



## Appendix H

### **Restrictive Covenant**

This is the restrictive covenant we used to limit the annual appreciation value of the North Beaver Valley Farmland property and its infrastructure. It requires that the property be actively farmed and gives Jefferson Land Trust the right of first refusal so that we can choose to be part of selecting the next farmer-buyer in the future. This restrictive covenant was drafted by Jefferson Land Trust with the help of a regional attorney and is based on Groundwork Solutions Network's 2021 *Declaration of Affordability Covenants with Use, Refinance, and Resale Restrictions and Purchase Option*.

**AFTER RECORDING RETURN TO:**

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**DECLARATION OF RESTRICTIVE COVENANT WITH RESALE RESTRICTIONS**

Grantor: JLT Resources LLC, a Washington limited liability company  
Grantee: Jefferson Land Trust, a Washington non-profit corporation  
Legal Description (Abbreviated):

[See Exhibit A for a full legal description]

Tax Parcel No:

Reference No. \_\_\_\_\_ *[Insert Recording Number of Conservation Easement]*

JLT RESOURCES LLC, a Washington limited liability company ("**JLTR LLC**") and wholly owned subsidiary of the JEFFERSON LAND TRUST, a Washington non-profit corporation (the "**Land Trust**") for itself and on behalf of all future owners of the Farm (a "**Farmer**") hereby encumber the real property described on attached Exhibit A (the "**Farm**"), having an address of \_\_\_\_\_ with this Declaration of Restrictive Covenant with Resale Restrictions (this "**Declaration**") as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "**Effective Date**") for the benefit of the Land Trust and its successors and assigns.

**RECITALS**

A. The Land Trust is a community land trust organized exclusively for charitable purposes, including preserving land in Jefferson County, Washington, for agricultural and habitat conservation purposes.

B. The Land Trust operates a program to preserve the long-term affordability of agricultural and habitat conservation land while providing farmers an opportunity for secure access to farmland and to generate intergenerational wealth through farm ownership (the "**Program**").

C. The purpose of this Declaration is to subject the Farm to Program restrictions to ensure the Farm is actively used by the Farmer for agricultural purposes in a manner that preserves the long term affordability of the Farm to future owners while preserving the Farmer's ability to earn a reasonable return on their investment. Such restrictions include an affirmative obligation to actively use the Farm for agricultural purposes and a restriction of the price at which the Farm may be sold.

D. Acquisition of the Farm by the Farmer and/or its successors and assigns is contingent on compliance with this Declaration. These obligations run with the land and bind

Farmer and all future owners of the Farm. As used herein, the term “**Farmer**” shall mean the entity or individual(s) that acquire the Farm from JLTR LLC and each and every owner of the Farm thereafter during the Term of this Declaration.

## **ARTICLE I.**

### **MAXIMUM RESALE PRICE; COVENANT TO FARM; DEFINITIONS**

**Section 1.01 Maximum Resale Price.** The Farm shall not be Transferred for an amount exceeding the Maximum Resale Price during the Term of this Declaration. This restriction limits the equity the Farmer may accrue in the Farm. It is intended to preserve the affordability of the Farm for all future Farmers and preserve the public and private resources invested by the Land Trust to acquire and preserve the Farm. The Maximum Resale Price is an aggregate limit. Funds received by a Farmer during its ownership of the Farm due to any event of Transfer (as defined below) may not exceed the Maximum Resale Price.

**Section 1.02 Affirmative Covenant to Farm.** Farmer shall through direct management and oversight actively use the Farm for Agricultural Use in a manner that generates sufficient income to pay, at a minimum, all applicable real property taxes, insurance premiums, labor, materials, and other expenses required or deemed necessary by Farmer to actively operate the Farm and to otherwise comply with the Jefferson County, Washington, income requirements for maintaining the Farm in an open space/agriculture use tax designation in effect on the Effective Date of this Declaration. The Land Trust reserves the right to adopt replacement income requirements if Jefferson County, Washington, terminates or otherwise materially alters those income requirements in a manner that is inconsistent with the purposes of this Declaration. Nothing in this Section shall prohibit the Farmer from entering short term leases for all or any portion of the Farm provided such leases are restricted to Agricultural Use and otherwise in compliance with this Declaration, the Conservation Easement, and Program requirements.

**Section 1.03 Definitions.** As used in this Declaration, the following terms have the meanings given:

“**Agricultural Use**” shall mean the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products, including but not limited to crops commonly found in the community surrounding the Farm, 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 Chapter 84.33 RCW, 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 agricultural buildings, fences, roads, bridges, ponds, drains, waterways, and similar features as well as restoration, maintenance of streambanks, watercourses, and wetland ponds. Agricultural Use shall also include such “Accessory Uses,” as defined in

RCW 36.70A.177(3)(b), that are related to the permitted Agricultural Use of the Farm, that maintain the primacy of, and are subordinate to, the farmland character and use of the Farm, that are compatible with the Agricultural Conservation Values as defined in the Conservation Easement, and that provide supplemental income.

