

AFTER RECORDING RETURN TO:

Jefferson Land Trust
1033 Lawrence Street
Port Townsend, WA 98368

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. Short, Roger D.
2. Short, Sandy S. G.

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

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

1. Jefferson Land Trust
- 2.

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

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

Ptns NW ¼ 26-29-1W

☐ Additional legal description is on page(s) A-1 of document.

Assessor's Property Tax Parcel/Account Number

☐ Assessor Tax # not yet assigned

901 224 001, 901 233 002, 901 233 010, 901 233 011, ~~901 233 005~~,
901 233 008, 901 262 002, 901 262 003

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 **ROGER D. SHORT and SANDY S. G. SHORT**, husband and wife, having an address of 1720 Center Road, Chimacum WA 98325 ("Grantor"), in favor of **JEFFERSON LAND TRUST**, a Washington nonprofit corporation, having an address of 1033 Lawrence Street, Port Townsend WA 98368 ("Grantee"). The United States of America ("United States") acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service ("NRCS") acting on behalf of the Commodity Credit Corporation as its interest appears herein, for the purpose of forever conserving the agricultural productivity of the Property and its value for resource preservation and as open space and The State of Washington, acting by and through the Washington State Recreation and Conservation Office ("RCO") has certain rights hereunder, including the right of enforcement. The foregoing (Grantor, Grantee, NRCS and RCO) are collectively herein referred to as the "Parties".

- 1.1. Grantor is the sole owner in fee simple of the certain real property (hereinafter, "Property") located in Jefferson 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 Property consists of 253.4 acres in eight tax parcels, and is commonly known as the "Short Family Farm".
- 1.2. The Property possesses significant agricultural values of great importance to Grantor, Grantee, the people of Jefferson County, and the people of the State of Washington (collectively, "Agricultural Conservation Values"). The Agricultural Conservation Values include: agricultural productivity; prime, unique and important agricultural soils of regional and State-wide importance; the suitability of the Property for Agricultural Activities, as defined herein; the size of the agriculturally productive portion of the Property; existing and potential economic productivity; and the viability of the site for continued agricultural production, including farm-to-market access, proximity to roads, utilities, and water availability.
- 1.3. The Property also possesses significant fish and wildlife habitat values of great importance to Grantor, Grantee, the people of Jefferson County, and the people of the State of Washington (collectively, "Habitat Values"). The Habitat Values include: the riparian corridors associated with the West fork of Chimacum Creek and with Naylor Creek, both of which contain, and will support the enhancement of, features that afford safe passage and suitable habitat for coho salmon, steelhead, cutthroat trout, and other species of fish; wetland habitat; migratory bird habitat and forage areas, and other fish and wildlife habitat. The Property abuts and is visible

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

from Center Road, a Jefferson County road, from which the general public can easily view the Property, providing scenic values to the people of Washington that use this public area.

- 1.4. The Property consists primarily of farmland (as defined in RCW 79A.15.010(4)) the soils of which have been classified as "prime farmland" or "soils of statewide importance" by the Natural Resources Conservation Service, U.S. Department of Agriculture because this land has a soil quality, growing season, moisture supply, and mild maritime climate needed for sustained agricultural production.
- 1.5. The Agricultural Conservation Values and Habitat Values are documented in an inventory of relevant features of the Property on file at the offices of Grantee and incorporated herein by this reference ("Baseline Documentation"). The Baseline Documentation has been reviewed and approved in writing by Grantor and consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the 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, upon review and written approval by Grantor, incorporated into the Easement by this reference. Failure to timely compile the additional Baseline Documentation shall not affect the enforceability of 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 Property has occurred, but its existence shall not preclude the use of other evidence to establish the condition of the 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 Property.
- 1.6. Permanent protection of the 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." Under the OSTA, lands eligible for

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT**

**GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

preferential real property tax treatment include lands such as the subject Property where the preservation in its present use would conserve and enhance natural resources and promote conservation of soils. Pursuant to this legislative directive, Jefferson County has adopted an Open Space Tax Program (Ordinance No. 09-1203-03) that recognizes the importance of the following resources that occur on the Property: presence of prime agricultural soil on a significant portion of the parcel; historic usage for agriculture; and physically and topographically suitable for the practice of commercial agriculture.

- 1.7. Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, and also qualified as a nonprofit nature conservancy corporation under Sections 64.04.130 and 84.34.250 of the Revised Code of Washington, one of whose principal purposes is to acquire, hold, preserve, and dispose of land, easements, leases, or other rights or interests in land, or improvements to land, in Jefferson County, Washington, in order to protect natural areas and ecologically significant land for scientific, educational, and charitable purposes for the benefit of the public.
- 1.8. The purpose of the federal Farm and Ranch Lands Protection Program (16 U.S.C. 3838h and 3838i) is to provide funding for the purchase of Conservation Easements for the purpose of protecting agricultural use and related conservation values of eligible land by limiting nonagricultural uses of that land. Grantor and Grantee acknowledge that, under the authority of the Farm and Ranch Lands Protection Program, the Natural Resources Conservation Service, acting on behalf of the Commodity Credit Corporation, has contributed funds to acquire this Easement. By virtue of these funds, NRCS recognizes that purchase of this Easement is in the public interest.
- 1.9. This Easement is acquired in part with funds from a grant from RCO pursuant to that certain grant agreement (#12-1287 C) between RCO and Grantee dated August 22, 2013 ("RCO Grant Agreement"), a portion of which was used for acquisition related costs to acquire this Easement, such as the appraisal and survey.
- 1.10. This Easement is acquired in part with funds from a grant from the Jefferson County Conservation Futures Fund, a portion of which was used for acquisition related costs such as the appraisal and survey.
- 1.11. The Parties agree that, in order to maintain the opportunity for agricultural activity upon the 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

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

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.

- 1.12. The Parties intend that the Agricultural Conservation Values and Habitat Values be preserved and maintained in perpetuity by permitting only those land uses on the Property that do not impair or interfere with the Agricultural Conservation Values or Habitat Values.
- 1.13. Grantor, as owner of the 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 in perpetuity.
- 1.14. The foregoing recitals are incorporated into this Easement by this reference.

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 \$10.00 and other good and valuable consideration, the receipt of which is acknowledged hereby, to Grantee, and Grantee hereby accepts a conservation easement in gross in perpetuity over the Property, consisting of the rights in the 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, subject only to the mutual covenants, terms, conditions and restrictions set forth in this Easement and to title matters of record as of the date of this Easement.

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

- 2.3. Grantor expressly intends that this Easement runs with the land and that this Easement shall be binding upon Grantor's and Grantee's successors and assigns in perpetuity.

3. PURPOSE

- 3.1. **Purpose.** It is the purpose of this Easement to protect the Agricultural Conservation Values and assure that the Property will be retained forever for agricultural productivity and use, to maintain the opportunity for agricultural activity upon the Property pursuant to RCW 79A.15.130(1), to ensure no net loss of agricultural lands, to protect prime and important agricultural soils, and to prevent any use of, or activity on, the Property that will impair or interfere with its agricultural values, character, use or utility. To the extent that the preservation and protection of the Habitat Values of the Property referenced in the above Recitals is consistent with the primary purpose of protecting the agricultural soils, agricultural viability, and agricultural productivity of the Property in perpetuity, it is also the purpose of this Easement to assure protection of critical areas, wetlands, and fish and wildlife habitat on the Property, and to prevent any use of, or activity on, the Property that will significantly impair or interfere with the Habitat Values. Grantor intends that this Easement will confine the use of, or activity on, the Property to such uses and activities that are consistent with the purpose described above (the "Purpose").

