

After Recording Return to:
Property Management
Snohomish County Department of Facilities and Fleet
3000 Rockefeller Avenue MS 609
Everett, WA 98201

GRANT OF CONSERVATION EASEMENT

Grantor: City of Snohomish, a municipal corporation of the State of Washington
Grantee: Snohomish County, a political subdivision of the State of Washington

Abbreviated Legal: Ptn Block 28, Panting's Addition to Snohomish, Vol 2 of
Plats, page 10, in Snohomish County, WA

Tax Parcel No.: 00538902800000

This grant of a perpetual CONSERVATION EASEMENT (hereinafter "Conservation Easement") is made this ____ day of _____, 2024, by the City of Snohomish, a municipal corporation of the State of Washington (hereinafter "Grantor"), to Snohomish County, a political subdivision of the State of Washington (hereinafter "Grantee" or "County"), in perpetuity as holder of the Conservation Easement pursuant to RCW 64.04.130.

RECITALS

- A. Grantor is the sole owner in fee simple of the property legally described on Exhibit A, which is attached hereto and incorporated herein by reference (the "Protected Property"), located on 20th Street in the City of Snohomish, Washington; and
- B. Grantor warrants that Grantor has good legal title to the Protected Property, as well as the right to convey this Conservation Easement, and that the Protected Property is free and clear of any encumbrances except those general exceptions contained in the title policy and any special exceptions shown on the Preliminary Commitment that are accepted by the Grantee; and
- C. Grantor warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances or waste on the Protected Property; and

D. The Protected Property possesses significant long-term natural and open space values (“Conservation Values”) of great importance to the people of Snohomish County for passive recreation; and

E. This Conservation Easement is authorized by RCW 64.04.130, the provision of state law governing conservation easements; and

F. The Grantor and the Grantee intend and have the common purpose of retaining the Protected Property for open space and passive recreation by placing restrictions on the use of the Protected Property, which shall continue as a servitude running with the land, and authorizing Grantee to monitor and enforce such restrictions, as described herein; and

G. Snohomish County, as the Grantee of this Conservation Easement, is a qualified holder of conservation easements under RCW 64.04.130; and

H. This Conservation Easement is being purchased with funds provided, in part, by the County’s Conservation Futures Program pursuant to RCW 84.34.200, RCW 84.34.210, RCW 84.34.220 and chapter 4.14 SCC, which authorizes Snohomish County to purchase conservation easements for the purpose of protecting open space and timber land through restrictions on incompatible uses of the land;

NOW, THEREFORE, for the mutual covenants, terms, conditions, and restrictions contained herein by Grantee, the receipt of which is hereby acknowledged by Grantor, and pursuant to the laws of the State of Washington, including chapters 64.04 and 84.34 of the Revised Code of Washington, the parties agree as follows:

I. **Grant.** Grantor hereby grants to the Grantee a perpetual Conservation Easement over, under, across and through the Protected Property, as described in Exhibit A attached hereto, to protect, preserve, maintain, improve, restore, limit future use of or otherwise conserve the Protected Property as open space pursuant to chapter 84.34 RCW.

II. **Purpose.** The purpose of this Conservation Easement is to assure that the Protected Property will be retained forever in its natural and open space condition and to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values. Grantor intends that this Conservation Easement will confine the use of, or activity on, the Protected Property to such uses and activities that are consistent with this purpose. This statement of purpose is intended as a substantive provision of the Conservation Easement. Any ambiguity or uncertainty regarding the application of the provisions of this Conservation Easement will be resolved so as to further this purpose.