**"Base Price"** shall mean the original purchase price or total consideration paid by the Farmer to acquire the Farm. The Base Price shall not include any interest or points paid or payable on debt incurred by the Farmer to acquire or improve the Farm.

**"Capital Improvements Credit"** shall mean the credit, if any, due the Farmer under Section 3.04 of this Declaration for Qualified Capital Improvements.

**"Conservation Easement"** shall mean the Grant Deed of Agricultural Conservation Easement encumbering the Farm dated \_\_\_\_\_ and recorded in the official records of Jefferson County, Washington, under Recording No. \_\_\_\_\_ and any subsequent amendments.

**"CPI"** shall mean the Consumer Price Index, all Urban Consumers, for the Seattle/Tacoma SMSA, published by the United States Department of Labor, Bureau of Labor Statistics. If the method of computing the CPI is changed by the United States Department of Labor, Bureau of Labor Statistics ("Labor Department") after the initial CPI is established, the beginning index and the adjusted index shall be converted in accordance with the conversion factor published by the Labor Department. If the CPI is discontinued or revised without a published conversion factor, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

**"Excess Proceeds"** shall mean all net proceeds of any Transfer of the Farm that exceed the amount of proceeds that the Farmer would have received if the Farm had been sold for the Maximum Resale Price.

**"Maximum Resale Price"** shall mean the Base Price *plus* an annual increase of 1.5% of the Base Price (without compounding), *plus* any applicable Capital Improvements Credit, *plus* any sales commission and other typical selling expenses actually incurred by Farmer to sell the Farm including, without limitation, real estate excise tax, escrow fees, and recording fees.

**"Qualified Capital Improvements"** shall mean the following improvements constructed on the Farm in compliance with the requirements of Section 3.04 below: residential improvements that house the Farmer and/or farmworkers, one or more barns, garages, or other permanent structures actively used to support agriculture activities on the Farm, one or more wells, permanent irrigation infrastructure, new or improved driveways or roads within the Farm, and any other capital improvements approved by the Land Trust in writing prior to construction of such improvement. For clarity, the following do not constitute Qualified Capital Improvements: soil amendments or improvements, equipment, personal property or vehicles, non-permanent irrigation infrastructure, or any pre-existing improvements present on the Farm when acquired by the Farmer.

**"Transfer"** or **"Transferred"** shall mean the sale, transfer, foreclosure, encumbrance, taking by eminent domain, or other conveyance of the Farm or any interest therein except

short term tenant leases consistent with Program requirements and financing of Qualified Capital Improvements if approved by the Land Trust.

## **ARTICLE 2**

### **TERM; OPTION TO EXTEND; EXCESS PROCEEDS**

**Section 2.01.** Term of Declaration is Ninety-Nine Years. This Declaration shall remain in full force and effect for Ninety-Nine years after the Effective Date (the “Term”).

**Section 2.02** Option to Extend Term. Farmer shall have the right to extend the original Term of this Declaration for an additional ninety-nine year period in accordance with this Section 2.02. Not later than twelve (12) months prior to the expiration of the original Term, Farmer shall deliver written notice to Land Trust of its election to (i) extend the Term for a second ninety-nine year term, or (ii) pay the Land Trust all Excess Proceeds that would be received by the Farmer if the Farmer, upon expiration of the original Term, were to sell the Farm unencumbered by this Declaration to a third party in a bona fide arm’s length transaction based on a fair market valuation of the Farm prepared by a duly licensed appraiser based on analysis and comparison of comparable properties but disregarding all of the restrictions of this Declaration (an “**Appraisal**”). If Farmer elects to extend the Term, such extension shall be documented in a written amendment to this Declaration signed by Land Trust and Farmer and recorded in the official records of Jefferson County, Washington, no later than six (6) months prior to the expiration of the original Term. If an amendment extending the Term is not recorded by such deadline, then the Farmer will be deemed to have elected to pay the Excess Proceeds to the Land Trust on or before the last day of the original Term. The Land Trust shall promptly record a release of this Declaration upon receipt of Excess Proceeds paid under this Section 2.02.