- 3.2. **Stewardship Plan.** To further the Purpose of this Easement, Grantor and Grantee may develop and agree in writing upon a written plan for stewardship of the Property (a "Stewardship Plan"), a copy of which will be kept on file at the offices of Grantee and incorporated herein by this reference, effective as of the date of such plan. As of the Effective Date of this Easement, no highly erodible soils are known to exist on the Property. In the event that highly erodible land is found on the Property, the Stewardship Plan must be consistent with a Conservation Plan for highly erodible land prepared in consultation with NRCS, as provided for in Section 5.2.4. A Stewardship Plan that has been approved by Grantee and is effective as of the date of any change in ownership of the Property shall become an interim management plan that will be valid for 90 days following the date of conveyance of the Property to the new owner(s). Grantee shall meet with the new owner during this 90-day period for the purpose of reviewing the Stewardship Plan with the new owner and determining whether such plan should be extended or revised.

3.3. Interpretation of the Easement

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

GRANT DEED OF AGRICULTURAL CONSERVATION EASEMENT

GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST

3.3.2. The Parties intend that this Easement be interpreted to confine Grantor's use of the 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 Property. Grantor specifically reserves the right to enter into contracts concerning the leasing or licensing of waterfowl hunting rights.

4. RIGHTS CONVEYED TO 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 in perpetuity and to enhance, restore, or improve by mutual agreement the Agricultural Conservation Values and/or Habitat Values of the 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 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 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 Property and the condition of the Property, and (b) monitoring the uses and activities on the Property to determine whether they are consistent with this Easement.

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

4.2.3. To enter upon the Property at such other times as are necessary if there is reason to believe that a violation of the Easement is occurring or has occurred,

GRANT DEED OF AGRICULTURAL

CONSERVATION EASEMENT

GRANTOR: ROGER D. AND SANDY S.G. SHORT

GRANTEE: JEFFERSON LAND TRUST

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 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 Property, or Grantor's quiet enjoyment of the 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 are extinguished may not be used on or transferred off of the 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 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 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 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 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 Property, visible from a public road, bearing information indicating that the 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 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.

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

5. PERMITTED USES

- 5.1. **General.** Grantor reserves for itself and its successors and assigns, any and all rights not otherwise conveyed to Grantee under this Easement and any and all uses of, or activities on, the 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 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 Property, field crops, fruits, vegetables, horticultural specialties, livestock or livestock products, or the commercial production of berries, grain, hay, straw, 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;.
- 5.2.2. Agricultural Activities shall also include such "Accessory Uses," as defined in RCW 36.70A.177(3)(b), that are related to the permitted Agricultural Activities on the Property, that maintain the primacy of, and are subordinate to, the farmland character and use of the Property, that are compatible with the Agricultural Conservation Values, and that provide supplemental income. Such Accessory Uses may include the leasing or rental of waterfowl hunting rights.
- 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. Unless otherwise agreed as part of a Stewardship Plan, Grantor retains discretion over the specific character and content of the management decisions and practices

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

necessary to identify, protect, preserve, maintain and conserve in perpetuity and to enhance, restore, or improve the Agricultural Conservation Values consistent with the Purpose and terms of this Easement.

- 5.2.4. As of the Effective Date of this Easement, no highly erodible lands ("HEL") are known to exist on the Property. In the event that HEL are found on the Property, as required by section 1238I of the Food Security Act of 1985, as amended, Grantor, his heirs, successors, or assigns, shall conduct all agricultural operations on the Property in a manner consistent with a conservation plan for highly erodible soils prepared in consultation with NRCS and approved by the Jefferson 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, 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 Grantor, in order to monitor compliance with the Conservation Plan. In the event of noncompliance with the Conservation Plan, NRCS shall work with Grantor to explore methods of compliance and give Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If Grantor does not comply with the Conservation Plan, NRCS will inform Grantee of Grantor's noncompliance. 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 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, or maintain the Agricultural Conservation Values and Habitat Values, including but not limited to habitat restoration, enhancement, or management activities ("Habitat Activities"), pursuant to a Stewardship Plan. All

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

Habitat Activities on the Property shall be carried out in compliance with the Purpose and terms of this Easement. In the event of any conflict between the terms and conditions of a Stewardship Plan and the terms and conditions of a Highly Erodible Lands Conservation Plan, should such a plan be required, the terms and conditions of the Highly Erodible Lands Conservation Plan will control.

5.4. Maintenance and Construction of Buildings and Other Structures

- 5.4.1. **Building Envelopes.** Three portions of the Property, as described on Exhibit A and shown in Exhibit B, are designated as "Building Envelopes" ("Building Envelope 1", "Building Envelope 2" and "Building Envelope 3", collectively referred to as the "Building Envelopes"): Except as expressly permitted in this Section 5.4, the construction of any building or other structure is prohibited on the Property outside of the Building Envelopes. Further, the construction of any building or any other structure on the Property shall be in accordance with this section 5.4. All structures and improvements on the Property are subject to the impervious surface limitation in Section 6.8.1. All activities related to structures and improvements must be carried out in compliance with the Purpose and terms of this Easement.
- 5.4.2. **Maintenance of Existing Agricultural Structures.** Grantor may maintain, repair, replace, enlarge, or decommission existing agricultural structures and other permanent agricultural improvements in their current location within a Building Envelope ("Agricultural Improvements"). Such Agricultural Improvements shall include utility systems that support agricultural activities on the Property such as electric power lines, septic systems, water storage and delivery systems, telephone and communication cable systems and the like.
- 5.4.3. **Construction of Additional Agricultural Improvements.** Within a Building Envelope, Grantor may construct additional Agricultural Improvements not existing as of the Effective Date of this Easement in compliance with the Purpose and terms of this Easement.
- 5.4.4. **Existing Single-Family Residential Structures.** Grantor may maintain, repair, reasonably enlarge, replace, or decommission the two (2) single-family residential structures existing on the Property within Building Envelope 1 as of the Effective Date of this Easement, as well as the one (1) single-family residential structure existing within Building Envelope 2. No more than three (3) single-family residential structures are allowed within the Property under any circumstances and no residential structure may be located outside of Building Envelope 1 or Building Envelope 2; provided that, to the extent permitted by local ordinances and other applicable law, Grantor may, within

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT**

**GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

Building Envelope 1 and Building Envelope 2, construct, maintain, repair, replace, or decommission an accessory dwelling unit (ADU) associated with any such single-family residential structure. Notwithstanding the foregoing, Grantor shall not install, build or construct any structure or improvement, except Agricultural Improvements and telecommunications and renewable energy installations as provided in Section 5.4.5, on the Property without receiving the advance written consent of the Grantee pursuant to Section 7

- 5.4.5. The following additional improvements may be constructed within Building Envelope 1 after providing notice to the Grantee in accordance with Section 7 (i) telecommunications installations, only to the extent necessary to serve the agricultural and residential needs of the Property, 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 Property within Building Envelope 1 for telecommunications purposes, and/or (ii) wind and/or solar energy installations, solely for the purpose of generating energy for the agricultural and residential needs of the Property, which may include foundations, concrete pads and footings; wind turbine units and/or photovoltaic panels; 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 public or private transmission systems; 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 Property within Building Envelope 1 for the production of wind energy, solar energy, or other source of alternative energy. To the extent the energy produced by Grantor exceeds the agricultural and residential needs of the Property, Grantor may sell excess electricity to the local utility company. Notwithstanding the foregoing, any structures or improvements built pursuant to this subsection must be built and maintained within the impervious surface limits, with minimal impact on the Agricultural Conservation Values and consistent with the Purposes of this Easement
- 5.4.6. Outside of a Building Envelope, Grantor shall not construct any structures or improvements or expand, replace, renovate or enlarge any structures or improvements existing on the Property as of or after the Effective Date, unless such structures or improvements are consented to in writing in advance by Grantee as provided for in Section 7 and such structures or improvements are temporary in nature (present on the Property for less than one year); provided, however, that Grantor may construct de minimis agricultural structures outside

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

of the Building Envelopes without the consent of the Grantee so long as they neither individually or collectively have an adverse impact on the agricultural use of the Property or permanently impair the soil for agriculture.

