

**AGREEMENT BETWEEN SNOHOMISH COUNTY AND FORTERRA NW
CONCERNING ACQUISITION OF A CONSERVATION EASEMENT WITH CONSERVATION
FUTURES FUNDS**

THIS AGREEMENT BETWEEN SNOHOMISH COUNTY AND FORTERRA NW CONCERNING ACQUISITION OF A CONSERVATION EASEMENT WITH CONSERVATION FUTURES FUNDS (this "Agreement"), is made and entered into by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington (the "County"), and FORTERRA NW, a Washington nonprofit corporation ("Forterra") pursuant to chapter 84.34 RCW. The County and Forterra may be referred to individually as "a Party" or collectively as "the Parties."

RECITALS

A. The County manages a Conservation Futures funding program pursuant to RCW 84.34.200 et seq. and chapter 4.14 Snohomish County Code.

B. Cities and towns located in Snohomish County, nonprofit historic preservation corporations, and nonprofit nature conservancy corporations or associations as such are described in RCW 84.34.210 are eligible to apply to the County for resources to fund acquisition of interests or rights in real property located within Snohomish County that meet the conservation criteria described in RCW 84.34.210 et seq.

C. Forterra applied for resources from the Snohomish County Conservation Futures Property Tax Fund (the "Fund") to acquire a conservation easement (the "Conservation Easement") on an approximately 39.54-acre agriculture real property located in unincorporated Snohomish County, referred to as Foster Corn Maze, and more particularly described in Section 1 below (the "Property").

D. On October 2, 2025, the Conservation Futures Program Advisory Board (the "Board") at a Special Session meeting listened to Forterra's presentation, reviewed the project proposal, and voted to recommend project funding through the Fund in the amount of Five Hundred Twenty Thousand and Three Hundred Fifty 00/100 Dollars (\$520,350.00) to assist with purchase of the Conservation Easement.

E. On March 18, 2026, the Snohomish County Council, by Motion No. 26-118, allocated funding in the amount of Five Hundred Twenty Thousand and Three Hundred Fifty and 00/100 Dollars (\$520,350.00) to Forterra NW from the Fund for that purpose.

NOW, THEREFORE, in consideration of the mutual promises set out below and for other good and valuable consideration, the Parties agree as follows:

1. Identification of Property and Conservation Easement. The unimproved Property is located in unincorporated Snohomish County, Washington and is generally legally described as follows:

SEE ATTACHED EXHIBIT A.

The owner of the Property is the Estate of Betty A. Foster (the "Landowner"). Forterra proposes to purchase from Landowner a Conservation Easement in substantially the form attached hereto as Exhibit B.

2. **Purpose of Conservation Easement Acquisition.** The Conservation Easement is to be acquired for the purpose of conserving farm and agricultural land as authorized by RCW 84.34.200 et seq., and for conservation and preservation of farm and agricultural land.

3. **Duration.** This Agreement shall become effective when executed by both parties (the "Effective Date"). If the Conservation Easement is acquired within the time frame provided in Section 5.1 below, this Agreement shall be in effect perpetually, subject to any amendments agreed to in writing by the parties. If the Conservation Easement is not acquired within the time frame provided in Section 5.1 below, this Agreement shall be terminated; PROVIDED, HOWEVER, that the County and Forterra may mutually agree in writing, prior to termination, upon an extension of time.

4. **Administrators.** Each party to this Agreement shall designate an individual (an "Administrator") who may be designated by title or position, to oversee and administer such party's participation in this Agreement. The parties' initial Administrators shall be the following:

County's Administrator:
Snohomish County
Attn: Pej Morgan
Real Property Administrator
Email: pej.morgan@snoco.org
3000 Rockefeller Avenue M/S 404
Everett, WA 98201

Forterra Administrator:
Forterra NW
Attn: Julie Currier
Sr. Managing Director – Real Estate
Email: jcurrier@forterra.org
5101 14th Ave NW, Suite 200, #307
Seattle, WA 98107

Either party may change its Administrator at any time by delivering written notice of such party's new Administrator to the other party.

5. **Duties of Forterra to Acquire, Operate, Maintain and Conserve.** Forterra shall:

5.1 Cause the Landowner to convey the Conservation Easement to the County, if reasonably possible, within twenty-four (24) months of the Effective Date of this Agreement and upon closing, cause the executed Conservation Easement to be recorded. Forterra shall undertake all reasonable efforts to cause the Landowner to convey the Conservation Easement to the County.