**Section 2.03** Calculation of Excess Proceeds. Any Excess Proceeds due to Land Trust under this Declaration if the Term is not renewed or if there is any involuntary sale (e.g. an event of foreclosure, bankruptcy, condemnation, etc.) shall be calculated and paid as follows:

- i. The Land Trust shall, at its sole cost and expense, obtain an Appraisal of the Farm to determine the fair market value;
- ii. The Land Trust will calculate the Maximum Resale Price;
- iii. The Land Trust will calculate Excess Proceeds by subtracting the Maximum Resale Price from the fair market value of the Farm, as determined by the Appraisal; and
  - A. If the calculation in subparagraph 2.03(iii) results in a negative number (in other words, if the Maximum Resale Price is higher than the fair market value set forth in the Appraisal), then no Excess Proceeds will be owed to the Land Trust in connection with that transaction.
  - B. If calculation in subparagraph 2.03(iii) results in a positive number (in other words, if the Maximum Resale Price is lower than the fair market value set forth in the Appraisal), then the Farmer shall pay the Excess Proceeds to the Land Trust within 90 days after receiving the Land Trust’s calculation.

### **ARTICLE 3.**

#### **TRANSFER OF THE FARM**

**Section 3.01 Notice of Transfers.** Farmer shall notify the Land Trust in writing at least ninety (90) days prior to any Transfer of the Farm. Such notice shall include the name and contact information of the buyer, lender and/or escrow officer handling the Transfer.

**Section 3.02 Option to Purchase.** Land Trust reserves the option to purchase the Farm pursuant to the provisions of attached **Exhibit B** (the “**Option**”) in the event of a Transfer. The Option is granted as an integral part of this Declaration. The Option constitutes a restriction that runs with the land and is binding even in the event of a foreclosure. The intent of the Option is to preserve the Agricultural Use of the Farm during the Term of this Declaration and prevent any Transfer of the Farm on terms that would preclude its future affordability to future Farmers.

**Section 3.03 Maximum Resale Price.** So long as this Declaration remains in effect, the Farm shall not be sold for a price that exceeds the Maximum Resale Price.

**Section 3.04 Capital Improvements Credit.** The Farmer is authorized to make capital improvements to the Farm including without limitation construction of residential improvements to house the Farmer and/or farmworkers provided the improvements are consistent with the requirements of this Declaration and the Conservation Easement and the Land Trust has approved the improvements, acting reasonably and not to be unreasonably denied, before construction has commenced. The Farmer may receive a credit (a “**Capital Improvements Credit**”) on Transfer of the Farm to reimburse Farmer for third party costs incurred by such Farmer to construct or install Qualified Capital Improvements during its ownership of the Farm, provided (i) at least sixty (60) days prior to the commencement of construction, the Farmer submits an itemized list to the Land Trust of third party costs budgeted for which credit is sought including costs related to design, materials, services, labor, and permit fees, (ii) the Land Trust notifies the Farmer in writing that a Capital Improvements Credit has been approved and the amount of such approval, and (iii) the Farmer submits a final cost certification in form required by the Land Trust with supporting documentation to establish the actual cost incurred to construct the Qualified Capital Improvements. No credit shall be due for improvements that were constructed without proper permits or otherwise in violation of applicable laws, ordinances, regulations, covenants, or restrictions or without Land Trust consent. No credit shall be provided for improvements destroyed or impaired by a fire or other casualty unless rebuilt or repaired by the Farmer at its cost (or with insurance proceeds actually used for such purpose) to substantially the same condition as existed before such casualty. If the Farmer desires to replace such improvements with updated or expanded improvements, the Land Trust shall reasonably consider a request by the Farmer to adjust the Capital Improvements Credit to reflect the additional value provided by such updated or expanded improvements. Prior to assessing the availability of the credit, the Land Trust may request additional information from the Farmer provided it is requested no later than 30 days after receipt of the Farmer's request for credit approval. The Land Trust shall inform the Farmer of its decision to approve all or a portion of the requested Capital Improvements Credit, within 60 days after receipt of all requested information from the Farmer. If the Land Trust consents to a requested Capital Improvements Credit, the Land Trust shall inform the Farmer of the value to be ascribed to the Capital Improvements or the method to be employed to determine

such value at resale, including application of depreciation rates, which may result in a Capital Improvements Credit less than the actual cost of the Qualified Capital Improvements.

Notwithstanding the forgoing, for purposes of calculating the Capital Improvements Credit, the actual cost of the Qualified Capital Improvements (as certified in the final cost certification) shall be adjusted based on the change in the CPI between the date of the final cost certification (the "Beginning Index") and the date the Capital Improvements Credit is calculated (the "Adjusted Index"). By way of example, if the original cost of Qualified Capital Improvements was \$200,000 and the Index increased 15% between the date of the Beginning Index and the date of the Adjusted Index, then the adjusted cost of such improvements for purposes of calculating the credit would be \$230,000 or  $(\$200,000 \times [1 + 0.15])$ .