5.5. **Water Rights.** The Parties agree that the Water Rights must be maintained to ensure the protection of the Agricultural Conservation Values. Grantor shall take such affirmative actions as may be applicable to avoid such abandonment, relinquishment, loss or forfeiture, including but not limited to the following: (i) exercising the Water Rights by putting them to beneficial use in accordance with Chapter 90.14 RCW; (ii) seeking to place or enroll the Water Rights in the Washington State trust water rights program on a temporary basis, provided that any acquisition of the Water Rights by the State shall be expressly conditioned to limit its use to in-stream purposes and its duration to a term no longer than 10 years; or (iii) seeking to lease the Water Rights for use on land other than the 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 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 Water Rights are under threat of abandonment, relinquishment, loss or forfeiture, Grantor shall convey ownership of said Water Rights to Grantee for Grantee's use in order to preserve and maintain the water rights associated with the Property for any and all present and future agricultural activity on the Property. Grantor may maintain, repair, and if destroyed, reconstruct any existing facilities relating to the 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. **Pond Creation and Wetland Restoration.** Ponds existing as of the Effective Date are located as depicted in Exhibit B; the total aggregate area of such existing ponds is 616,525 square feet. Grantor is permitted to construct ponds and restore wetlands in accordance with a Stewardship Plan and, if applicable, an NRCS Conservation Plan and NRCS standards and specifications. A constructed pond must primarily support agricultural operations such as irrigation, livestock water supplies, or fire control. Wetlands must either be used to treat agricultural waste or support critical habitat needs for wildlife species. The size of a pond and wetlands must be supported by the appropriate documentation in a Stewardship Plan and, if applicable, the NRCS Conservation Plan case file.

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

- 5.7. **Customary Rural Enterprises.** Grantor has the right to establish and carry out customary rural enterprises provided said activities are compatible with the Purpose of this Easement and agriculture and forestry uses of the Property and are subordinate to the agricultural and single-family residential use of the Property. An enterprise must be conducted within a building required for the agricultural use of the Property or a single-family residential structure permitted herein; no building may be constructed solely to accommodate a rural enterprise. Examples of rural enterprises include but are not limited to, home occupations or cottage industries, educational programming, professional offices within a residence, child-care facilities, nonprofit work, bed and breakfast lodging, craft production, and firewood distribution. An enterprise that markets petroleum or chemical products is prohibited.
- 5.8. **Recreational or Educational Use.** Grantor may engage in, and allow others to engage in, recreational or educational activities on the Property. Recreational uses are limited to uses such as hiking, hunting, fishing, horseback riding, and other forms of recreation that do not require site modification or impervious surfaces. Grantor specifically reserves the right to enter into contracts concerning the lease or licensing of waterfowl hunting rights. All forms of developed recreation and any recreational activity that requires infrastructure with impervious surfaces is prohibited. All recreational and educational activities on the 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 Property.
- 5.9. **Forestry Use:** Grantor may remove trees from the 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 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 Property. The provisions of this Section 5.9 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.
- 5.10. **Emergencies:** Grantor may undertake any activities that are necessary to protect health or safety or prevent significant property damage on the 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.

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT**

**GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

6. PROHIBITED USES AND RESTRICTIONS ON PERMITTED USES

- 6.1. **General.** Any use of, or activity on, the Property inconsistent with the Purpose or other terms 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 of, or activities on, the 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.** Except as expressly permitted herein, Grantor shall not use or convert the Property for any commercial or industrial uses or suburban/residential development or for any other use that is incompatible with maintaining the opportunity for agricultural activity on the Property.
- 6.3. **Limitations on Conveyance, Subdivision, and Boundaries.** Grantor shall not legally or in a "de facto" manner subdivide the Property, which shall include, but not be limited to, any subdivision, short subdivision, platting, planned unit development, binding site plan, partition, testamentary division, or any other process by which the Property is divided into lots.
- 6.3.1. Grantor hereby covenants and agrees the Property shall be held, in fee, in perpetuity, as an indivisible tract of land under unified ownership. Grantor covenants and agrees any and all subsequent conveyances of the Property, regardless of the number of underlying individual parcels encumbered by this Conservation Easement, shall be as a single tract.
- 6.3.2. The boundary of the Property may be adjusted only in the case of technical errors made in the survey or legal description. In such cases, adjustments to the boundary of the Property cannot exceed two acres for the entire Property. Any such adjustment of the boundary shall require an amendment to this Easement and the approval of the Parties.
- 6.4. Any and all development rights assigned to or associated with the Property's underlying parcels are hereby expressly terminated and extinguished. Any and all development rights associated with the Property's underlying parcels are not transferrable and shall not be transferred to any person or entity, or to any land currently held or acquired by Grantor. The termination, extinguishment, and non-transferability of the associated development rights shall be binding on Grantor, Grantor's successors, heirs and/or assigns.

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT**

**GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

6.5. **Prohibition of Mining:** Grantor shall not conduct, engage in, or permit others to engage in or conduct mining or extraction of soil, peat, sand, gravel, oil, natural gas, fuel, or any other mineral substance on the Property.

6.6. **Water Rights.**

6.6.1. In furtherance of the Purpose of this Easement, Grantor shall cooperate with Grantee to help assure the maintenance of the Water Rights.

6.6.2. Except as expressly provided in this section, Grantor shall not transfer, encumber, sell, lease or otherwise separate the Water Rights from the Property.

6.6.3. Grantor shall not abandon, relinquish or otherwise lose or forfeit, by action or inaction, any of the Water Rights.

6.6.4. Grantor shall take affirmative actions to avoid such abandonment, relinquishment, loss or forfeiture, including but not limited to the following: i) exercising the Water Rights by putting them to beneficial use in accordance with Chapter 90.14 RCW; ii) seeking to place or enroll the Water Rights in the Washington State trust water rights program on a temporary basis, provided that any acquisition of the 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 ten (10) years; or (iii) seeking to lease the Water Rights for use on land other than the Property for a term no longer than ten (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 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 Water Rights are under threat of abandonment, relinquishment, loss or forfeiture, Grantor shall convey ownership of said Water Rights to Grantee for Grantee's use in order to maintain the opportunity for agricultural activity on the Property.

6.6.5. Any relinquishment, loss or forfeiture of the 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.

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

6.7. Limitations on Agricultural Use.

6.7.1. 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 Property and year-round confinement for the commercial production of dairy products on the Property are expressly permitted. Furthermore, nothing in this Section shall prevent Grantor from leasing pasture for the grazing of livestock owned by others.

