

AFTER RECORDING RETURN TO:

PCC Farmland Trust
1917 First Avenue
Level A, Suite 100
Seattle, WA 98101

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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. Kim P. Shelstad 2. Janet R. Shelstad ☐ Additional names are on page(s) _____ of document.
Grantee(s) (Last name first, then first name and initials) 1. PCC Farmland Trust, a Washington nonprofit corporation 2. ☐ Additional names are on page(s) _____ of document.
Legal description (abbreviated: i.e. lot, block, plat or section, township, range) Section 25 Township 19 Range 04 Quarter 13 ☒ Additional legal description is on Exhibit A of this document.
Assessor's Property Tax Parcel/Account Number ☐ Assessor Tax # not yet assigned 0419251030
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.

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Shelstad Conservation Easement - Ver 5.3 for PC_NRCS review (10 30 15) with all exhibits

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EXCISE COLLECTED: \$4,058.40 PROC FEE: \$0.00
AUDITOR
Pierce County, WASHINGTON TECH FEE: \$5.00

GRANT DEED OF AGRICULTURAL CONSERVATION EASEMENT

This GRANT DEED OF AGRICULTURAL CONSERVATION EASEMENT ("**Easement**") is made by Kim P. Shelstad and Janet R. Shelstad, having an address of 14523 168th St. E, Orting, WA 98360 (collectively, the "**Grantor**"), in favor of the PCC Farmland Trust, a Washington nonprofit corporation, having an address of 1917 First Avenue, Level A, Suite 100, Seattle, WA 98101 ("**Grantee**") (each a "**Party**", collectively the "**Parties**"), and to the United States of America ("**United States**"), acting by and through the United States Department of Agriculture, Natural Resources Conservation Service ("**NRCS**"), on behalf of the Commodity Credit Corporation, as its interest appears herein, for the purpose of forever conserving the agricultural productivity of the Protected Property and its value for resource preservation and as farmland.

1. RECITALS

- 1.1. The Grantee has primary responsibility for management and enforcement of the terms of this Easement, subject to the rights of the United States.
- 1.2. Grantor is the sole owner in fee simple of that certain real property (hereinafter, "**Protected Property**") located in Pierce County, Washington, more particularly described in "**Exhibit A**" (Legal Description of Property Subject to Easement) and shown on "**Exhibit B**" (Site Map), both of which are attached to this instrument and incorporated herein by this reference. The Protected Property consists of approximately 35.6 acres.
- 1.3. The Protected Property possesses significant agricultural values of great importance to Grantor, Grantee, the people of Pierce County, and the people of the State of Washington (collectively, "**Agricultural Conservation Values**"). The Agricultural Conservation Values include agricultural productivity, prime agricultural soils, the suitability of the Protected Property for producing row crops, haying, and use as pasture, the size of the commercially productive portion of the Protected Property, existing and potential economic productivity, the viability of the site for continued agricultural production, including farm-to-market access, proximity to roads and utilities and water availability.
- 1.4. The Protected Property also possesses significant fish and wildlife habitat values of great importance to Grantor, Grantee, the people of Pierce County, and the people of the State of Washington (collectively, "**Habitat Values**"). The Habitat Values include undeveloped wetland habitat adjacent to Horsehaven Creek on the property's north-western corner, and/or undeveloped fish and wildlife habitat along a 1500 linear feet



section of Horsehaven Creek, which follows the property's western boundary from the southern property line on 168th Street East, flowing north to the confluence with the Puyallup River.

- 1.5. The Protected Property consists primarily of farmland (as defined in RCW 79A.15.010(4)). The entirety of the Protected Property has been classified as prime farmland with no restrictions (72.6%), and prime farmland if irrigated/protected from flooding (27.4%). The property is protected from flooding from the adjacent Puyallup River by a levee along the property's northern boundary. All classifications were furnished by the Natural Resource Conservation Service, U.S. Department of Agriculture. The Protected Property is flat and well drained, posing little risk for erosion on all mapped prime farmland soils and farmland of statewide importance. The soil quality is considered to be excellent for production of hay, row crops, and use as pasture. The Parties agree that the Protected Property's soils constitute an important natural resource, and are an integral component of the Agricultural Conservation Values.
- 1.6. The Agricultural Conservation Values and Habitat Values are documented in an inventory of relevant features of the Protected Property on file at the offices of Grantee and incorporated herein by this reference ("**Baseline Documentation**"). The Baseline Documentation consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Protected Property at the time of this grant, and 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 Effective Date, as defined in Section 1.11. The Parties further agree that within three (3) months of the execution of this Easement, a collection of additional Baseline Documentation may be compiled by Grantee, and incorporated into the Easement by this reference. Failure to timely compile the additional Baseline Documentation shall not affect the enforceability 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 Protected Property has occurred, but its existence shall not preclude the use of other evidence to establish the condition of the Protected Property as of the date of this Easement. Grantee may use the Baseline Documentation in enforcing provisions of this Easement, but is not limited to the use of the Baseline Documentation to show a change in the use or condition of the Protected Property. Grantor shall, when executing this Easement, sign the Baseline documentation.

1.7. 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 preferential real property tax treatment include lands such as the subject Protected Property where the preservation in its present use would conserve and enhance natural resources and promote conservation of soils. As of the Effective Date, the Protected Property is classified by Pierce County's Assessor's office as farm and agricultural land (as such term is defined in the OSTA). Pursuant to such classification, the Protected Property receives preferential real property tax treatment in accordance with the OSTA.

1.8. Under the authority of the Farm and Ranch Lands Protection Program (16 U.S.C. §§ 3838h and 3838i) the NRCS has or will provide on behalf of the Commodity Credit Corporation \$218,000 to the Grantee for acquisition of the Easement, entitling the United States to rights identified herein. The purpose of the Farm and Ranch Lands Protection Program is to protect the agricultural use and related conservation values of the eligible land by limiting nonagricultural uses of the Protected Property in perpetuity.

1.9. This Easement will also serve the following "conservation purpose" as such term is defined in section 170(h)(4)(A) of the Internal Revenue Code: the preservation of open space (including farmland and forest land) where such preservation is (a) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and (b) will yield a significant public benefit.

1.9.1. **Clearly Delineated Governmental Conservation Policy.** The Protected Property is designated for "Agricultural Resource Lands" under the Pierce County Comprehensive Plan. The Protected Property is zoned for agricultural use (with the designation as agricultural land) under Title 18I.30 of the Pierce County Code. The Protected Property is classified as farm and agricultural land pursuant to OSTA, and thus is eligible for preferential real property tax treatment. Additionally, the Protected Property is situated within an open space corridor as designated by Pierce County, a corridor that runs from Mt. Rainier to the southeast to Commencement Bay to the northwest. As first discussed in Section 1.5, the entire Protected Property has been classified as prime farmland with no restrictions (72.6%), and prime farmland if irrigated/protected from flooding (27.4%). The NRCS is a party to, and third-party beneficiary of,

this Easement. Collectively these six factors are evidence of a clearly delineated governmental conservation policy in furtherance of the conservation of the Protected Property.

1.9.2. **Significant Public Benefit.** In a separate memorandum on file at the offices of Grantee, the Grantee has documented that the conservation of the Protected Property through the terms and conditions of this Easement will yield a significant public benefit. In making such determination, the Grantee utilized an eleven factor test as set forth in Treas. Reg. § 1.170A-14(d)(4)(iv)(A).

- 1.10. The Parties agree that, in order to maintain the opportunity for agricultural activity upon the Protected Property, it is appropriate to recite in this Easement any and all adjudicated and unadjudicated water rights, whether appropriative or riparian, including but not limited to ditches and ditch rights, springs and spring rights, reservoir and reservoir rights, wells and groundwater rights, water allotments, units or shares, memberships, shares, or rights to receive water from any water company, ditch company, or irrigation district, permits, certificates, or claims under RCW Chapter 90.14, and any other types of rights related to the ownership of water, appurtenant to or customarily or historically used or associated with or upon the Protected Property, including but not limited to those specifically described in "**Exhibit C**" (Water Rights), which is attached to this Easement 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 therefore.
- 1.11. Grantee is a publicly supported, tax-exempt non-profit organization, qualified under sections 501(c)(3) and 170(h) of the Internal Revenue Code, and is also a non-profit nature conservancy corporation authorized to acquire and hold conservation easement interests under RCW 64.04.130 and RCW 84.34.210. Grantor, as owner of the Protected Property, has the right to protect and preserve the Agricultural Conservation Values and Habitat Values, and desires and intends to transfer such rights to Grantee in perpetuity commencing on the date on which this Easement is first recorded in the public records of Pierce County (the "**Effective Date**").
- 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 Protected Property that do not impair or interfere with the Agricultural Conservation Values or Habitat Values.

2. CONVEYANCE AND CONSIDERATION

- 2.1. NOW THEREFORE, for the reasons stated above, and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of Washington and in particular RCW 64.04.130 and RCW 84.34.210, Grantor hereby voluntarily grants, conveys and warrants, for valuable consideration, the receipt of which is acknowledged hereby, to Grantee, a conservation easement in gross in perpetuity in, on, over and across the Protected Property, consisting of the rights in the Protected Property, hereinafter enumerated, subject only to the title matters set forth in "**Exhibit D**" (Permitted Exceptions), which is attached to this Easement and incorporated herein by this reference. As additional consideration for such grant, payment has been made to the Grantor in the amount of \$218,000.
- 2.2. This conveyance is a conveyance of an interest in real property under the provisions of RCW 64.04.130 and 84.34.210.
- 2.3. Grantor expressly intends that this Easement run with the land and that this Easement shall be binding upon Grantor's personal representatives, heirs, successors, assigns, agents, employees, tenants, and occupants of the Protected Property. 
- 2.4. Grantor warrants that:
 - 2.4.1. it has good title to the Protected Property;
 - 2.4.2. it has the right to convey this Easement; and
 - 2.4.3. as of the Effective Date and with the exception of the Permitted Exceptions and the recorded mortgage benefitting Home Street Bank and dated March 16th 2010, which will be subordinated to this Easement, the Protected Property is free and clear of any encumbrances. 

3. PURPOSE

- 3.1. **Purpose.** The "**Purpose**" of this Easement is to forever protect the Agricultural Conservation Values of the Protected Property and prevent any use of the Protected Property that might impair or interfere with its Agricultural Conservation Values, thereby maintaining the opportunity for agricultural activity upon the Protected Property. To the extent that the protection of Habitat Values is consistent with 

maintaining the opportunity for agricultural activity upon the Protected Property, it is within the Purpose of this Easement to protect such Habitat Values by preventing any use of the Protected Property that will impair or interfere with its Habitat Values.

- 3.2. **Stewardship Plan.** To further the Easement's Purpose, the Parties will develop a plan for stewardship of the Protected Property, subject to the Parties' written approval (the "**Stewardship Plan**"). The Grantee will have primary responsibility for developing the Stewardship Plan. The Stewardship Plan shall be subject to the Grantor's review and approval, which shall not be unreasonably withheld, and shall be consistent with, and may be developed in conjunction with, the conservation plan prepared in consultation with the NRCS and the Pierce Conservation District or other appropriate governmental or educational institution, as provided for in Section 5.2.4. The Stewardship Plan will guide the Grantee's interpretation and enforcement of this Easement. In the event of a conflict between the Stewardship Plan and the Easement, the Easement shall prevail. If neither the Stewardship Plan nor the Easement provides clear guidance on whether a proposed use or activity is permitted, Grantor shall seek further clarification from Grantee prior to commencing the use or activity. An approved Stewardship Plan that is effective as of the date of any change of ownership shall become an interim plan that will remain effective for 90 days following the date of conveyance of the Protected Property. Grantee shall meet with the new owner during such 90-day period for the purpose of reviewing the approved Stewardship Plan with the new owner and determining whether such plan should be extended or revised.
- 3.3. **Interpretation of the Easement.** The Parties intend that this Easement be interpreted (a) in a manner consistent with its Purpose, and (b) so as to confine the Grantor's use of the Protected Property to such activities that are consistent with the Purpose and terms of this Easement. At the same time, the Parties intend, and this Easement is structured, to give Grantor maximum flexibility and discretion to undertake activities that are consistent with the Easement's Purpose and terms.
- 3.4. **No Public Rights Conveyed Through Easement.** The Parties acknowledge that, except as specifically provided herein, Grantor does not grant, expand or extend any rights to the general public through this Easement, including without limitation, any rights of public access to, on or across, or public use of, the Protected Property.