5.2 Upon closing, if it occurs, cause the Landowner to execute and record an instrument conveying a Conservation Easement for the Property to the County in substantially the form attached hereto as Exhibit B (the "Conservation Easement")

5.3 Prior to acquisition of the Conservation Easement, perform a boundary line survey to determine potential trespass or adverse possession issues. County may waive this requirement if there are no potential boundary issues, as determined in the County's sole discretion, or if a prior survey has been performed.

5.4 Forward a copy of the recorded and executed Conservation Easement for the Property to the County after those documents are returned from the Snohomish County Auditor.

5.5 Provide an identifying sign, the size and design of which shall be approved by the Snohomish County Department of Conservation and Natural Resources Parks and Recreation Division, at the entrance to the Property which shall be in plain sight in perpetuity, listing the

County as a participant in the acquisition of the Conservation Easement through the Snohomish County Conservation Futures Program.

6. Payment from the County. The County shall provide Forterra financial assistance from the Fund in the amount of the lesser of \$520,350.00 or 95% of the total purchase price of the Conservation Easement. Payment shall be made (or, at Forterra's direction, funds will be placed into escrow) within thirty (30) days of County receipt of a Forterra invoice submitted with documentation of imminent purchase and recording of the Conservation Easement, provided Forterra has complied with all of the applicable terms of this Agreement. Documentation of matching funds as submitted in the original grant application are required for reimbursement. Any obligations of the County beyond the current fiscal year are subject to appropriation of funds for the specific purpose of funding this Agreement in accordance with its Charter and applicable law. In no event shall the County be obligated to provide any payment to Forterra in excess of the actual purchase price of the Conservation Easement.

7. Compliance with Laws. The parties shall comply with all applicable federal, state and local laws, rules and regulations in performing this Agreement, including, but not limited to, laws against discrimination.

8. Records, Inspections and Audits. Forterra will keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. The County may, at its sole discretion, from time to time whether before or after acquisition of the Conservation Easement or termination of this Agreement inspect all books and records and other materials related to any matters covered by this Agreement and not otherwise privileged, belonging to Forterra or any contractor or to elect to have an audit conducted to verify acquisition-related costs through the date of the acquisition. Such books, records and other materials shall be made available for County inspection during regular business hours within a reasonable time of the request. If the County elects to conduct such an audit, it will give notice to Forterra, and such audit will be conducted as soon as is reasonably feasible thereafter, but County payments to Forterra (if any) will not be delayed pending the outcome of the audit. Such audit will be conducted by an auditor selected by the County, and the County will, except as provided herein, pay the cost of such audit. Forterra agrees to cooperate with the auditor and to make available for examination at its principal office all its books, records, correspondence and other documents deemed necessary to conduct the audit by the auditor. If the audit reveals a variation equal to five percent (5%) or more of the cost of acquiring the Conservation Easement, then Forterra will pay the cost of the audit, not to exceed Ten Thousand and 00/100 Dollars (\$10,000.00).

Forterra will preserve all records for a period of seven (7) years; PROVIDED, HOWEVER, that if Forterra proposed to dispose of any documents materially related to the Conservation Easement for a period less than seven (7) years, then Forterra will deliver the same to the County for disposition by the County.

Forterra acknowledges and agrees that its obligations under this Section 8 will survive termination of this Agreement.

9. Risk of Loss. All of Forterra's personal property of any kind or description whatsoever, or that of its employees, agents, contractors, and/or invitees placed on the Property shall be at Forterra's sole risk, and the County will not be liable for any damage done to, or loss of, such personal property.

10. Public Records Act. This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of Forterra are needed for the County to respond to a request under the Act, as determined by the County, Forterra agrees to make them promptly available to the County. If Forterra considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, Forterra shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Forterra and the County determines that release of the information is required by Act or otherwise appropriate, the County's sole obligations shall be to notify Forterra (a) of the request and (b) of the date that such information will be released to the requester unless Forterra obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If Forterra fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this Section assumes, no obligation on behalf of Forterra to claim any exemption from disclosure under the Act. The County shall not be liable to Forterra for releasing records not clearly identified by Forterra as confidential or proprietary. The County shall not be liable to Forterra for any records that the County releases in compliance with this Section or in compliance with an order of a court of competent jurisdiction.