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

6.8. Limitations on Improvements. Grantor may build, replace, construct, expand or rebuild structures or improvements only in a manner consistent with Section 5.4 and the following absolute limit on Impervious Surfaces (as defined below), in addition to any other limitations and prohibitions in this Easement:

6.8.1. **Impervious Surfaces Limitation.** 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. Seasonal structures are exempt from the impervious surface limitation. An example of a seasonal structure is a "hoop house": a floorless, framed structure with no foundation.

6.8.2. The total area of the Property covered by Impervious Surfaces shall be limited to no more than two percent (2%) of the area of the Property, excluding NRCS-approved conservation practices developed under the Stewardship Plan and, if applicable, an NRCS Conservation Plan and NRCS standards and specifications

6.9. Limitations on Alteration of Land. Except for alterations of land within a Building envelope pursuant to Section 5.4 that are (i) minimal in scope and impact, (ii) accomplished in a manner that is consistent with the Purpose of this Easement and (iii) reasonably incidental to the activities permitted in a Building Envelope,

GRANT DEED OF AGRICULTURAL

CONSERVATION EASEMENT

GRANTOR: ROGER D. AND SANDY S.G. SHORT

GRANTEE: JEFFERSON LAND TRUST

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

6.9.1. Notwithstanding anything in this Section or Section 6.5 to the contrary, soil, peat, sand, gravel, rock, stone, aggregate, or sod may be extracted without further consent from Grantee so long as such extraction is solely for use on the Property, is in conjunction with permitted Agricultural Activities, is revegetated promptly after extraction is complete, is minimal in scope and impact, not exceeding an area of 2 acres of the Property, and is accomplished in a manner that is consistent with the Purpose and terms of this Easement.

6.9.2. Existing roads, as identified in the Baseline Documentation Report, may be maintained and repaired in their state as of the date of this Easement, as described in the Baseline Documentation Report. New roads may be constructed only if they are necessary for agricultural operations on the Property. Paved and gravel roads are subject to the impervious surface limitation in section 6.8.1.

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

6.11. Limitations on Waste Disposal.

6.11.1. Grantor may accumulate and store ashes, garbage or other waste ("Trash") on the Property only if such accumulation occurs in the normal course of domestic or Agricultural Activities on the 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.

6.11.2. Grantor shall not otherwise dispose of or Release (or permit the disposal or release of) any Hazardous Substance on the 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,

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

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.

- 6.12. **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 Property ("Compensatory Mitigation") is prohibited on the 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 Property.
- 6.13. **Utility Easements.** The granting of easements for utilities, pipelines, water lines, power lines, gas lines, sewer lines, telecommunication lines, cell towers, wind farms, solar panel farms, etc., is prohibited as an encumbrance on the property rights of the United States. Notwithstanding the foregoing, Grantor may grant easements for the installation of utilities necessary for the permitted uses of the Property provided that such installation is consistent with the purposes of this Easement and is done in such a manner as to minimize to the greatest extent possible impact on prime soils. Existing utilities may be replaced or repaired in their current location.
- 6.14. **Limitation on Motor Vehicles.** Grantor may not use motor vehicles on the Property or grant permission for such use except as necessary in the accomplishment of the agricultural, forestry, habitat management, law enforcement and public safety, or other permitted uses of the Property, provided that no use of motorized vehicles may create impacts that are detrimental to the productivity of the soils on the Property and the purposes of this Easement.
- 6.15. **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.
- 6.16. **Limitation on Transfers.**

- 6.16.1. For purposes of this Section, "Restricted Transfer" includes but is not limited to any sale, grant, lease, hypothecation, encumbrance, assignment, conveyance,

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

or any transaction the purpose of which is to effect a sale, grant, lease, hypothecation, encumbrance, assignment, or conveyance; *provided*, that in the case of a lease for agricultural purposes consistent herewith the Grantor shall only be required to provide the Grantee with an advance copy of the proposed lease that demonstrates that the land will be used consistently with the purposes hereof and that the lessee is obligated to abide by the terms of this Easement; and *provided further*, that the transfer of the Property either: (1) to an entity owned by a Grantor; (2) among the Grantors; or (3) upon the death of any Grantor, shall not be considered a Restricted Transfer for purposes hereof; provided further, that Grantor shall provide prompt notice of any such transfers to Grantee.

6.16.2. Except as provided in Section 5.8 and 6.16.3, Grantor shall not undertake or permit any Restricted Transfer of any rights in the Property, including but not limited to any right in the nature of an easement, 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 Restricted Transfer would be inconsistent with the Purpose and terms of this Easement.

6.16.3. The following shall require thirty (30) days advance written 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 5.4; (iii) temporary transfers or leases of the Water Rights pursuant to Section 6.5.4; or (iv) any gift, bargain, sale, or devise of fee simple absolute title to the Property.

6.17. **Limitations on 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 Property, except in connection with the sale or lease of the Property or to state the conditions of access to the Property. Signage consistent with the character of a working farm, and for Agricultural Activities, is allowed on the 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

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

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. Grantee shall provide a copy of any such notice to RCO and NRCS 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 5.4.4, 5.4.5, 5.4.6, 5.5 and 6.16.2). 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. Upon receipt of such notice, Grantee shall immediately forward a copy to RCO and NRCS.

7.2. **Consent**

- 7.2.1. **Consent of RCO.** Wherever in this Easement Grantee's consent is required, such consent is also required of RCO.
- 7.2.2. **Consent Not Unreasonably Withheld.** Wherever in this Easement the consent of RCO or Grantee 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:

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

- 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 sixty (60) days of receipt of a written request for consent.
- 7.2.3.3. **RCO.** Where consent by RCO is required under this Easement, RCO 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.** RCO, Grantee and Grantor agree that failure to grant or withhold consent within the required time on any proposed action, use or activity shall be deemed consent but shall not be deemed or construed to be a waiver of such Parties' rights under this Easement with respect to any future proposed action, use or activity. The provisions of this section shall not apply to the consent of the United States or NRCS.
- 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: Roger and Sandy Short
 1732 Center Road
 Chimacum WA 98325
 Phone (360) 732- 4601
 Fax (360) 732-7255

**GRANT DEED OF AGRICULTURAL
 CONSERVATION EASEMENT
 GRANTOR: ROGER D. AND SANDY S.G. SHORT
 GRANTEE: JEFFERSON LAND TRUST**

To Grantee: Jefferson Land Trust
 1033 Lawrence Street
 Port Townsend WA 98368
 Phone (360) 379-9501
 Fax (360) 379-9897

To RCO: Washington State Recreation and Conservation Office
 1111 Washington St SE
 PO Box 40917
 Olympia, WA 98504-0917
 Phone: (360) 902-3000
 Fax: (360) 902-3026

To NRCS: State Conservationist
 U.S. Natural Resources Conservation Service
 Washington State Office
 316 W. Boone Ave., Suite 450
 Spokane, WA 99201-2348
 Phone: (509) 323-2900
 Fax: (509) 323-2909

8. DISPUTE RESOLUTION

8.1. Preventive Discussions.

8.1.1. Grantor and Grantee will promptly give the other notice of problems or concerns arising in connection with the other's actions under this Easement or the use of or activities or conditions on the 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. Grantee shall give notice of and invite RCO and NRCS to any such preventive discussion meetings and all dispute resolution processes provided for in this Section 8. Proof of such notice shall be immediately provided to Grantor.

