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EXCISE TAX NOT REQUIRED  
BENTON COUNTY EXCISE TAX DIVISION  
BY Hannah M. Smith 10-3-06 DEPUTY  
Easement

Document Title: Conservation Easement  
Grantor: TRE, LLC  
Grantee: City of Richland, Washington  
Legal Description:  
Tax Assessor Parcel #: 1-1408-400-0002-002

### Deed of Conservation Easement

THIS GRANT DEED OF CONSERVATION EASEMENT is made and entered into effective the 30<sup>th</sup> day of September, 2005, by and between TRE, LLC, a Washington limited liability company, having an address of 1728 Horn Avenue, Richland, WA 99354 ("Grantor"), in favor of the City of Richland, a municipal political subdivision of the State of Washington, located in Benton County, Washington, having an address of \_\_\_\_\_ ("Grantee").

### RECITALS

A. Ownership. Grantor owns a fee simple interest in certain real property located in Benton County, Washington commonly known as the proposed Plat of Willow Pointe, located in the S½ of the SE¼ of Section 14 and the N½ of the NE¼ of Section 23, Township 10 North, Range 28 East, W. M. ("Willow Pointe"). The Property borders, between the East right-of-way of Richardson Road to the ordinary high water line (OHWL) of the Columbia River, (right bank) A more precise legal description shall be attached hereto as Exhibit A and is considered incorporated herein by this reference.

B. Rationale. As a condition of approval for issuance of a Shoreline Development Permit for Willow Pointe, a Wetland/Riparian Enhancement Plan was required by Grantee. (SM2-2003, Provision 9). Approval of the proposed Wetland/Riparian Enhancement Plan by the Washington Department of Ecology and Fish and Wildlife was required. Additionally, in conjunction with the Wetland/Riparian Enhancement Plan, the Shoreline Development Permit required the granting of a Conservation Easement to protect the portion of Willow Pointe bordering the Columbia River. Specifically, the grant of easement was required to cover all properties at Willow Pointe located between the Westerly edge of the proposed 22.00-foot wide Public Access Easement (Trail) as shown on the proposed Plat of Willow Point and the OHWL of the Columbia River. Additionally, the grant of easement would extend landward from the Trail (generally Westerly towards Richardson Road) an additional 10.00 feet.

C. Purpose. The purpose of the grant of this Conservation Easement is to permanently establish and protect open space along the shoreline of the Columbia River. Additionally, the intent is to permanently enhance and subsequently protect the native vegetative structure and species diversity of the shoreline. This would, in part, be initially accomplished through the implementation of the recommendations set forth in the Wetland/Riparian Enhancement Plan. Finally, the intent is to accommodate the existing pedestrian and bicycle trail (said proposed 22.00 foot wide Public Access Easement) use and provide for future educational signage along the Trail. As contemplated by the Grantor and the Grantee, the Trail is intended to permit and allow the continuation of the existing trail system within the City of Richland and to permit activities customarily associated this systems including, without limitation, walking, hiking, jogging, running, bicycling, etc. to the extent the same are permitted by the City of Richland. Other proposed modifications that would impair the



intended purposes, such as constructing buildings, fences, gardening, landscaping, composting, dumping of yard waste, introduction of beauty bark, or similar such activities would be regarded as conflicting with the stated purposes of the easement and are thus prohibited.

AGREEMENT

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Washington and in particular RCW §64.04.130, the parties hereby agree as follows:

