



Contains options for both Private and Government entity managing the underlying limited fee lands. State Forest Legacy Program holds the conservation easement.

Purpose of the agreement: 1) Long term timber management, 2) Preserve working forest landscapes; 3) Maintain forest condition for habitat and water quality; and 4) Allow flexibility for future changes in social needs and forest management technology.

Needs cover sheet to record.

### CONSERVATION EASEMENT DEED

This Conservation Easement Deed (“Easement”) is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, *choose*: [a non-profit conservation organization][a \_\_\_\_\_ corporation] [a municipality] [a \_\_\_\_\_ partnership] [husband and wife], Grantor, and the State of Washington, acting by and through the Department of Natural Resources, Grantee.

WHEREAS, Grantor is the owner of certain real property located in \_\_\_\_\_ County, Washington which is legally described in Exhibit A (hereafter the “Property”), and displayed on the map attached as Exhibit B; and

WHEREAS, Grantee desires to put into effect the provisions of the Forest Legacy Program upon said Property, which purposes include protecting environmentally important forest areas that are threatened by conversion to non-forest uses; promoting forest land protection while allowing use of the area for commercial forestry; and protecting important scenic, cultural, fish, wildlife and recreational resources, riparian areas and other ecological values; and

WHEREAS, the State of Washington has the authority to obtain interests in real property for the purpose of conservation, protection and preservation under RCW 64.04.130, and in accordance with the provisions of the Forest Legacy Program authorized by the Cooperative Forestry Assistance Act of 1978, as amended by section 1217 of the Food Agriculture, Conservation and Trade Act of 1990 (104 Stat. 3528) and Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 U.S.C. § 2103c); and

WHEREAS, the conservation values of the Property are documented in an inventory of relevant features of the Property, dated \_\_\_\_\_, on file at the Department of Natural Resources (“Baseline Documentation”) which includes reports, maps, photographs, and other documentation that the parties agree provides, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective, though non-exclusive, information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, the Parties intend to allow continuation of existing uses of the Property as specifically identified herein that do not significantly impair or interfere with the conservation objectives of this easement;

NOW, THEREFORE, in consideration of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) and other good and valuable consideration, receipt of which is hereby acknowledged, the Grantor does hereby grant, convey and warrant to Grantee an easement in perpetuity over, in and upon the Property.

## **PART I AUTHORIZED USES BY GRANTOR**

Grantor reserves the right to use the Property for natural resource production, [*Option*-limited commercial and] non-commercial recreation, and environmental educational purposes so long as the use is consistent with the goals of the Forest Legacy Program, as currently defined or subsequently amended, and the limitations set forth hereafter. No other use is permitted.

## **PART II RESTRICTIONS ON THE USE OF THE PROPERTY BY GRANTOR**

***Option A-2.1 Subdivision.*** The Property shall not be further subdivided into smaller parcels than exist as of the date of this Easement.

***Option B-2.1 Subdivision.*** The Property may be further subdivided into no more than \_\_\_\_ parcels each of which shall contain at least \_\_\_\_ acres.

**2.2 Structures and Improvements.** Except as provided for herein, Grantor shall not construct [*Option*- reconstruct nor maintain] any building, structure, or other improvements of any kind, temporary or permanent, on the Property, including but not limited to houses, sheds, tanks, mobile homes, windmills, wind turbines, dams, and impoundments. [*Option*- Structures already located on the Property as of the date of this Easement may be reconstructed and maintained but not expanded.]

**2.3 Forest Management.** Timber management and harvesting is permitted on the Property for commercial purposes in accordance with applicable Federal, State, and local laws and regulations and the following provisions:

- a. [A Forest Stewardship Plan] *or* [An acceptable Multi-Resource Management Plan] prepared by Grantor and approved in writing by Grantee is on file with the Department of Natural Resources (hereafter, the “Plan”). The Plan shall be consistent with the provisions of Section 5(f) of the Cooperative Forestry Assistance Act of 1978, as amended, 16 U.S.C. 2103a(f), and the Washington State Forest Stewardship Plan Guidelines in effect on the

effective date of this Easement and shall be subject to revision in order to incorporate forest management practices that are prescribed under federal or state law. The Plan shall be reviewed and updated as needed every ten (10) years. Any subsequent amendments to the Plan must be submitted to the Grantee for review and approval, which approval shall not be unreasonably withheld. In the event of any inconsistency or conflict between the provisions of this Easement and the Plan, this Easement shall control.

b. Grantor may construct forest management access and logging roads, fences, gates, barriers, and the following [*option-* temporary] structures and improvements for forest management purposes: [choose: bridges, culverts, landings, and skid trails.]

