rights under this Section 7 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee’s remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this Section 7, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee’s remedies described in this Section 7 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

 **7.6. Discretion in Enforcement.** Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term of any of Grantee’s rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. Notwithstanding the foregoing, nothing in this Easement shall be interpreted to waive or toll any applicable statutes of limitation.

 **7.8. Acts Beyond Party’s Control.** Neither Grantor nor Grantee shall be in default or violation as to any obligation created hereby and no condition precedent or subsequent shall be deemed to fail to occur if such Party is prevented from fulfilling such obligation by, or such condition fails to occur due to:

 7.8.1. Actions by trespasser upon the Protected Property;

 7.8.2. Forces beyond such Party’s reasonable control, including without limitation, destruction or impairment of facilities resulting from breakdown not resulting from lack of ordinary care and maintenance, flood, earthquake, slide, storm, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, proceeding by court or public authority, or act or failure to act by court, public authority, or third Party, which forces by exercise of due diligence and foresight such Party could not reasonably have expected to avoid; or

 7.8.3. Any action deemed reasonable 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, Grantor agrees, at Grantee’s option and expense, to join in any suit, to assign its right of action to Grantee, or to appoint Grantee its attorney in fact, for the purpose of pursuing enforcement action against the responsible parties.

**8. COSTS, LIABILITIES, TAXES**

 **8.1. Costs, Legal Requirements, Liabilities and Insurance.**  Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property.

 **8.2. Taxes and Other Costs.** Grantor shall pay all taxes, fees and charges assessed against the Protected Property by governmental authority as they become due.

**9. EXTINGUISHMENT, CONDEMNATION, AND SUBSEQUENT TRANSFER**

 **9.1. Extinguishment.** If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement may be terminated or extinguished, whether in whole or in part, by the Parties’ mutual agreement and with the written approval of the U.S. Army Corps of Engineers (Corps) or by judicial proceedings in a court having jurisdiction.

 **9.2. Condemnation.** If the Easement is taken, in the whole or in the part, by the exercise of the power of eminent domain, Grantee shall be entitled to compensation based upon the appraised value of the conservation easement.

 **9.3. Subsequent Transfers.** Grantor agrees to:

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

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

 9.3.3. Give advance written notice to Grantee and Corps of the proposed transfer of any interest in all or a portion of the Protected Property at least 60 days prior to the date of such transfer. Such notice to Grantee and Corps shall include the name, address, and telephone number of the transferee or the transferee’s representative. The failure of Grantor to perform any act required by this Section 9.3 shall not impair the validity of this Easement or limit its enforceability in any way.

 **9.4. No Merger.** In the event that Grantee acquires the fee title to the Protected Property, it is the Parties’ intention 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 this Easement, shall, in the event title becomes vested in Grantee, become and remain permanent and perpetual restrictions on the use of the Protected Property.

**10. AMENDMENT**

 If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement upon approval of such amendment or modification by the Corps. Any such amendment shall be recorded in the official records of       County, Washington, and any other jurisdiction in which such recording is required.

**11. ASSIGNMENT AND SUCCESSION**

 **11.1. Assignment.** With Grantor’s written approval, which shall not be unreasonably withheld, and the Corps’ written approval, this Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is authorized to acquire and hold conservation easements under applicable law (RCW 64.04.130).

 **11.2. Successors and Assigns.**  The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the Parties to this Easement and their respective successors and assigns, and shall continue as a servitude running in perpetuity with the Protected Property, unless sooner terminated as expressly provided for herein. A Party’s rights and obligations under this Easement terminate upon transfer of the Party’s interest in the Easement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

**12. RECORDATION**

 Grantee shall record this Easement 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.

**13. GENERAL PROVISIONS**

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

 **13.2.** **Involuntary Succession.** If at any time the Corps shall reasonably determine the Grantee is unable to carry out its responsibilities under this Easement, the Corps shall have the right to notify both the Grantor and the Grantee in writing of this determination and the reasons therefore. The Grantee shall have       days to cure the disability or if the disability cannot be cured within this period, the Grantee shall take reasonable steps toward curing the disability within this time period. However, if the Grantee is unwilling or unable to establish its capacity to carry out the Easement responsibilities, the Easement shall be assigned by the Grantee, by a legal representative of the Grantee, or by court order, to a qualified successor approved by the Grantor and the Corps.

**13.3. 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 Easement 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.

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

 **13.5. Entire Agreement.** Except as to any other written agreement between the Parties, all prior discussions, negotiations, understandings, communications, or oral agreements regarding this Easement have been superseded by, and are merged into, this Easement.

 **13.6. Effective Date.** The effective date of this Easement is the date of recording of this Easement.

**14. SCHEDULE OF EXHIBITS**

 **14.1.** Exhibit A - Legal Description and Map of Property Subject to Easement.

 **14.2.** Exhibit B – Outstanding interests of record.

In Witness Whereof, the undersigned Grantor has executed this Easement this       day of      , 20     .

Grantor:

By

**ACKNOWLEDGEMENT
(Individual)**

STATE OF       )

 )

County of       )

 I certify that I know or have satisfactory evidence that       is the person(s) who appeared before me, that said person(s) acknowledged that he/she/they signed this Easement and acknowledged it to be his/her/their free and voluntary act for the uses and purposes mentioned in the Easement.

 DATED this       day of      , 20     .

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 NOTARY PUBLIC in and for the State

 of      , residing at

 My Commission Expires:

**ACCEPTANCE BY GRANTEE**

Grantee,      , does hereby accept the above Grant Deed of Conservation Easement.

Dated:

Grantee

By

**ACKNOWLEDGEMENT
(Individual)**

STATE OF       )

 )

County of       )

 I certify that I know or have satisfactory evidence that      , is the person who appeared before me, that said person acknowledged that he/she/they signed this Easement and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the Easement.

 DATED this       day of      , 20     .

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 NOTARY PUBLIC in and for the State

 of Washington, residing at

 My Commission Expires:

**EXHIBIT A**

**Legal Description and Map of Property Subject to Conservation Easement**

**This document shall be signed and stamped by a licensed surveyor.**

**EXHIBIT B**

**Outstanding Interests of Record**