4. RIGHTS CONVEYED TO GRANTEE

To accomplish the Easement's Purpose, 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 Protected Property.
- 4.2. **Access by Grantee.** As provided for and limited herein, Grantor hereby grants to Grantee reasonable and non-exclusive access at reasonable times across the Protected Property solely for the purposes of fulfilling Grantee's obligations under this Easement and exercising its affirmative rights under this Easement. Specifically, Grantee shall have the right:
- 4.2.1. To enter upon, inspect, observe and study the Protected Property, with such persons as Grantee may require, at mutually agreeable dates and times and upon reasonable prior notice to the Grantor, for the purpose of (a) identifying the current uses and practices on the Protected Property and the condition of the Protected Property, and (b) monitoring the uses and activities on the Protected Property to determine whether they are consistent with this Easement.
 - 4.2.2. To enter upon the Protected Property, at a mutually agreeable date and time and upon prior notice to Grantor, to inspect the Protected Property after major natural events occur, such as fires, windstorms, and floods.
 - 4.2.3. To enter upon the Protected Property at such other times as are necessary if there is reason to believe that a violation of the Easement is occurring, for the purposes of enforcing the provisions of this Easement. Prior to entry, Grantee must provide Grantor notice, and describe the basis of the reasonable belief that a violation is occurring on the Protected Property.
 - 4.2.4. Grantee shall exercise its access rights in compliance with applicable law and in a manner that will not materially disturb or interfere with Grantor's reserved rights, any other person's lawful use of the Protected Property, or Grantor's quiet enjoyment of the Protected Property.
 - 4.2.5. Grantor shall not unreasonably withhold or delay its consent to dates and times of access proposed by Grantee.
- 4.3. **Development Rights.** Grantor hereby grants to Grantee all development rights associated with the Protected Property except as specifically reserved herein, and the Parties agree that such rights may not be used on or transferred off of the Protected Property as it now or hereafter may be bounded or described, or to any other property

adjacent or otherwise, or (except as expressly permitted herein) used for the purpose of calculating permissible lot yield or density of the Protected Property or any other property.

- 4.4. **Injunction and Restoration.** Grantee shall have the right to prevent, or cause Grantor to prevent, any use of, or activity on, the Protected Property that is inconsistent with the Purpose and terms of this Easement, including trespasses by members of the public, and shall have the right to undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be materially damaged by activities contrary to the provisions hereof, all in accordance with Section 9.
- 4.5. **Enforcement.** Grantee shall have the right to enforce the terms of this Easement, in accordance with Sections 8 and 9.
- 4.6. **Assignment.** Grantee shall have the right to assign, convey, or otherwise transfer Grantee's interest herein in accordance with Section 13.
- 4.7. **Signage.** Grantee shall have the right to erect and maintain a sign or other appropriate marker on the Protected Property, visible from a public road, bearing information indicating that the Protected Property is protected by this Easement and held by Grantee. The sign may also name the funding sources for the acquisition of the Easement to the extent required by the funding sources. The location and design of the sign shall be determined by mutual consent of Grantor and Grantee, which consent shall not be unreasonably withheld. The wording of the information shall be determined by Grantee, but shall clearly indicate that the Protected Property is privately owned and not open to the public. The dimensions of such sign shall not exceed four (4) feet by eight (8) feet. Grantee shall be responsible for the costs of erecting and maintaining such sign or marker.
- 4.8. **Additional Access Rights to Grantee.** In furtherance of the Easement's Purpose, Grantee shall have reasonable access to and non-exclusive use of the Protected Property (excluding residences and other buildings not used in farming operations) to enable Grantee to stage, at its sole cost and expense (e.g., Grantee to pay for any and all permits, temporary toilet facilities, and the like) the following activities upon reasonable prior notice to Grantor and at such dates and times reasonably agreed to by Grantor and Grantee: 
- 4.8.1. upon not less than thirty (30) days prior notice to Grantor, one annual event, not to exceed two (2) days in duration, with each day's activities taking place between 8:00 a.m. and 6:00 p.m.;

- 4.8.2. in each case upon not less than thirty (30) days prior notice to Grantor, and not more than once per calendar quarter, either an organized farm tour or an educational event; provided that, no such tour or event shall exceed six (6) hours in duration; provided further that, each such tour or event shall be between the hours of 8:00 a.m. and 6:00 p.m.;
- 4.8.3. occasional promotional and news events;
- 4.8.4. occasional, discreet site visits by Grantee and its guests for purposes of familiarizing such guests with the Grantee's role as the holder of the Easement; and
- 4.8.5. other access on terms and conditions as agreed to by Grantor and Grantee from time to time and for purposes consistent with the Purpose of this Easement, including without limitation, work parties organized by the Grantee and utilizing volunteer labor to improve the Protected Property.
- 4.9. **Right of First Refusal.** Grantor grants to Grantee a right of first refusal to purchase the Protected Property, subject to the following terms and conditions:
- 4.9.1. Grantor grants to Grantee a right of first refusal (such term is referred to elsewhere in this Easement as the "**Right of First Refusal**"), for the period beginning on the Effective Date, and ending on the tenth anniversary of the Effective Date (such term is referred to elsewhere in this Easement as the "**Duration**"), to purchase the Protected Property on such terms and conditions as Grantor would be willing to sell said Protected Property to a third-party, provided that the purchase price paid by Grantee shall be ninety percent of the third-party's purchase price (such price is referred to elsewhere in this Easement as the "**Discounted Purchase Price**").
- 4.9.2. At such time as Grantor, at any time during the Duration, receives a written offer to purchase the Protected Property that they wish to accept (the "**Offer**"), Grantor shall notify Grantee of such receipt and shall include in such notice a true and accurate copy of the Offer as submitted in writing to Grantor. Grantee shall then have eight (8) days, excluding Saturdays, Sunday or federal holidays, from delivery of such notice in the manner set forth below, within which to enter into a written agreement of sale and purchase with Grantor upon the same terms and conditions as are contained in the Offer (but subject to the Discounted Purchase Price), including any and all contingencies therein for

such matters as, e.g., inspections, obtaining financing, zoning matters, or the like.

- 4.9.3. All dates set forth in the Offer shall be adjusted to account for the delay between the Grantor's delivery of notice of the Offer and Grantee's entering into a written agreement of sale and purchase with Grantor upon the same terms and conditions as are contained in the Offer (but subject to the Discounted Purchase Price). For example: if the Offer is dated March 1st and sets forth a closing date of May 15th, notice of the Offer is delivered to Grantee on March 6th, and Grantee exercises its Right of First Refusal on March 12th, Grantee's agreement with Grantor shall be considered to be "upon the same terms and conditions as are contained in the Offer (but subject to the Discounted Purchase Price)" if it sets forth a closing date of May 27th. Dates such as those for earnest money deposits, inspection contingencies and the like shall be similarly adjusted. Grantee shall be deemed to have "entered into a written agreement of sale and purchase with the Grantor" (subject to the Discounted Purchase Price) upon Grantee's timely delivery to Grantor of a writing signed by Grantee on the same terms and conditions as are contained in the Offer (but subject to the Discounted Purchase Price); the failure, neglect or refusal of Grantor to sign such timely delivered "written agreement of sale and purchase with Grantor" (subject to the Discounted Purchase Price) shall not defeat Grantee's exercise of the Right of First Refusal hereunder.
- 4.9.4. If for any reason the Grantor fails to sell the Protected Property to a third-party after the Grantee's decision not to exercise the Right of First Refusal, this Right of First Refusal will not be extinguished, but shall survive the remainder of the Duration.
- 4.9.5. This Right of First Refusal shall be inapplicable to:
- 4.9.5.1.a transfer, by way of sale, gift or devise, including a trust, to or for a party related to the Grantor (a "Related Party"), or to any transfer, in whole or part, from one Related Party to another, but shall apply to any subsequent transfer to a third party and shall remain in effect for the remainder of the Duration. For the purpose of this subsection, if the then-Grantor is an individual, a Related Party shall include and be limited to a spouse, lineal descendant or spouse of such descendant, ancestor or sibling (whether by the whole or half blood), a partnership of which such Grantor is a member, a joint ownership or ownership in common, which includes the then owner Grantor, or a corporation, the majority of whose securities is owned by the Grantor, or any one or

more of the foregoing parties. If the then-Grantor is a corporation, a Related Party shall include and be limited to an affiliate, subsidiary or parent corporation, a successor by merger or consolidation, or the holder or holders of the majority of the securities of such corporation.

4.9.5.2. an involuntary transfer of the Protected Property, including a transfer pursuant to a foreclosure, real estate contract forfeiture or court order; but shall apply to any subsequent transfer to a third party and shall remain in effect for the remainder of the Duration.

4.9.6. Except as provided for in in this section 4.9.6, Grantee's rights under the Right of First Refusal may not be assigned by Grantee.

4.9.6.1. If Grantee elects to match an Offer (subject to the Discounted Purchase Price), Grantee may at that point assign its interest in the written agreement for the sale and purchase of the Protected Property on the same terms and conditions as are contained in the Offer (but subject to the discounted Purchase Price).

4.9.6.2. Grantee's Right of First Refusal shall survive any assignment, conveyance or transfer of Grantee's interest herein in accordance with Section 13.

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 Protected Property that are not inconsistent with the Purpose and terms of this Easement, and that are not prohibited herein. Without limiting the generality of the foregoing, Grantor specifically reserves for itself and its successors and assigns the following uses and activities, which shall be considered permitted uses and activities under the Easement; provided that, such uses and activities are done in a manner that is consistent with the Easement's Purpose, and that complies with all applicable federal, state and local laws, regulations and requirements.

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

- 5.2.1. As used herein, "**Agricultural Activities**" shall mean the commercial production of horticultural (as long as topsoil is not removed from the protected area), viticultural, floricultural, dairy, apiary, vegetable, or animal products, including but not limited to crops commonly found in the community surrounding the Protected Property, field crops, fruits, vegetables, horticultural specialties, livestock or livestock products, or the commercial production of berries, grain, hay, straw, seed, or Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, and all conditions and activities occurring on a farm in connection with such commercial production, including, but not limited to, marketed produce at roadside stands or farm markets; noise; odors; dust; fumes; operation of machinery and irrigation pumps; movement, including, but not limited to, use of current county road ditches, streams, rivers, canals, and drains, and use of water for agricultural purposes; ground and aerial application of seed, fertilizers, conditioners, and plant protection products; employment and use of labor; roadway movement of equipment and livestock; protection from damage by wildlife; prevention of trespass; and construction and maintenance of buildings, fences, roads, bridges, ponds, drains, waterways, and similar features and maintenance of streambanks and watercourses.
- 5.2.2. Agricultural Activities shall also include such "**Accessory Uses**," as defined in RCW 36.70A.177(3)(b),¹ that are related to the permitted Agricultural Activities on the Protected Property, that maintain the primacy of, and are subordinate to, the farmland character and use of the Protected Property, that are compatible with the Agricultural Conservation Values, and that provide supplemental income. Such Accessory Uses may include, by way of example, farm tours, work experiences, field trips, petting zoos, corn mazes and hay rides.