#### **2.4. Mineral Development.**

[*Option-* Except as provided below, no] No mining, drilling, excavation or mineral development of any kind shall be permitted in, under or upon the Property, including but not limited to the development of minerals or common varieties of mineral resources such as sand, gravel, stone and clay, or the mining of organic materials such as peat. The Grantor may designate not more than \_\_\_\_\_ areas [not to exceed a total of \_\_\_\_\_ acres] of un-reclaimed land at any given time from which sand, gravel and stone may be extracted for use as is reasonably necessary for the construction and maintenance of those trails, roads and parking areas which are located within the Property [*Option-* or contiguous property now or hereafter owned or managed by the Grantor.]

a. The Property shall be occupied, used, or disturbed only as is necessary to perform the authorized activities in this subsection.

b. Grantor may construct such structures and improvements that are necessary to perform the activities permitted in this subsection, but Grantor shall remove all such structures, other improvements and construction materials from the Property within one year of terminating operations. Should Grantor fail to do so, Grantee may remove, destroy or otherwise dispose of such structures, improvements and construction materials at Grantor's expense.

c. In performing the activities authorized in this subsection, Grantor shall take all reasonable precautions to dispose of dumpage or other deleterious materials or substances to prevent obstruction, pollution, or deterioration of water and other natural resources.

d. Within one year of completion of operations, the land shall be re-vegetated and be reclaimed as much as practical to its original contours.

[*include if 3<sup>rd</sup> party holds mineral rights*] e. If third-party mineral rights are exercised by the mineral rights owner, and if the Conservation Objectives are significantly compromised by mineral exploration or extraction activities under those rights, Grantor and Grantee shall agree to either replace (by substituting other property owned by Grantor) or extinguish that portion of this Easement so affected. In the event the parties agree to extinguish the affected portion of this Easement, Grantor shall reimburse the

federal government in accordance with Sections 5.8 and 5.13 herein. For the purposes of this Section 2.4.e., the Conservation Objectives shall be considered significantly compromised if (i) the affected Baseline Conditions may not be reclaimed or restored within ten (10) years of the initial ground disturbance; and (ii) in any one instance the affected area consists of ten (10) or more acres, or in the aggregate the affected areas consist of fifty (50) or more acres.

**2.5. Recreation/Education.** Grantor may construct or reconstruct the following structures and improvements for educational and recreational purposes: [*choose appropriate options:* trails, primitive camping sites, outhouses, composting toilets, interpretive signs, directional signs, railings, walkways, wildlife observation stands or blinds, septic systems, water and utility services and systems, paved roads and similar structures and services for the public.]

**2.6. Topography Modification.** Changes in the existing general topography of the landscape or land surface of the Property, excluding change as a result of activities permitted by this Easement, are prohibited unless such changes were caused by circumstances beyond the control of the Grantor.

**2.7. Waste Disposal and Hazardous Materials.** Grantor shall not use any portion of the Property for dumps, landfills, or the storage or deposit of waste materials of any kind nor transport over or keep on or around the Property for use, disposal, treatment, generation, storage or sale any substance designated as hazardous, dangerous, toxic, or harmful as those terms are used in any federal, state, or local law regulating such substance except to the extent necessary to perform activities authorized by this Easement and applicable law.

**2.8. Industrial, Commercial and Residential Activities.** Except as authorized herein, the use of the Property for industrial, commercial or residential activities is prohibited.