1. Grant. Grantor hereby grants and conveys to Grantee a Conservation Easement in perpetuity over, across, and through that portion of the proposed Plat of Willow Pointe described as follows: All that portion of proposed Plat of Willow Pointe, located between the Westerly edge of the proposed 22.00-foot wide Public Access Easement (pedestrian/bicycle trail) as shown on the proposed Plat of Willow Point and the OHWL of the Columbia River. Additional, the grant of an easement would extend landward from the West edge of (the Trail, generally Westerly toward Richardson Road) an additional 10.00 feet.
2. Interest in Land. This Conservation Easement is a conveyance of an interest in real property. All of the real property described herein shall be held, transferred, and conveyed subject to the terms of this Agreement, which Agreement shall run with the real property encompassed hereby. This Agreement shall be binding upon all parties having any right, title, or interest in the Easement Area, the parties' heirs, successors, and assigns, and shall inure to the benefit of each owner, its guests, tenants, invitees, heirs, successors, and assigns.
3. Prohibited Uses. The Easement Area shall be kept as open space in its natural and wild state and restricted from any development with buildings or any use other than as open space and as a sanctuary for native wildlife and native wild vegetation. Provided, however, that existing use of the Trail and future educational signage along the same shall not violate the grant. It is understood that the Conservation Easement herein granted permits the Grantor and Grantor's successors in interest to use the Easement Area for all purposes, present and future, not inconsistent with the grant nor prohibited herein.
4. Express Restrictions. With respect to the Easement Area, there shall be:
  - a. No legal or *de facto* subdivision of the Easement Area for any purpose;
  - b. No placement or construction of any building, structures, or other improvements, whether temporary or permanent, inconsistent with the stated purpose of the Conservation Easement;
  - c. No alteration of the surface of the land except as contemplated in the Wetland/Riparian Enhancement Plan approved by the Grantee and identified in Provision #9 of the City of Richland's SM2-2003 permit;
  - d. No activity or use following completion of the Wetland/Riparian Enhancement Plan that causes or is likely to cause significant degradation or erosion or significant pollution of any surface or subsurface water;
  - e. No dumping or other disposal of waste, refuse or debris. All that is generated within the Easement Area by invited public or pedestrians shall be carried out on leaving the area;
  - f. No recreational use or operation of any type of mechanized, motorized, or non-motorized vehicles.
5. Vegetation Enhancement.
  - a. As part of the development of Willow Pointe by Grantor, the westerly ten (10) feet of the Easement Area shall be gently sloped and re-vegetated in conformance with the Wetland/Riparian Enhancement Plan.
  - b. Grantor shall comply with the Wetland/Riparian Enhancement Plan recommended by Wild West Riparian, Inc. and approved by the Department of Fish and Wildlife, including the planting of thirty-five (35) containerized black cottonwood (*populus tricoarpa*) along the approximately one thousand four hundred fifty-nine (1,459) foot shoreline. Special emphasis shall be given to planting technique, maintenance and multi year survival of planted species.

- c. Because the stated purpose of the Conservation Easement is to preserve and foster a natural and wild character across the easement area, gardening, landscaping, composting, dumping of yard waste, introduction of beauty bark or subsequent exotic plantings, excluding those that are volunteer or appear on their own, apart from the initial species list is prohibited.

6. Maintenance of Easement.

- a. Photo points shall be established by or at the direction of Grantor post planting and repeated annually in July for three (3) years and provided to Grantee. Following this initial term, for a period of an additional six (6) years, photos shall be taken every two (2) years in July and provided to Grantee. The purpose of the photo point analysis is to document the success of the Wetland/Riparian Enhancement Plan and to help ensure the long-term protection of the shoreline as well as to help identify any unauthorized shoreline management or activities.
- b. Maintenance of the Easement area shall be the done by or at the direction of Grantor. Mowing in the Easement Area shall be allowed only as needed for weed control. Management of identified weeds is an action consistent with the easement and accordingly hand removal, spot application of herbicide by a licensed individual (pesticide applicators license), and biological control shall be allowable means of controlling weeds with in the Easement Area. Notwithstanding the foregoing, it shall be the responsibility of Grantee to maintain the surface of the Trail and the land two feet on either side to ensure consistency within the existing trail system.

7. Grantee Rights. To accomplish the Purpose of this Conservation Easement, the following rights are conveyed to Grantee by this Easement:

- a. To identify, preserve, and protect the stated purposes of the Conservation Easement;
- b. To access and enter the Easement Area to ensure compliance with the terms hereof, including required maintenance;
- c. To access and enter the Easement area to perform maintenance on the Trail as described above;
- d. To enjoy any use of, or activity in, the Easement Area that is inconsistent with the Purpose of this Conservation Easement, and undertake or cause to be undertaken the restoration of such portions or features of the Easement Area as may be damaged by uses or activities contrary to the provisions hereof; and
- e. To enforce, consistent herewith, the provisions of this Conservation Easement.

8. Remedies. The parties hereto may seek such relief in law or in equity as they may deem necessary to enforce the terms of this Conservation Easement subject to the following:

- a. Except as otherwise provided herein, in the event of litigation between the parties hereto in connection with this Conservation Easement, the prevailing party shall recover all reasonable costs and attorneys' fees actually incurred, including on appeal.
- b. If Grantee determines that Grantor is in violation of the terms of this Conservation Easement or that a violation is threatened, Grantee shall provide written notice to Grantor of such violation and demand corrective action sufficient to cure the violation including indicating, where appropriate, reasonable restorative measures.
- c. Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Conservation Easement if Grantor or any successor in interest:
  - i. Fails to cure the violation within thirty (30) days after receipt of a written notice of violation from Grantee;
  - ii. Under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curative action within the thirty (30) day period or fails to continue diligently working to cure such violation.
- d. Any action brought by Grantee consistent with the terms hereof, may seek:
  - i. To enjoin the violation by temporary or permanent injunction;
  - ii. To recover any damages to which Grantee is entitled for violation of the terms of this Conservation Easement; and/or
  - iii. To require the restoration of the Easement Area to the condition that existed prior to any such injury.