11. Hold Harmless and Indemnification. Forterra shall assume the risk of, be liable for, and pay all damage, loss, costs and expense of any party arising out of the activities under this Agreement. Forterra shall hold harmless, indemnify and defend the County, its officers, elected and appointed officials, employees and agents from and against all claims, losses, lawsuits, actions, counsel fees, litigation costs, expenses, damages, judgments, or decrees by reason of damage to any property or business and/or any death, injury or disability to or of any person or party, including but not limited to any employee, arising out of or suffered, directly or indirectly, by reason of or in connection with the acquisition of the Conservation Easement and this Agreement; PROVIDED, that the above indemnification does not apply to those damages caused by the sole negligence or willful misconduct of the County, its elected and appointed officials, officers, employees or agents, nor does it apply to the acts, omissions, negligence or misconduct of the Landowner or its employees or agents.

12. Dispute Resolution. The Parties agree to use their best efforts to resolve disputes and other matters arising out of this Agreement or the ongoing administration of this Agreement. If a dispute arises, then (i) within ten (10) business days of a written request by either Party, Forterra's designated representative and County's designated representative shall meet and resolve the issue; if these parties cannot resolve the issue within ten (10) business days of the meeting, then (ii) the issue shall be submitted to Forterra's Conservation Managing Director and to the Director of the Snohomish County Department of Conservation and Natural Resources; if these parties cannot resolve the issue within fifteen (15) business days of submission to them, then (iii) the issue shall be submitted for mediation; if mediation does not successfully resolve the dispute, then (iv) either Party may file suit in a court of competent jurisdiction.

13. Notice. All notices required to be given by any party to the other party under this Agreement shall be in writing and shall be delivered either in person, by United States mail, or by electronic mail (email) to the applicable Administrator or Administrator's designee. Notice delivered in person shall be deemed given when accepted by the recipient. Notice by United

States mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid and addressed to the Administrator or Administrator's designee at the addresses set forth in Section 4 above. Notice delivered by email shall be deemed given as of the date and time received by the recipient.

14. Miscellaneous.

14.1. Entire Agreement; Amendments. This Agreement shall constitute the full and complete Agreement of the parties regarding the subject matter hereof and supersedes any and all prior oral or written agreements between the parties regarding the subject matter contained herein. This Agreement may be amended only by written agreement of the parties.

14.2. Interpretation. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

14.3. Governing Law and Stipulation of Venue. This Agreement shall be governed by the laws of the State of Washington and the parties stipulate that any lawsuit regarding this Agreement must be brought in Snohomish County, Washington. In the event that a lawsuit is instituted to enforce any provision of this Agreement, the prevailing party shall be entitled to recover all costs of such a lawsuit, including reasonable attorney's fees.

14.4. Rights and Remedies. The rights and remedies of the Parties to this Agreement are in addition to any other rights and remedies provided by law except as otherwise provided in this Agreement.

14.5. No Third Party Rights. It is understood and agreed that this Agreement is solely for the benefit of the Parties hereto and gives no right to any other party. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under, or by reason of, this Agreement on any persons other than the Parties.

14.6. Binding on Successors. All the terms, provisions and conditions of this Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors, permitted assigns and legal representatives.

14.7. No Waiver. Payment by the County under this Agreement shall not constitute a waiver by the County of any claims it may have against Forterra for any breach of this Agreement or for failure of Forterra to perform the work or actions, as specified in this Agreement. Forbearance of the rights of the parties under this Agreement will not constitute waiver of entitlement to exercise their respective rights as to any future acts or omissions by the offending party.

14.8. No Employee Relationship. In performing work and services pursuant to this Agreement, Forterra, its, employees, consultants, agents, and representatives shall be acting as agents of Forterra and shall not be deemed or construed to be employees or agents of the County in any manner whatsoever. Forterra shall not hold itself out as, nor claim to be, an officer or

employee of the County and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of County. Forterra shall be solely responsible for any claims for wages or compensation by Forterra employees, consultants, agents, and representatives, including sub-consultants, or any agency, and shall defend, indemnify and hold County harmless therefrom.

14.9 Conflicts between Attachments and Text. Should any conflicts exist between any attached exhibit or schedule and the text or main body of this Agreement, the text or main body of this Agreement shall prevail.