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 RCO or NRCS, and if Grantor agrees not to proceed with the use or activity pending resolution of the dispute, Grantor or Grantee may refer the dispute to mediation by request made in writing upon the other and with notice to RCO and

**GRANT DEED OF AGRICULTURAL
 CONSERVATION EASEMENT**

**GRANTOR: ROGER D. AND SANDY S.G. SHORT
 GRANTEE: JEFFERSON LAND TRUST**

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: (i) promote discussion among the Mediation Parties; (ii) assist the Mediation Parties to develop and exchange pertinent information concerning the issues in dispute; and (iii) 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 Mediation Parties; the Mediation Parties shall bear their own expenses, including attorney's fees, individually.

GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST

- 8.3. **Arbitration.** The Parties may by mutual agreement submit disputed matters to arbitration upon such rules of arbitration as the Parties may agree.
- 8.4. **Effect of Arbitration, Mediation or Settlement.** No arbitration, mediation, or settlement shall be effective and binding against a Party unless the Party agreed to arbitration or approved the Settlement in writing.

9. GRANTEE'S REMEDIES

- 9.1. **Notice of Non-Compliance.** If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is likely to occur, 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 Property resulting from any use or activity inconsistent with the Purpose or terms of this Easement, to restore the portion of the Property so injured to its prior or potential condition in accordance with a plan to which Grantee has given consent.
- 9.2. **Grantor's Failure to Respond.** 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;
 - 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 Action.** 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 Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Grantee, in its sole and absolute discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. All such actions for injunctive relief may be taken without Grantee being required to post bond or provide other security.

GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST

- 9.4. **Immediate Action Required.** Notwithstanding any other provision of this Easement, if Grantee, in its sole and absolute discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Agricultural Conservation Values or Habitat Values, Grantee may pursue its 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 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 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 9 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 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 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 Grantor and Grantee agree that the money damages Grantee is entitled to recover from Grantor shall be, at Grantee's election, the higher of (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 or Habitat Values that have been damaged by such violation. In the event Grantee chooses the second of these two measures, Grantor agrees to allow Grantee, its agents or contractors to enter upon the Property and conduct restoration activities.
- 9.7. **Costs of Enforcement.** In the event Grantor or 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 any forbearance by Grantee to exercise its rights

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

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 of such term or 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 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 Grantee or its successors in interest under or pertaining to this Easement based upon abandonment, adverse possession or prescription relating to the Property or this Easement. Except for the foregoing, Grantor specifically retains any and all rights it has under the law as owner of the Property, including, without limitation, the right to bring claims against Grantee for any breach by 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 to bring any action against Grantor to abate, correct, or restore any condition on the Property or to recover damages for any injury to or change in the Property resulting from actions by a trespasser upon the 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 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 option, to assign its right of action to Grantee, for purposes of pursuing enforcement action against the responsible parties.
- 9.11. **Compliance Certificates.** Upon request by Grantor, 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 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 Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within forty-five (45) days of receipt of Grantor's written request and payment therefor. RCO shall not be estopped from claiming or enforcing a violation of this Easement unless RCO has also executed the Compliance Certificate.

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

- 9.12. **Impact on US Right of Enforcement.** No remedy, damage award or other action contemplated in this Section 9 shall be construed as limiting or otherwise having any impact on the rights of the United States under this Easement, including those rights specified in Section 15.

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 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 Grantor and Grantee 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; *provided*, that, if required, Grantee shall obtain and comply with such permits for work it may undertake on the Property pursuant to its rights under this Easement. Grantor and Grantee, as the case may be, shall keep the Property free of any liens arising out of any work performed for, material furnished to, or obligations incurred by Grantor or Grantee; *provided*, however, that the 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 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 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.** 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.

GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST

10.4. Representations and Warranties. :

10.4.1. **Environmental Warranty.** Grantor warrants that he is in compliance with, and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property. Grantor further warrants that he has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable federal and state law.

Moreover, Grantor hereby promises to hold harmless and indemnify the Grantee and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.

"Environmental Law" or "Environmental Laws" means any and all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

10.4.2. There is no pending or threatened litigation affecting the Property or any portion of the Property that will materially impair the Agricultural Conservation Values or Habitat Values of any portion of the 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 **General Indemnification.** Grantor shall indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Grantee and the United States may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, agreements contained in this Conservation Easement Deed, or violations of any Federal, State, or local laws, including all Environmental Laws.

10.6. **Remediation.** If, at any time, there occurs, or has occurred, a Release in, on, or about the Property of a Hazardous Substance, Grantor agrees, if it causes such release, to take or, if the release is caused by a known third party, to take what Grantor determines, in its sole, best judgment, are any all appropriate and reasonable actions to 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). At such time as Grantor elects to not pursue such actions, it shall offer to assign the right to take such actions to Grantee. If the Release was caused by Grantee or its agent or contractor, 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.

10.7. **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 RCO to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") or the Model Toxics Control Act (Chapter 70.105D RCW).

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT**

GRANTOR: ROGER D. AND SANDY S.G. SHORT

GRANTEE: JEFFERSON LAND TRUST

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 and only with the consent of the United States, by and through NRCS

11.1.2. The amount of the proceeds to which Grantee, RCO, and the United States and Jefferson County shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with Sections 11.3 and 11.4. 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. Subject to the approval and acceptance by NRCS and RCO, 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.

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.** The United States' Right of Enforcement is a vested property right that cannot be condemned by state or local government and may not be condemned without the explicit consent of the United States, by and through NRCS. NRCS must be given advance notice of the initiation of any proceeding to condemn the Easement. If the Easement is taken, in the whole or in the part, by the exercise of the power of eminent domain, Grantee, RCO and NRCS shall be entitled to compensation in accordance with Sections 11.3 and 11.4, for the value of the Easement taken; and Grantor shall be entitled to compensation in accordance with

GRANT DEED OF AGRICULTURAL

CONSERVATION EASEMENT

GRANTOR: ROGER D. AND SANDY S.G. SHORT

GRANTEE: JEFFERSON LAND TRUST

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, Grantee, RCO and NRCS shall be divided in accordance with applicable law. 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 and the United States. 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 Property unencumbered by the Easement (minus any increase in value attributable to improvements on the Property), at the time of termination or extinguishment, as determined by a complete summary appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards for Federal Land Acquisition (UASFLA, approved by Grantee, RCO and the United States, and completed by a Washington certified general appraiser, by (b) the ratio of the value of the Easement at the time of this grant to the value of the 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 is evidenced by that certain real property appraisal prepared by Halberg Pacific Appraisal Service, dated January 29, 2015, on file with Grantee. This ratio is 0.526 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: RCO is entitled to 45%, NRCS is entitled to 50%, and Jefferson County is entitled to 5% of any such proceeds. Notwithstanding anything to the contrary contained: herein, NRCS shall collect, on behalf of the Commodity Credit Corporation ("CCC"), a share of the value of the Easement based on the appraised fair market value of the Easement at the time the Easement is extinguished or terminated. The CCC's share shall be in proportion to its percentage of original investment.