III. **Rights of the Grantee.** Grantor hereby conveys to the Grantee all rights necessary to accomplish the purpose of this Conservation Easement, including, without limitation, the following:

- A. The right to protect, conserve, maintain, improve and restore the Conservation Values of the Protected Property;
- B. The right to enter the Protected Property or allow Grantee's invitees or licensees to enter, at a reasonable time and upon prior written notice to the Grantor, for the following purposes (i) to make general inspection of the Protected Property to monitor compliance with this Conservation Easement; (ii) to protect, preserve, maintain, improve and restore the Conservation Values of the Protected Property; and (iii) to mitigate or terminate any violation or otherwise enforce the provisions of this Conservation Easement.
- C. The right to enjoin any use of, or activity on, the Protected Property that is inconsistent with the purpose of this Conservation Easement, including trespasses by members of the public, and to require the restoration of such area or features of the Protected Property as may be damaged by uses or activities inconsistent with the provisions of this Conservation Easement, all in accordance with Section XI.
- D. The right to enforce the terms of this Conservation Easement, consistent with Section XI.
- E. The right to place a sign on the Protected Property which acknowledges this Conservation Easement, any conditions on access, and any funding contribution to the acquisition of the Conservation Easement.

The foregoing are rights, not obligations, and shall not create any third-party rights of enforcement.

IV. Permitted Uses and Activities.

- A. Grantor reserves to itself, and to its successors and assigns all rights accruing from its ownership of the Protected Property, including the right to engage in or permit or invite others to engage in all uses of the Protected Property that are not prohibited herein and are not inconsistent with the purpose of this Conservation Easement. In the event Grantor plans to undertake actions that could be inconsistent with the purpose of this Conservation Easement, Grantor shall provide Grantee written notice of such intent not less than sixty (60) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Conservation Easement. Grantee shall grant or withhold its approval in writing within sixty (60) days of receipt of Grantor's notice. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action proposed would be inconsistent with the purpose of this Conservation Easement.
- B. Any improvements to the Protected Property shall be limited to those which are passive in nature and meet the requirements and intent of RCW 84.34.200-220. Passive improvements include, but are not limited to, trails, interpretive centers, viewpoints, picnicking facilities,

access, restrooms, playgrounds and restoration projects. Active recreational improvements are prohibited. Such improvements include, but are not limited to ball fields, use by motorized vehicles, swimming pools, and recreation centers.

C. Nothing herein precludes the Grantor from demolishing, removing, and remediating existing improvements on the property as of the date of this Conservation Easement.

V. **Prohibited Uses and Activities.** Neither Grantor nor its licensees or invitees shall use the Protected Property for any activity or purpose that is inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following activities are expressly prohibited in the Protected Property:

A. The placement or construction of any buildings, structures, improvements or equipment of any kind except as permitted in subsection IV. B;

B. The continuation, creation, expansion or intensification of any use or activity that is contrary to the purpose of this Conservation Easement or prohibited in this section;

C. Mining or extraction of soil, sand, gravel, oil, natural gas or other mineral;

D. Dumping or accumulation of trash or refuse;

E. The use of motorized vehicles except for those necessary to conduct the uses permitted under this Conservation Easement; and

F. Any construction, expansion, repair or other development activity that would result in more than ten percent (10%) of the area of the Protected Property being covered with impervious surfaces, including, without limitation, asphalt, concrete, gravel, buildings, or ponds.

VI. **Transfer of Property. The Grantor agrees to:**

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

B. Describe the Conservation Easement in and append it to any contract for the transfer of any interest in the Protected Property.

C. Give written notice to the Grantee of the transfer of any interest in all or any portion of the Protected Property no later than forty-five (45) days prior to the date of such transfer. Such notice to the Grantee shall include the name, address and telephone number of the prospective transferee or the prospective transferee's representative.

D. Execute and record any and all necessary documents, as required by the Grantee, to ensure the continuing validity and enforceability of the Conservation Easement regardless of

the status of the transferee.

The failure of the Grantor to perform any act required by this subsection shall not impair the validity of this Conservation Easement or limit its enforceability.

VII. Extinguishment. This Conservation Easement may be terminated or extinguished, whether in whole or in part, only under one or more of the following circumstances:

A. By judicial determination, by a court having jurisdiction over the Conservation Easement, those circumstances have rendered the purpose of this Conservation Easement impossible to achieve.