**2.9. Signs and Billboards.** Grantor shall not place any sign or billboard on the Property, except to state the name and address of the property owner or manager or interpretive signs referring to forestry and timberland management, signs related to silvicultural treatments as required by law, road numbering signs, survey monument signs, signs providing road and trail directions, real estate signs, timber sale and harvest boundary or leave-tree signs, warning signs, signs disclosing access rules and regulations, or to control unauthorized entry or use as may be permitted herein. Authorized signs shall be no larger than thirty-six (36) square feet in area.

**2.10. Utility Rights-of-Way.** No additional utility easements or rights-of-way shall be located within the Property after the date of this instrument without Grantee's consent. All such utilities must be located underground.

### **PART III USE OF THE PROPERTY BY THE GRANTEE**

Grantee shall have the following rights, but not the obligation, to use the Property.

**3.1. Entry and Inspection.** Grantee may enter upon the Property to inspect for compliance with the terms of this Easement, and otherwise administer use of the Property pursuant to the rights acquired hereunder. In exercising this right, the Grantee may utilize motorized vehicles including, but not limited to, cars, trucks, all terrain vehicles, snowmobiles, helicopters and boats. Access by the Grantee for inspection purposes shall be on twenty-four hours advance oral or written notice to the Grantor except in emergencies or cases of suspected deliberate violations.

**3.2. Signs and Notices.** Grantee may post signs and notices to survey, mark and monument the boundaries of the Property; to identify and interpret natural environmental features, to promote on-site activities permitted on the Property; to give road or trail directions; or to control unauthorized entry or uses as described herein.

**3.3. Monitoring and Research.** Grantee may conduct research activities and monitor such activities in connection with promoting forest land use, protection, and conservation such as protecting important scenic, cultural, fish, wildlife and recreational resources, riparian areas and other ecological values consistent with all provisions of this Easement.

**3.4. [Optional] Vegetation.** Grantee may plant new trees and shrubs and prune, mark, cut, and remove trees and shrubs that are dead, dying, diseased, or insect-infested for the purposes of restoring or maintaining the aesthetic, natural or scenic qualities of the Property, for prevention of disease or insect infestation, and for purposes of public health and safety at Grantor's cost if Grantor is required to perform such activities under the Plan and fails to do so resulting in a violation of this Easement. Grantor shall be entitled to the receipts from the sale of merchantable trees cut and removed, less Grantee's reasonable costs. [*Option-* A written cost estimate shall be provided to the Grantor prior to the Grantee incurring any costs. If such costs are not acceptable to Grantor, the Grantee shall revise the plan and cost estimates.]

**3.5. [Optional] Recreation/Public Use.** Grantee may construct, reconstruct, locate, relocate, develop, operate, use and maintain trails, paved or unpaved roads, parking areas, overlooks and vistas, to enable or enhance recreational use of the Property by the public with consent of the Grantor as to the location and size, which shall not be unreasonably withheld, provided such actions do not unreasonably interfere with the reserved rights of the Grantor. For purposes of this clause, the term "parking area" means a cleared area, paved or unpaved, suitable for the parking of passenger vehicles of such sizes and in such locations as are acceptable to all Parties.

## PART IV PUBLIC ACCESS

**4.1. Recreation.** The public shall have the right to enter, traverse and otherwise use the Property for recreational activities, including but not limited to camping, hunting, trapping, fishing, hiking, snowshoeing, skiing, biking and horseback riding. Snowmobiles and other

motorized vehicles will be permitted on designated roads and trails [*Option* - as shown on Exhibit \_\_\_\_]. The Grantor may reasonably regulate public use and access of the Property to avoid interference with the Grantor's reserved rights. The Grantor shall not charge the public or otherwise impose a fee for public use of the Property. [*Option*- unless the charge is for use of recreational areas constructed or maintained by the Grantor for commercial purposes.]

**4.2. Restrictions on Public Use.** Grantor may reasonably regulate or prohibit antisocial behavior, destruction or vandalism to improvements, and removal of any trees, firewood or other forest products by the general public. Grantor may reasonably regulate or prohibit public use and access where public safety may be threatened by the risk of wildfire, floods, landslides, or other hazards. The Grantor may reasonably regulate or prohibit public use and access where necessary to correct resource damage from any recreational use until the damage is mitigated. [*Option*- Grantor may regulate use of any commercial recreational sites constructed or maintained by Grantor.]