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

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

itself of any interest in all or a portion of the Property; and (2) describe this Easement in and append it to, any executory contract for the transfer of any interest in the 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. Prior to signing and recordation of any such amendment must be mutually agreed upon in writing by all the Parties. If a Party other than the United States does not object to a proposed amendment within ninety (90) days of its receipt of a written request for such approval, the request shall be deemed approved. Any such amendment shall be consistent with the Purpose of this Easement, and may not: (i) affect the qualification of this Easement or the status of Grantee under any applicable laws; (ii) result in a net loss of conservation values; or (iii) shorten the duration of this Easement. An amendment shall be recorded in the official records of Jefferson 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 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. Grantee shall not assign this Easement without notice to and prior written consent of 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

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

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 a transfer consented to under Section 13.1 of the party's interest in the 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. **Succession.** If at any time it becomes impossible for Grantee to ensure compliance with the covenants contained herein and the 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, with NRCS's prior written consent. RCO may then assign, with NRCS's prior written 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. RCO Right of Enforcement.

14.1. RCO is hereby granted 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. RCO and Grantee each have independent authority to enforce the terms of this Easement; provided, however, that RCO expects that Grantee shall have primary responsibility for monitoring and enforcement of the Easement. In the event that RCO and 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 right of enforcement does not extend to any other 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 as required in Section 13, 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

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

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 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 and such use results in the permanent, non-remediable loss of the Agricultural Conservation Values and/or Habitat Values protected by this Easement, upon the prior written consent of the US, by and through NRCS, in its sole and absolute discretion, 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 joint enforcement process described in Section 16 and 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 the prior written consent of the US, by and through the NRCS, in its sole and absolute discretion, and Grantor's repayment of such amount to RCO a, 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. RIGHTS OF THE UNITED STATES OF AMERICA

- 15.1. Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment ("Right of Enforcement"). The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this Right of Enforcement under any authority available under State or Federal law if the Grantee fails to enforce any of the terms of this Conservation Easement, as determined in the sole discretion of the Secretary.

In the event NRCS determines it must exercise its rights as identified in this Conservation Easement Deed, NRCS will provide written notice by certified mail, return receipt requested, to Grantee's last known address. The notice will set forth the nature of the noncompliance by the Grantee and a 60-day period to cure. If the Grantee fails to cure within the 60-day period, NRCS shall take the action specified

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

under the notice. NRCS reserves the right to decline to provide a period to cure if NRCS determines that imminent harm may result to the conservation values or other interest in the Property it seeks to protect

The United States shall be entitled to recover any and all administrative and legal costs from the Grantee, including attorney's fees or expenses, associated with any enforcement or remedial action as it relates to the enforcement of this Easement.

Additionally, the United States is granted the right to enter the Property at a reasonable time and upon reasonable prior written notice to Grantor, for the purpose of making a general inspection of the Property, in accordance with FRPP requirements.

16. Joint Enforcement

16.1. Before either Grantee, or RCO 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, RCO or the United States to exercise its enforcement and other rights under this Easement without the presence of each other. If Grantee or RCO 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 for enforcement costs and expenses to reimburse such parties for their costs and expenses. Any recovery related to a loss of value to the Easement shall be distributed pursuant to Section 11.4. Failure of Grantee or RCO to join in such enforcement action shall preclude such party from exercising its enforcement rights against Grantor on the same basis as the action.

16.2. If Grantee or RCO chooses not to participate in mediation, arbitration or legal action as provided for in Sections 8 and 9, and/or share costs and expenses with the party who initiates 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 shall be distributed in accordance with Section 11.4.

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

17. RECORDATION

Grantee shall record this instrument in a timely fashion in the official records of Jefferson 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 acquires all or a portion of the fee title to the 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 Property and thereby eliminate them, and that the restrictions on the use of the Property, as embodied in the Easement, shall, in the event that all or a portion of title become vested in Grantee, become and remain permanent and perpetual restrictions on the use of the Property. Grantee covenants 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. GENERAL PROVISIONS

19.1. **Effective Date.** The Effective Date of this Easement shall be the date on which the Grantor executed this Easement.

19.2. **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. Except where the United States is party to the action, venue for action based on this Easement shall be exclusively in Jefferson County Superior Court.

19.3. **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.

19.4. **Severability.**

19.4.1. Except as provided in Section 19.4.2 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

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

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.

- 19.4.2. 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.
- 19.5. **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.
- 19.6. **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- 19.7. **"Grantor" - "Grantee".** The terms "Grantor" and "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, and the above-named Grantee and its successors and assigns. The term "Grantor" shall also include any party taking ownership of the Property, or any portion thereof, subsequent to the foreclosure of any mortgage or deed of trust.
- 19.8. **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 Property, or any portion thereof, subsequent to the foreclosure of any mortgage or deed of trust, and shall continue as a servitude running *in perpetuity* with the Property.
- 19.9. **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.
- 19.10. **Counterparts.** The Parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all Parties; each counterpart shall be deemed an original instrument as against any party who has

GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST

signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

19.11. **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.

19.12. **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.

20. **Certification and Debarment**

Grantor certifies by signing this Agreement that Grantor is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from the participating in this contract by any federal department or agency. Further, Grantor agrees not to enter into any arrangements or contracts related to this grant with any party that is on the "General Service Administration List of parties Excluded from Federal Procurement or Non-procurement Programs".

21. **SCHEDULE OF EXHIBITS**

Exhibit A.	Legal Description of Property Subject to Easement.
Exhibit B.	Site Map.
Exhibit C.	Water Rights.

TO HAVE AND TO HOLD unto Grantee, The United States, and RCO, their successors and assigns forever.

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**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 30
day of June, 2016.

Roger D. Short
Roger D. Short

Sandy S. G. Short
Sandy S. G. Short

STATE OF WASHINGTON)
) ss.
COUNTY OF JEFFERSON)

I certify that I know or have satisfactory evidence that ROGER D. SHORT is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: June 30, 2016



(Use this space for notarial stamp/seal)

Stacie J. Reid
Notary Public
Print Name Stacie J. Reid
My commission expires 3-19-2020
SR

**GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST**

STATE OF WASHINGTON)
) ss.
 COUNTY OF JEFFERSON)

I certify that I know or have satisfactory evidence that SANDY S. G. SHORT is the person who appeared before me and acknowledged that she signed this instrument and acknowledged it to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: June 30, 2016



(Use this space for notary stamp/seal)

Stacie J. Reid
 Notary Public
 Print Name Stacie J. Reid
 My commission expires 3-19-2020

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**GRANT DEED OF AGRICULTURAL
 CONSERVATION EASEMENT
 GRANTOR: ROGER D. AND SANDY S.G. SHORT
 GRANTEE: JEFFERSON LAND TRUST**

THE STATE OF WASHINGTON, BY AND THROUGH THE WASHINGTON STATE RECREATION AND CONSERVATION OFFICE, does hereby accept the above Grant Deed of Agricultural Conservation Easement.

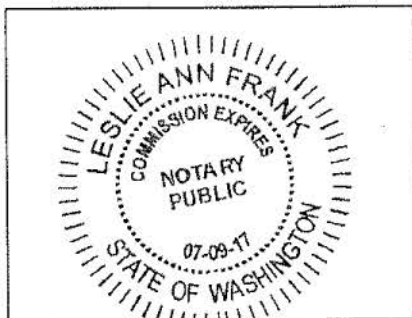
Dated: 6/30/2016

By Scott T. Rab
Its Deputy Director

STATE OF WASHINGTON)
COUNTY OF Muskan) ss.