¹ **NOTE: RCW 36.70A.177(3)(b) provides that "[a]ccessory uses may include" the following:** "(i) Agricultural accessory uses and activities, including but not limited to the storage, distribution, and marketing of regional agricultural products from one or more producers, agriculturally related experiences, or the production, marketing, and distribution of value-added agricultural products, including support services that facilitate these activities; and (ii) Nonagricultural accessory uses and activities as long as they are consistent with the size, scale, and intensity of the existing agricultural activities on the property and the existing buildings on the site. Nonagricultural accessory uses and activities, including new buildings, parking, or supportive uses, shall not be located outside the general area already developed for buildings and residential uses and shall not otherwise convert more than one acre of agricultural land to nonagricultural uses."

- 5.2.3. All Agricultural Activities shall be carried out in accordance with applicable law and in compliance with the Purpose and terms of this Easement. Grantor retains discretion over the specific character and content of the management decisions and practices necessary to identify, protect, preserve, maintain and conserve in perpetuity and to enhance, restore, or improve the Agricultural Conservation Values consistent with the Purpose and terms of this Easement.
- 5.2.4. **Conservation Plan.** As required by section 1238I of the Food Security Act of 1985, as amended, the Grantor, his heirs, successors, or assigns, shall conduct agricultural operations on highly erodible land on the Protected Property in a manner consistent with a conservation plan prepared in consultation with the NRCS and with generally accepted best management practices as those practices may be identified from time to time by the Pierce Conservation District or other appropriate governmental or educational institutions. 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 date of this Easement. However, the Grantor may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. NRCS shall have the right to enter upon the Protected Property, with advance notice to the Grantor, in order to monitor compliance with the conservation plan. The landowner shall be liable for any costs incurred by NRCS as a result of the landowner's negligence or failure to comply with the easement requirements as it relates to conservation easement plan violations.

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

If the NRCS standards and specifications for highly erodible land are revised after the date of this Easement based on an act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection

Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.

- 5.3. **Stewardship Activities.** Grantor may engage in, and allow others to engage in, any activity to monitor, protect and maintain the Agricultural Conservation Values and Habitat Values, including but not limited to habitat restoration, enhancement and management activities ("**Habitat Activities**"), pursuant to any Stewardship Plan or conservation plan covering the Protected Property and agreed to by the parties to the Stewardship Plan or conservation plan. All Habitat Activities on the Protected Property shall be carried out in compliance with the Purpose and terms of this Easement.

5.4. **Maintenance and Construction of Buildings and Other Structures.**

- 5.4.1. **Maintenance of Existing Structures.** Grantor may maintain, repair, replace or decommission existing structures, houses, barns, water-pollution-control facilities, water impoundments, fences, corrals, roads, ditches, sloughs, pumps, levees, utilities and other permanent improvements ("**Improvements**"), provided that such activities are carried out in a manner that is consistent with the Easement's Purpose, and that complies with the limitations on Improvements and Impervious Surfaces, both of which are set forth in Section 6.5.
- 5.4.2. **Construction of New Structures and Expansion of Existing Structures.** Grantor may construct additional Improvements, and may expand or enlarge existing Improvements, but only so long as such activities comply with the limitations on Improvements and Impervious Surfaces, both of which are set forth in Section 6.5.
- 5.4.3. **Roads.** Existing roads, as identified in the Baseline Documentation Report may be maintained and repaired in their current state. New roads may be constructed only if they are necessary for agricultural operations on the Protected Property. Paved roads are subject to the impervious surface limitations defined above.
- 5.4.4. **Fences.** Existing fences can be maintained and replaced and new fences installed if they are necessary for agricultural operations on the Protected Property including customary management of livestock and to delineate the boundary of the Protected Property.

- 5.5. **Water Rights.** Grantor may exercise the Water Rights by putting them to any beneficial use that is not inconsistent with the Purpose and terms of this Easement, and that is not prohibited herein. Grantor may maintain, repair, and if destroyed, reconstruct any existing facilities relating to the Water Rights (such as ditches, wells and reservoirs) with notice to Grantee as provided for in Section 7, provided that such activities are carried out in compliance with the Purpose and terms of this Easement.
- 5.6. **Recreational or Educational Use.** Grantor may engage in, and allow others to engage in, recreational or educational activities on the Protected Property. Recreational uses are limited to uses such as hiking, fishing, horseback riding, and other forms of recreation that do not require site modification to accommodate motorized, mechanical or electronic accessories. All forms of developed recreation or recreation that adversely impact the Agricultural Conservation Values or Habitat Values are prohibited. All recreational and educational activities on the Protected Property shall be carried out in compliance with the Purpose and terms of this Easement, and in a manner that maintains the primacy of, and remains subordinate to, the farmland character and use of the Protected Property.
- 5.7. **Forestry Use.** Grantor may remove trees from the Protected Property when required for safety, fire protection, salvage purposes, pest control, disease control, restoration, domestic use, or as necessary to benefit Agricultural Activities (the “**Forestry Activities**”). All Forestry Activities on the Protected Property shall be carried out in compliance with the Purpose and terms of this Easement, and, except for de minimis forest activities, shall be performed in accordance with a written forest management plan. Grantor shall not engage in or permit any Forestry Activities that would preclude the opportunity for agricultural activity upon the Protected Property. The provisions of this Section 5.7 shall not apply to the commercial production of Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140.
- 5.8. **Emergencies.** Grantor may undertake any activities that are necessary to protect health or safety or prevent significant property damage on the Protected Property or are required by and subject to compulsion of any governmental agency; provided, however, that Grantor shall first reasonably attempt to notify Grantee prior to taking such action. If Grantee cannot provide consent, with or without conditions, within such time as is reasonable under the circumstances, Grantor may proceed with such action without consent.

Boundary Line Adjustments of the Protected Property. The boundary line of the Protected Property may only be adjusted in the case of technical errors made in a survey or legal description of the Protected Property boundary line. Any adjustments to the



boundary line of the Protected Property cannot exceed two (2) acres for the entire Protected Property.

6. PROHIBITED USES AND RESTRICTIONS ON PERMITTED USES

- 6.1. **General.** Any use of, or activity on, the Protected Property inconsistent with the Purpose or other terms of the Easement is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in, or permit any such use or activity. Without limiting the generality of the foregoing, the following uses of, or activities on, the Protected Property are either (a) inconsistent with the Agricultural Conservation Values and/or Habitat Values and Purpose of this Easement and prohibited herein or (b) limited as provided herein to make such uses or activities consistent with the Agricultural Conservation Values, Habitat Values and Purpose of this Easement.
- 6.2. **No Conversion to Incompatible Uses.** Grantor shall not convert the Protected Property to industrial or suburban/residential development or to any other use that is incompatible with maintaining the opportunity for agricultural activity on the Protected Property. 
- 6.3. **Limitations on Subdivision.** Although the Protected Property may include more than one tax parcel or other land unit that can be conveyed separately, Grantor hereby covenants and agrees the Protected Property shall be held, in fee, as an undivided tract of land in perpetuity, and any and all subsequent conveyances of the Protected Property, regardless of the number of underlying individual parcels encumbered by this Conservation Easement, shall be conveyed as a single tract of land. This limitation on subdivision of the Protected Property shall be binding upon Grantor, Grantor's successors, heirs and assigns. Grantor shall not legally or in a "de facto" manner subdivide the Protected Property, which shall include, but not be limited to, any subdivision, short subdivision, platting, binding site plan, testamentary division, or other process by which the Protected Property is divided into lots or any process which divides the ownership. 
- 6.4. **Limitations on Agricultural Activities Near Horsehaven Creek.** Consistent with current Pierce County Critical Area Ordinances, no livestock use will be permitted within a 150-foot setback distance from the centerline of Horsehaven Creek, as depicted on Exhibit E, which is attached to this Easement and incorporated herein by this reference. Grantor shall have three years from the Effective Date to bring current operations into compliance with this setback requirement and to ensure that any established or historical livestock use on the Protected Property is permanently moved outside of the surveyed setback area. 

- 6.5. **Limitations on Industrial and Commercial Uses.** The establishment of any commercial or industrial facilities (other than those necessary in the operation or uses of the Protected Property expressly permitted by this Easement) including, but not limited to, commercial feed lot(s), any retail sales or service business, restaurant, night club, campground, trailer park, motel, hotel, commercial recreation facility, gas station, retail outlet, or facility for the manufacture or distribution of any product (other than products to be grown or produced on the Protected Property in connection with purposes expressly permitted in this Easement) is prohibited.
- 6.6. **Limitations on Improvements.** Grantor may build or rebuild Improvements only in a manner consistent with the following absolute limit on Impervious Surfaces (as defined below) and other Improvement-related limitations:

6.6.1. **Impervious Surfaces Limitation.**

6.6.1.1. As used herein, "**Impervious Surfaces**" means permanent, non-seasonal rooftops and concrete and asphalt surfaces. Impervious Surfaces include residential buildings, agricultural buildings (with and without flooring), and areas that are paved, graveled, or made of packed or oiled earthen materials, or other surfaces that similarly impeded the natural infiltration of surface and storm water both within and outside the Building Envelope. 

6.6.1.2. The total area of the Protected Property covered by either Improvements of any kind, or Impervious Surfaces, shall be limited to no more than four percent (4%) of the area of the Protected Property; provided, however, that minor unenclosed agricultural improvements such as corrals, hayracks, headgates, fences, ditches, culverts, stock tanks, or other minor agricultural structures ("**Temporary Agricultural Improvements**") may be constructed or placed on the Protected Property and not count against this total impervious surface limit.

- 6.6.2. **Additional Improvements within the Building Envelope.** So as to encourage the clustering of residential uses and other structures within a designated area, thereby both protecting Agricultural Conservation Values and preventing conflicts between agricultural and residential uses, within the areas described and depicted on Exhibit B, collectively referred to as the "**Building Envelope**", Grantor may construct additional Improvements (or expand or enlarge existing Improvements), subject to the following conditions:

6.6.2.1. Grantor provides Grantee with advance written notice of the proposed additional Improvements (or the proposed expansion or enlargement of existing Improvements) within the Building Envelope;

6.6.2.2. Grantee concludes that such additional Improvements (or the expansion or enlargement of existing Improvements) are in support of the agricultural use of the Protected Property and will not have an adverse impact on the Agricultural Conservation Values; and

6.6.2.3. Grantee gives its prior written consent to such additional Improvements (or the expansion or enlargement of existing Improvements) as provided for in Section 7.

6.6.2.4. Subject to the conditions in this Section 6.6.2, Grantor may also construct a barn within one of the two areas marked on Exhibit B as "Building Envelope 2 (Floating Barn Envelope Option 1)" and "Building Envelope 3 (Floating Barn Envelope Option 2)." Grantor may not construct any other improvements within the Floating Barn Envelope. Once either Building Envelope 2 or Building Envelope 3 have been identified by the property owner for final location of the barn construction, the selected Floating Barn Envelope's location will be legally described and depicted in an amendment to this Easement, at which time the remaining optional Floating Barn Envelope location will be extinguished. This amendment to the easement will be recorded in the public records of Pierce County. Grantor will pay all costs and expenses associated with preparing and recording such amendment.