**Section 3.05 Distribution of Transfer Proceeds.** The proceeds of any Transfer of the Farm shall be distributed as follows: First to satisfy any applicable mortgages in order of priority, second to pay any amounts that may be due the Land Trust hereunder or under the Conservation Easement or other document recorded against the Farm in favor of the Land Trust, third to pay taxes and any statutory or municipal fees then due and payable, fourth to the Land Trust to pay Excess Proceeds if any are due, and fifth to the Farmer.

**Section 3.06 No Promises Made as to Future Sales.** Nothing in this Declaration constitutes a promise, commitment or guarantee by the Land Trust that upon resale the Farmer shall actually receive the Maximum Resale Price for the Farm or any other price for the Farm.

**Section 3.07 Payment in Event of Foreclosure.** Farmer and Land Trust recognize that it would be contrary to the purposes of this Declaration if Farmer could receive more than the Maximum Resale Price as the result of the foreclosure of a mortgage. Therefore, Farmer hereby irrevocably assigns to Land Trust all net proceeds of any sale (or deed in lieu of foreclosure) of the Farm that would otherwise have been payable to Farmer under RCW 61.24.080 and that exceed the amount of net proceeds that Farmer would have received if the Farm had been sold for the Maximum Resale Price. The individual or entity conducting any sale is hereby authorized to pay such Excess Proceeds directly to Land Trust. If, for any reason, such Excess Proceeds are paid to Farmer, Farmer shall hold such Excess Proceeds in trust for the benefit of the Land Trust, such Excess Proceeds shall not be subject to the claims of Farmer's creditors, and Farmer shall promptly pay such Excess Proceeds to the Land Trust.

## **ARTICLE 4**

### **LATE PAYMENTS; LIEN FOR UNPAID AMOUNTS; INSURANCE**

**Section 4.01 Default Interest.** If the Land Trust has not received any amounts due under this Declaration on or before the required date (the "**Due Date**"), the Land Trust may require the Farmer to pay interest on the unpaid amount from the Due Date through and including the date such payment is received by the Land Trust, at a rate not to exceed twelve (12%) per annum or the maximum amount permitted by law, whichever is less. Such interest shall be deemed an additional fee of the Program and shall be paid by the Farmer to the Land Trust upon demand.

**Section 4.02 Land Trust Can Collect Unpaid Amounts When Farm Is Sold.** If any amount due the Land Trust from the Farmer under this Declaration or under any other document including the Conservation Easement, remain unpaid when the Farm is Transferred such as and including any Excess Proceeds, interest payable under Section 4.01, and/or any fees, charges or other liabilities incurred by the Land Trust to enforce this Declaration, the outstanding amount, including any interest (the "**Unpaid Amounts**") shall be paid to the Land Trust out of any proceeds from the

Transfer that would otherwise be due to the Farmer. The Farmer hereby grants to the Land Trust a lien upon the Farm for such Unpaid Amounts. Such lien shall be prior to all other liens and encumbrances on the Farm except liens and encumbrances recorded before the recording of this Declaration and liens for real property taxes and other governmental assessments or charges against the Farm.

**Section 4.03 Insurance Requirements.** Farmer shall maintain, at its cost, commercial general liability insurance in an amount specified by the Land Trust, acting reasonably, and property/casualty insurance (replacement value) for any improvements located or thereafter constructed on the Farm. All insurance shall name the Land Trust as an additional insured and shall not be cancelled or modified without thirty (30) days prior written notice to the Land Trust. Current certificates of insurance shall be delivered to the Land Trust at least thirty (30) days before any policy expires.

## **ARTICLE 5.**

### **ANNUAL MEETING REQUIREMENT**

**Section 5.01 Land Trust Has a Right to Conduct Annual Meetings with the Farmer.** The Land Trust shall have the right to conduct annual meetings with the Farmer at the Farm or via mutually convenient electronic means to assess compliance with the active Agricultural Use covenant in Section 1.02 above (including obtaining a written certification of such use), to confirm required insurance renewals, to collect proof that taxes and assessments have been paid, to confirm construction of Qualified Capital Improvements for which Capital Improvements Credit has been sought and to address any other Program requirements. The Farmer will cooperate with the Land Trust in scheduling and attending these meetings and will provide Land Trust with information reasonably related to the Farmer's compliance with this Declaration including without limitation a copy of Farmer's federal income tax return for the previous tax year including a copy of Schedule F (Farm Income) or such other form or schedule as is then required by the Internal Revenue Service for reporting farm income, insurance certificates, construction permits and all required certificates of occupancy. The Land Trust may opt to request such information from the Farmer by phone, mail, email, or some other method instead of conducting an in-person (or electronically facilitated) meeting, and the Farmer will then promptly provide the Land Trust with the requested information using the alternative method. Unless the Land Trust approves a longer period in writing, failure to meet and/or provide the requested information within thirty (30) calendar days of Land Trust's request shall constitute a default under this Declaration.