B. In the event all or any of the Protected Property is taken by exercise of the power of eminent domain or acquired in lieu of condemnation, whether by public, corporate or other authority, except by the parties hereto.

VIII. Proceeds. In the event of termination or extinguishment of this Conservation Easement, Grantee shall be compensated by Grantor for the fair market value of its interest in the Protected Property as determined by either a real estate appraiser licensed by the State of Washington or a court of competent jurisdiction.

IX. Transfer or Assignment of the Conservation Easement. *This Conservation Easement is transferable, but Grantee may assign its rights under this Conservation Easement only to an agency or organization that is authorized to acquire and hold conservation easements under RCW 64.04.130 or RCW 84.34.250, or otherwise qualified at the time of transfer under §170(h) of the Internal Revenue Code of 1986. As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the purpose of this Conservation Easement.*

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

A. Taxes. Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Protected Property.

B. Attorneys' fees and costs for enforcement. If the Grantee commences and successfully prosecutes an enforcement action pursuant to Section XI below, the Grantor shall pay all reasonable costs and expenses associated with the enforcement action, including but not limited to, reasonable attorneys' fees.

XI. Enforcement & Monitoring. Grantee shall have the authority to enforce the terms of this Conservation Easement. To exercise this authority and thereby further the purpose of this Conservation Easement, the Grantee shall have the following rights under this Conservation

Easement, which are subject to the stated limitations:

- A. Entry onto Protected Property with Reasonable Notice. If the Grantee has reason to believe that a violation of the terms of this Conservation Easement has occurred or is occurring, the Grantee shall have the right to enter the Protected Property, provided that reasonable advance notice is given to the Grantor, for the purpose of inspecting it for violations of any requirement set forth in this Conservation Easement. Additionally, the Grantee shall have the right to enter the Protected Property at least once a year, at a mutually agreed time, for purposes of inspection and compliance monitoring regardless of whether Grantee has reason to believe that a violation of this Conservation Easement exists.
- B. Enforcement Mechanisms and Remedial Measures. If the Grantee finds what it believes to be a violation of this Conservation Easement, it may, at its discretion, use any available legal or equitable remedy to secure compliance, including but not limited to seeking injunctive relief and/or specific performance requiring the Grantor to cease and desist all activity in violation of the terms of this Conservation Easement and to return the Protected Property to its condition prior to any violation(s). Except when an imminent violation could irreversibly diminish or impair the Conservation Values of the Protected Property, the Grantee shall give the Grantor written notice of the violation and thirty (30) days in which to take corrective action prior to commencing any legal action. The failure of Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time or constitute a waiver of its rights.
- C. Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damages to the Conservation Values of the Protected Property, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.
- D. Scope of Relief. Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement. Grantor agrees that the Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- E. Costs of Enforcement. In the event Grantee must enforce the terms of this Conservation Easement, any costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, invitees or licensees in violation of the terms of this Conservation Easement and Grantee's reasonable enforcement expenses, including reasonable attorneys' and consultants' fees and costs, shall be borne by Grantor, its successors or assigns.

F. **Waiver of Defenses.** Grantor acknowledges it has carefully reviewed this Conservation Easement and has consulted or had the opportunity to consult with counsel of its terms and requirements. In full knowledge of the provisions of this Conservation Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors or assigns under or pertaining to this Conservation Easement based upon waiver, laches, estoppel or prescription.

G. **Acts Beyond Grantor's Control.** Nothing contained in this Conservation Easement shall be construed to entitle the Grantee to bring any action against Grantor to abate, correct or restore any condition in the Protected Property or to recover damages for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including fire, flood, storm, and earth movement or the like.