6.6.2.5. Only one residential dwelling unit is permitted within the Building Envelope. For purposes of this Easement, the term "**Residential Dwelling Unit**" means a structure (or a portion thereof) with sleeping accommodations and kitchen facilities, and that is provided, used constructed, converted, remodeled, added onto or replaced for habitation or occupation by one or more people, including a residence, apartment, suite, guest house, employee housing, and cabin. Any such Residential Dwelling Unit, whether that be the existing Residential Dwelling Unit (existing as of the Effective Date and depicted on Exhibit B) or a new Residential Dwelling Unit replacing the existing Residential Dwelling Unit, must have a permanent foundation, and its heated and livable area must not exceed 2,000 square feet in size. Any structures associated with the Residential Dwelling Unit (e.g. a garage,

workshop, storage shed, or Accessory Dwelling Unit as permitted by County ordinance) must also be located within the Building Envelope and are subject to the Impervious Surfaces limitation as set forth in this Section 6.

6.6.2.6. "Accessory Dwelling Unit," as used herein means: a separate, complete dwelling unit that is attached to or contained within the structure of a reserved dwelling unit or is contained within a separate structure that is accessory to and on the same legal lot as a reserved dwelling unit. The total living space square footage of an accessory dwelling unit shall not exceed 1,250 square feet unless the accessory dwelling unit is wholly contained within a basement or attic of a reserved dwelling unit. Only one accessory dwelling unit is permitted for each reserved dwelling unit. Property containing an accessory dwelling unit cannot be divided or transferred separately from the property on which the reserved dwelling unit is located unless the accessory dwelling unit is removed prior to such action.

6.6.2.7. The use of accessory dwelling units shall be limited to the Grantors and their successors in interest to the Protected Property, the farm operator, or the families of such persons, or for accommodating on-farm agricultural employees of the owner or operator and their families. Accessory dwelling units cannot be leased to the public-at-large.

6.6.2.8. "Agricultural Employee Dwelling Unit," as used herein means: a dwelling unit in which the total living space square footage does not exceed 1,250 square feet and which is used to house agricultural employees who are employed to work on the Protected Property. Such agricultural employee dwelling units are not included in the number of dwelling units reserved nor are they considered to be accessory dwelling units. If the primary use of the Protected Property changes to a non-agricultural use, all agricultural employee dwelling units shall be removed. Property containing agricultural employee dwelling units cannot be divided or transferred separately from the rest of the Protected Property unless said structures are permanently removed prior to such action. Agricultural employee dwelling units may only be occupied by agricultural employees who are employed to work on the Protected Property.

6.6.2.9. The Grantor must obtain written permission from the Grantee prior to the construction or installation of any accessory dwelling units or

agricultural employee dwelling units not existing on the Protected Property upon the date of this Deed and Agreement. Nothing herein shall be deemed to waive the requirement to obtain any required permits from the agency of the appropriate government responsible for issuing development permits. New accessory dwelling units and/or agricultural employee dwelling units must be located within an existing building envelope. Any addition of accessory dwelling units and/or agricultural employee dwelling units shall be shown on an updated Site Plan which has been approved in writing by the Grantee and which shall be added to the Baseline Documentation on file at the offices of the Grantee.

6.6.3. Limitations on Additional Improvements Outside the Building Envelope.

6.6.3.1. Except as expressly provided for in this subsection 6.5.3, outside the Building Envelope, Grantor shall not (a) construct Improvements, or (b) expand or enlarge existing Improvements, unless Grantee gives it prior written consent (as provided for in Section 7) to such construction, expansion or enlargement, and such Improvements are either (x) temporary in nature (present on the Protected Property for less than one year); or (y) reasonably necessary for Agricultural Activities (excluding Accessory Uses) in compliance with the limitation on Impervious Surfaces set forth in subsection 6.5.1.

6.6.3.2. Subject to the conditions in this Section 6.6.3.2, Grantor may relocate the existing Puyallup River levee within the area marked on Exhibit C as the "Levee relocation envelope." For purposes of this Section, a Levee shall mean any flood mitigation structure including a traditional structural levee, a road-top levee, and other flood protection infrastructure designs including revetments and use of natural materials (such as woody debris, engineered logjams, etc). Grantor may not construct any other improvements within the Levee Relocation Envelope. Under no circumstances will the relocation of the levee convert more than 3 (three) acres of land documented as being currently in agricultural production at time of easement closing, as documented in the baseline documentation report signed by the Grantor at closing and maintained on file at PCC Farmland Trust's offices. In addition, under no circumstances will the dimensions of the relocated levee exceed twenty (20) feet in top width and three (3) feet in total height above the base flood elevation. Finally, any relocated levee within the Levee Relocation Envelope must



comply with the total impervious surfaces limitation of the Protected Property.

6.6.3.3. Despite any provisions to the contrary in this Easement, without notice to or consent of Grantee, Grantor may:

6.6.3.3.1. expand or enlarge Temporary Agricultural Improvements;

6.6.3.3.2. install a well or drain field outside of the Building Envelope, but only to the extent necessary to make the Residential Dwelling Unit habitable;

6.6.3.3.3. construct new fences to mark the Protected Property's boundaries.

6.7. **Water Rights.**

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

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

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

6.7.4. Grantor shall take affirmative action to avoid such abandonment, relinquishment, loss or forfeiture, including but not limited to the following requirements: Grantor, in the event the agricultural viability of the Protected Property is threatened or endangered by any loss of water usage due to the transfer of water rights shall retain, in any transferring document, the right to immediately terminate any of the foregoing transactions, upon thirty days notice to transferee: 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 state of Washington's trust water rights program on a temporary basis, provided that any acquisition of the Water Rights by the state of Washington shall be expressly conditioned to limit its use to instream purposes and its duration to a term no longer than 10 years; or iii) seeking to

lease the Water Rights for use on land other than the Protected Property for a term no longer than 10 years, with prior written notice to and consent of Grantee, after obtaining approval in accordance with RCW 90.03.380, 90.03.383, 90.03.390, or 90.44.100 for a temporary transfer or change of the Water Rights; provided, however, that any such lease shall require the lessee to make beneficial use of the 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 Protected Property.

6.7.5. 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 Easement's Purpose, and shall not otherwise impair the validity of this Easement or limit its enforceability in any way.

6.8. **Alternative Energy Production.** Grantor may install, build, or construct improvements for alternative energy production (micro-hydro, micro-wind or micro-solar power) exclusively for generating energy for permitted uses on the Protected Property with advance written notice to and consent of Grantee as provided for in Section 7. Infrastructure installed to support these activities is subject to the Impervious Surfaces limitations as described in Section 6.5.1.

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

6.10. **Limitations on Oil, Gas and Mineral Exploration and Extraction.** Except as provided for in Section 6.11, Grantor shall not conduct, engage in, or permit any of the following on the Protected Property:

6.10.1. the commercial mining or commercial extraction of soil, sand or gravel;

6.10.2. any exploration for, or extraction of, oil, natural gas, fuel, or any other mineral substance.

- 6.11. **Limitations on Alteration of Land.** Grantor shall not alter the surface of the land, including, without limitation, grading, excavating or removing soil, sand, gravel, rock, stone, aggregate, peat, or sod, except as provided for in the following sentence. Notwithstanding anything in this Section or Section 6.10 to the contrary, soil, sand, gravel, rock, stone, aggregate, peat or sod may be extracted without further consent from Grantee so long as such extraction is solely for use on the Protected Property, is in conjunction with permitted Agricultural Activities, is revegetated promptly after extraction is complete, is limited to no more than one acre total of the Protected Property, and is accomplished in a manner that is consistent with the Purpose and terms of this Easement. 
- 6.12. **No Significant Erosion or Pollution.** Grantor shall not engage in any use or activity that causes or is likely to cause significant soil degradation or erosion or significant contamination or pollution of any soils or surface or subsurface waters on the Protected Property.
- 6.13. **No Compensatory Mitigation.** The creation, enhancement, restoration or preservation of wetlands, fish or wildlife habitat, or other natural resources for the purpose of, directly or indirectly, compensating for or mitigating resource losses or damages in any way associated with actual or potential impacts of development except for impacts caused by Grantor on the Protected Property ("**Compensatory Mitigation**") is prohibited on the Protected Property. Compensatory Mitigation includes, but is not limited to, mitigation banking, conservation banking, and any other sale or exchange of mitigation credits based on the creation, restoration, enhancement and/or preservation of such natural resources within the Protected Property. 
- 6.14. **Pond Creation and Wetland Restoration.** Subject to the provisions of the preceding Section, Grantor may construct ponds and restore wetlands in accordance with the conservation plan and NRCS standards and specifications. Such ponds must 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 the ponds and wetlands must be supported by appropriate documentation in the conservation plan case file. 
- 6.15. **Limitations on Waste Disposal.**
- 6.15.1. The dumping or accumulation of trash or refuse on the Protected Property is prohibited, except that the storage of agricultural products for use on the

Protected Property and by-products generated on the Protected Property is permitted.

6.15.2. Grantor shall not otherwise dispose of or Release (or permit the disposal or release of) any Hazardous Materials on the Protected Property. The term "**Release**" shall mean any release, generation, treatment, disposal, dumping, burying, or abandonment. "**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. But, Hazardous Materials does not include biosolids, herbicides, pesticides, rodenticides, insecticides, and fertilizers applied in accordance with federal, state, and local law. Any storage of Hazardous Materials shall be in accordance with federal, state, and local law.

6.16. Limitation on Transfers.

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

6.16.2. Except as provided in Section 6.15.3, Grantor shall not undertake or permit any Transfer of any rights in the Protected Property without prior notice to and consent of Grantee as provided for in Section 7; provided, however, that such consent shall not be withheld unless Grantee determines that the proposed Transfer would be inconsistent with the Purpose and terms of this Easement.

6.16.3. The following shall require notice to but shall not require consent of Grantee: i) Any mortgage, deed of trust, real estate contract or similar document providing security for an indebtedness of Grantor, provided that such security interest shall be subject and subordinate to this Easement; ii) temporary transfers or leases of the Water Rights pursuant to Section 6.6.4; or iii) any gift, bargain, sale or devise of fee simple absolute title to the Protected Property.

6.17. Limitation on Motorized Vehicle Use. The use of motorized vehicles on the Protected Property is prohibited except to the extent reasonably necessary to support

(a) the Easement's Purpose, (b) any Agricultural Activities, (c) stewardship or Easement enforcement, (d) educational uses, (e) forestry use, (f) law enforcement or public safety, (g) preservation of Agricultural Values or Habitat Values, or (h) any other permitted use on the Protected Property.

6.18. **Current Use Classification** The Protected Property is classified as farm and agricultural land under RCW 84.34. Throughout the term of this Easement, Grantor shall (a) maintain such classification, and (b) take no steps to discontinue such classification.

6.19. **Limits on Grants of Certain Easements.** The granting of easements or rights-of-way for power lines, gas lines, sewer lines, water lines, telecommunication towers and wind farms is prohibited. However, despite this prohibition, Grantor may grant easements and install utilities necessary for permitted uses on the Protected Property that are consistent with the Purposes of this Easement and done in such a manner as to minimize to the greatest extent possible impact on soils.

7. NOTICE AND CONSENT

7.1. Notice.

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

7.1.2. **Grantor.** Certain provisions of this Easement require Grantor to give notice to Grantee prior to undertaking certain permitted uses and activities. 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 thirty (30) 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.

- 7.1.3. **NRCS.** In the event NRCS determines it must exercise its right of enforcement, NRCS shall provide written notice by certified mail, return receipt requested, to the Grantee, or Grantee's successors and/or assigns, at their last known address. The notice shall set forth the nature of the noncompliance by the Grantee and a sixty (60) day period to cure. If the Grantor fails to cure within the sixty (60) day period, NRCS shall take the action specified 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 Agricultural Conservation Values or other interest in the land it seeks to protect.