14.10 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

14.11 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

14.12 No Assignment. This Agreement shall not be assigned, either in whole or in part, by either party without the express written consent of the other party, which may be granted or withheld in such party's sole discretion. Any attempt to assign this Agreement in violation of the preceding sentence shall be null and void and shall constitute a default under this Agreement.

14.13 Warranty of Authority. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign this Agreement.

14.14 No Joint Venture. Nothing contained in this Agreement shall be construed as creating any type or manner of partnership, joint venture or other joint enterprise between the parties.

14.15 No Separate Entity Necessary. The parties agree that no separate legal or administrative entities are necessary to carry out this Agreement.

14.16 Ownership of Property. Except as expressly provided to the contrary in this Agreement, any real or personal property used or acquired by either party in connection with its performance under this Agreement will remain the sole property of such party, and the other party shall have no interest therein.

14.17. Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

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EXECUTED this ____ day of _____, 2026.

SNOHOMISH COUNTY:

Snohomish County Executive

Forterra NW:

Signed by:


Michelle Conner, CEO

APPROVED AS TO FORM:

Guadamud, Digitally signed by
Guadamud, Rebecca
Date: 2026.03.19
06:46:11 -07'00'

Deputy Prosecuting Attorney Date

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Parcels A through C, J and K, Record of Survey Boundary Line Adjustment No. PFN 06-132755 BA, recorded November 16, 2006 as Recording No. [200611165008](#) and Affidavit of Boundary Line Adjustment recorded November 16, 2006 as Recording No. [200611160662](#), in Snohomish County, Washington.

Exhibit B
Conservation Easement

After Recording Return to:

Assistant Clerk
Snohomish County Council
3000 Rockefeller Avenue MS 609
Everett, WA 98201

GRANT OF CONSERVATION EASEMENT

Grantor: Estate of Betty A. Foster

Grantee: Snohomish County, a political subdivision of the State of Washington

Legal: Attached as Exhibit A

Tax Parcel No.: 310510-003-014-00, 310510-003-015-00, 310510-003-013-00, 310510-003-019-00 and 310510-003-020-00

This grant of a perpetual CONSERVATION EASEMENT (hereinafter "Conservation Easement") is made this ____ day of _____, 202__, by Estate of Betty A. Foster (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. The Washington State Department of Ecology ("Ecology") is a third-party beneficiary ("Beneficiary") and has certain rights hereunder, including a third party right of enforcement.

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 in Snohomish County, Washington and which is an assemblage of the following Snohomish County Parcels: 310510-003-014-00, 310510-003-015-00, 310510-003-013-00, 310510-003-019-00 and 310510-003-020-00.

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 conservation and agricultural values ("Conservation Values") of great importance to the people of Snohomish County; 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 conservation and preservation of farm and agricultural land 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. To document the present condition of the Protected Property so that Grantee or its assigns are able to monitor future uses and assure compliance with the terms of this Conservation Easement, Grantee has, at its expense, prepared baseline data consisting of photographs and other documentation summarized in Exhibit B and incorporated herein by reference as though set forth in full (the "Baseline Documentation") that the parties agree provide an accurate representation of the Protected Property as of the date of this Conservation Easement; and

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

I. This Easement is acquired with partial funding from a Floodplains by Design grant from Ecology in accordance with that certain grant agreement (# _____) between Ecology and Snohomish County dated _____ ("Ecology Grant Agreement"). To protect the public's interest, Ecology is provided certain rights as a Beneficiary under this Easement as detailed herein; and

J. This Conservation Easement is being acquired with partial funding 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, farm and agricultural and timber land through restrictions on incompatible uses of the land;

NOW, THEREFORE, for and in consideration of the above recitals and the mutual covenants, terms, conditions, and restrictions contained herein and in payment of one dollar (\$1.00) and other valuable consideration 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 farm and agricultural land 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 as farm and agricultural land 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.

F. 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. Subject to the limitations of Section V(F) below, Grantor shall have the right to construct a barn together with utilities and other infrastructure required to operate the barn but only so long as the barn and infrastructure are used to further farming and other permitted agricultural

uses of the Protected Property. Grantor shall provide the County with written notification including design plans of its proposed barn construction for County review and approval; County approval will not be unreasonably withheld, conditioned, or delayed. Any other 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 Protected 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 Conservation 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 except that nothing contained in this Conservation Easement prohibits Grantor from creating or rerouting irrigation ditches as necessary for agricultural purposes;

D. Dumping or accumulation of trash or refuse;

E. The use of motorized vehicles except as necessary to conduct the permitted agricultural activities on the 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.