XII. **Hold Harmless.** Grantor hereby agrees to release and hold harmless, indemnify and defend Grantee, its officers, elected and appointed officials, employees and agents (collectively "Indemnified Parties") from all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including, without limitation, reasonable attorneys' and consultants' fees arising from or in any way connected with:

A. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Protected Property that is not a consequence of an activity of the Indemnified Parties undertaken under the rights granted to Grantee under this Conservation Easement;

B. Violations or alleged violations of, or other failure to comply with, any federal, state or local law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, including without limitation CERCLA (42 U.S.C. 9601 et seq.) and MTCA (ch. 70.105D RCW), by any person other than any of the Indemnified Parties, in any way affecting, involving or relating to the Protected Property, unless such violations or alleged violations are due to the sole acts or omissions of any of the Indemnified Parties on the Protected Property;

C. The presence or release in, on, from or about the Protected Property, at any time, of any substance now or hereafter defined, listed or otherwise classified pursuant to any federal, state or local law, regulation or requirement of any substance hazardous, toxic or dangerous to the air, water or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties.

XIII. **Recordation.** Grantee shall record this instrument in the Office of the Snohomish County Auditor and may re-record it at any time.

XIV. **Notices.** Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to another party under the terms of this Conservation

F. No forfeiture. Nothing in this Conservation Easement shall result in a forfeiture or revision of Grantor's title in any respect.

G. Successors. As stated in the above recitals, all covenants, terms, conditions, and restrictions of this Conservation Easement shall run with the land and be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

H. Severability. If any portion of this Conservation Easement is declared unlawful or invalid, the remainder of the Conservation Easement shall remain in full force and effect.

I. Authority of signatories. The individuals executing this Conservation Easement warrant and represent that they are duly authorized to execute and deliver this Conservation Easement.

J. No merger. If Grantee at some future time acquires the underlying fee title in the Protected Property, the interest conveyed by this Deed will not merge with fee title but will continue to exist and be managed as a separate estate.

XVI. Environmental Compliance.

A. Grantor represents and warrants that, after reasonable investigation and to the best of Grantor's knowledge, Grantor and the Protected Property are in compliance with all federal, state and local laws, regulations and requirements applicable to the Protected Property and its use, including without limitation all federal, state and local environmental laws, regulations and requirements.

B. Grantor further represents and warrants that there has been no release, dumping, burying, abandonment or migration from offsite onto the Property of any substances, materials or wastes that are hazardous, toxic, dangerous or harmful or are designated as, or contain components that are subject to regulation as hazardous, toxic, dangerous or harmful by any federal, state or local law, regulation, statute or ordinance. There is no pending or threatened litigation affecting the Property or any portion of the Property that will materially impair the Conservation Values. No civil or criminal proceedings have been instigated or are pending against Grantor or its predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and neither Grantor nor its predecessors in interest have received any notice of violation, penalties, claims, demand letters or other notifications relating to a breach of environmental laws.

C. Remediation. If at any time there occurs or has occurred a release in, on or about the Property of any substances now or hereafter defined, listed or otherwise classified pursuant to any federal, state or local law, regulation or requirement as hazardous, toxic or dangerous to the air, water or soil, or in any way harmful or threatening to human health or environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including

Printed Name: _____
NOTARY PUBLIC in and for the State of
Washington, residing at _____.
My Commission Expires: _____.

Attest:

City Clerk

APPROVED AS TO FORM

City Attorney Date

EXHIBIT A

Legal Description of Property

For APN/Parcel ID(s): 00538902800000

Beginning at the Southeast corner of Block 28, Panting's Addition to Snohomish, according to the plat thereof recorded in Volume 2 of Plats, page 10, records of Snohomish County, Washington;
Thence West 291 feet to the center line of Washington Avenue;
Thence North to the North line of said Block 28 extended West;
Thence East 291 feet to the Northeast corner of said Block 28;
Thence South to the point of beginning;
Together with the West half of Ridge Avenue adjoining;
Situate in the County of Snohomish, State of Washington

Situate in the County of Snohomish, State of Washington