7.2. **Consent**

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

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

7.2.2.1. 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.

7.2.2.2. 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.

- 7.3. **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 Easement's Purpose 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: Kim P. and Janet R. Shelstad
14523 168th St. E.
Orting, WA 98360
Telephone: (253) 886-6896

To Grantee: PCC Farmland Trust
1917 First Avenue
Level A, Suite 100
Seattle, WA 98101
Telephone: 206-547-9855
Fax: 206-547-9734

Copy to: Duncan M. Greene, Esq.
Van Ness Feldman LLP
719 Second Avenue, Suite 1150
Seattle, Washington 98104-1728
Telephone: 206-623-9372
Fax: 206-623-4986

To NRCS: State Conservationist
U.S. Natural Resources Conservation Service,
on behalf of the Commodity Credit Corporation
316 West Boone Avenue, Suite 450
Spokane, WA 99201-2348
Telephone: 509-323-2900

- 7.5. Where notice to Grantor of entry upon the Protected Property by Grantee is required under this Easement (including any notice to Grantor pursuant to Section 4.8), Grantee may notify any of the persons constituting Grantor or any appropriate agent of Grantor by telephone, mail, or in person prior to such entry.

8. **DISPUTE RESOLUTION**

8.1. **Preventive Discussions.**

8.1.1. Grantor and Grantee will promptly give each other notice of problems or concerns arising in connection with the others' actions under this Easement or the use of or activities or conditions on the Protected Property, and will meet as needed, but no later than fifteen (15) business days after receipt of a written request for a meeting, to minimize the same.

8.1.2. Grantee shall invite the NRCS to such preventive discussion meetings provided for in this Section 8.

8.2. **Mediation.** If the Parties disagree as to the consistency of any proposed use or activity with the Purpose or terms of this Easement and the Parties are unable to resolve such disagreement through unassisted preventive discussions between themselves and the 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 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. The provisions of Section 8.2 shall not be applicable to the United States. Mediation shall then proceed in accordance with the following guidelines:

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

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

- 8.2.3. **Confidentiality.** All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the Mediation Parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party. Records of mediation communications shall be exempt from the requirements of Chapter 42.56 RCW (Washington State Public Records Act) to the extent provided for in Chapter 7.07 RCW (Washington State Uniform Mediation Act).
- 8.2.4. **Time Period.** Neither party shall be obligated to continue the mediation process beyond a period of sixty (60) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.
- 8.2.5. **Costs.** The costs of the mediator shall be borne equally by the Parties; the Mediation Parties shall bear their own expenses, including attorneys' fees, individually.
- 8.3. **Arbitration.** The Parties may by mutual agreement submit disputed matters to arbitration upon such rules of arbitration as Grantor, Grantee, and the NRCS may agree.

9. **REMEDIES**

- 9.1. **Notice of Non-Compliance.** If Grantee determines that the 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 Protected Property resulting from any use or activity inconsistent with the Easement's Purpose or terms, to restore the portion of the Protected Property so injured to its prior or potential condition in accordance with a plan to which Grantee has consented.
- 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 Habitat Values; and to require the restoration of the Protected Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Grantee, in its sole and absolute discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property. All such actions for injunctive relief may be taken without Grantee being required to post bond or provide other security.
- 9.4. **Immediate Action Required.** Despite any other provision of this Easement to the contrary, 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 and 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, and 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 may be 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.
- 9.6. **Liquidated Damages.** Inasmuch as the actual damages to the Agricultural Conservation Values and/or Habitat Values that could result from a breach of this

Easement by Grantor would be impractical or extremely difficult to measure, the Parties agree that the damages Grantee is to recover from Grantor shall be as follows:

9.6.1. With respect to the construction of any Improvement prohibited by this Easement, which is not subsequently removed and the Protected Property restored to its previous condition within a reasonable amount of time specified by Grantee, then damages shall be an amount equal to the greater of:

9.6.1.1. the actual cost of such Improvement; or

9.6.1.2. the increase in the fair market value of the Protected Property, and of any other real property owned by Grantor, attributable to such Improvement;

9.6.2. With respect to any use or activity prohibited by this Easement, whether or not involving the construction or maintenance of Improvements, an amount equal to any economic gain realized by the Grantor or any other party, commencing from the date of breach; and

9.6.3. Any other damages and remedies allowable under Washington law, including, but not limited to, restoration of lost or damaged Agricultural Conservation Values, in which case Grantor shall permit Grantee and its agents and contractors to enter the Protected Property and conduct restoration activities.

9.6.4. Any damages received by Grantee pursuant to this Section shall, after the deduction of any damages awarded to Grantee for costs incurred, be distributed to the Grantee and the NRCS in accordance with Section 11.

9.7. **Costs of Enforcement.** If 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. Any forbearance by Grantee to exercise its rights under this Easement if Grantor breaches any of the Easement's terms 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. Grantee's delay or omission in the exercise of any right or remedy

upon any breach by Grantor shall not 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 and in view of the fact that Grantee will not be continually present on the Protected Property, that Grantee has limited resources to monitor compliance with the Easement, and that activities inconsistent with the Purpose and terms of this Easement could occur without Grantee's immediate knowledge, 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, prescription, laches, estoppel or changed circumstances relating to the Protected Property or 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 Protected Property or to recover damages for any injury to or change in the Protected Property resulting from actions by a trespasser upon the Protected Property or causes beyond Grantor's control, including, without limitation, natural disaster, fire, flood, storm, pest infestation, earth movement, and climate change, and from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. If the Easement's terms 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 or to appoint Grantee its attorney-in-fact, for purposes of pursuing enforcement action against the responsible parties. It shall be Grantor's burden to demonstrate that a violation was caused by a trespasser and that Grantor could not have anticipated or prevented such violation.
- 9.11. **Compliance Certificates.** Upon Grantor's request, 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 Protected 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. The NRCS shall not be estopped from claiming or enforcing a violation of this Easement unless it has also executed the Compliance Certificate.

10. LIABILITIES, TAXES, AND ENVIRONMENTAL COMPLIANCE

- 10.1. **Liabilities and Insurance.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage. Such insurance shall include Grantee's interest, name both Grantee and the United States as an additional insured, and provide for at least thirty (30) days notice to Grantee before cancellation and that the act or omission of one insured will not invalidate the policy as to the other insured party. The Parties release and relieve the other, and waive their entire right to recovery for loss or damage to the extent that the loss or damage is covered by the injured party's insurance. This waiver applies whether or not the loss is due to the negligent acts or omissions of Grantor or Grantee. Grantor remains solely responsible for obtaining any applicable governmental permits and approval for any construction or other activity or use permitted by this Easement. Grantor shall keep the Protected Property free of any liens arising out of any work performed for, material furnished to, or obligations incurred by Grantor; **provided** that the Protected Property shall be deemed to be free of such liens if i) Grantor or Grantee, as the case may be, is diligently challenging the application of such liens to the Protected Property; or ii) such liens are subordinated to this Easement and do not require any action or inaction inconsistent with the Purpose and terms of this Easement.
- 10.2. **Compliance with Applicable Laws.** Grantor shall comply with all statutes, laws, ordinances, rules, regulations, codes, orders, guidelines, or other restrictions, or requirements applicable to the Protected Property that have been enacted or otherwise promulgated by any federal, state, county, municipal, or other governmental or quasi-governmental agency, board, bureau, commission, court, department, panel, or other official body (whether legislative, administrative, or judicial), or by any competent official of any of the foregoing, including, but not limited to, those relating to pollution or the protection of human health or the environment. Furthermore, any activity on the Protected Property that is not prohibited by a state criminal statute (including any such activity authorized by any state, local or municipal government), but violates a federal criminal statute is prohibited.
- 10.3. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, charges of whatever description levied on or assessed against the Protected Property by competent authority, including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

10.4. Indemnification.

Grantor shall indemnify and hold harmless the Grantee and 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 Easement, or violations of any Federal, State, or local laws, including all Environmental Laws.

10.5. Environmental Warranty and Related Definitions.

10.5.1.

Grantor warrants that it 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 Protected Property. Grantor further warrants that it 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 Protected Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Protected 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 Protected Property or any restoration activities carried out by any of the Grantee at the Protected Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Protected Property by Grantee.

10.5.2.

“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.

10.5.3.

“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.

- 10.6. **Remediation.** If there is a Release of any Hazardous Materials on the Protected Property, Grantor shall take or compel responsible third parties to take, all steps required under applicable law and necessary to assure its containment and remediation, including any cleanup that may be required (except that the use of institutional controls shall not be allowed without Grantee’s consent), unless the Grantee caused the Release, in which case Grantee shall be responsible for such remediation to the extent it caused the Release. At its discretion, Grantee may assist Grantor in compelling third parties to contain and remediate any 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 the NRCS to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of Grantor’s activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of either the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or Washington’s Model Toxic Control Act, as amended.

11. EXTINGUISHMENT, CONDEMNATION and SUBSEQUENT TRANSFERS

11.1. **Generally.** Under this Easement, the United States is granted a Right of Enforcement. This is a vested property right that cannot be condemned by State or local government. 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 Grantor, Grantee and the United States 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. The United States retains a vested property right in the Protected Property which shall not be extinguished without the express written consent of the United States.

11.2. Extinguishment.

11.2.1. If circumstances arise that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction; **provided that:**

11.2.1.1. prior to the initiation of any proceeding to terminate or extinguish this Easement, the Grantor shall furnish NRCS with written notice of the pending initiation of such proceeding; and

11.2.1.2. any such termination or extinguishment requires the express written consent of the NRCS.

11.2.2. The amount of the proceeds to which Grantee and the United States shall be entitled to receive, shall be determined, in accordance with Sections 11.3 and 11.4, below. Grantee shall use its share of such proceeds for the acquisition of property interests substantially equivalent to those conveyed by this Easement.

11.3. Condemnation.

11.3.1. If the Easement is taken, in whole or in part, by the exercise of the power of eminent domain, after the express written consent of the United States, Grantee and Grantor shall be entitled to compensation in accordance with applicable

law. The United States shall be compensated as described in Section 11.4. and 11.5.

11.3.2. Prior to the initiation of any such condemnation proceeding, the Grantor shall, furnish NRCS and Grantee with written notice of the pending initiation of such proceeding.

11.3.3. Any such condemnation requires the express consent of the NRCS.

11.4. **Valuation.** In the event this easement is terminated or extinguished, NRCS shall collect the Commodity Credit Corporation's (CCC's) share 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 proportionate to its percentage of original investment.

11.5. **Distribution of Proceeds.** In the event of extinguishment or termination of this Easement pursuant to Section 11.2, condemnation of this Easement pursuant to Section 11.3, or any other proceeding whereby damages or compensation is paid attributable to the value of this Easement, any proceeds attributable to the value of the Easement shall be distributed as follows: Grantee is entitled to 50% and the NRCS is entitled to 50%.

11.6. **Subsequent Transfers.**

11.6.1. Grantor shall: (1) incorporate by express reference the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in the Protected Property, including without limitation any leasehold interest; and (2) describe this Easement in and append it to, any executory contract for the transfer of any interest in the Protected Property. Grantor shall 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 shall not impair the validity of this Easement or limit its enforceability in any way.