E. 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. Grantee shall have primary responsibility for monitoring and enforcement of the Easement; however Ecology is hereby granted third party right of enforcement of this Easement as a result of Ecology's role as funder under the Ecology Grant Agreement. As such, in the event that Grantee is for any reason unable to enforce this Easement, Grantee shall notify Ecology and

Ecology may exercise all of the rights and remedies provided to Grantee herein. Ecology is entitled to all of the indemnifications provided to Grantee in this Easement. Nothing in this Easement is intended to limit Ecology's regulatory authority as authorized by law. If Ecology, acting in its regulatory capacity, takes action against the Protected Property, Grantor, Grantee, or any future party subject to this Easement, Ecology is not required to follow any procedure outlined in this Easement. Rather, Ecology may take enforcement action consistent with applicable law. This third party right of enforcement may be transferred by Ecology only to another State of Washington government entity charged with maintaining, preserving and/or restoring riparian and/or agricultural and related lands, and does not extend to any other third party.

B. 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.

C. 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. Grantee may use the Baseline Documentation as a basis for enforcing the provisions of this Conservation Easement, but is not limited to the use of the Baseline Documentation to show a change of conditions.

D. 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.

E. 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.

F. 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.

G. 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.

H. 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. Obligations of Grantor. Grantor agrees to:

- A. Fund any improvements that are made to the Protected Property from revenue sources other than Grantee and limit any such improvements to those that meet the requirements and intent of RCW 84.34.200 et. seq. and this Conservation Easement;
- B. Submit to Grantee a long-term maintenance plan for the Protected Property and any improvements within six (6) months of the execution of this Conservation Easement;
- C. Provide Grantee with forty-five (45) days' written notice prior to any subsequent conveyance of the Protected Property. Execute and record any and all necessary

documents, as required by Grantee, to ensure the continuing validity and enforceability of this Conservation Easement regardless of the status of the transferee;

- D. Pay on a current basis all taxes or assessments levied on the Protected Property-related activities and the Protected Property; PROVIDED, HOWEVER, that nothing contained herein will modify Grantor's right to contest any such tax, and Grantor will not be deemed to be in default as long as it is, in good faith, contesting the validity or amount of any such taxes; and
- E. Obtain and maintain, at its own costs and expense, all necessary permits, licenses and approvals related to the purchase, ownership, and on-going maintenance and management of the Protected Property.

XIV. Records, Inspections and Audits. Grantor will keep such full and detailed accounts as may be necessary for proper financial management under this Conservation Easement. The Grantee may, at its sole discretion, from time to time, inspect all books and records and other materials related to any matters covered by this Conservation Easement and not otherwise privileged, belonging to Grantor or any contractor or to elect to have an audit conducted to verify income from the Protected Property, maintenance and operation costs, and the cost of improvements. Such books, records and other materials shall be made available for Grantee inspection during regular business hours within a reasonable time of the request. If Grantee elects to conduct such an audit, it will give notice to Grantor, and such audit will be conducted as soon as is reasonably feasible thereafter. Such audit will be conducted by an auditor selected by Grantee, and Grantee will, except as provided herein, pay the cost of such audit. Grantor agrees to cooperate with the auditor and to make available for examination at its principal office all its books, records, correspondence and other documents deemed necessary to conduct the audit by the auditor.

Grantor will preserve all records for a period of seven (7) years; PROVIDED, HOWEVER, that if Grantor proposed to dispose of any documents materially related to the Protected Property for a period less than seven (7) years, then Grantor will deliver the same to Grantee for disposition by Grantee.

Grantor may at all times enter the Protected Property to determine Grantor's compliance with the terms and conditions of this Conservation Easement or to post notices. Any person or persons who may have an interest in the purposes of the Grantee's visit may accompany Grantee.

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

XVI. 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 Easement shall be in writing and either served at or mailed to:

Grantee: Snohomish County
 County Executive Office
 3000 Rockefeller Avenue, M/S #407
 Everett, WA 98201

Grantor(s): Estate of Betty A. Foster
Brian J. Foster, Personal Representative
23324 Dike Road
Arlington, WA 98223
bcfoster58@gmail.com

or to such other address as any party from time to time shall designate by written notice to others.