## **PART V GENERAL TERMS AND CONDITIONS**

**5.1 Notices.** Unless otherwise provided herein, any request for approval, approval, or written notice called for in this Easement shall be delivered: (1) in person; (2) by certified mail, return receipt requested, postage prepaid; or (3) by next-business-day delivery through a reputable overnight courier that guarantees next-business-day delivery and provides a receipt. All notices shall be deemed received on the date delivered if personally delivered, or on the earlier of three (3) days after mailing or the date delivery is officially recorded on the return receipt if sent by certified mail. Notices shall be addressed as follows, or at such other addresses as the parties may from time to time designate in writing:

To Grantor:

To Grantee:

**5.2. Successors in Interest.** The obligations of the Grantor under this Easement shall bind the Grantor's heirs, successors, agents, and assigns.

**5.3. Authorized Representatives.** As used in this Easement, the term Grantee shall include its agents, successors or assigns.

**5.4. Hold Harmless.** Grantor hereby releases and agrees to hold harmless, indemnify, and defend (with counsel acceptable to Grantee) Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them from and against any and all liabilities, penalties, fines, charges, costs

(including reasonable attorney fees), losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including injury to or death of any person, or physical damage to any property, arising out of or resulting from any act or omission of Grantor, its employees, agents, contractors, or licensees and quests, including the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act and the Model Toxics Control Act. As between Grantor and Grantee, Grantee shall be liable for all losses arising after the date hereof to the extent that the losses arise from or relate to Grantee's negligence or intentional misconduct in the performance of its monitoring activities under this Easement.

**5.5. Enforcement.** Grantee shall give Grantor thirty (30) days written notice (Cure Period) of a violation of this Easement. If the grantee determines, in its sole discretion, that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue such corrective action without waiting for the Cure Period to expire including but not limited to a lawsuit for injunctive relief. In the event the violation is not cured within the Cure Period, Grantee may take such action as is reasonably necessary to correct the violation and recover the cost of such corrective action as damages including Grantee's administrative costs. If a dispute arises out of a breach of this Easement that does not entitle the Grantee to take immediate action as set forth above, and if such dispute cannot be settled through negotiations within thirty (30) days of Grantee giving Grantor written notice of an alleged breach (Negotiation Period), that matter will be submitted to mediation before resorting to litigation or some other dispute resolution procedure. If the Grantor and the Grantee cannot agree on a mediator within thirty (30) days from conclusion of the Negotiation Period, the matter shall be referred to the Seattle Office of the American Arbitration Association for mediation. Grantee shall be entitled to recover damages for injury to any conservation values protected by this Easement, including but not limited to damages for the loss of scenic, aesthetic, or environmental values. In the event a party retains an attorney to bring suit or seek alternative dispute resolution to interpret or enforce this Easement, the prevailing party shall be entitled to reasonable attorney's fees whether or not such matter proceeds to judgment.

**5.6. Waiver.** Enforcement of the terms of this Easement shall be at the discretion of the Grantee. Any forbearance by Grantee to exercise its rights under this Easement in the event of breach of any term by the Grantor shall not be deemed a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of the rights of the Grantee under this Easement. No delay or omission by the Grantee in exercising its rights shall impair such right or remedy or be construed as a waiver.

**5.7. Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the control of the Grantor including but not limited to vandalism, fire, flood, storm, and earth movement.

**5.8. Unpaid Obligations.** Grantor shall pay before delinquency all obligations secured by the Property and all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property and upon written request, provide Grantee evidence of payment. In the event such obligations become delinquent, Grantee shall have the right, but not the obligation, to cure the delinquency and recover such payments with interest at twelve percent per annum as damages.

**5.9. Extinguishment.** If circumstances arise 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 consent of the parties or judicial proceedings in a court of competent jurisdiction. Grantee shall be entitled to the value of the Easement or proportionate part thereof, which would have remained had the Easement continued, as of the date the Easement is extinguished, as determined by agreement of the parties or a court of competent jurisdiction.