11.6.2. **Stewardship/Transfer Fee.** Grantor shall pay, or cause the closing agent in connection with the future transfer for value of any fee simple interest in the Protected Property to pay, to Grantee, or any successor having stewardship obligations pertaining to the Protected Property, at closing, a stewardship fee (the "**Fee**") in an amount equal to four (4) percent of the full consideration



paid, including that portion of such consideration attributable to improvements, and any fixtures and other improvements permanently attached to the Protected Property; **provided that**, the Fee shall not be inapplicable to a transfer, by way of sale, gift or devise, including a trust, to or for a party related to the Grantor, or to any transfer, in whole or part, from one such related party to another, but shall apply to any subsequent transfer to a third party. For the purpose of this subsection, if the then Grantor shall be an individual, a related party shall include a spouse, lineal descendant or spouse of such descendant, ancestor or sibling (whether by the whole or half blood), a partnership of which such Grantor is a member, a joint ownership or ownership in common, which includes the then owner of the Protected Property, or a corporation, the majority of whose securities is owned by the Grantor, or any one or more of the foregoing parties. If the then Grantor shall be a corporation, a related party shall include an affiliate, subsidiary or parent corporation, a successor by merger or consolidation, or the holder or holders of the majority of the securities of such corporation. If the Fee is not paid as provided herein, Grantee shall have the right to initiate proceedings to impose a lien on the Protected Property to secure the continuing obligation of Grantor and its successors in title to pay the Fee. Such lien may be imposed, enforced and/or foreclosed in accordance with the laws of the State of Washington.

12. **AMENDMENT**

This Easement may be amended only if in the sole and exclusive judgment of the Grantee, and NRCS such amendment furthers and/or is not inconsistent with the Easement's purposes. Any such amendment must be mutually agreed upon by the Grantor, Grantee, and NRCS, prior to signing and recording by the parties and must comply with all applicable laws and regulations. The Grantee must provide to NRCS timely notice in writing of the proposed amendment prior to signing and recordation.

13. **ASSIGNMENT**

- 13.1. **Assignment of Grantee's Interest.** Grantee's interest in this Easement is transferable with prior written notice to and consent of the NRCS, but Grantee may assign its rights and obligations under this Easement only to an organization that is both (a) a qualified holder at the time of transfer under RCW 64.04.130, as amended, and (b) is permitted to accept a qualified conservation contribution pursuant to section 170(h) of the Internal Revenue Code as amended from time to time. Grantee shall not assign this Easement without notice to and consent of Grantor and NRCS, which shall not be

unreasonably withheld. As conditions of such transfer, Grantee shall require that assignee continue to carry out the Easement's Purpose. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment. The assignment shall not be valid without such notice; provided, however, that the failure of Grantee to give such notice shall not impair the validity of this Easement or limit its enforceability in any way. If the vesting of the Grantee's interest in this Easement in a successor organization is deemed to be void under the Rule Against Perpetuities, the Grantee's rights and obligations under this Easement shall vest in such organization as a court of competent jurisdiction shall direct, pursuant to the applicable Washington law and the applicable provisions of the Internal Revenue Code (or corresponding provision of any future statute) and with due regard to the Easement's Purpose and terms.

- 13.2. **Rights and Obligations Upon Transfer.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Protected Property or this Easement, as the case may be, except that liability for acts or omissions occurring prior to transfer shall survive transfer. Grantee is authorized to record and file from time to time any notices or instruments that may be appropriate to ensure the perpetual enforceability of this Easement, and Grantor agrees to execute, acknowledge, and/or deliver (as applicable) any such notices or instruments upon Grantee's reasonable request.

14. **RIGHTS OF THE UNITED STATES**

Under this Easement, the United States is granted the right of enforcement in order to protect the public investment. This is a vested property right that cannot be condemned by State or local government. 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, or its successors or assigns, fails to enforce any of the terms of this Easement, as determined in the sole discretion of the Secretary.

In the event NRCS determines it must exercise its Right of Enforcement, NRCS will provide written notice, by certified mail, return receipt requested, to Grantee or Grantee's successors and/or assigns last known address. The notice will set forth the nature of the noncompliance by the Grantee and a 60-day period to cure. If Grantee fails to cure within the 60-day period, NRCS will take the action specified 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 land 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 Conservation Easement.

Representatives of the United States shall have the right to enter the Protected Property after notifying Grantor for the purposes of inspection and ensuring the terms and conditions of this Easement are being implemented appropriately. All notices to the Grantor under this Section may be made either in writing or verbally, at the discretion of the party providing the notice; however, in the event of an emergency, NRCS may enter the Protected Property to prevent, terminate or mitigate a potential violation of the Easement, and in such case, notice to Grantor will be given at the earliest practicable time.

15. JOINT ENFORCEMENT

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16. RECORDATION

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

17. NO MERGER

If Grantee, the United States, the NRCS or any successor or assignee thereof acquires all or a portion of the fee title to the Protected Property, it is the intent of the Parties that no merger of title shall take place that would merge the restrictions of this Easement with fee title to the Protected Property and thereby eliminate them, and that the restrictions on the use of the Protected Property, as embodied in the Easement, shall, if all or a portion of title become vested in Grantee, become and remain permanent and perpetual restrictions on the use of the Protected Property. Grantee, United States and the NRCS each covenants to do what is required to prevent merger of title, including, if necessary, assignment of the Easement to an appropriate third party. If the Grantee, the United States or the NRCS takes legal title to the Grantor's

fee simple interest in the Protected Property, the Grantee must commit the Easement's monitoring and enforcement to another qualified organization within the meaning of section 170(h)(3) of the Internal Revenue Code, as amended, which organization has among its purposes the conservation and preservation of land and water areas.

18. LIENS

- 18.1. **Existing Mortgage.** As of the Effective Date, the Protected Property is subject to that certain mortgage dated March 16, 2010, and recorded under Pierce County recording number 201003220346 ("**Mortgage**"). The mortgagee has agreed by separate instrument substantially in the form of the instrument attached here as Exhibit E, which will be recorded concurrently with this Easement, to subordinate certain of its rights in the Protected Property to this Easement, so as to permit Grantee to enforce the Easement's Purpose in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the mortgagee.
- 18.2. **Future Mortgages/Liens.** Any mortgage or lien arising after the Effective Date must be subordinated to this Easement and its terms and conditions.

19. GENERAL PROVISIONS

- 19.1. **Governing Law and Venue.** The laws of the State of Washington and applicable federal law shall govern the interpretation and performance of this Easement. By executing this Easement, Grantor acknowledges the jurisdiction of the courts of the State of Washington in this matter. In the event of a lawsuit involving this Easement, venue shall be proper only in Pierce County, Washington.
- 19.2. **Liberal Construction.** Despite any general rule of construction to the contrary, this Easement shall be liberally construed in favor of the grant to further 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.
- 19.3. **Severability.**
- 19.3.1. Except as provided in the next subsection, if any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid or unenforceable by any court of competent jurisdiction or is superseded by state or federal legislation, rules, regulations or decision, the remainder of the

provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid or unenforceable, as the case may be, shall not be affected thereby.

- 19.3.2. 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 Easement's Purpose and applicable law.
- 19.4. **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.
- 19.5. **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- 19.6. **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns, and to any party taking ownership of the Protected Property, or any portion thereof, subsequent to the foreclosure of any mortgage or deed of trust, and shall continue as a servitude running in perpetuity with the Protected Property.
- 19.7. **No Joint Venture.** Grantor, Grantee and the NRCS expressly disclaim the existence of any fiduciary relationship, partnership, joint venture or agency relationship between or amongst them with respect to matters arising out of or related to this Easement.
- 19.8. **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.

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- 19.9. **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. SCHEDULE OF EXHIBITS

- 20.1. Exhibit A. Legal Description of Property Subject to Easement.
- 20.2. Exhibit B. Building Envelope Map and Description.
- 20.3. Exhibit C. Water Rights.
- 20.4. Exhibit D. Permitted Exceptions.
- 20.5. Exhibit E. Subordination Agreement.

TO HAVE AND TO HOLD the said Easement hereunto the said *Grantee, the United States of America, and their respective successors and assigns forever.*

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IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this 22 day of December, 2014.

GRANTOR

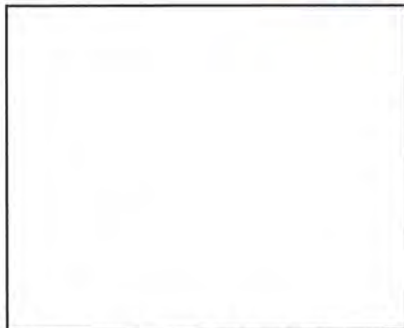
By: [Signature]
Printed Name: Kim P. Shelstad

By: [Signature]
Printed Name: Janet Shelstad

STATE OF WASHINGTON)
) ss.
COUNTY OF Pierce)

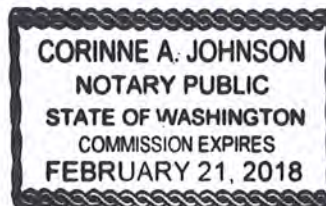
I certify that I know or have satisfactory evidence that Kim P. Shelstad Janet Shelstad is the person who appeared before me, and such person acknowledged that ~~he~~ they signed this instrument, on oath stated that ~~they~~ they ~~was~~ was authorized to execute the instrument and acknowledged it as the their to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12/22/15



(Use this space for notarial stamp/seal)

[Signature]
Notary Public
Print Name Corinne A. Johnson
My commission expires 2/21/18



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The PCC Farmland Trust, a Washington nonprofit corporation, does hereby accept the above Grant Deed of Agricultural Conservation Easement.

Dated: 12/22/15

Grantee

By: Rebecca Sadinsky

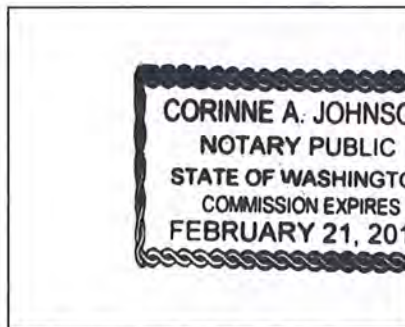
Name: Rebecca Sadinsky

Its: Executive Director

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Rebecca Sadinsky is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument and acknowledged it as the Executive Director of the PCC Farmland Trust, a Washington nonprofit corporation to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 12/22/15



(Use this space for notarial stamp/seal)

Corinne A. Johnson
Notary Public
Print Name Corinne A. Johnson
My commission expires 2/21/18

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(PCC Farmland Trust 7305461201BX3 Parcel #1301BS Kim and Janet Shelstad)

Dated: 12/20/2015
Brian R. Shelton
State Conservationist
Natural Resources Conservation Service
United States Department of Agriculture

A circular notary seal for Janice M Monk, Notary Public, State of Washington. The seal features the text "JANICE M MONK" at the top, "APPOINTMENT EXPIRES" on the left, "NOTARY PUBLIC" in the center, and "JUNE 20, 2019" at the bottom. The outer ring of the seal reads "STATE OF WASHINGTON".

Janice M. Monk
Notary Public
Print Name JANICE M MONK
My commission expires 6/20/2019

EXHIBIT A

Legal Description of Property Subject to Easement

THE EAST HALF OF GOVERNMENT LOT 4, AND THE WEST 660.00 FEET IN GOVERNMENT LOT 5
IN SECTION 25, TOWNSHIP 19 NORTH, RANGE 4 EAST, W.M., IN PIERCE COUNTY, WASHINGTON.