**Section 5.02 Land Trust's Successors and Assigns.** The Land Trust may from time to time designate a successor or assignee to its rights under this Declaration and may appoint one or more agents to enforce this Declaration on its behalf including without limitation conducting the annual meeting described in Section 5.01.

## **ARTICLE 6.**

### **TAKING FOR PUBLIC USE**

**Section 6.01 What Happens if Some or All of the Farm Is Taken for Public Use.**

(a) If all of the Farm is taken by eminent domain or otherwise for public purposes, or if so much of the Farm is taken that the Farm is lost or damaged beyond repair, this Declaration shall terminate as of the date when Farmer is required to give up possession of the Farm, provided, however, that any Excess Proceeds arising from eminent domain or other public use proceedings shall be paid to the Land Trust.



(b) In the event of a taking of a portion of the Farm that results in damage to the Farm that can reasonably be restored to an agricultural or conservation use consistent with the Conservation Easement and this Declaration, then this Declaration shall remain in full force and effect and Farmer shall restore the Farm to an Agricultural Use consistent with the requirements of the Conservation Easement and this Declaration.

## **ARTICLE 7. ENFORCEMENT**

**Section 7.01** What Happens if Farmer Fails to Make Required Payments to Land Trust. It shall be an event of default if the Farmer sells the Farm for an amount exceeding the Maximum Resale Price or fails to pay any Excess Proceeds, or any other amounts when due under this Declaration. There are no cure periods for a payment default and the Land Trust shall be entitled to exercise the rights and remedies under Section 7.04 for any such violation immediately upon notice of such violation being given by the Land Trust to the Farmer. All such defaults, and the resulting remedies of Land Trust, shall survive the Transfer of the Farm.

**Section 7.02** What Happens if Farmer Violates Other (Nonmonetary) Terms of the Declaration. It shall be an event of default if the Farmer fails to abide by any other requirement or restriction stated in this Declaration, and/or any other document of record encumbering the Farm, and such failure is not cured by the Farmer within 60 days after notice of such failure is given by the Land Trust to the Farmer. The Land Trust may in its sole discretion extend the cure period but only by written notice signed by the executive director of the Land Trust. Notwithstanding the foregoing, the Farmer shall not be entitled to a cure period for any violation described in Section 7.01 above.

**Section 7.03** What Happens if Farmer Defaults as a Result of Judicial Process. It shall be an event of default if the Farm is taken on execution or by other process of law, or if any assignment is made of the Farm for the benefit of creditors, or if a receiver, trustee in involuntary bankruptcy or other similar officer is appointed to take charge of any substantial part of the Farm by a court of competent jurisdiction, or if a petition is filed for the reorganization of Farmer under any provisions of the Bankruptcy Act now or hereafter enacted, or if Farmer files a petition for such reorganization, or for arrangements under any provision of the Bankruptcy Act now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for payment of debts.

**Section 7.04** Remedies Available to the Land Trust in the Event of Default. Upon the occurrence of an event of default that continues beyond any applicable cure period, the Land Trust shall have the right, in addition to all other rights and remedies provided at law or in equity, at the Land Trust's sole discretion and without further notice or demand of any kind, to take any one or more of the following actions:

(a) The right to enforce this Declaration independently by appropriate legal proceedings and to obtain injunctive and other appropriate relief on account of any violations, which right shall be in addition to, and not in limitation of, any other rights and remedies available to the Land Trust.

(b) Without limitation of any other rights or remedies available to the Land Trust, the following rights for any Transfer of the Farm in violation of the provisions of this Declaration:

- (i) specific performance of the provisions of this Declaration;
- (ii) money damages for Excess Proceeds and Unpaid Amounts, if applicable; and
- (iii) the right to void any contract for sale or any sale, conveyance or other Transfer of the Farm in violation of the provisions of this Declaration, by an action in equity to enforce this Declaration.

In addition to the foregoing, the Farmer shall pay all fees and expenses (including legal fees and expenses) of the Land Trust if the Land Trust is the prevailing party in any enforcement action. By acquiring the Farm subject to this Declaration, the Farmer grants the Land Trust the right to take all actions with respect to the Farm which the Land Trust may determine to be necessary or appropriate pursuant to applicable law, court order, or the consent of the Farmer to prevent, remedy or abate any violation of this Declaration.

**Section 7.05** What Happens if the Land Trust Defaults. The Land Trust shall not be in default in the performance of any of its obligations under this Declaration unless and until the Land Trust has failed to perform such obligations for 60 days, or such additional time as is reasonably required to correct any default, after written notice is delivered by the Farmer to the Land Trust describing with specificity the obligations the Land Trust has failed to perform and the action Farmer believes is necessary to correct such failures. If the Land Trust fails to correct such default, Farmer's remedy shall be limited to an action for specific performance. Under no circumstances shall Land Trust be liable for damages to Farmer.