**5.10. Entire Agreement.** This document sets forth the entire agreement of the parties. Any prior or contemporaneous discussions, negotiations, or agreements are of no effect.

**5.11. Amendment.** All amendments must be in writing and signed by an authorized representative.

**5.12. Subsequent Transfer of Ownership.** Grantor may convey the Grantor's interest in the Property, subject to the terms of this Easement after \_\_\_\_\_ (\_\_) days written notice to Grantee. Grantor shall reference the Easement in its deed of conveyance. The Grantee may assign its rights and obligations under this Easement only to a unit of State or local government.

**5.13. Reversion.** The Grantee acknowledges that this Easement was acquired with federal funds under the Forest Legacy Program (P.L. 101-624; 104 Stat. 3359; 16 U.S.C. §2103c) and that the interest acquired cannot be sold, exchanged, or otherwise disposed, except as provided in Section 5.12 above, unless the United States is reimbursed the current market value in proportion to the original Federal investment in the Easement; provided, however, the Secretary of Agriculture may exercise discretion to consent to such sale, exchange, or disposition upon the State's tender of equal valued consideration acceptable to the Secretary.

**5.14. Rule of Construction.** This Easement shall be liberally construed to carry out the purposes of the Forest Legacy Program and its guidelines under the Forest Legacy Program Implementation Guidelines, in effect on the effective date of this Easement, to protect forest lands that are threatened by conversion to non-forest uses and other conservation purposes for which this easement was acquired. The parties acknowledge that each has had an opportunity to have this Easement reviewed by an attorney and agree that the terms shall not be presumed construed against the drafter.

**5.15. Easement Management.** The Grantee shall have the right to delegate management and enforcement authority under this Easement to any duly appointed easement manager, which may

include a federal, state, or local government agency or non-profit agency. This appointment may be changed from time to time.

**5.16. Invalidity.** Invalidity of any of these covenants and restrictions or anything else contained herein or any part thereof by judgments or court orders shall in no way affect the validity of any of the other provisions hereof which shall remain in full force and effect.

**5.17. Compliance with Laws.** Grantor shall comply with all federal, state, or local laws while performing any of the activities on the Property authorized herein.

**5.18. Exhibits.** All exhibits referenced herein are incorporated into this Easement as part of this Easement.

EXHIBITS:  
*(list)*

GRANTOR :

Dated: \_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE:

STATE OF WASHINGTON (GRANTEE)  
DEPARTMENT OF NATURAL RESOURCES

Dated: \_\_\_\_\_ By: \_\_\_\_\_

Peter Goldmark  
Commissioner of Public Lands

Approved as to Form this \_\_\_\_ day of  
\_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Assistant Attorney General  
State of Washington

STATE OF \_\_\_\_\_ )  
 )ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, personally appeared before me \_\_\_\_\_ to me known to be the \_\_\_\_\_ of the **corporation** that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that **he/she/was they were** authorized to execute said instrument for said corporation and that the seal affixed is the corporate seal of the said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington residing at \_\_\_\_\_

My appointment expires \_\_\_\_\_.

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ personally appeared before me \_\_\_\_\_, to me known to be the **(individual)** \_\_\_\_\_ described in and who executed the within and foregoing instrument and acknowledged that **he/she/they** signed the same as **his/her/their** free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20

\_\_\_\_\_  
Washington, residing at \_\_\_\_\_.

My appointment expires \_\_\_\_\_.

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF )

STATE OF WASHINGTON )  
 ) ss  
County of )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, personally appeared before me Peter Goldmark, to me known to be the Commissioner of Public Lands, State of Washington, who executed the within and foregoing instrument on behalf of the State of Washington, and acknowledged said instrument to be the free and voluntary act and deed of the State of Washington for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the official seal of the Commissioner of Public Lands for the State of Washington.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_.

My appointment expires \_\_\_\_\_.

**STATE OF WASHINGTON  
DEPARTMENT OF NATURAL RESOURCES**

**EXHIBIT A**

Legal Description of Conservation Easement Property