EXCEPT A STRIP OFF THE SOUTH SIDE OF GOVERNMENT LOT 4, 15 FEET WIDE AND 40 RODS
LONG, CONVEYED TO PIERCE COUNTY FOR HIGHWAY PURPOSES IN DEED RECORDED UNDER
RECORDING NUMBER 50864;

EXCEPT A STRIP OFF THE WEST SIDE OF THE EAST HALF OF GOVERNMENT LOT 4, 1 ROD
WIDE AND 40 RODS LONG, CONVEYED TO L. VOGEL FOR A ROAD IN DEED RECORDED UNDER
RECORDING NUMBER 199848;

EXCEPT ANY PORTION CONVEYED TO JONATHAN E. COMBS IN DEED RECORDED UNDER
RECORDING NUMBER 160557;

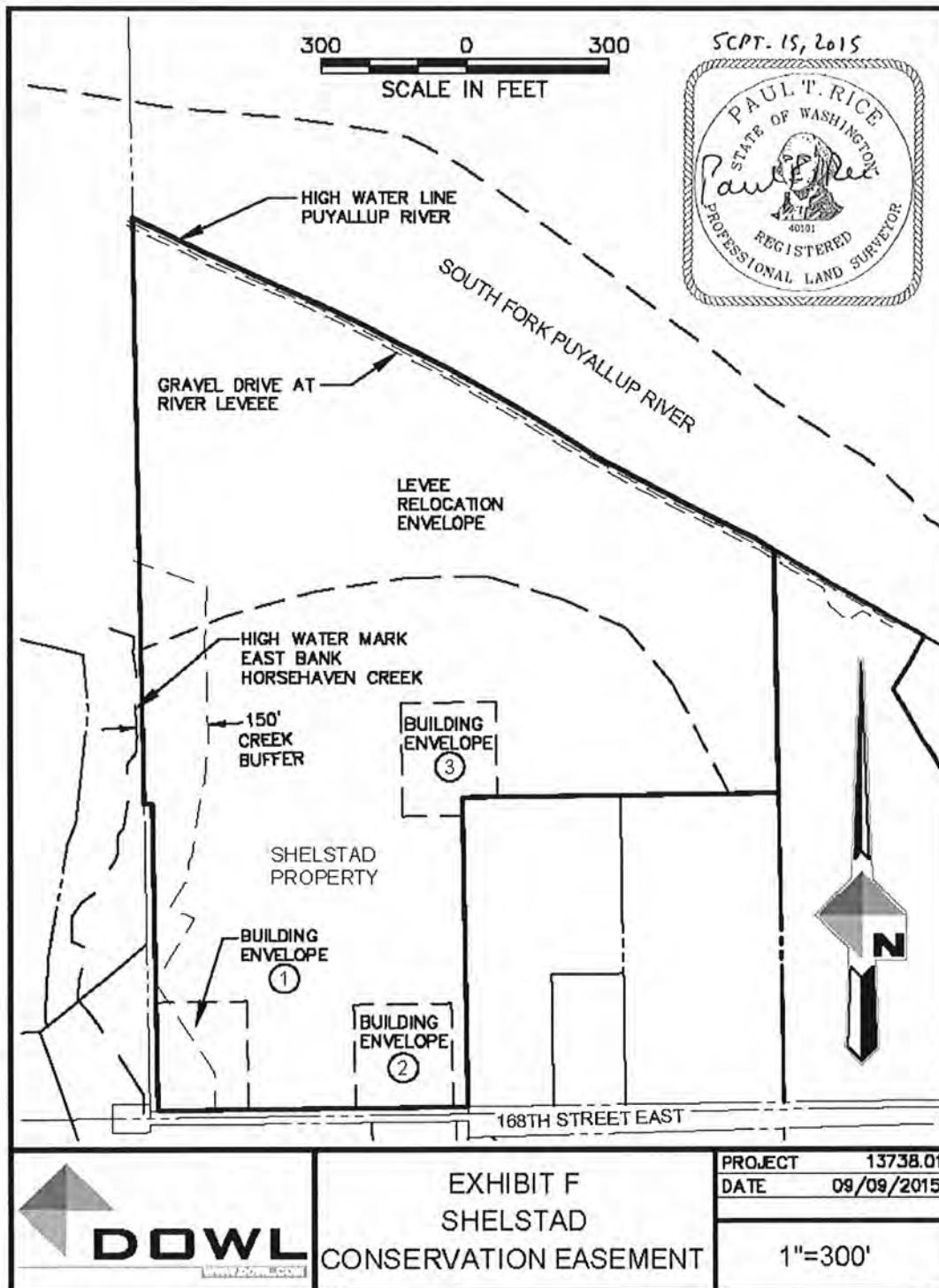
EXCEPT THAT PORTION OF GOVERNMENT LOT 5, DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHWEST CORNER OF SAID GOVERNMENT LOT 5;
THENCE NORTH 00°54'00" WEST ALONG THE WEST LINE OF SAID GOVERNMENT LOT 5, A
DISTANCE OF 665.49 FEET;
THENCE NORTH 89°14'28" EAST, 660.00 FEET;
THENCE SOUTH 00°54'04" EAST, 665.38 FEET TO THE SOUTH LINE OF SAID GOVERNMENT LOT
5;
THENCE SOUTH 89°13'52"W, ALONG SAID SOUTH LINE, 660.00 FEET TO THE POINT OF
BEGINNING.

EXCEPT ANY PORTION WHICH MAY LIE BELOW THE HIGH WATER LINE OF THE SOUTH FORK
OF THE PUYALLUP RIVER;

TOGETHER WITH:

THAT PORTION, IF ANY, OF GOVERNMENT LOT 2, IN SECTION 25, TOWNSHIP 19 NORTH, RANGE
4 EAST, W.M., IN PIERCE COUNTY, WASHINGTON, LYING EASTERLY OF THE WEST LINE OF THE
EAST HALF OF GOVERNMENT LOT 4 IN SAID SECTION 25 EXTENDED NORTHERLY, AND LYING
SOUTH OF THE SOUTH HIGH WATER LINE OF THE SOUTH FORK OF THE PUYALLUP RIVER.

EXHIBIT B – BUILDING ENVELOPE MAP AND DESCRIPTIONS



BUILDING ENVELOPE 1 (Existing Home Site):

COMMENCING AT THE EAST QUARTER CORNER OF SECTION 25, TOWNSHIP 19 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON.

THENCE SOUTH 89°13'52" WEST, ALONG THE SOUTH LINE OF GOVERNMENT LOT 5 IN SAID SECTION 25, A DISTANCE OF 1317.81 FEET TO THE SOUTHEAST CORNER OF GOVERNMENT LOT 4 IN SAID SECTION 25;

THENCE NORTH 00°54'00" WEST, ALONG THE EAST LINE OF SAID GOVERNMENT LOT 4, A DISTANCE OF 15.00 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF 168TH STREET EAST, AND THE SOUTHERLY BOUNDARY OF THE ABOVE DESCRIBED PROPERTY;

THENCE SOUTH 89°13'52" WEST, ALONG SAID NORTHERLY RIGHT OF WAY LINE AND SAID SOUTHERLY BOUNDARY, A DISTANCE OF 451.87 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 89°13'52" WEST, ALONG SAID NORTHERLY RIGHT OF WAY LINE AND SAID SOUTHERLY BOUNDARY, A DISTANCE OF 190.58 FEET TO THE SOUTHWEST CORNER OF THE ABOVE DESCRIBED PROPERTY;

THENCE NORTH 01°03'11" WEST, ALONG THE WESTERLY BOUNDARY OF THE ABOVE DESCRIBED PROPERTY, A DISTANCE OF 228.57 FEET;

THENCE LEAVING SAID WESTERLY BOUNDARY, NORTH 89°13'52" EAST, 190.58 FEET;

THENCE SOUTH 01°03'11" EAST, A DISTANCE OF 228.57 FEET TO THE POINT OF BEGINNING. SAID PORTION CONTAINS 43,560 SQUARE FEET, OR 1.0000 ACRE OF LAND, MORE OR LESS.

BUILDING ENVELOPE 2 (Floating Barn Envelope Option 1):

COMMENCING AT THE EAST QUARTER CORNER OF SECTION 25, TOWNSHIP 19 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON.

THENCE SOUTH 89°13'52" WEST, ALONG THE SOUTH LINE OF GOVERNMENT LOT 5 IN SAID SECTION 25, A DISTANCE OF 1317.81 FEET TO THE SOUTHEAST CORNER OF GOVERNMENT LOT 4 IN SAID SECTION 25;

THENCE NORTH 00°54'00" WEST, ALONG THE EAST LINE OF SAID GOVERNMENT LOT 4, A DISTANCE OF 15.00 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF 168TH STREET EAST, AND THE SOUTHERLY BOUNDARY OF THE ABOVE DESCRIBED PROPERTY;

THENCE SOUTH 89°13'52" WEST, ALONG SAID NORTHERLY RIGHT OF WAY LINE AND SAID SOUTHERLY BOUNDARY, A DISTANCE OF 30.48 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 89°13'52" WEST, ALONG SAID NORTHERLY RIGHT OF WAY LINE AND SAID SOUTHERLY BOUNDARY, A DISTANCE OF 200.00 FEET;

THENCE LEAVING SAID NORTHERLY RIGHT OF WAY LINE AND SAID SOUTHERLY BOUNDARY, NORTH 00°54'00" WEST, A DISTANCE OF 217.80 FEET;

THENCE NORTH 89°13'52" EAST, A DISTANCE OF 200.00 FEET;

THENCE SOUTH 00°54'00" EAST, A DISTANCE OF 217.80 FEET TO THE POINT OF BEGINNING.
SAID PORTION CONTAINS 43,560 SQUARE FEET, OR 1.0000 ACRE OF LAND, MORE OR LESS.

BUILDING ENVELOPE 3 (Floating Barn Envelope Option 2):

COMMENCING AT THE EAST QUARTER CORNER OF SECTION 25, TOWNSHIP 19 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON.

THENCE SOUTH 89°13'52" WEST, ALONG THE SOUTH LINE OF GOVERNMENT LOT 5 IN SAID SECTION 25, A DISTANCE OF 1317.81 FEET TO THE SOUTHEAST CORNER OF GOVERNMENT LOT 4 IN SAID SECTION 25;

THENCE NORTH 00°54'00" WEST, ALONG THE EAST LINE OF SAID GOVERNMENT LOT 4, A DISTANCE OF 15.00 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF 168TH STREET EAST AND A CORNER ON THE SOUTHERLY BOUNDARY OF SAID PROPERTY;

THENCE CONTINUING NORTH 00°54'00" WEST, ALONG SAID EAST LINE, AND AN EASTERLY BOUNDARY OF THE ABOVE DESCRIBED PROPERTY, A DISTANCE OF 612.55 FEET TO THE POINT OF BEGINNING;

THENCE LEAVING SAID EAST LINE AND SAID EASTERLY BOUNDARY, SOUTH 89°14'28" WEST, A DISTANCE OF 122.29 FEET;

THENCE NORTH 00°54'00" WEST, 237.95 FEET;

THENCE NORTH 89°14'28" EAST, 194.60 FEET;

THENCE SOUTH 00°54'00" EAST, 200.00 FEET TO A SOUTHERLY BOUNDARY OF THE ABOVE DESCRIBED PROPERTY;

THENCE SOUTH 89°14'28" WEST, ALONG SAID SOUTHERLY BOUNDARY, 72.31 FEET TO A CORNER ON THE ABOVE DESCRIBED PROPERTY;

THENCE SOUTH 00°54'00" EAST, ALONG AN EASTERLY BOUNDARY OF THE ABOVE DESCRIBED PROPERTY, A DISTANCE OF 37.94 FEET TO THE POINT OF BEGINNING;
SAID PORTION CONTAINS 43,560 SQUARE FEET, OR 1.0000 ACRE OF LAND, MORE OR LESS.