## **ARTICLE 8.**

### **MEDIATION**

**Section 8.01** Nothing in this Declaration shall be construed as preventing the Farmer and the Land Trust from utilizing any process of mediation in which the parties agree to engage for the purpose of resolving a dispute.

**Section 8.02** Farmer and Land Trust shall each pay one half (50%) of the cost of the mediator hired to mediate any dispute between the parties.

## **ARTICLE 9.**

### **NOTICES AND OTHER PROVISIONS**

**Section 9.01** Notices. Whenever this Declaration requires either party to give notice to the other, the notice shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by like written notice. Notice by email transmission is also allowed if the recipient of such email acknowledges receipt in writing (automated out of office replies do not constitute receipt for this purpose). The following addresses shall be used for such notices or

correspondence or such other address as a party may from time to time direct by notice given in accordance with this Section:

If to Land Trust:

Address:

Phone:

E-mail:

Attn: Executive Director

If to Farmer:

Address:

Phone:

E-mail:

All notices, demands and requests shall be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt. For email transmissions, notice shall be deemed given when the recipient acknowledges receipt of the email transmission.

**Section 9.02 Severability.** If any part of this Declaration is unenforceable or invalid, such material shall be read out of this Declaration and shall not affect the validity of any other part of this Declaration or give rise to any cause of action of Farmer or Land Trust against the other, and the remainder of this Declaration shall be valid and enforced to the fullest extent permitted by law.

**Section 9.03 Waiver.**

(a) The waiver by Land Trust at any time of any requirement or restriction in this Declaration, or the failure of Land Trust to take action with respect to any breach of any such requirement or restriction, shall not be deemed to be a waiver of such requirement or restriction with regard to any subsequent breach of such requirement or restriction, or of any other requirement or restriction in the Declaration. Land Trust may grant waivers in the terms of this Declaration, but such waivers must be in writing, signed by the Executive Director of the Land Trust, and recorded in the official records of Jefferson County, Washington, before being effective.

(b) The subsequent acceptance by Land Trust of any late payments or late performance shall not be deemed to be a waiver of any preceding breach by Farmer of any requirement or restriction in this Declaration, other than the failure of the Farmer to make the particular payment or perform the non-monetary obligation so accepted, regardless of the Land Trust's knowledge of such preceding breach at the time of acceptance of such payment or late performance.

**Section 9.04 Headings.** The headings and subheadings in this Declaration are for convenience only, and are not a part of this Declaration and do not in any way limit or amplify the terms or conditions of this Declaration.

**Section 9.05 Parties and Successors Bound.** This Declaration sets forth the entire agreement between Land Trust and JLTR LLC with respect to the subject matter of this Declaration; it is binding upon and inures to the benefit of JLTR LLC, the Land Trust, and their respective successors and assigns including all future Farmers. This Declaration is not a mere

“personal covenant” limited to JLTR LLC. This Declaration shall be binding upon any party taking ownership of the Farm, or any portion thereof, at any time including subsequent to the foreclosure of any mortgage or deed of trust, and shall continue as a servitude running with the Farm.

**Section 9.06** Governing Law. This Declaration shall be interpreted in accordance with and governed by the laws of the State of Washington. The language in all parts of this Declaration shall be, in all cases, construed according to its fair meaning and not strictly for or against Land Trust or Farmer.

**Section 9.07** Rights and Obligations Upon Transfer. A party’s rights and obligations under this Declaration shall terminate upon Transfer of the party’s interest in the Farm or this Declaration, as the case may be, except liability for acts or omissions by such party occurring prior to Transfer which shall survive including, without obligation, the requirement to pay any Excess Proceeds if due.

**Section 9.08** Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

**Section 9.09** Recitals. The Parties agree that the terms and recitals set forth in this Declaration are material to this Declaration, and that each Party has relied on the material nature of such terms and recitals in entering into this Declaration. Each term and recital set forth in the Recitals hereof is fully incorporated into this Easement.

**Section 9.10** Amendments. This Declaration may not be altered or amended except by written amendment executed by the Executive Director of the Land Trust or its successor or assigns, and recorded in the official records of Jefferson County, Washington.

**Section 9.11** No Merger. This Declaration shall burden the Farm without merger as a result of any future ownership of the Farm by the Land Trust. Upon any conveyance of the Farm to a Farmer, neither the Land Trust nor the Farmer acquiring the Farm shall need to execute additional documentation to evidence the existence of this Declaration. The Declaration shall relate back to and shall be deemed to have been created as of the date of recording in the official records of Jefferson County, Washington.