I certify that I know or have satisfactory evidence that Scott T. Robinson 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 Deputy Director of Recreation & Commission to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: June 30, 2016



(Use this space for notarial stamp/seal)

Leslie Ann Frank
Notary Public
Print Name Leslie Ann Frank
My commission expires 7-9-17

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GRANT DEED OF AGRICULTURAL
CONSERVATION EASEMENT
GRANTOR: ROGER D. AND SANDY S.G. SHORT
GRANTEE: JEFFERSON LAND TRUST

THE NATURAL RESOURCES CONSERVATION SERVICE, an agency of the United States government, does hereby accept the above Grant Deed of Agricultural Conservation Easement, and the rights conveyed therein, on behalf of the United States of America.

(Jefferson Land Trust 7305461201BWR Parcel 01DQ0 Roger and Sandy Short)

Dated: 6/8/2016

By [Signature]

Its State Conservationist

STATE OF WASHINGTON)
) ss.
COUNTY OF SPOKANE)

I certify that I know or have satisfactory evidence that ROYLENE RIDES AT THE DOOR 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 State Conservationist of Natural Resources Conservation Service to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: June 8, 2016



(Use this space for notarial stamp/seal)

Janice M. Monk
Notary Public
Print Name JANICE M. MONK
My commission expires June 20, 2019

EXHIBIT A**PROPERTY AND BUILDING ENVELOPE LEGAL DESCRIPTIONS****Conservation Easement Legal Description****Parcel A:**

That portion of the West 1/2 of Section 23, Township 29 North, Range I West, W.M., more particularly described as follows:

Commencing at the Northwest corner of said Section 23;

Thence South 0° 32' 15" East, a distance of 2,634.32 feet along the west line of said Section 23, to the west quarter corner of said Section 23 which is the true point of beginning;

Thence North 89° 54' 07" East, a distance of 988.41 feet along the East-West centerline of said

Section 23;

Thence South, a distance of 1,308.97 feet along the west right-of-way of a drainage canal to the intersection of the south line of the Northwest ¼ of the Southwest ¼ of said Section 23;

Thence South 89° 41' 29" West, a distance of 976.50 feet along the south line of said Northwest ¼ of the Southwest ¼ of said Section 23 to the intersection of the west line of said Section 23;

Thence North 0° 31' 14" West, a distance of 1,312.59 feet along the west line of said Section 23 to the true point of beginning.

TOGETHER WITH an easement for ingress, egress and utility purposes over and across a strip of land 60 feet in width adjacent to and westerly of the west line of the Chimacum Creek Drainage Canal in the North 560 feet of the Southwest ¼ of the Southwest ¼ of said Section 23.

ALSO, a strip of land 25 feet in width adjacent to and abutting the east line of the following described property (the east line of said 25 foot strip is the centerline of the Chimacum Creek Drainage Canal):

That portion of the West ¼ of Section 23, Township 29 North, Range 1 West, W.M., Jefferson County, Washington, more particularly described as follows:

Commencing at the northwest corner of said Section 23;

Thence South 0° 32' 15" East, a distance of 2,634.32 feet along the west line of said Section 23, to the west ¼ corner of said Section 23 which is the true point of beginning;

Thence North 89° 54' 07" East, a distance of 988.41 feet along the East-West centerline of said Section 23;

Thence South, a distance of 1,308.97 feet along the west right-of-way of drainage canal to the intersection of the south line of the Northwest ¼ of the Southwest ¼ of said Section 23;

Thence South 89° 41' 29" West, a distance of 976.50 feet along the south line of said Northwest ¼ of the Southwest ¼ of said Section 23 to the intersection of the west line of said Section 23;

Thence North 0° 31' 14" West, a distance of 1,312.59 feet along the west line of said Section 23 to the true point of beginning.

Parcel B:

That portion of the West ½ of the Northwest ¼ of Section 26, Township 29 North, Range 1 West, W.M., Jefferson County, Washington, west of the centerline of Chimacum Creek Irrigation Ditch.

Parcel C:

That portion of the Northwest 1/2 of Section 26, Township 29 North, Range 1 West, W.M., Jefferson County, Washington, east of the centerline of Chimacum Creek Irrigation Ditch and west of County Road No. 18 as conveyed to Jefferson County by deed recorded March 20, 1958 under Recording No. 156959, records of Jefferson County, Washington.

Parcel D:

That portion of the South ½ of the Southwest 14 of Section 23, Township 29 North, Range 1 West, W.M., Jefferson County, Washington, between the centerline of Chimacum Creek Irrigation and Drainage Ditch and County Road No. 18 (Center Road) as conveyed to Jefferson County by deeds recorded April 30, 1980 under Recording Nos. 265122, 265123 and 265125, all records of Jefferson County, Washington; and south of a line 500 feet south of the 1/16th section line on the north side of the Southwest ¼ of said Section 23.

Parcel E:

The South ½ of the Southwest ¼ of Section 23, Township 29 North, Range 1 West, W.M., Jefferson County, Washington, west of Center Road (County Road No. 18) as conveyed to Jefferson County by deeds recorded April 30, 1980 under Recording Nos. 265122, 265123 and 265125, all records of Jefferson County; EXCEPT that portion between the centerline of Chimacum Creek Irrigation and Drainage Ditch and County Road No. 18 (Center Road), south of the line which lies 500 feet south of the 1/16th section line on the north side of the south ½ of the Southwest ¼ of said Section 23.

Parcel F:

That portion of the Southwest 14 of Section 23, Township 29 North, Range 1 West, W.M., described as follows:

Commencing at the west 14 corner of said Section 23, being a 5/8" rebar set in concrete;

Thence South 01° 42' 00" West along the westerly section of said Section 23, a distance of 1,314.93 feet;

Thence South 88° 19' 56" East, a distance of 1,601.10 feet to the Point of Beginning of this description;

Thence North 02° 33' 34" East, a distance of 440.05 feet;

Thence North 88° 19' 56" West, a distance of 599.78 feet to the easterly margin of the Chimacum Creek irrigation and drainage ditch;
Thence South 01° 30' 19" West along said easterly margin, a distance of 378.99 feet;
Thence South 03° 16' 13" West along said easterly margin, a distance of 61.04 feet;
Thence South 88° 19' 56" East, a distance of 593.56 feet to the Point of Beginning.

Parcel G:

That portion of the East ½ of the Southeast ¼ of Section 22, Township 29 North, Range 1 West, W.M., Jefferson County, Washington, east of West Valley Road as conveyed to Jefferson County by deed recorded November 3, 1977 under Recording No. 245797, records of Jefferson County, Washington; EXCEPT the North 21 acres of that portion of the Southeast ¼ of said Section 22, east of said West Valley Road; ALSO EXCEPT that portion within said road right-of-way; ALSO EXCEPT that portion as granted by Judgment Quieting Title to Real Property entered April 8, 2011 in Jefferson County Superior Court Cause No. 10-2-00009-6.

All situate in the County of Jefferson, State of Washington.

Building Envelope 1

That portion of the South half of the Southwest quarter Section 23, Township 29 North, Range 1 West, W.M., lying westerly of the right of way of Center Road and easterly of the following described line:

Commencing at the Southwest corner of said Section 23, being a 2" iron pipe;
 thence, North 01° 42' 00" East along the westerly section line of said Section 23, a distance of 1314.93 feet;
 thence, South 88° 19' 56" East, a distance of 1420.67 feet to the Point of Beginning of this description;
 thence, South 11° 11' 35" West, a distance of 365.09 feet;
 thence, South 00° 42' 37" West, a distance of 411.87 feet;
 thence, South 09° 14' 02" East, a distance of 261.94 feet;
 thence, South 16° 04' 55" East, a distance of 293.42 feet to the south line of said Section 23 and the termination of this description.