XVII. General Provisions.

A. Amendment. If circumstances arise under which an amendment to this Conservation Easement would be appropriate, the Grantor and Grantee may jointly amend this Conservation Easement by a written instrument to be recorded with the Snohomish County Auditor, provided that such an amendment does not diminish the effectiveness of this Conservation Easement in carrying out its purpose to permanently preserve and protect in perpetuity the Conservation Values of the Protected Property.

B. Controlling Law. The interpretation or performance of this Conservation Easement shall be governed by the laws of the State of Washington and the Laws of the United States. Any legal proceeding regarding this Conservation Easement shall be initiated in Snohomish County Superior Court.

C. Interpretation. This Conservation Easement shall be interpreted to resolve any ambiguities and questions of the validity of specific provisions to give maximum effect to its preservation purpose, as stated in Section II, above. If the Grantor has any doubt concerning the Conservation Easement, covenants, conditions, limitations, or restrictions herein contained with respect to any particular use of the said Protected Property, it may submit a written request to the Grantee for consideration and approval of such use.

D. Definitions. Any masculine term used in this Conservation Easement shall include the female gender. The terms "Grantor" and "Grantee," wherever used in this Conservation Easement, and any pronouns used in their place, shall be held to mean, and include respectively the above-named Grantor, its successors, and assigns, and the above-named Grantee, its successors and assigns.

E. Entire agreement. This Conservation Easement sets forth the entire agreement of the parties with respect to the issues addressed herein and supersedes all prior discussions, negotiations, understandings, or agreements relating to these issues, all of which are merged herein.

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 Conservation Easement will not merge with fee title but will continue to exist and be managed as a separate estate.

XVIII. 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 any cleanup that may be required, unless the release was caused by the Grantee, in which case Grantee shall be responsible for remediation.

Washington State Department of Ecology does hereby accept the above Grant Deed of Agricultural Conservation Easement.

Dated: _____

Third Party Beneficiary

By: _____
Joenne McGerr

Its: Shorelands and Environmental Assistance Program Manager

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

This record was acknowledged before me on _____ (date) by _____
_____ (name(s) of individuals) as _____ (type of
authority, such as officer or trustee) of _____ (name of party
on behalf of whom record was executed).

(Signature of notary public)

(Title of office)

(Stamp)

My Commission Expires: _____

EXHIBIT A

**LEGAL DESCRIPTION OF PROPERTY
SUBJECT TO CONSERVATION EASEMENT**

Parcels A through C, J and K, Record of Survey Boundary Line Adjustment No. PFN 06-132755 BA, recorded November 16, 2006 as Recording No. [200611165008](#) and Affidavit of Boundary Line Adjustment recorded November 16, 2006 as Recording No. [200611160662](#), in Snohomish County, Washington.

EXHIBIT B
BASELINE SITE ASSESSMENT

CURRENT CONDITIONS

Please describe the current conditions of the site at the time of acquisition. If a descriptor below does not apply, then indicate "Not Applicable". Please include a description of:

- I. **PROPERTY DATA**
 - A. Structures (residential, commercial, agricultural, historic)
 - B. Access Roads and/or Road Frontage
 - C. Percentage & Type of Impervious Surfaces (note: gravel is considered impervious)
 - D. Utilities (power, water, gas, sewer/septic, storm water)
 - E. Other Site Improvements
 - F. Easements (road, utility, trail, agricultural, other)
 - G. Present Use/Proposed Future Use(s)
 - H. Mineral Rights and/or Water Rights Held by Property Owner and/or Others
 - I. Critical Areas
 - J. Existing Critical Areas Protection Areas and/or Native Growth Protection Areas (attach a copy of any documentation, e.g. Critical Areas Site Plan)
 - K. Historic Site Features (Other than Structures)

II. **GRAPHIC DOCUMENTATION OF CURRENT SITE CONDITIONS**

Please attach documents for items A – D.

- A. High resolution aerial photo showing outline of acquisition area.
- B. Ground photos of existing site features of significance

- C. Site map. Map should note location of features identified above (A - F), including impervious areas.

- D. Property boundary survey, if partial acquisition.

EXHIBIT C
SITE PLAN