IN WITNESS WHEREOF, JLTR LLC has caused this Declaration to be executed as of the Effective Date.

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

JLT RESOURCES, LLC, a  
Washington limited liability company

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF WASHINGTON    )  
  ) ss.  
COUNTY OF JEFFERSON    )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of JLT RESOURCES, LLC, To be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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



(Use this space for notarial stamp/seal)

\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

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FOLLOWS

IN WITNESS WHEREOF, Land Trust has caused this Declaration to be executed as of the Effective Date.

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

JEFFERSON LAND TRUST, a  
Washington non-profit corporation

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

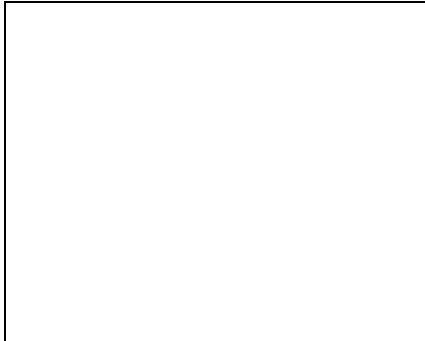
Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF WASHINGTON    )  
  ) ss.  
COUNTY OF JEFFERSON    )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that they signed this instrument, on oath stated that they were authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of JEFFERSON LAND TRUST to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

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



(Use this space for notarial stamp/seal)

\_\_\_\_\_  
Notary Public  
Print Name \_\_\_\_\_  
My commission expires \_\_\_\_\_

**EXHIBIT A**

**Legal Description  
of the Farm**

## **EXHIBIT B**

### **OPTION TO PURCHASE FARM**

A. **Triggering of Option.** The Land Trust shall have the right to exercise the Option upon the occurrence of either one of the two following events ("**Triggering Events**"): (1) Farmer desires to enter or has entered into a bona fide Purchase and Sale Agreement with a third party (the "**Purchase and Sale Agreement**") for the sale of the Farm a "**Proposed Sale**"; or (2) Farmer has failed to use the Farm for an Agricultural Use and failed to cure such default in accordance with the provisions of Section 7.02 of the Declaration ("**Failure to Cure**").

B. **Determination of Option Price.** The price for which Land Trust shall have the right to purchase the Farm (the "**Option Price**") shall be the lesser of the price stated in the Purchase and Sale Agreement (if Farmer has entered into such an agreement) or a price equal to the as-restricted fair market value of the Farm ("**As-Restricted Value**") determined by the Farmer's choice of one of the two methods described in subsection (1) or (2) this subsection B. If the Option has been triggered by a violation of the Agricultural Use covenant, the Option Price shall be the As-Restricted Value of the Farm as determined by the Land Trust's choice of one of the two methods described in subsection (1) or (2) of this subsection B:

1. **Appraisal Method:** An appraisal of the As-Restricted Value of the Farm, including all Qualified Capital Improvements thereon, shall be conducted by a duly licensed appraiser with experience in the appraisal of agricultural real estate situated in Jefferson County, Washington. Such appraisal shall be obtained and paid for by the party who elected to use the method of valuation described in this subsection (1)(the "**Appraisal Method**"). The appraisal shall be conducted by a market comparison of the Farm, including all Qualified Capital Improvements, with comparable properties recently purchased or leased for Agricultural Use such as would be permitted under the terms of this Declaration, and/or by such other appraisal methods as such appraiser finds appropriate for determining the As-Restricted Value of the Farm. In conducting such appraisal, the appraiser shall take into consideration all restrictions and requirements imposed by this Declaration, the Conservation Easement, and Option that may affect market value.

If the party that did not obtain the appraisal is not satisfied with the appraisal, such party may commission, at its cost, a second appraisal of the Farm in accordance with the provisions of the paragraph above by a duly licensed appraiser with experience in the appraisal of agricultural real estate in Jefferson County, Washington. If the value reported by such second appraisal is no more than ten percent (10%) higher or lower than the value reported by the first appraisal, the As-Restricted Value, for purposes of determining the Option Price, shall be the average of the two appraised values. If the second appraised value is more than ten percent (10%) higher or lower than the first appraised value, then Farmer's appraiser and Land Trust's appraiser shall together appoint a third duly licensed appraiser with experience in the appraisal of agricultural real estate in Jefferson County, Washington, who shall appraise the Farm according to the requirements of the paragraph above. The cost of the third appraisal shall be equally



borne by Land Trust and the Farmer. The value of the Farm determined by the third appraiser in such case shall be the As-Restricted Value for purposes of determining the Option Price.

2. Fixed Rate Method. Alternatively, the As-Restricted Value for purposes of determining the Option Price may be the Maximum Resale Price, as defined in and determined in accordance with the Declaration (the "**Fixed Rate Method**").