TOGETHER WITH that portion of the Northeast quarter of the Northwest quarter Section 26, Township 29 North, Range 1 West, W.M., lying westerly of the right of way of Center Road and easterly of the following described line:

Commencing at the Northwest corner of said Section 26, being a 2" iron pipe;
 thence, South 88° 34' 31" East along the south line of said Section 26, a distance of 1506.87 feet to the Point of Beginning of this description;
 thence, South 16° 04' 55" East, a distance of 155.84 feet;
 thence, South 88° 34' 31" East, a distance of 269.41 feet, more or less, to the westerly margin of said Center Road and the termination of this description.

Situate in the County of Jefferson, State of Washington

Building Envelope 2

That portion of the Southeast quarter of the Northwest quarter of Section 26, Township 29 North, Range 1 West, W.M., lying westerly of Center Road and more fully described as follows:

Commencing at the Northwest corner of said Section 26, being a 2" iron pipe, from which the North quarter corner of said Section 26 bears South 88° 34' 31" East, a distance of 2588.72 feet;

thence, South 02° 01' 20" West along the westerly section line of said Section 26, a distance of 2642.54 feet;
 thence, South 87° 51' 38" East along the south line of the Northwest quarter of said Section 26, a distance of 1797.85 feet, more or less, to the westerly margin of said Center Road and the Point of Beginning of this description;
 thence, North 87° 51' 38" West, a distance of 205.36 feet to a ½ rebar with a plastic cap stamped "Brewer 36791";
 thence, North 01° 57' 58" East, a distance of 213.23 feet to a ½ rebar with a plastic cap stamped "Brewer 36791";
 thence, South 87° 51' 38" East, a distance of 202.77 feet, more or less, to the said westerly margin of Center Road;
 thence, South 01° 16' 16" West along said westerly margin of Center Road, a distance of 213.25 feet to the Point of Beginning of this description, containing one acre.

Situate in the County of Jefferson, State of Washington

Building Envelope 3

That portion of the Northwest quarter of the Northwest quarter of Section 26, Township 29 North, Range 1 West, W.M., described as follows:

Commencing at the Northwest corner of said Section 26, being a 2" iron pipe, from which the North quarter corner of said Section 26 bears South 88° 34' 31" East, a distance of 2588.72 feet;

thence, South 02° 01' 20" West along the westerly section line of said Section 26, a distance of 359.56 feet to the Point of Beginning of this description;

thence, continuing South 02° 01' 20" West, a distance of 961.70 feet to the southwest corner of said Northwest quarter of the Northwest quarter;

thence, South 88° 13' 03" East along the south line of said Northwest quarter, a distance of 368.14 feet to a ½ rebar with a plastic cap stamped "Brewer 36791";

thence, departing from said south line, North 06° 01' 23" East, a distance of 962.51 feet to a ½ rebar with a plastic cap stamped "Brewer 36791";

thence, North 87° 58' 40" West, a distance of 435.30 feet to the west section of said Section 26 and the Point of Beginning of this description.

Situate in the County of Jefferson, State of Washington

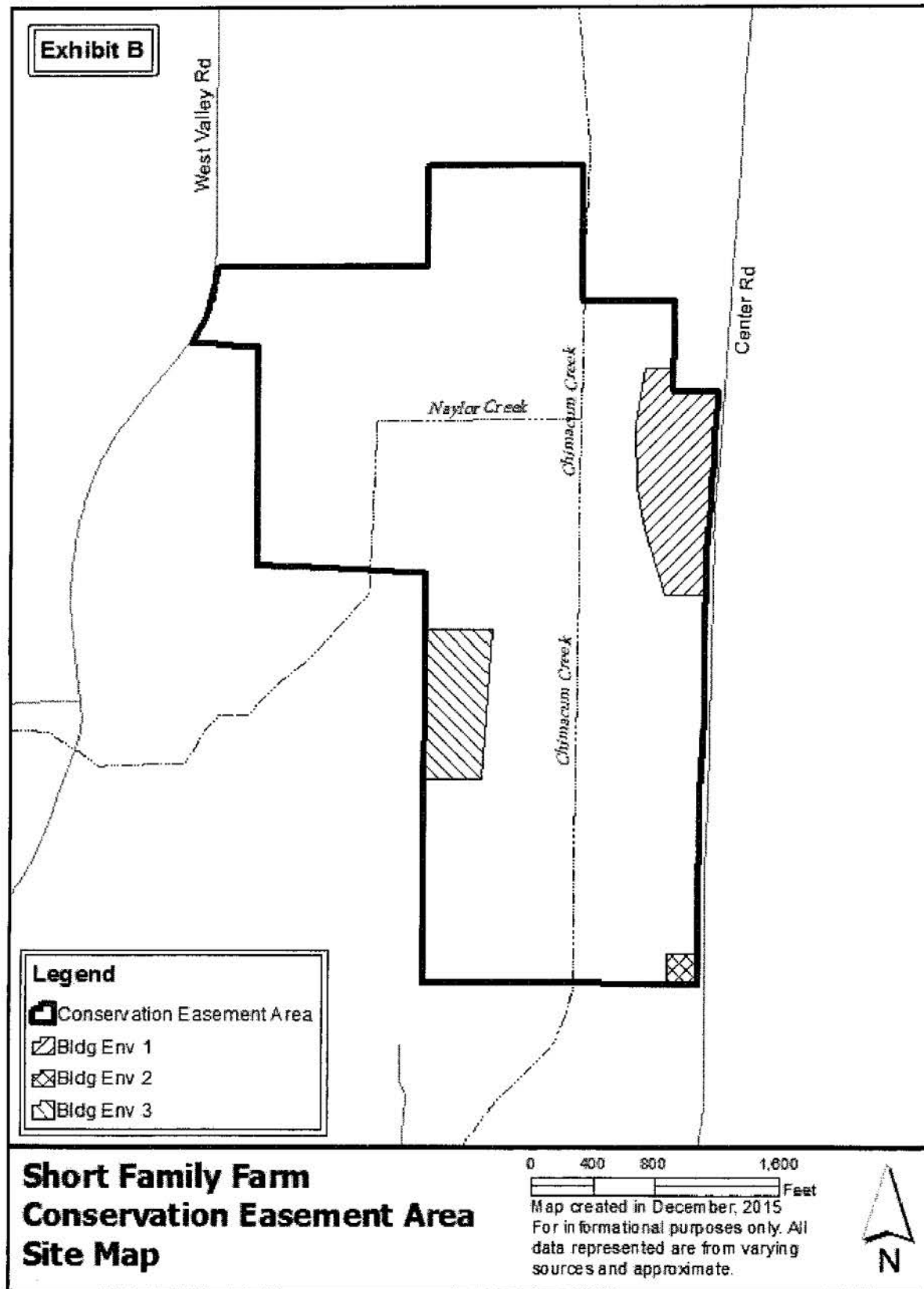


EXHIBIT C

Water Rights

600 acre-feet per year not to exceed 550 gallons per minute from two wells under terms and conditions of *Certificate of Ground Water Right*, found in Volume 8, on page 3843-A, under Ground Water Permit No. 4183, with confirmed dates from April 27, 1956.