LEVEE RELOCATION ENVELOPE:

THAT PORTION OF THE ABOVE DESCRIBED PROPERTY, LYING NORTHERLY AND EASTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE EAST QUARTER CORNER OF SECTION 25, TOWNSHIP 19 NORTH, RANGE 4 EAST, WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON.

THENCE SOUTH 89°13'52" WEST, ALONG THE SOUTH LINE OF GOVERNMENT LOT 5 IN SAID

SECTION 25, A DISTANCE OF 1317.81 FEET TO THE SOUTHEAST CORNER OF GOVERNMENT LOT 4 IN SAID SECTION 25;

THENCE NORTH 00°54'00" WEST, ALONG THE EAST LINE OF SAID GOVERNMENT LOT 4, A DISTANCE OF 15.00 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF 168TH STREET EAST AND A CORNER ON THE SOUTHERLY BOUNDARY OF THE ABOVE DESCRIBED PROPERTY;

THENCE CONTINUING NORTH 00°54'00" WEST, ALONG SAID EAST LINE AND AN EASTERLY BOUNDARY OF THE ABOVE DESCRIBED PROPERTY, A DISTANCE OF 650.49 FEET TO A CORNER ON THE ABOVE DESCRIBED PROPERTY;

THENCE NORTH 89°14'28" EAST, ALONG A SOUTHERLY BOUNDARY OF THE ABOVE DESCRIBED PROPERTY, A DISTANCE OF 558.08 FEET TO THE POINT OF BEGINNING OF THE ABOVE DESCRIBED LINE;

THENCE ALONG SAID LINE, THE FOLLOWING EIGHT COURSES:

NORTH 27°00'00" WEST, 260.00 FEET;

NORTH 40°00'0" WEST, 153.00 FEET;

NORTH 66°00'00" WEST, 143.00 FEET;

NORTH 73°00'00" WEST, 168.00 FEET;

SOUTH 89°00'00" WEST, 160.00 FEET;

SOUTH 81°30'00" WEST, 194.00 FEET;

SOUTH 74°30'00" WEST, 195.00 FEET;

SOUTH 68°30'00" WEST, A DISTANCE OF 190.33 FEET TO A POINT ON THE WESTERLY BOUNDARY OF THE ABOVE DESCRIBED PROPERTY AND THE POINT OF TERMINUS OF SAID LINE;

SAID PORTION CONTAINS 702,915 SQUARE FEET, OR 16.1367 ACRE OF LAND, MORE OR LESS.

EXHIBIT C

Water Rights

(See following page.)

**Auditor's notation
to facilitate
scanning process**

STATE OF WASHINGTON, COUNTY OF Elaine

CERTIFICATE OF WATER RIGHT

(For filing perfected water rights, enlargement or secondary permits.)
(In accordance with the provisions of Chapter 117, Laws of Washington for 1917, and the regulations of the State Supervisor of Hydraulics thereunder.)

This is to certify, that George E. Morris and Thom. Ward
of Puyallup, State of Washington, has made
proof to the satisfaction of the State Supervisor of Hydraulics of Washington, of a right to the use of
the waters of Unnamed spring, a tributary of Lawrence Creek
for the purposes of Domestic supply and irrigation
under Appropriation Permit No. 3106 issued by the State Supervisor of Hydraulics, and
that said right to the use of said waters has been perfected in accordance with the laws of Washington,
and is hereby confirmed by the State Supervisor of Hydraulics of Washington and entered of record in
Volume 4, at Page 1890, on the 18th day of November, 1942; that
the right hereby confirmed dates from July 23, 1940; that the amount of water to
which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount
actually beneficially used for said purposes, and shall not exceed 0.3 of a cubic foot
per second.

A description of the lands under such right to which the water hereby confirmed is appurtenant,
and the place where such water is put to beneficial use, is as follows:

PLACE OF USE			LEGAL SUBDIVISION	FOR IRRIGATION	
Section	Township	Range		No. Acres Described in Permit	No. Acres Actually Irrigated
<u>25</u>	<u>19 N</u>	<u>4 E.W. 1</u>	<u>N$\frac{1}{2}$ of NW$\frac{1}{4}$ of SE$\frac{1}{4}$</u>	<u>-10-</u>	<u>-10-</u>
			<u>and</u>		
<u>25</u>	<u>19 N</u>	<u>4 E.W. 1</u>	<u>E$\frac{1}{2}$ of Lot 4 and</u>	<u>-15-</u>	<u>-15-</u>
			<u>N$\frac{1}{2}$ of Lot 5</u>		

LOCATION OF POWER PLANT			LEGAL SUBDIVISION	FOR POWER	
Section	Township	Range		H. P. Described in Permit	H. P. Actually Developed

Section	Township	Range	LEGAL SUBDIVISION	FOR OTHER USES
			<u>Lands described above</u>	<u>Domestic supply</u>

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of
use herein described, except as provided in Section 39, Chapter 117, Session Laws 1917.

WITNESS the seal and signature of the State Supervisor of Hydraulics affixed this 18th day
of November, 1942

Chas. J. Barbaux
State Supervisor of Hydraulics.

EXHIBIT D

Permitted Exceptions

The following exceptions as set forth on Schedule B, Parts I & II of that certain ALTA commitment (5th report) for title insurance as issued on or about September 17th, 2015 by Puget Sound Title Company (as agent for Old Republic National Title Insurance Company) constitute Permitted Exceptions:

1. General Exceptions Part I, 1 – 6;
2. Special Exceptions Part II, 1 – 14;
3. Special Exception Part II, 5 (Deed of Trust dated March 16th, 2010 recorded March 22nd, 2010 under File No. 201003220346), but only so long as such deed of trust is subordinated to this Easement;
4. Special Exceptions Part II, 16 – 18.

Nothing herein shall expressly or by implication constitute a re-publication or admission of the validity of any exception to title to Protected Property if it, they, or any of them have expired, are invalid, or have become unenforceable for any reason whatsoever.

**[EXHIBIT E
Form of Subordination Agreement]**

When Recorded Return to:

Subordination Agreement

Dated: _____

Mortgagor:

Mortgagee:

Easement Holder: **PCC Farmland Trust, a Washington non-profit corporation**

Background

A. Mortgagee is the holder of that certain mortgage dated [DATE] granted by [NAME/INTEREST], in favor of Mortgagee to secure an indebtedness in the original principal amount of \$[NUMBER] (the "**Mortgage**");

B. The Mortgage created a lien on certain real property owned by Mortgagor in [COUNTY], WA the legal description of which is as follows (hereinafter, the "**Property**");

[DESCRIPTION]

C. The Mortgage was recorded in the land records of [COUNTY], WA, under recording number [NUMBER];

D. Mortgagor has agreed to grant to Easement Holder a Grant Deed of Agricultural Conservation Easement (the "**Conservation Easement**") restricting the Property's use;

E. A true and complete copy of the Conservation Easement has been provided to Mortgagor and Mortgagee;

F. The Conservation Easement will be recorded concurrently with this Subordination Agreement; and

G. Pursuant to the Subordination Agreement's terms and conditions, Mortgagee is willing to subordinate the lien of the Mortgage to the provisions of the Conservation Easement.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound hereby, Mortgagee and Easement Holder agree as follows:

1. Except as otherwise provided for in this Subordination Agreement, the Mortgage, and all of Mortgagee's rights, interests, claims, remedies and privileges under the Mortgage are, and at all times shall continue to be, subject and subordinate in all respects to the Conservation Easement, with the same force and effect as if the Conservation Easement had been executed, delivered and recorded prior to the execution and delivery of the Mortgage.

2. Despite anything to the contrary in this Subordination Agreement, the priority of the Mortgage with respect to any valid claim on the part of Mortgagee to the proceeds of any sale, condemnation proceedings, or insurance, or to the leases, rents and profits of the Property, is not affected hereby, and any monetary lien that may be created by the Easement Holder's exercise of any of its rights under the Conservation Easement shall be junior to the Mortgage; provided that, if the Conservation Easement is terminated under the circumstances described in section 11, the Easement Holder shall be entitled to compensation in accordance with the terms set forth therein.

3. If any action or proceeding is commenced by Mortgagee for the foreclosure of the Mortgage or the sale of all or part of the Property, Easement Holder will not be named as a party therein, and the sale of the Property (or a portion thereof) in any such action or proceeding shall be made subject to all rights of Easement Holder under the Conservation Easement.

4. If Mortgagee shall become the owner of the Property by reason of the foreclosure of the Mortgage or the acceptance of a deed or assignment in lieu of foreclosure or otherwise, the Conservation Easement shall not be affected thereby, but shall continue in full force and effect, and Mortgagee shall abide by all of the terms, covenants and conditions set forth in the Conservation Easement.

5. Notwithstanding anything to the contrary contained in this Subordination Agreement or in the Conservation Easement, in the event that Mortgagee or any other person acquires title to the Property pursuant to the exercise of any remedy provided for in the Mortgage or under applicable law or as a result of a deed-in-lieu of foreclosure, neither Mortgagee nor any successor or assign of Mortgagee shall in any event be:

- (i) liable for Mortgagor's violation of the Conservation Easement's terms, covenants and conditions, so long as Mortgagee (or its successor or assign) promptly (promptness being measured from the date Mortgagee [or its successor or assign] acquires title to the Property, not when the violation occurred or is deemed to have occurred) takes corrective action sufficient to cure the violation, but in no instance will Mortgagee (or its successor or assign) be liable for damages (including direct, indirect, compensatory, liquidated or any other type of damages) arising from Mortgagor's violation of the Conservation Easement's terms, covenants and conditions; or
- (ii) bound by any amendment to the Conservation Easement made subsequent to the date of this Subordination Agreement, which amendment was not consented to by Mortgagee, such consent not to be unreasonably withheld or conditioned.

6. This Subordination Agreement shall be binding upon and inure to the benefit of Mortgagee and Easement Holder and their respective successors and assigns.

7. This Subordination Agreement may not be amended or modified except by an instrument in writing executed by the party against whom such amendment or modification is sought to be enforced.

8. This Subordination Agreement shall be construed and enforced in accordance with the laws of the state of Washington.

9. An endorsement has been placed upon the promissory note secured by the Mortgage, stating that the Mortgage has been subordinated to the Conservation Easement to the extent described herein.

10. This Subordination Agreement shall be recorded immediately after the Conservation Easement.

11. This Subordination Agreement may be executed in counterparts.

Mortgagee:

By: **EXHIBIT – DO NOT SIGN**

Name: _____

Title: _____

PCC Farmland Trust, a Washington non-profit corporation

By: **EXHIBIT – DO NOT SIGN**

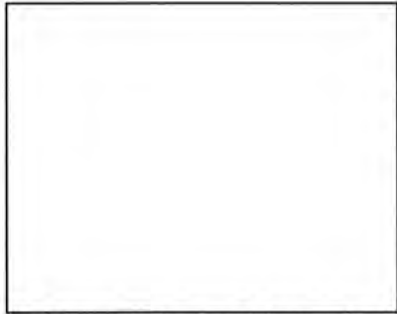
Name: Rebecca Sadinsky

Title: Executive Director

[NOTARY ACKNOWLEDGEMENTS FOLLOW]

STATE OF _____)
) ss.:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, _____ by _____
_____, _____ of _____ corporation, on
behalf of the corporation, as his or her, and its, free act and deed.



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____

STATE OF WASHINGTON)
) ss.:
COUNTY KING)

The foregoing instrument was acknowledged before me this ____ day of _____, _____ by Rebecca
Sadinsky, executive director of the PCC Farmland Trust, a Washington nonprofit corporation, on behalf of the
corporation, as her, and its, free act and deed.



(Use this space for notarial stamp/seal)

Notary Public
Print Name _____
My commission expires _____