C. Procedures for Exercising Option. Upon the occurrence of a Triggering Event, the following procedures shall be followed.

1. If the Triggering Event is a Proposed Sale by the Farmer:

a. The Farmer shall give to the Land Trust a written notice of their intent to sell the Farm (the "**Intent to Sell Notice**"), to which shall be attached (a) a copy of the Purchase and Sale Agreement and (b) either a copy of an appraisal determining the As-Restricted Value of the Farm in accordance with the Appraisal Method above or Farmer's own calculation of As-Restricted Value by the Fixed Rate Method described in Section B(2) above.

b. If the Land Trust chooses to obtain a second appraisal in accordance with Section B(1) above, such appraisal shall be commissioned within 15 days of the Land Trust's receipt of the Intent to Sell Notice.

c. Land Trust shall notify Farmer in writing of its election to exercise the Option ("**Election to Exercise Notice**") or its waiver of the Option within 90 days of its receipt of the Intent to Sell Notice, or, in the event that multiple appraisals have been commissioned, within 60 days of its receipt of the final appraisal conducted in accordance with Section B(1) above.

2. If the Triggering Event is a Failure to Cure by Farmer:

a. Having given notice to Farmer of their failure to cure as required by Section 7.02 of the Declaration, the Land Trust may initiate the process of determining the Option Price by either obtaining an appraisal of the As-Restricted Value of the Farm in accordance with the Appraisal Method above or by calculating the Maximum Resale Price in accordance with the Fixed Rate Method above. Upon the completion of the calculation method elected, the Land Trust shall notify Farmer in writing that the Land Trust is reviewing its Option to Purchase (the "**Notice of Review**") and shall attach to said notice a copy of the Appraisal or the Maximum Resale Price calculation, as applicable.

b. If the Land Trust has selected the Appraisal Method for determining the As-Restricted Value, the Farmer may, within 15 days of the Farmer's receipt of the Notice of Review, either (i) notify Land Trust that they accept the result of the appraisal as representing the Option Price, or (ii) commission a second appraisal in accordance with the Appraisal Method above.

c. Within sixty (60) days of its receipt of Farmer's notice of acceptance of the appraisal under Section C(2)(b)(i) above or the conclusion of the Appraisal Method above, the Land Trust shall notify the Farmer in writing of its election to either exercise the Option by delivering the Election to Exercise Notice or to waive the Option.

D. Completion of Purchase. In the event that the Land Trust elects to exercise the Option and purchase the Farm or assign the Option to another party (the "**Assignee**"), the transaction shall be completed by the Farmer and the Land Trust or Assignee within 90 days of Farmer's receipt of the Election to Exercise Notice.

1. Land Trust may assign the Option at any time after giving the Election to Exercise Notice, provided that the Assignee, in the Land Trust's opinion, acting reasonably, will use the Farm for Agricultural Use in accordance with the terms of this Declaration. Such assignment shall be made in writing, with a copy delivered to the Farmer.

2. The deed delivered to the Land Trust or the Assignee upon completion of the transaction shall convey a marketable and clear title to the Farm free of all financial liens and subject only to those matters that encumbered title on the date the Farmer originally acquired the Farm and any other matters recorded against title with the prior written approval of the Land Trust. At such time, the Farm shall be in the same condition as it was at the time of the Election to Purchase Notice, reasonable wear and tear and use thereof excepted.

E. If Option Is Not Exercised. If Farmer has executed a Purchase and Sale Agreement with a third party, Farmer may sell the Farm to such third party only in the event that Land Trust (1) has declined or failed to exercise its Option in writing within the specified time period, or (2) having elected to exercise its Option, has failed to complete the purchase within the specified time period. All sales to a third party shall be subject to the Maximum Resale Price, Agricultural Use and other restrictions of the Declaration.

F. Transfers Exempt from Option. The obligations of the Farmer under an Option triggered by a Proposed Sale shall not apply where the proposed transfer of ownership will be a result of:

1. A gift for nominal consideration to the Farmer's spouse, parent, children or grandchildren (whether by blood, marriage or adoption), siblings and/or their children or grandchildren (whether by blood, marriage or adoption);

2. The devise (or conveyance) of the Farm by the will or intestacy of the Farmer; or

3. Any sale of the Farm to a business or operations partner of the Farmer who is physically engaged in the day-to-day agricultural operation of the Farm.

However, any subsequent transfer by a party acquiring the Farm under this Section F or Section E above shall again be subject to this Option it being the intent of the Farmer and the Land Trust that the Land Trust shall retain an Option for all subsequent sales of the Farm during the Term of the Declaration except those specifically described in Section F above.